



The Committee on Energy and Commerce

Memorandum

July 31, 2012

To: Members of the Subcommittee on Commerce, Manufacturing, and Trade

From: Majority Committee Staff

Re: Hearing on "Oversight of the Consumer Product Safety Commission"

On Thursday, August 2, 2012, the Subcommittee on Commerce, Manufacturing, and Trade will convene a hearing at 9:30 a.m., in room 2322 of the Rayburn House Office Building, entitled "Oversight of the Consumer Product Safety Commission." Witnesses are by invitation only.

The purpose of the hearing is to examine the Commission's implementation of changes Congress enacted one year ago to the Consumer Product Safety Improvement Act of 2008, as well as its handling of other emerging consumer product issues.

I. Witnesses

One panel of witnesses will testify before the Subcommittee, consisting of all four sitting members of the Consumer Product Safety Commission.

The Honorable Inez Tenenbaum

Chairman
Consumer Product Safety Commission

The Honorable Robert Adler

Commissioner
Consumer Product Safety Commission

The Honorable Nancy Nord

Commissioner
Consumer Product Safety Commission

The Honorable Anne Northup

Commissioner
Consumer Product Safety Commission

II. Background

In 2007, in response to a number of toy recalls for lead-in-paint violations, then-Chairman Dingell and then-Ranking Member Barton ushered the bipartisan Consumer Product Safety Improvement Act of 2008 (CPSIA) through the Committee on Energy and Commerce and the House. After a lengthy conference with the Senate, President Bush signed the CPSIA into law in August 2008.¹ Since enactment, implementation of the CPSIA has occupied a great deal of the Commission's time and resources.

Within months of enactment, it became clear that implementing some provisions of CPSIA would be extremely problematic. Because portions of CPSIA were impossible to implement or comply with on time for various reasons, the CPSC issued several significant stays of enforcement prior to 2011 (testing and certification requirements were stayed repeatedly; lead limits for ATVs, off-road youth motorcycles, and snowmobiles were stayed; and lead limits for bicycles were stayed).

In the last Congress, the Committee held an oversight hearing on CPSIA implementation in April 2010. The hearing also focused on a legislative draft authored by Mr. Waxman. That draft received no further official action.

In the 112th Congress, the Subcommittee on Commerce, Manufacturing, and Trade conducted three separate events on CPSIA implementation. In January 2011, Majority staff hosted a bipartisan stakeholder meeting to gather suggestions for legislation to ameliorate the problems arising out of CPSIA. In February, the Subcommittee conducted an oversight hearing on the CPSIA implementation and the CPSC budget, and in April, it held a legislative hearing on a draft bill.

On August 1, 2011, after bicameral and bipartisan negotiations, both the House and the Senate passed H.R. 2715. The President signed the legislation into law on August 12, 2011.² The law was intended to relieve the most significant burdens imposed on businesses of all sizes - but small businesses in particular -- including:

Modification of Lead Limits. CPSIA established limits on the lead content of children's products, which were phased in over two years. However, CPSIA made the limits "retroactive," meaning that no children's product could be sold or distributed after a lower (stricter) limit became effective unless it complied with that new limit — even if the product had been manufactured years earlier and complied with any limit applicable at the time. The result was to turn many safe and legal products into "banned hazardous substances." H.R. 2715 corrected this problem by making the 0.01 percent limit prospective, permitting the sell-through of products manufactured prior to August 14, 2011, so long as they were in compliance with the 0.03 percent limit.

¹ P.L. 110-314.

² P.L. 112-28.

Functional Purpose Exception. The CPSIA created an exception process to the lead limits, but the grounds for exception were so narrow that the Commission was unable to grant a single exception. H.R. 2715 created new exception criteria designed to provide limited relief from the onerous lead limits established by CPSIA. A die-cast aluminum manufacturer petitioned the Commission in September 2011 for such an exemption from the 0.01 percent limit; under the new criteria, the Commission granted the exemption request in April 2012.

Exceptions from Lead Limits. One of the unintended consequences of the CPSIA is that it resulted in a de facto ban on the resale of used children's products including clothes, shoes, toys, furniture, and other items, as well as children's ATVs and snowmobiles. H.R. 2715 created a statutory exemption for youth ATVs, snowmobiles, bicycles and used children's products (with the exception of children's jewelry) from the lead limits of CPSIA.

Testing Cost Reductions. H.R. 2715 required the CPSC to seek public comment within 60 days of enactment on ways to reduce testing costs. Not later than one year after enactment, the Commission is to issue new or revised third party testing regulations if the regulations will reduce third party testing costs consistent with assuring compliance with the applicable rules, bans, standards or regulations. That deadline is August 12, 2012. The Commission issued a request for comments on November 8, 2011, but has yet to take any further official action. If the Commission finds it lacks authority to implement a cost-reducing approach, it is required to advise Congress.

Third Party Testing Exemption for Books. When intended for children age 12 and younger, products made of paper (such as books, magazines, and birthday cards) were also required to meet the onerous lead limits and be tested by a third party under CPSIA. H.R. 2715 exempted ordinary paper books for children ages 3 to 12 from the CPSIA testing requirements.

Third Party Testing Exemption for Bicycles. Like many products containing parts made with metal, bicycles have had difficulty consistently meeting the lowest lead limit of 0.01 percent; however, most bicycle manufacturers were able to meet the previous lead limit of 0.03 percent consistently. The Commission issued a stay of enforcement for bicycles through December 31, 2011; in essence, H.R. 2715 permanently extended that stay, keeping the lead limit for bicycles at 0.03 percent.

Small Business Relief. H.R. 2715 directed the CPSC to find alternative, less costly testing methods for the smallest children's product manufacturers, or exempt them from third party testing altogether (with certain products being unqualified for exemptions). Businesses availing themselves of the exemption or alternative testing requirements must register with the Commission.

Future Crib Standards. Similar to the lead limits, CPSIA made each new mandatory crib standard retroactive. The result is that retailers were stuck with perfectly safe cribs

(i.e., cribs that the CPSC had not recalled) that they were not legally permitted to sell. Under H.R. 2715, any future revisions to the crib standard will apply prospectively.

Phthalates. H.R. 2715 clarified that the CPSIA’s phthalate limits apply only to plastic components, so non-plastic parts of children’s products need not be tested for non-existent phthalates. Additionally, the law exempted from the limits inaccessible parts, similar to the inaccessible part provisions in the lead restrictions. The Commission must either promulgate a rule providing guidance on what is inaccessible, or adopt the same guidance promulgated by the Commission regarding inaccessibility of lead.

Tracking Labels. CPSIA requires a permanent mark or label on children’s products for identification purposes in the case of a recall. While the requirement only applies “to the extent practicable,” CPSIA did not give the CPSC authority to exempt products or require labeling alternatives. H.R.2715 granted the CPSC authority to exclude a product or class of products from the requirement.

Public Database. CPSIA mandated the creation of a public database in which consumers can file and review reports concerning unsafe products. Manufacturers have an opportunity to review the complaint and respond or allege material inaccuracy – where, for example, the product is not identified or is incorrectly identified. The legislation provides an additional five days for the Commission to resolve such claims of material inaccuracy.

III. Issues

- Where is the Commission on the actions and determinations required by H.R. 2715?
- What is the status of the Chronic Advisory Hazard Panel (CHAP) on phthalates required by CPSIA?
- What is the status of the Commission’s work on other proposed rules and consumer products?
- What is the status of the Commission’s implementation of CPSIA and other recent statutes?

Please contact Brian McCullough, Gib Mullan, or Shannon (Weinberg) Taylor of the Committee staff at (202) 225-2927 with questions.