MEMORANDUM

April 5, 2019

To: Subcommittee on Consumer Protection and Commerce Members and Staff

Fr: Committee on Energy and Commerce Staff


On Tuesday, April 9, 2019, at 10:15 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Consumer Protection and Commerce will hold a hearing entitled, “Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?”

I. BACKGROUND

The Consumer Product Safety Commission (CPSC) is an independent agency responsible for protecting consumers from unreasonable risk of injury or death from consumer products.\textsuperscript{1} The Commission carries out its mission by: (1) developing voluntary standards with industry; (2) issuing and enforcing mandatory standards or bans on hazardous consumer products; (3) investigating potential product hazards; and (4) recalling unsafe products or arranging for their repair.\textsuperscript{2} The CPSC is empowered to protect consumers from dangerous products through three major statutes: (1) the Consumer Product Safety Act (CPSA);\textsuperscript{3} (2) the Federal Hazardous Substances Act (FHSA);\textsuperscript{4} and (3) the Consumer Product Safety Improvement Act (CPSIA).\textsuperscript{5} Of the agencies within the Subcommittee’s jurisdiction, the CPSC is the smallest, with an appropriation of $127 million for Fiscal Year 2019.


\textsuperscript{3} Pub. L. No. 92-573 (1972).

\textsuperscript{4} Pub. L. No. 86-613 (1960).

II. FISCAL YEAR 2020 BUDGET REQUEST

CPSC has requested $127 million for Fiscal Year 2020. This funding level is the same as what was enacted for Fiscal Year 2019. CPSC identifies several initiatives that would allow it to identify emerging risks and develop a better understanding of product dangers, such as gathering injury data from urgent care centers in addition to emergency departments and including e-commerce platforms in its marketplace analysis. These particular activities, however, would not be funded under the proposed budget.

III. NOTABLE TOPICS SUBJECT TO CPSC OVERSIGHT

A. Furniture Tip-Over

Furniture tip-overs are a significant hazard, particularly for households with children. According to CPSC data, a falling television, piece of furniture, or appliance kills a child every two weeks and sends approximately 17,300 children to emergency rooms each year. In 2016, following at least 8 fatalities, CPSC and IKEA recalled 17 million dressers. In 2017, an IKEA dresser that had not been recalled fell onto a toddler and killed him – a dresser that remains on the market. CPSC currently has no mandatory standards to prevent furniture tip-overs.

B. Window Coverings

Despite several voluntary standards adopted by industry, window blind cords continue to be a persistent danger for children, resulting in an average of approximately 10 deaths each year. The most recent voluntary standard requires inaccessible cords for stock products, but does not include custom products, which account for 20 percent of the market. CPSC began

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work in 2014 on a mandatory standard to require all window coverings to be cordless or have inaccessible cords, but there has been little progress.

C. **Portable Generators**

On average, 73 people die each year from carbon monoxide exposure to generator exhaust. CPSC began work on a mandatory standard for portable generators in 2016. Two voluntary industry standards have been subsequently implemented, however, CPSC’s mandatory standard has yet to be finalized. Some argue that relying on voluntary standards with different safety requirements may result in more dangerous products remaining in the marketplace than if a single, enforceable standard were in place.

D. **Section 6(b) Disclosure Requirements**

Section 6(b) of the Consumer Product Safety Act restricts CPSC’s ability to publicly disclose certain information by requiring it to provide manufacturers notice and an opportunity to review the information prior to its publication. Other federal agencies are not subject to the same statutory restrictions. CPSC Commissioner Robert Adler criticized the rule stating, “Section 6(b)’s cumbersome procedures and unnecessary delays put consumers’ lives and limbs at risk by requiring CPSC to restrict the flow of critical safety information to the public.”

E. **E-Commerce**

E-commerce platforms have created new purchasing and distribution channels for consumer products, as well as new challenges for ensuring a safe marketplace. Online classified sites allow consumers to buy and sell used products, but these sites may not prevent recalled products from being sold. Direct-to-consumer sales, in which a product is shipped directly from a manufacturer to an individual consumer, may escape inspection at ports, allowing

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dangerous products to enter the country illegally. Additionally, e-commerce sites can serve as platforms for counterfeit goods: a recent Government Accountability Office (GAO) report found that 20 of 47 products it had purchased from third-party sellers on e-commerce sites were counterfeit, raising questions about their safety.

F. **Internet of Things**

Many consumer products are being developed with internet connectivity, linking them to the internet of things (IoT). IoT devices raise numerous policy questions relating to cybersecurity, which in turn raise concerns about product safety. Connected consumer products can be susceptible to physical safety hazards that result from hacking or faulty software. For example, malware on a connected toaster could cause it to overheat and catch fire. Earlier this year, security researchers were able to hack an electric scooter and control its acceleration and braking. CPSC has recently begun to study IoT safety issues.

G. **Recalls and Enforcement**

Over the last three years, CPSC recall actions have diminished. CPSC issued 258 recalls in 2018, 280 recalls in 2017, and 332 recalls in 2016. At the same time, a survey of children’s product recalls found that more incidents were reported prior to a recall being issued, suggesting a longer timeline for CPSC to investigate and act on recalls.

CPSC has emphasized improving recall effectiveness to get dangerous products out of the marketplace. To be successful, a recall must reach consumers who own the recalled product. In addition to issuing fewer recalls in 2018, CPSC also publicized fewer of those recalls on its social media channels than in previous years. CPSC has also faced criticism from its own

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25 See note 22.
commissioners for allowing companies to remove dangerous products from the marketplace without using the term “recall.”

CPSC enforcement has scaled back in other areas as well. CPSC has imposed fewer civil penalties in each of the last four years; the three penalties that were imposed in 2018 amounted to be the fewest assessments in decades.

IV. WITNESSES

The following witnesses have been invited to testify:

PANEL ONE

The Honorable Ann Marie Buerkle
Acting Chairman
Consumer Product Safety Commission

The Honorable Elliot F. Kaye
Commissioner
Consumer Product Safety Commission

The Honorable Robert S. Adler
Commissioner
Consumer Product Safety Commission

The Honorable Dana Baiocco
Commissioner
Consumer Product Safety Commission

The Honorable Peter A. Feldman
Commissioner
Consumer Product Safety Commission

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PANEL TWO

Rachel Weintraub
Legislative Director and General Counsel
Consumer Federation of America

Nancy Cowles
Executive Director
Kids in Danger

Remington A. Gregg
Counsel for Civil Justice and Consumer Rights
Public Citizen

Mike Gentine
Counsel
Schiff Hardin LLP