

CLIENT ALERT

Highlights from ICPHSO 2013

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The International Consumer Product Health and Safety Organization (ICPHSO) hosted its 20th annual meeting and training symposium on February 26-March 1, 2013, just outside of Washington, D.C. Crowell & Moring attorneys Bridget Calhoun and Lynn Levitan were speakers and attended this year's meeting along with attorneys Cheryl Falvey, Natalia Medley, Laura Walther, and Monica Welt.

Conference Overview. Once again, a highlight of this year's meeting was "CPSC Day," where representatives from the U.S. Consumer Product Safety Commission (CPSC) spoke about the Commission's positions on key issues and priorities for the coming year. Speakers included CPSC Chairman Inez Tenenbaum, Commissioner Robert Adler, new General Counsel Stephanie Tsacumis, Executive Director Kenneth Hinson, Office of Import Surveillance Director Carol Cave, Acting Director of Compliance and Field Operations Marc Schoem, among many others. Other attendees and speakers at the four-day meeting included representatives from other federal agencies, including the Food and Drug Administration (FDA), Consumer and Border Protection (CBP), Department of Homeland Security (DHS); foreign governments; industry; consumer interest groups; law firms; consultants; testing laboratories; and standard-setting bodies.

Highlights from the meeting included:

Chairman's Remarks Regarding Key Priorities for 2013

- CPSC Chairman Tenenbaum announced that she will not seek renomination when her term expires this October but intends to remain at the Commission until her successor takes office or until required by law to step down in October 2014. It remains to be seen who President Obama will nominate to fill that position.
- Despite the challenges the government faces given sequestration, Chairman Tenenbaum called for more funding for the Commission's import surveillance work including its Risk Assessment Methodology (RAM) pilot program. Other CPSC priority projects for this year include: (1) creation of an upholstered furniture flammability standard focused on barrier technologies to avoid the use of harmful chemicals as flame retardants; (2) examination of emerging science about carbon monoxide hazards associated with generators; (3) promotion of the use of cordless blinds in the homes of families with young children; (4) education of users about the risks of ATVs and ROVs; (5) increasing "player brain safety in youth sports"; and (6) seeking to lower child drowning rates through its continued "Pool Safely" safety education campaign.
- The Chairman thanked retailers for their continuing cooperation in conducting voluntary recalls; particularly in circumstances where the manufacturer refused to conduct a voluntary recall. She alluded to the recent administrative cases by referencing that CPSC's "serious authorities" are being "used judiciously."

CPSC Staff Updates on Key Initiatives

- The CPSC continues its mission to get the word out to consumers about recalled products, through social media and other means. The CPSC staff encouraged companies to work with their marketers to harness existing techniques used to target specific types of consumers to send more directed recall alerts. The CPSC expects firms to do more than the bare minimum to publicize corrective actions and perceives that companies can do more to increase recall response rates.
- CPSC staff acknowledged their increasing coordination on recalls with Health Canada. The CPSC is sharing information with Health Canada pursuant to Section 29(f) of the Consumer Product Safety Act (CPSA), which permits the sharing of confidential information the CPSC learns from manufacturers as long as that information remains protected from public disclosure.
- CPSC staff discussed new material change and periodic testing requirements for children's products that took effect earlier this year. The CPSC recommended that manufacturers document all decisions made about testing and certification procedures to demonstrate compliance with the testing requirements.
- CPSC staff from the Office of Compliance – Field Operations announced that new recall guidance has been issued and is now available on the CPSC's webpage. The staff emphasized the importance of effectively communicating recalls, when possible using online resources, such as instructional "how-to" videos. Companies conducting recalls were reminded of the importance of developing a reverse logistics plan at the outset, both for reporting purposes and for efficient and successful recall implementation.
- CPSC staff repeatedly reaffirmed their commitment to following the Section 6(b) process to the letter of the law by allowing manufacturers to raise objections regarding the fairness and accuracy of statements regarding a specific manufacturer's products. There was no mention of the staff's previous announcement at the September 2012 Safety Academy as to an automatic start to the 6(b) clock upon the filing of a Section 15(b) report. Indeed, staff acknowledged that nothing in a Section 15(b) report would be disclosed prior to agreement on a voluntary recall announcement.
- Audience participants raised some concern about a recent request by staff that retailers post educational posters at the point of sale regarding ingestion hazards of detergent products. CPSC staff requested that retailers "do the right thing" for consumers.

Import Surveillance

- The partnership between the CPSC and CBP continues, with both agencies seeking to strengthen enforcement at the borders by targeting high risk shipments and streamlining the import process through automation. CPSC's ongoing RAM and Importer Self Assessment pilot programs are two key components of the CPSC's enforcement strategy at the border.
- CBP announced that its Automated Commercial Environment (ACE) system will be operational within three years. CPSC staff indicated its intention to incorporate more automated processes at the border to increase the effectiveness and efficiency of import surveillance.
- Information sharing was recognized as one of the key components of effective import surveillance. The CPSC is a participant in the recently-formed Border Interagency Executive Council, which aims to facilitate communications among federal agencies about border control. Member agencies are working to develop harmonized trusted trader programs help leverage agency resources and promote consistency among agencies in their treatment of importers. Chairman

Tenenbaum further stressed the importance of finding ways to work with foreign governments to focus on noncompliant and unsafe products imported into the U.S.

Beyond CPSC Enforcement

- Panelists spoke about requirements for consumer products containing chemicals found to be unsafe by certain state legislatures. California has proposed Safer Consumer Products Regulations, which are among the first comprehensive, state-level efforts to find safer alternatives to hazardous chemicals and are viewed by some as a possible national model for chemical reform. Similar requirements in the states of Washington, Maine, and Minnesota were discussed with helpful links provided for more information.
- Product regulation continues to grow internationally, becoming increasingly complex for those who sell products across the globe. Panelists spoke about compliance with laws in Canada, Australia, the European Union, and Brazil, all of which have their own safety standards, varied requirements for agency reporting, and recall obligations. In addition, representatives from Chile, Colombia, the Dominican Republic, Peru, and Brazil, among others, are working to increase communications about and cooperation on product safety in South and Central America.

For more information about ICPHSO and this year's meeting, please click [here](#).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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