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**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814**

July 26, 2012

CERTIFIED MAIL

RE: Freedom of Information Act (FOIA) Request #12-F-00508: Request a copy of the management review of the CPSC's implementation of the CPSC of 2008 (CPSIA). I am interested in receiving that document, not a related document called the PAR Report.

Thank you for your Freedom of Information Act ("FOIA") request seeking information from the U.S. Consumer Product Safety Commission ("Commission"). The record from the Commission files responsive to your request has been processed and the releasable responsive record is enclosed.

We are withholding portions of page three of the enclosed document pursuant to the FOIA Exemption 5, 5 U.S.C. § 552(b)(5). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. The records being withheld consist of internal staff discussions, recommendations, opinions, suggestions and analyses of the Commission's staffs. The records constitute both pre-decisional and deliberative discussion. It would not be in the public interest to disclose these materials because disclosure would impair the frank exchange of views necessary with respect to such matters.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: **FOIA APPEAL**, General Counsel, ATTN: The Secretariat - Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408.

Processing this request, performing the file searches and preparing the information, cost the Commission \$25.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have any questions, contact us by letter, facsimile (301) 504-0127 or telephone (301) 504-7923 or e-mail addressed to cpsc-foia@cpsc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Alberta Mills", with a long horizontal line extending to the right.

Alberta Mills
Freedom of Information Officer
The Secretariat – Office of the Secretary
Office of the General Counsel

Enclosure



United States
CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, MD 20814

OFFICE OF THE INSPECTOR GENERAL

Flash Report

A REVIEW OF THE CONSUMER PRODUCT SAFETY COMMISSION'S
MANAGEMENT PRACTICES DURING THE INITIAL IMPLEMENTATION OF THE
CONSUMER PRODUCT SAFETY IMPROVEMENT ACT

Date Issued: August 20, 2009

Grammatical Corrections made: September 1, 2009

Introduction

This report presents the results of the Consumer Product Safety Commission (CPSC), Office of Inspector General's (OIG), review of the CPSC's implementation of the *Consumer Product Safety Improvement Act of 2008* (CPSIA). The Commission's Acting Chairman, Nancy Nord, requested that the OIG carry out a management assessment to identify the strengths and weaknesses of the agency's rulemaking process within the first 180 days after the CPSIA's enactment on August 14, 2008 and ways to improve that process. This review does not constitute an audit as defined by the Government Audit Standards.

In implementing the CPSIA the CPSC faced challenges created by both the requirement that it promulgate rules within mandatory timelines and the complex scientific, technical, and procedural issues surrounding said rules. For example, the first in a series of rules dealing with laboratory accreditation (not a subject traditionally within CPSC jurisdiction) needed to be promulgated within 30 days of the enactment of the CPSIA. A rule dealing with advertising (also not a subject traditionally within CPSC jurisdiction) needed to be issued within 60 days of enactment. In order to be timely completed, work on rules dealing with the testing and certification of products, procedural issues relating to the lead content requirement, mandatory standards for ATV's and toys, and a number of other technical issues needed to be initiated shortly after enactment of the CPSIA. The pace of required rulemaking will remain high throughout the foreseeable future, as not later than one year after the date of enactment of the CPSIA, the agency is required by the Act to promulgate standards for no fewer than two categories of durable infant or toddler products every 6 months thereafter, beginning with the product categories that the Commission determines to be of highest priority, until the Commission has promulgated standards for all such product categories.¹

This review does not address the underlying utility of the CPSIA itself or the policy decisions made by the CPSC during the implementation process. The focus of this review is management practices and on ways that the agency can improve them in order to more efficiently carryout implementation efforts in the future.

Background

The CPSIA expanded both the authority and the responsibilities of the CPSC. It established an aggressive regulatory agenda and set deadlines to ensure that results were achieved in a timely fashion. The aggressiveness of the CPSIA has had both positive and negative effects on the agency. It has spurred on a greater degree of regulatory activity than would have existed without the passage of the act. At the same time, it established implementation timelines that required the CPSC to move at a pace that the agency was unable to accommodate. Given some of the criticisms the agency has received in the past it is understandable that Congress would desire to speed-up the rule making process. However, the implementation timelines established by the

¹ The product categories include full-size and nonfull-size cribs; toddler beds; high chairs, booster chairs, and hook-on chairs; bath seats; gates and other enclosures for confining a child; play yards; stationary activity centers; infant carriers; strollers; walkers; swings; and bassinets and cradles.

CPSIA failed to include time for several necessary steps in the rule making process. For example, no time was provided for interpreting the CPSIA and providing training to CPSC employees on the content of the CPSIA. This led to the CPSC attempting to interpret various provisions of the CPSIA (What is a "children's product?" Are provisions of the CPSIA retroactively applicable? Etc.) at the same time it was attempting to develop rules to implement the CPSIA.

In assessing the CPSC's efforts at implementing the requirements of the CPSIA it should be kept in mind that the CPSIA did not relieve the CPSC of its existing responsibilities when it created new ones. Additionally, the CPSIA was not the only new statute the agency was responsible for implementing. (The Virginia Graeme Baker Pool Act and Children's Gasoline Burn Prevention Act were also implemented in this time frame.) In particular, the implementation of the Virginia Graeme Baker Pool Act was technically challenging and drew on many of the same agency resources (General Counsel's Office and Technical Experts) as the CPSIA.

The CPSIA's drafters clearly contemplated that new employees would be hired by the CPSC to implement the CPSIA. However, the deadlines they developed did not take into account either the seven month delay in the provision of funding which occurred or the amount of time that would be required to train the new employees after they had been hired. In addition to the delays ordinarily associated with the federal personnel process was added the fact that the hiring process could not commence until there were funds available to sustain the hiring action.

This underscores another challenge facing the CPSC. Although training costs are ubiquitous to all Federal agencies, as a small agency the CPSC faces several unique challenges when it attempts to utilize its increased resources. For example, because of the size and culture of the CPSC, senior managers carry out a greater variety of duties than senior managers at other Federal agencies. The majority of supervisors at the CPSC are "working supervisors;" not only are they responsible for providing leadership, technical expertise, and carrying out the hiring actions in question, they also have "hands-on" technical duties and are in many cases responsible for providing on-the-job training to new employees. Therefore, the hiring of new employees to implement the CPSIA creates a surge in the workload of the same senior managers who are charged with overseeing the implementation of the CPSIA.

Management and employees of the CPSC accepted the challenges posed by the CPSIA and engaged in an unprecedented level of rulemaking activities. Great efforts were made by individual employees and the agency as a whole. Given the limited resources available to the agency and the numerous competing needs for those resources, the acting Chairman of the agency set out a formal priorities list for the agency. These priorities acknowledged that the agency would not be able to meet all of its preexisting goals as well as the new requirements of the act. A number of existing safety programs were put on hold, as the agency sought to focus its efforts on certain key areas, including the implementation of the CPSIA.

Findings and Recommendations

Overall, six months into the implementation of the CPSIA, the OIG found that CPSC had initiated and advanced over 20 rulemaking activities required by the Act. Additionally, during this same period of time the agency also published enforcement guidance and policies to enhance compliance, conducted numerous meetings with stakeholders, developed a special website dedicated to the CPSIA, and responded to thousands of questions from the public regarding issues related to both the CPSIA and Virginia Graeme Baker Pool Act.² These are notable accomplishments, especially considering the pace at which the agency has historically carried out rule making activities.² However, there are a number of areas in which management practices could be improved in order to increase the efficiency of the agency's future implementation efforts.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² The CPSC has worked on an Upholstered Furniture standard for over a decade.

[REDACTED]



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

Cheryl A. Falvey
General Counsel

AUG 29 2012

Tel: 301-504-7642
Fax: 301-504-0403
Email: cfalvey@cpsc.gov

Re: FOIA Request 12-F-00508
A Review of the Consumer Product Safety Commission's Management Practices During
the Initial Implementation of the Consumer Product Safety Improvement Act

By letter dated July 28, 2012, received on August 1, 2012, you appealed the July 26, 2012 decision of the Commission's Freedom of Information Officer's partial denial for information in the above referenced matter.

AUG 7 2012
Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. The Commission's Freedom of Information Officer has reconsidered his decision with respect to certain information contained in the records. The Commission's Freedom of Information Officer will process this information for release to you and will notify you under separate correspondence.

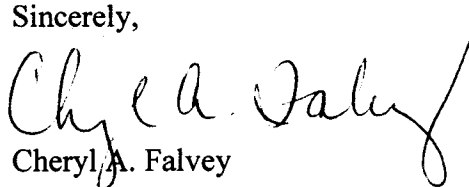
I affirm the Freedom of Information Officer's decision to withhold other responsive information in the records based on Exemption 5 of the Freedom of Information Act (FOIA). *See* 5 U.S.C. § 552(b)(5).

FOIA Exemption 5 provides for the withholding of portions of Commission materials that contain pre-decisional and deliberative discussions. The above-requested records contain opinions and recommendations of the Commission's Inspector General that are both pre-decisional and deliberative in nature. The deliberative process privilege protects advice, recommendations, and opinions that are part of the agency's deliberative, consultative, and decision making process. Although this privilege applies to opinions and recommendations

contained in a document and not to factual information, facts are withheld here because they are inextricably intertwined with exempt portions. *See Rein v. U.S. Patent and Trademark Office*, 553 F. 3d 353, 375 (4th Cir. 2009) (upholding the withholding of documents by an agency because factual portions, when viewed as part of a larger document, “would reveal the very pre-decisional and deliberative material exemption 5 protects”); *Dean v. FDIC*, 389 F. Supp 2d 780, 794 (E.D. Ky. 2005) (Exemption 5’s protections apply to opinions of personnel in the IG’s office); *Providence Journal Co. v. U.S. Dep’t of the Army*, 981 F. 2d 552, 560, (1st Cir. 1992) (significant portion of IG report was “essential” to the consultative process within the agency and could be withheld pursuant to exemption 5). Release of this information would impair the Commission’s decision making ability with respect to the consideration of the Agency’s management practices by inhibiting open and frank communication with the agency.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl A. Falvey". The signature is fluid and cursive, with a long, sweeping line extending from the end of the name.

Cheryl A. Falvey



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Todd A. Stevenson
The Secretariat • Office of the Secretary
Office of the General Counsel

Tel: 301-504-6836
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

August 30, 2012

Re: FOIA Request 12-F-00508: Review of the Consumer Product Safety Commission's
Management Practices During the Initial Implementation of the Consumer Product Safety Act

Pursuant to the August 29, 2012, letter responding to your appeal from the
Commission's General Counsel, enclosed are documents responsive to your Freedom of
Information Act request that we decided to disclose after reconsidering your request and appeal
of the withholding of records.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", written over a horizontal line.

Todd A. Stevenson

Enclosures



United States
CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, MD 20814

OFFICE OF THE INSPECTOR GENERAL

Flash Report

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1. Cultural Changes: Changes in the mission, size, and funding of the CPSC, largely driven by the needs of implementing and enforcing the CPSIA, necessitate changes in the culture of the agency.

(b)(5)

b. Changing roles of senior staff: Given the size of the agency, it has historically not only been feasible for Assistant Executive Directors and other senior managers at the CPSC to become directly involved in ongoing projects at the agency, it has been common practice. Senior managers have functioned as technical experts and done "hands-on" work in addition to carrying out their supervisory duties.³ This may or may not have been advantageous in the past, but given the new responsibilities and expanding size of the CPSC it is not an efficient way to manage the agency.

(1) The willingness of some senior managers to directly manage projects that are, at least theoretically, the responsibility of their subordinates has been a factor in the creation of an environment where many junior or middle managers are unable or unwilling to make decisions and function effectively as supervisors/managers for fear that they will be overruled by their superiors.

(2) Centralization of authority in senior managers can lead to bottlenecks in the decision making process. This occurs whenever senior managers are unable to keep up with their own duties in addition to those that should have been delegated to their subordinates.

² The CPSC has worked on an Upholstered Furniture standard for over a decade.

³ In part this practice may be an outgrowth of supervisors' efforts to deal with steadily decreasing resources or the practice of hiring supervisors based on their technical expertise rather than their supervisory abilities.

(3) Historically, unlike most Federal agencies, senior staff at the CPSC (General Counsel, Chief Financial Officer, etc.) could be contacted directly by the public and would respond directly to outside inquiries. Although this may have helped to foster cooperation and openness in the past, today it helps to contribute to the "over tasking" of senior leadership at the CPSC. (b)(5)

(b)(5)

- The current policy has resulted in "forum shopping" by outside parties (contacting various CPSC senior staff members and asking each the same question until they find the answer most beneficial to them and then relying on that answer.) It also creates an environment in which individuals have the opportunity to hold "private" conversations with agency officials regarding pending policy decisions. (b)(5)

(b)(5)

(b)(5)

(1) The majority of first and second level supervisors in the CPSC were hired internally. They were primarily hired for their technical expertise, not their supervisory abilities.

(2) With the exception of those supervisors hired or promoted within the past three years (who have benefited from a new training requirement put in place by Acting Chairman Nord) the vast majority of CPSC supervisors have never received adequate training in their supervisory duties and a substantial number of them do not adequately understand their role as a supervisor.

d. Agency's overuse of certain key personnel: Some of the individuals assigned to rulemaking teams serve on more than one team and carry out other key roles within the agency.

(b)(5)

(b)(5)

2. Planning:

a. Human Resources: Senior agency management met to determine what new hires to make for FY 09 and to estimate in general how much additional manpower would be required from each office at the CPSC to implement the CPSIA. However, due to a lack of time and resources, no formal skill gap analysis was performed to fine tune these calculations. No determination was made regarding what specific hiring actions or retraining would be required to implement the CPSIA after FY 09. (b)(5)

(b)(5)

b. Project Plans: During the period reviewed, two rule making teams did not develop adequate project plans for their activities. To some extent, this was the result of the pace of the rulemaking efforts and the uncertainty surrounding the interpretation of the CPSIA present at the time in question. However, the lack of adequate project plans outlining the steps to be taken in carrying out projects, establishing milestone dates, etc. negatively impacts both project efficiency and oversight.⁶ (b)(5)

(b)(5)

3. Comments and Inquiries: The CPSC did not anticipate the deluge of questions and comments from the public that the CPSIA generated and was therefore overwhelmed by the volume of communications received.⁷ Comprehensive procedures were not established to allow the agency to adequately assess and address the thousands of e-mail, telephonic, and written

⁵ To some extent, complaints about communication are ubiquitous to bureaucracies and some of the complaints dealt more with the employees' disagreement with the policy decision in question than the timing of the communication.

(b)(5)

⁶ No project plan with milestones, etc was developed for one of the rule making teams and the other team had an inadequate plan.

⁷ Once the agency realized the volume of communications it would be dealing with plans were made to contract for additional support, but resources were not available to support this effort.

inquiries received regarding the CPSIA. This resulted in thousands of inquiries which received no direct response from the agency and numerous comments potentially unconsidered.⁸ In some ways even more troubling was the CPSC's limited analysis and aggregation of data regarding the numbers or content of the e-mails, telephonic, and written inquiries received by the agency. Similarly, no aggregate record was kept of how many of the inquiries generated a response from the agency. (b)(5)

(b)(5)

a. Because of the CPSC's longstanding practice of allowing members of the public direct access to its senior management officials these management officials received thousands of e-mails and telephone calls.⁹ This not only resulted in the waste of senior managers' time but also in a chaotic situation in which no aggregate data was kept on the number or content of these communications. (b)(5)

(b)(5)

(b)(5)

c. One tool management did develop to deal with inquiries was a publicly available list of Frequently Asked Questions (FAQs). Although the development of FAQs was an excellent step in improving communications, because they were developed on an ad hoc basis, there was insufficient time to provide training to the staff on their use. (b)(5)

(b)(5)

(b)(5)

⁸ Approximately 16,000 e-mails were received by the CPSC in a special CPSIA mailbox established by the agency. Although a number of senior staff members attempted to periodically review the contents of this e-mail box, this was not done in any sort of systematic way. (b)(5)

(b)(5)


some point in time the CPSC did implement an auto-generated response that indicated that not everyone who submitted an e-mail would receive an individual response and that interested parties should consult the list of FAQs developed by the agency.

⁹ The direct phone lines to and e-mail addresses of senior management officials are posted on the agency website.

¹⁰ For example, the Office of the Secretary is responsible for the handling of all formal comments received during the rulemaking process. (b)(5)

¹¹ Several senior managers reported repeatedly having CPSC employees transfer phone calls from third parties to them regarding questions that were addressed in existing FAQs.

(b)(5)


CHRISTOPHER W. DENTEL
Inspector General

(b)(5)