

KEEPING UP WITH THE



United States
CONSUMER PRODUCT SAFETY COMMISSION

***Update on Recent
CPSC Developments***



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Agenda

- CPSC Commissioner lineup
- CPSC agenda
- The Trump effect
- Section 15(b) reports
- Recalls
- Civil penalties
- Compliance provisions
- Social media activity



CPSC Commissioner Lineup



Ann Marie Buerkle
Acting Chairman
Term: May 2013 – Oct. 2018
Republican

Democrats on the five-member Commission expected to remain in the majority until the first vacancy arises in October 2017



Marietta S. Robinson
Term: Jun. 2013 – Oct. 2017
Democrat



Joseph Mohorovic
Term: Jul. 2014 – Oct. 2019
Republican



Elliot F. Kaye
Term: Mar. 2014 – Oct. 2020
Democrat



Robert S. Adler
Term: Dec. 2014 – Oct. 2021
Democrat



What's on CPSC's Agenda?

*The Commission also has directed staff to perform additional work to address the emerging and ongoing hazards associated with high energy density batteries, including but not limited to **enforcement, voluntary and mandatory standards work, import surveillance and compliance, and industry, interagency and intergovernmental cooperation.***

This project shall address the emerging and ongoing hazards associated with devices powered by high energy density batteries, including but not limited to lithium-ion, lithium polymer and lithium iron phosphate batteries, as well as system safety features that ensure high energy density batteries, battery packs, safety circuits, end products and chargers all work together to achieve safe operation for the intended application.



What's on CPSC's Agenda?

- **Amendment to Regulation on Information Disclosure Under Section 6(b) of the CPSC** (final rule stage)
- **Voluntary Recall Notices** (final rule stage)
- **Durable Infant and Toddler Products**
 - Standards being finalized for infant bouncer seats; high chairs; infant bath tubs; children's folding chairs and stools
 - Standards being proposed for infant inclined sleep products; baby changing products; gates and other enclosures; activity centers; booster seats
- **Phthalates Rule** (final rule stage)

The Trump Effect on CPSC Regulations

Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs

January 6, 2017

“Unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.”



**Kelley
Drye**

Acting Chair Buerkle Remarks

*We are experiencing some unpredictable times in Washington DC and across this great Nation. As best I can interpret the election results, the American people repudiated politics as usual on both sides of the aisle...**The good news for CPSC is that we are an independent regulatory agency. We are a part of the Executive Branch, but we are designed to be bipartisan and less subject to the President's control than the Cabinet agencies** ...Our mission of safety does not change. Our organic statutes do not evaporate nor do our regulations. **Our focus must remain on safety, data, and science.***

*...**The regulatory freeze is more like a pause, and applies only for a limited time.** Nor is it unusual for a new president to enact one. **The "two out, one in" executive order, while less conventional, provides guidance to independent agencies like our own.** The guidance encourages us "to identify existing regulations that if repealed or reversed would achieve cost savings and fully offset the costs of new significant regulatory actions." I would suggest that is what reasonable regulators should always be doing.*

*Having said that, however, we do work for the American people and **we cannot simply ignore the election results. As we go forward, our attitudes and our work should always be responsive and accountable to the American people.***

- Acting Chairman Ann Marie Buerkle Delivers Remarks at the 2017 International Consumer Product Health and Safety Organization Annual Symposium (Feb. 22, 2017)



What Triggers a Section 15(b) Report?

- When the manufacturer, importer, distributor or retailer of a consumer product has information that the product:
 - Fails to comply with an applicable consumer product Safety Rule;
 - Fails to comply with a voluntary standard upon which the Commission has relied;
 - Contains a defect that could create a substantial product hazard (*i.e.*, creates a substantial risk of injury to the public); or
 - Creates an unreasonable risk of serious injury or death

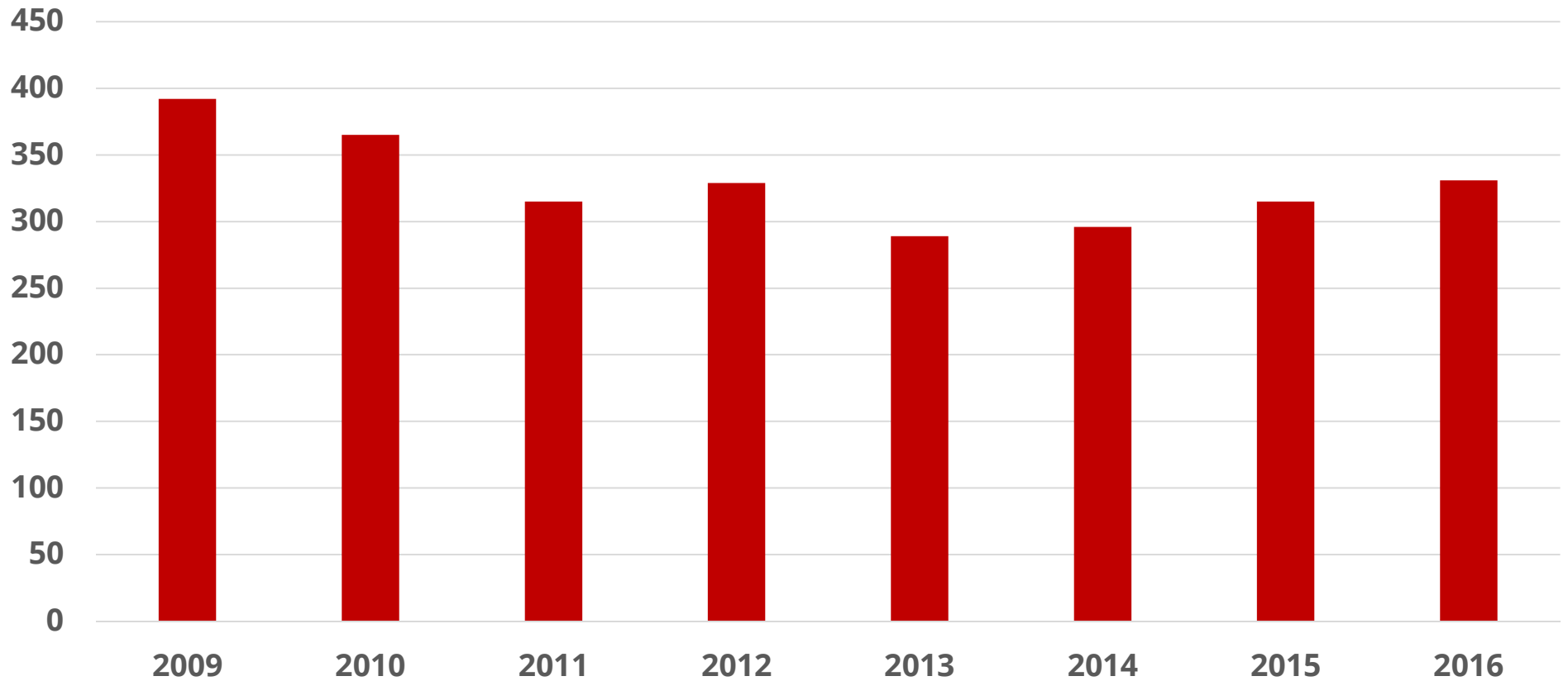
What Information Should Be Evaluated?

- Quality control, engineering, or production data
- Safety-related production or design change information
- Product liability suits and/or personal injury or damage claims
- Independent laboratory testing
- Consumer complaints, including social media
- Warranty claims
- Reports forwarded by CPSC or posted on website

Conducting a



Number of Recalls Per Year



CAP Acceptance Letter

By signing below pursuant to 16 C.F.R. § 1115.20(a)(1)(ix) the Firm, through an authorized representative, hereby agrees to undertake the actions set forth in the CAP document and to abide by the terms and conditions therein. The CAP shall be deemed effective upon staff's receipt of a signed copy of this CAP.

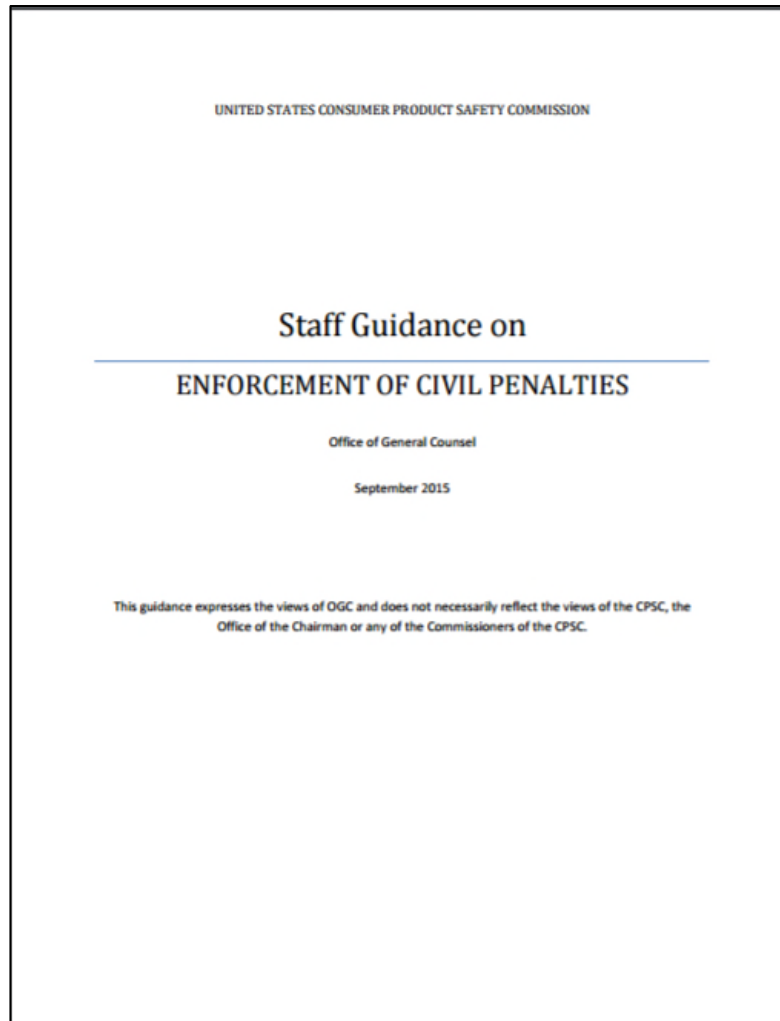
SIGNATURE & DATE: _____

NAME: _____

TITLE: _____



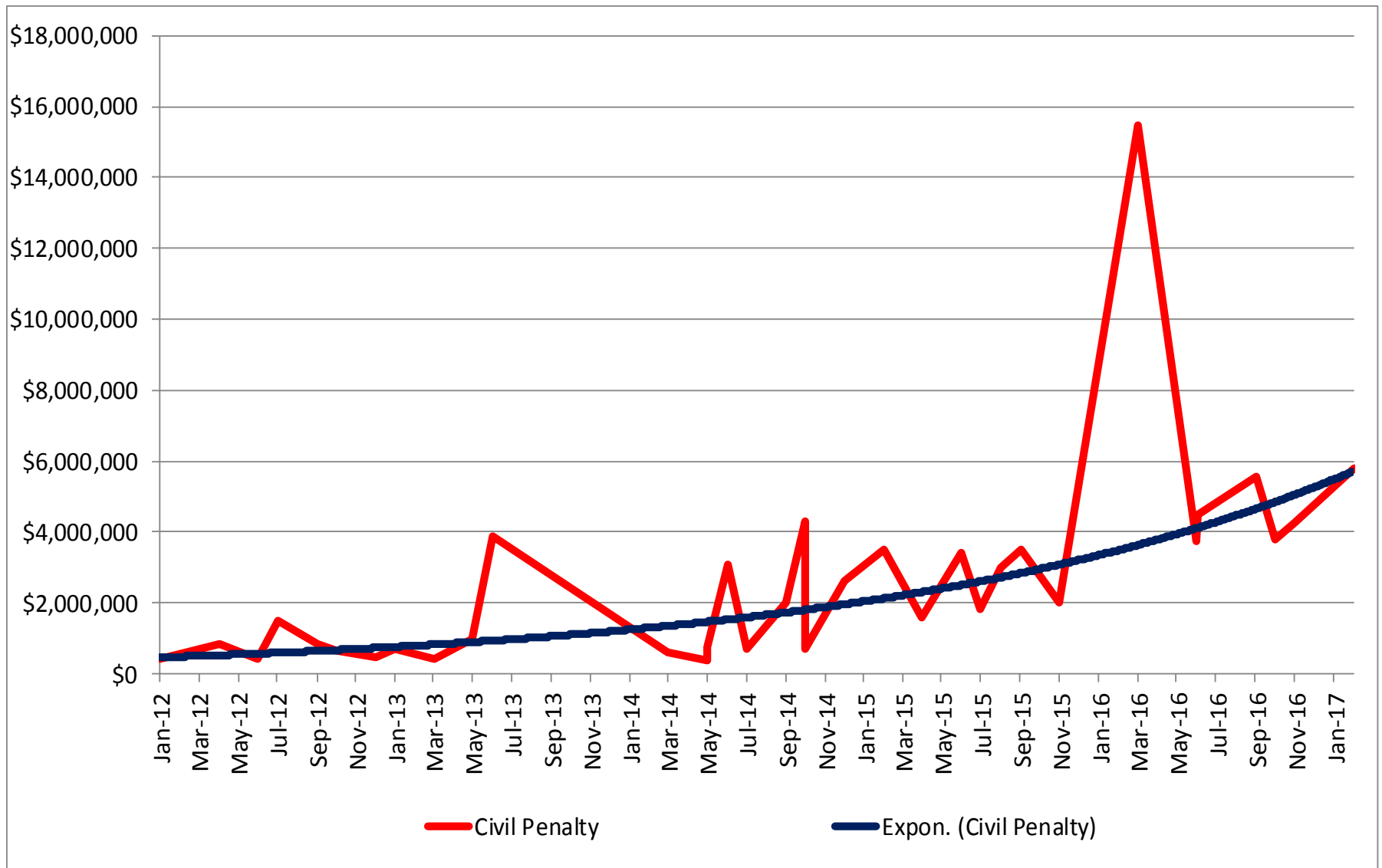
Civil Penalties



Civil Penalties

- Vigorous enforcement using every possible remedy
- May go to DOJ or pursue independently
- Multilayered managerial review at several stages
- Investigatory letter if preliminary investigation indicates potential existence of a legal violation
- Failure to provide timely, complete response could increase penalty
- Staff may consider closing if remedial action
- Show cause letter
- One shot at a meeting, and may require company rep(s) to attend

Civil Penalties Generally on the Rise



Recent Civil Penalties – Failure to Immediately Report

- Five most recent civil penalty agreements resolving allegations that the companies failed to immediately report product defects
- Average civil penalty amounts –
 - For the last five penalties: **\$4.83 MM**
 - For last 12 months (with Gree): **\$6.16 MM**
 - For last 12 months (without Gree): **\$4.60 MM**
- All required the companies to implement and maintain comprehensive compliance programs and a system of internal controls

Compliance Provisions

- Written standards and policies;
- Systematic procedures for:
 - Evaluating information for potential safety issues
 - Referring such information to appropriate personnel responsible for CPSC compliance
- Whistle blower mechanism
- Communication of policies to all employees
- Senior manager responsibility and accountability for compliance
- Oversight
- Recordkeeping for at least five years

And this.... *A New Compliance Provision?*

CPSC recommends that "all parties seek to include a provision in any private protective order or settlement agreement that—despite whatever restrictions on confidentiality are imposed, and whether entered into by consent or judicial fiat—specifically allows for disclosure of relevant [consumer product] safety information to [the CPSC] and other applicable authorities."

CPSC Litigation Guidance and Recommended Best Practices for Protective Orders and Settlement Agreements in Private Civil Litigation, 81 Fed. Reg. 87024 (Dec. 2, 2016)

CPSC 'Breaks the Internet'

 U.S. CPSC @USCPSC · Mar 17

Pots of gold can be overrated. Fresh batteries in a smoke/CO alarm at the end of the rainbow is what we all need. Happy #StPatricksDay



JOY, AND WORKING SMOKE/CO ALARMS, BE TO YOU ALL

14 13

 U.S. CPSC @USCPSC · Mar 4

Winter is peak season for CO deaths in the US. Our new OnSafety blog has tips to stay safe: bit.ly/2I13CVy #invisiblekiller



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CPSC 'Breaks the Internet'

 U.S. CPSC @USCPSC · Jan 29

Babies should be strapped into chairs like tiny astronauts strapped in a spaceship
#BabySafety



 #BabySafetyMonth @USCPSC

Babies should be strapped into high chairs like tiny astronauts strapped in a spaceship

← ↻ 20 ❤️ 12



MAGNETS GO IN EASIER THAN THEY COME OUT

KEEP SMALL MAGNETS OUT OF REACH OF CHILDREN

 www.cpsc.gov
 NSN 12-2



 U.S. CPSC @USCPSC · 28 Dec 2016

High-powered magnets are up to 8x stronger than average magnets. Keep them away from kids! pic.twitter.com/rIFwYH8DVy

← ↻ 17 ❤️ 11

Questions

THANK YOU



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