



UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION

MINUTES OF COMMISSION MEETING

June 22, 2022

Chair Alex Hoehn-Saric convened the June 22, 2022, meeting of the U.S. Consumer Product Safety Commission in open session at 2:00 p.m. The meeting was held remotely. Commissioners Dana Baiocco, Peter A. Feldman and Richard Trumka Jr., were in attendance. The Chair made welcoming remarks and summarized the agenda item for the meeting. The Chair also acknowledged that this open Commission meeting is the first to feature an American Sign Language (ASL) translator.

Decisional Matter: Notice of Proposed Rulemaking: Safety Standard for Recreational Off-Highway Vehicle and Utility Task/Terrain Vehicle Debris Penetration Hazards
(Briefing package dated May 18, 2022, OS# 0126)

Chair Hoehn-Saric introduced the decisional matter pending before the Commission and introduced staff that was present to address questions from the Commission: Duane Boniface, Assistant Executive Director, Hazard Identification and Reduction, Alex Moscoso, Associate Executive Director for Economic Analysis, Austin Schlick, General Counsel, Barbara Little, Attorney, and Han Lim, Project Manager, Engineering Sciences.

Chair Hoehn-Saric advised that each Commissioner would have five minutes to ask questions of staff, with multiple rounds as necessary, followed by consideration of amendments. Before the questioning session, the Chair stated that it was not appropriate to discuss legal advice given to the Commission by the Office of the General Counsel outside of Executive Session.

After conducting a roll call to confirm the presence of all the Commissioners, Chair Hoehn-Saric called for questions for staff. The Commissioners did not have any questions for staff. The Chair excused staff and commenced consideration of staff's draft proposed rule for a safety standard to address recreational off-highway and utility task/terrain vehicle debris penetration hazards, as well as any amendments to the draft proposed rule.

The Chair recognized himself for an amendment and read and described his amendment for the record. The amendment would clarify that the proposed rule would apply to vehicles that “meet the definition of ROV or UTV,” regardless of how the product is marketed. Additionally, the amendment harmonizes the language of the preamble to the requirements of the proposed rule. Chair Hoehn-Saric called for a second and Commissioner Feldman seconded the motion.

Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions about the amendment, and the Commissioners discussed their respective positions and support for the amendment. After the discussion, the Chair called for a vote on his amendment. The Commission voted unanimously (4-0) to adopt Chair Hoehn-Saric’s amendment. The Commission-adopted amendment is attached.

The Chair then recognized each Commissioner by order of seniority for additional amendments. Commissioners Baiocco and Feldman did not have any amendments. Commissioner Trumka stated that he had four amendments.

The Chair recognized Commissioner Trumka for his first amendment. Commissioner Trumka introduced his amendment for the record and explained the rationale for the amendment, which would strengthen the proposed provisions preventing manufacturers from stockpiling products that could be sold beyond the effective date of the rule. The Chair called for a second to consider the amendment and Commissioner Feldman seconded the motion.

Chair Hoehn-Saric advised that each Commissioner would have five minutes to ask questions and then recognized each Commissioner in order of seniority for questions. The Commissioners expressed their respective positions and support for the amendment. Commissioner Feldman supported the amendment with the stipulation to revisit the subject at the conclusion of the comment period to determine if supply chain disruptions impacted manufacturers’ production levels. After the discussion, the Chair called for a vote on the amendment. The Commission voted unanimously (4-0) to adopt Commissioner Trumka’s first amendment. The Commission-adopted amendment is attached.

The Chair recognized Commissioner Trumka for his second amendment. Commissioner Trumka introduced his second amendment for the record and explained the rationale for the amendment, which would reduce the effective date of the proposed rule from 180 days to 120 days after publication in the *Federal Register* and request public comment on the appropriate effective date for the final rule. The Chair called for a second to consider the amendment and Commissioner Baiocco seconded the motion.

Chair Hoehn-Saric advised that each Commissioner would have five minutes to ask questions and then recognized each Commissioner in order of seniority for questions. The Commissioners expressed their respective positions on the amendment. Chair Hoehn-Saric strongly supported the amendment. Commissioner Baiocco expressed support for the amendment with the caveat to revisit the subject at the conclusion of the comment period. Commissioner Feldman explained why he would not support the amendment, stating that, because the proposed rule could result in substantial redesign and testing for the subject vehicles, manufacturers should be allowed sufficient time for this process.

Hearing no further discussions, Chair Hoehn-Saric called for a vote on the amendment. The Commission voted (3-1) to adopt Commissioner Trumka's second amendment. Chair Hoehn-Saric, Commissioners Baiocco and Trumka voted to adopt the amendment. Commissioner Feldman voted to not adopt the amendment. The Commission-adopted amendment is attached.

The Chair recognized Commissioner Trumka for his third amendment. The Chair advised Commissioner Trumka that he could take up to three minutes to explain his amendment. Commissioner Trumka introduced his amendment for the record and explained the rationale for the amendment, which is to solicit public comments with respect to the valuation of benefits and costs associated with the proposed rule.

Chair Hoehn-Saric called for a second and Commissioner Baiocco seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and the Commissioners discussed their respective positions on the amendment. After the discussions, the Chair called for a vote on the amendment. The Commission voted unanimously (4-0) to adopt Commissioner Trumka's third amendment. The Commission-adopted amendment is attached.

The Chair recognized Commissioner Trumka for his fourth amendment. Commissioner Trumka introduced his amendment for the record and explained the rationale for the amendment, which directs staff to delete references to the usage of seatbelts from the proposed rule to avoid implications of consumer misuse, without supporting data.

The Chair called for a second to consider the amendment and Commissioner Baiocco seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and the Commissioners discussed their respective positions on the amendment. Commissioner Feldman explained why he would not support the amendment and expressed that the removal of this information would eliminate data that may be relevant to the analysis of the rule. After the discussion, the Chair called for a vote on the amendment. The Commission voted (3-1) to adopt the fourth amendment. Chair Hoehn-Saric, Commissioners Baiocco and Trumka voted to adopt the amendment. Commissioner Feldman voted to not adopt the amendment. The Commission-adopted amendment is attached.

Chair Hoehn-Saric called for any other amendments and, hearing none, moved for a vote on staff's draft proposed rule for a safety standard to address recreational off-highway and utility task/terrain vehicle debris penetration hazards as amended and direct publication of the same in the *Federal Register*. The Chair called for a second and Commissioner Baiocco seconded the motion. The Commission voted unanimously (4-0) to approve the proposed rulemaking as amended and publish it in the *Federal Register*.

Chair Hoehn-Saric stated that each Commissioner would have up to 10 minutes for closing remarks. The Chair provided his closing remarks and then recognized each Commissioner. Commissioners Baiocco, Feldman and Trumka each gave closing remarks.

There being no other business, Chair Hoehn-Saric adjourned the meeting at 2:47 p.m.

For the Commission:

Alberta Mills
Secretary

Attachments: 1. Commission Adopted Amendment Proposed by Chair Hoehn-Saric
2. Commission Adopted Amendments Proposed by Commissioner Trumka

June 22, 2022

Amendment by Chair Hoehn Saric

ADOPTED BY THE COMMISSION

Strike the paragraph at the end of Page 5 of the NPR that begins with the phrase:

“At least one ROV manufacturer offers youth-oriented ROVs...”

In the response to the American Academy of Pediatrics’ comment beginning on page 26 of the NPR, delete:

“These ROVs, however, have materially different risks of penetration than the risk for a full size-ROVs, due to their lower ground clearance and distinct wheel-well configuration. Further, there are no incident data involving these vehicles. The Commission, accordingly, has not included these products in the scope of the proposed rule”

And replace with:

“These vehicles will be treated in the same manner as other OHVs. If they meet the definition of ROV or UTV, then they are within the scope of the proposed rule.”

Trumka Amendments to OHV Debris Penetration NPR

Amendment #1: Anti-Stockpiling

ADOPTED BY THE COMMISSION

On page 25, under “C. Prohibited Stockpiling”:

Delete “120 percent” and replace with “105 percent”

Delete “as any period of 365 consecutive days, chosen by the manufacturer or importer, in the 5-year period immediately preceding promulgation of the final rule” and replace with “as the calendar month with the median manufacturing or import volume within the last 13 months immediately preceding the month of promulgation of the final rule”

On page 53:

Delete “, while stockpiling units for other models whose redesign would occur after the effective date”

On page 106, delete current § 1421.5 and replace with new § 1421.5:

- (a) **Base period.** The base period for ROVs and UTVs is the calendar month with the median manufacturing or import volume within the last 13 months immediately preceding the month of promulgation of the final rule.
- (b) **Prohibited acts.** Manufacturers and importers of ROVs and UTVs shall not manufacture or import ROVs or UTVs that do not comply with the requirements of this part between [date of promulgation of the rule] and [effective date of the rule] at a monthly rate this is greater than 105 percent of the monthly rate at which they manufactured or imported ROVs and UTVs during the base period.

Amendment #2: Effective Date

ADOPTED BY THE COMMISSION

On page 55,

Delete “180 days” and replace with “120 days” in the first and last lines of the paragraph beginning “If finalized”

In the Request for Comments starting on page 99, delete “Comments regarding the appropriateness of the 180-day effective date, or other periods commenters may alternatively recommend” and add:

- Comments regarding the appropriateness of the 120-day effective date, and a quantification of how a 120-day effective date would affect the benefits and costs of the proposed rule.
- Comments regarding the appropriateness of a 30-day effective date, and a quantification of how a 30-day effective date would affect the benefits and costs of the proposed rule.
- Comments regarding the appropriateness of any other period commenters may alternatively recommend, and a quantification of how such effective date(s) would affect the benefits and costs of the proposed rule.

On page 101, under § 1421.1(b):

Delete “180 days” and replace with “120 days”

Amendment #3: Valuation of Benefits ADOPTED BY THE COMMISSION

In the Request for Comments section starting on page 99, add:

- In estimating the number of debris penetration incidents, injuries, and deaths, how should CPSC incorporate the number of known debris penetration incidents from OHV recall data that differ from the debris penetration incidents available in NEISS and CPSRMS data?
- Are there other sources of data that could allow CPSC to generate a more robust national estimate of incidents, injuries, or deaths associated with OHV debris penetration?
- Given the data cited in the analysis above and any other relevant sources, is it possible to make reliable estimates of the number of incidents, injuries, and deaths associated with OHV debris penetration on a national scale? If not, what are plausible assumptions concerning these figures? What is a reasonable quantification of the benefits tied to avoiding those incidents?
- Are there benefits to the proposed rule arising from the avoidance of damage to OHVs, and elimination of associated repair costs? If so, what is a reasonable quantification of those benefits?

Amendment #4: General Edits ADOPTED BY THE COMMISSION

On page 13:

Insert “and” after “the accident” and delete “, and information regarding the occupants’ seatbelt usage.”

On page 14:

Delete: “Thirty-nine IDIs had information regarding whether seatbelts were fastened or not during the accidents.”