



CPSC's Long & Winding Rulemaking Road

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The Administrative State

Most of our
interactions with
government are with
executive agencies

Congress passes laws

Executive Agencies implement the laws

- Rulemaking
- Enforcement
- Guidance
- Studies
- Education

Courts can review legislation and agency
FINAL action

An aerial photograph of a winding asphalt road that snakes up a lush green mountain slope. The road has several sharp turns and is bordered by a white line. In the background, a rocky mountain peak is visible under a clear sky. The image is partially obscured by a blue geometric overlay on the right side of the slide.

Notice and Comment Rulemaking

- ▶ Established by Administrative Procedures Act
- ▶ Supposed to ensure
 - ▶ Public notice of rulemaking
 - ▶ Opportunity for stakeholders to have a say
 - ▶ Regulations based on sound data
 - ▶ Agency accountability
- ▶ Prevent “backdoor rulemaking”
 - ▶ Using enforcement, or other informal tools, instead of going through rulemaking process

Notice and Comment Rulemaking, Cont.

- ▶ Additional requirements for rulemaking through
 - ▶ Legislation (e.g. Paperwork Reduction Act, Regulatory Flexibility Act)
 - ▶ Executive orders
 - ▶ Courts



CPSC Rulemaking Powers

The Commission can initiate rulemaking for any product in CPSC's jurisdiction

- Staff recommendations
- Commissioner initiative
- Petitions
- Political pressure

Congress can mandate rulemaking for specific products through legislation

- Examples:
 - ATVs
 - Portable Fuel Containers
 - Toys

Rulemaking Constraints



- ▶ Referred to internally as “Section 7 and 9” rulemaking
- ▶ Extensive required findings
- ▶ Required hearings
- ▶ Findings for NPR are “preliminary”
- ▶ Findings for final rule go more in-depths

Section 7&9 Findings

- ▶ Findings must include:
 - ▶ No adequate voluntary standard
 - ▶ Cost benefit analysis of proposals and alternatives
 - ▶ Must be “least burdensome” requirement
 - ▶ Must be “reasonably necessary” and in the public interest
 - ▶ Must analyze all applicable voluntary standards
 - ▶ **Assess and respond to comments in final rule**





CPSC Rulemaking in Practice

- ▶ Long path to “Section 7 and 9” rulemaking
 - ▶ Years of resource-intensive research and analysis before NPR and final rule
 - ▶ Cumbersome procedures
 - ▶ Stakeholder engagement
 - ▶ Shifting political winds
- ▶ Congress sometimes intervenes
 - ▶ SOFFA Act
 - ▶ Section 104 model

Be Engaged!



MAKE SURE YOU KNOW
WHAT IS COMING DOWN
THE PIPELINE



COMMENT
STRATEGICALLY



VOLUNTARY
STANDARDS



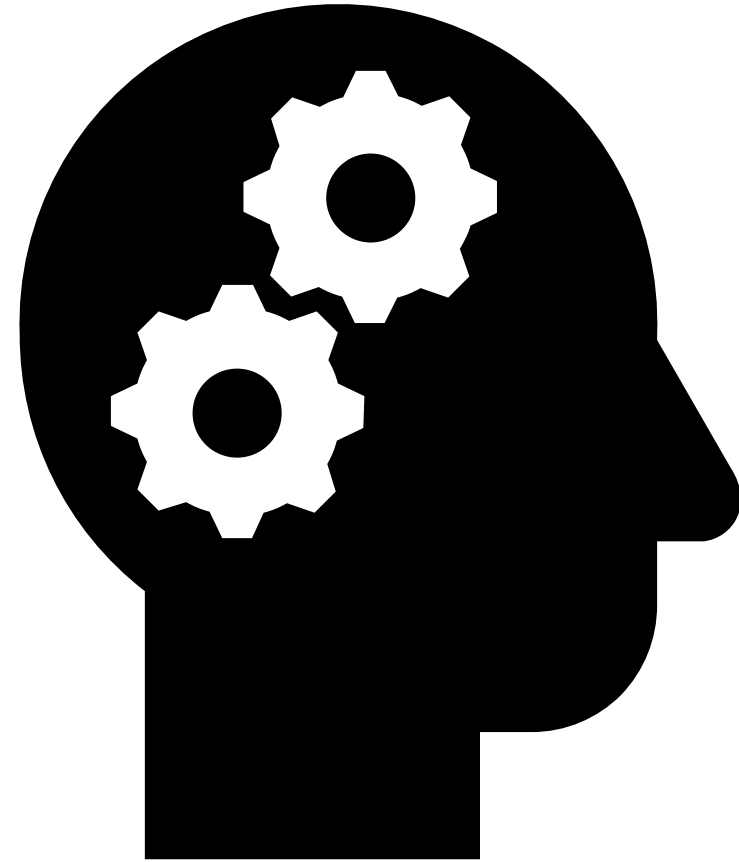
LOBBYING



JUDICIAL CHALLENGES

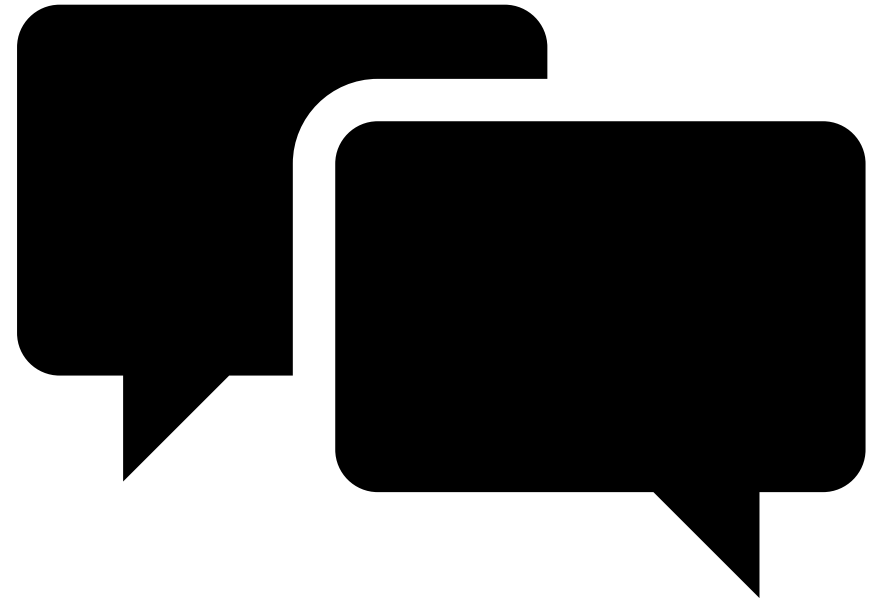
Make sure you know what is coming down the pipeline

- ▶ Federal register notices
- ▶ Public Calendar
- ▶ Operating Plan
- ▶ Regulatory Agenda
- ▶ CPSC Reports to Congress
- ▶ CPSC Research
- ▶ ICPHSO
- ▶ Voluntary Standards Committees



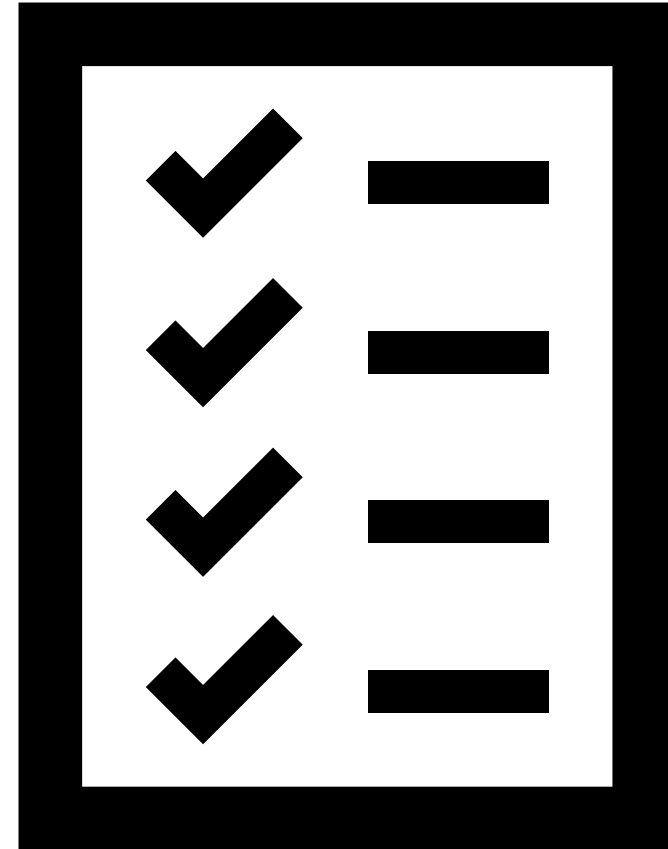
Comment Strategically

- ▶ Oral and written comments
- ▶ Focus on required findings
- ▶ Provide data
- ▶ Provide alternative technical solutions
- ▶ Build record for judicial challenge



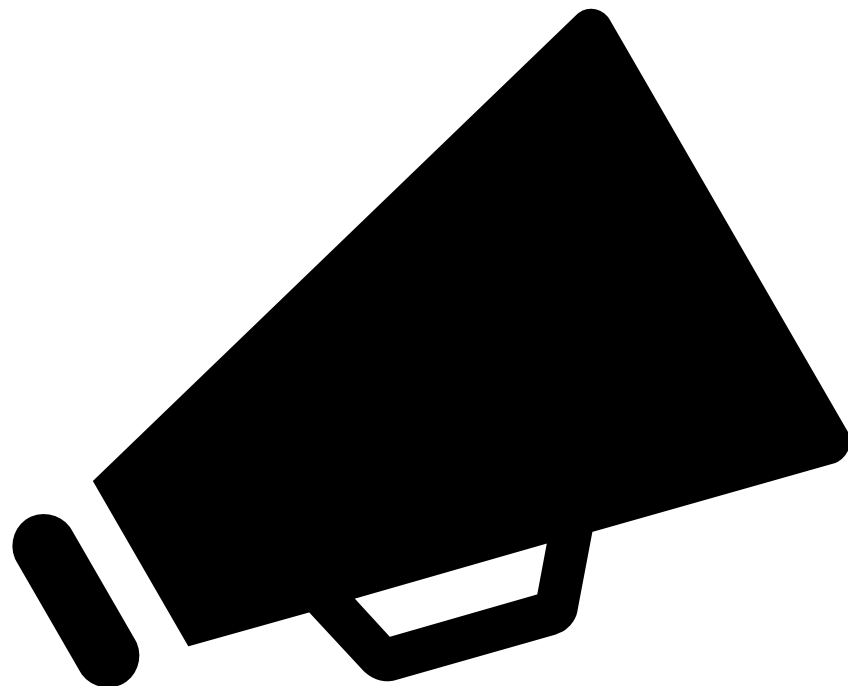
Voluntary Standards

- ▶ New or updated voluntary standards can slow or stop CPSC rulemaking
- ▶ Standard must eliminate or adequately reduce the risk of injury or death
- ▶ There must be substantial compliance with the standard



Lobbying

- ▶ Legislation
- ▶ Appropriations
- ▶ Oversight



Judicial Challenge

- ▶ Preserve your arguments by filing comments
- ▶ Challenge CPSC factual basis or analysis
- ▶ Not “natural outgrowth” or proposed rule
- ▶ Recent challenges
 - ▶ Magnets
 - ▶ Infant Sleep Products



A photograph of a man with dark hair and a beard, wearing a blue and white checkered shirt, sleeping with his head resting on his arms at a desk. In the background, other students are blurred, suggesting a classroom or lecture hall environment. The image is partially covered by a dark grey semi-transparent rectangle on the right side, which contains the text. The overall design includes blue geometric shapes on the left and right edges.

Questions?

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