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PROTECTING AMERICANS FROM DANGEROUS PRODUCTS: IS THE CONSUMER PRODUCT SAFETY COMMISSION FULFILLING ITS MISSION?

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION AND COMMERCE

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

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PROTECTING AMERICANS FROM DANGEROUS PRODUCTS: IS THE CONSUMER PRODUCT SAFETY COMMISSION FULFILLING ITS MISSION?

TUESDAY, APRIL 9, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER PROTECTION AND COMMERCE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:13 a.m., in room 2322, Rayburn House Office Building, Hon. Jan Schakowsky (chairwoman of the subcommittee) presiding.

Members present: Representatives Schakowsky, Castor, Veasey, Kelly, O'Halleran, Cárdenas, Blunt Rochester, Rush, Matsui, McNerney, Dingell, Pallone (ex officio), Rodgers (subcommittee ranking member), Upton, Burgess, Latta, Guthrie, Bucshon, Hudson, Carter, and Walden (ex officio).

Also present: Representative Griffith.

Staff present: Jeffrey C. Carroll, Staff Director; Alex Chasick, Counsel; Evan Gilbert, Deputy Press Secretary; Lisa Goldman, Senior Counsel; Waverly Gordon, Deputy Chief Counsel; Tiffany Guarascio, Deputy Staff Director; Alex Hoehn-Saric, Chief Counsel, Communications and Consumer Protection; Meghan Mullon, Staff Assistant; Kaitlyn Peel, Digital Director; Alivia Roberts, Press Assistant; Chloe Rodriguez, Policy Analyst; Ben Rossen, FTC Detailee; Mike Bloomquist, Minority Staff Director; Adam Buckalew, Minority Director of Coalitions and Deputy Chief Counsel, Health; Melissa Froelich, Minority Chief Counsel, Consumer Protection and Commerce; Theresa Gambo, Minority Financial and Office Administrator; Peter Kielty, Minority General Counsel; Bijan Koohmaraie, Minority Counsel, Consumer Protection and Commerce; Brannon Rains, Minority Staff Assistant; and Nate Wilkins, Minority Fellow.

Ms. SCHAKOWSKY. The hearing of the Consumer Protection and Commerce Subcommittee will come to order.

The Chair will now recognize herself for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. JAN SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

I want to thank our panel so much for being here, both of our panels, and for our Members for being here.

I want to tell you that consumer protection is my passion and what really first drew me to public life. As many Members will recall, I like to call our subcommittee the Nation's legislative help line and nowhere is there more evidence of this in its oversight of the Consumer Product Safety Commission.

The fundamental questions that we must answer today is found in the hearing's title: Is the Consumer Product Safety Commission fulfilling its mission to protect consumers?

Unfortunately for consumers, the data doesn't suggest that the CPSC is doing all it can to fulfill its mission. CPSC's ability to protect consumers from unsafe products relies on its ability to conduct effective and efficient investigations and issue recalls.

However, over the last 3 years, the CPSC recall actions have slowed dramatically. In 2016, when Commissioner Kaye was serving as chairman, the Commission issued 332 recalls.

Since then, that number has sunk pretty precipitously as last year there were only 258 recalls issued.

Now, don't misunderstand me. I would love to believe that the decrease in the recalls was the result of more effective regulation and higher quality, safer products being brought to the market.

The reality is, however, a survey conducted by Kids in Danger revealed that the number of incident reports in children's products actually increased over that time, which suggests that the CPSC is moving slowly to open cases and recall unsafe products, or worse, not moving much at all.

All of this comes as many of these products are becoming more and more complex with new challenges for the agency to tackle. For example, last year, every Christmas we have a unsafe toys demonstration and for the first time we talked about connected toys—those that may track our children wherever they go.

I commend Chairwoman Buerkle for making statements in support of increased resources for the Commission, in particular, a proposed initiative to gather information from urgent care centers in addition to emergency rooms and including e-commerce platforms in its marketplace analysis.

However, in its budget request the Consumer Products Safety Commission did not seek an increase, meaning that this and other plans and initiatives would remain pipe dreams.

I look forward to hearing from Chairwoman Buerkle and the other Commissioners. I thank you all for being here. It means so much to us as we discuss these and other important issues facing consumers.

I am also delighted to hear from consumer groups in our second panel. Their voice is so very important and it has been missing, I think, unfortunately, in the last few years on this subcommittee.

I look forward to working with each of you on the important issues that the Commission deals with. My preference will always be to be able to work in collaboration with the CPSC and all the members of the subcommittee on both sides of the aisle.

I hope the Commissioners will stay for the second panel—I really want to invite you to do that—where we will hear from advocates about how furniture tipovers kill one child every 2 weeks, how bed rails can kill senior citizens, and how—and the need for flame mitigation devices on portable fuel containers.

There are so many things that we can be doing to make the marketplace safer and this is the subcommittee that actually can do that.

We look forward to working in collaboration.

[The prepared statement of Ms. Schakowsky follows:]

PREPARED STATEMENT OF HON. JAN SCHAKOWSKY

Good morning and thank you all for joining us today. Consumer protection is my passion, and what first drew me to public life. As many Members will recall, I like to call our subcommittee the Nation's legislative helpline, and nowhere is that more evident than its oversight of the Consumer Product Safety Commission.

The fundamental question we must answer today is found in the hearing's title: is the Consumer Product Safety Commission fulfilling its mission to protect consumers?

Unfortunately for consumers, the data doesn't seem to suggest the CPSC is doing all it can to fulfill its mission. CPSC's ability to protect consumers from unsafe products relies on its ability to conduct effective and efficient investigations and issue recalls. However, over the last 3 years, CPSC recall actions have slowed dramatically. In 2016, when Commissioner Kaye was serving as chairman, the Commission issued 332 recalls. In 2017, when Acting Chair Buerkle began leading the Commission, that number fell to 280, and in 2018, it sunk even further to 258 recalls issued.

Don't misunderstand me—I would love to believe that the decrease in recalls was the result of more effective regulation and higher quality, safer products being brought to market. The reality is, however, a survey conducted by Kids in Danger revealed that the number of incidents reported in children's products increased over that time, which suggests that CPSC is moving slowly to open cases and recall unsafe products, or worse, not moving at all.

All of this comes as many of these products are becoming more complex, with new challenges for the agency to tackle. Last year, at the Christmas event I hold on unsafe toys in Chicago, for the first time we talked about connected-toys, and the challenges they can bring.

I commend Chairwoman Buerkle for making statements in support of increased resources for the Commission, in particular a proposed initiative to gather information from urgent care centers in addition to emergency departments and including e-commerce platforms in its marketplace analysis. However, in its budget request submission to Congress, the Commission would be flat-funded, meaning this and other initiatives would remain pipe dreams. I look forward to hearing from Chairwoman Buerkle and the other Commissioners as we discuss these and other important issues facing consumers.

I am also delighted to hear from consumer groups in our second panel. Their voice has been missing, unfortunately, the last few years on this subcommittee.

I look forward to working with each of you on the important issues the Commission deals with.

I now yield to Ranking Member Cathy McMorris Rogers for 5 minutes.

Ms. SCHAKOWSKY. And now I yield to Ranking Member Cathy McMorris Rodgers for 5 minutes.

OPENING STATEMENT OF HON. CATHY MCMORRIS RODGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mrs. RODGERS. Good morning, and I thank the Chair for yielding. Welcome to the Consumer Protection and Commerce Subcommittee hearing with the Consumer Product Safety Commission. It is great to see everyone.

Thank you to Acting Chair Ann Marie Buerkle, my former colleague—our former colleague—as well as the Commissioners Baiocco, Feldman, Kaye, and Adler all for being here today to discuss the Commission's mission and important work.

Even though it has only been 6 months with all five of you at the Commission, I am looking forward to hearing directly from you.

I will begin by congratulating my good friend and former colleague, Chair Buerkle, for advancing through the Senate Commerce Committee last week. My hope is the Senate will ask swiftly to confirm you as chair of the Commission.

Constitutional concerns with agency action prior to your nomination and the delays with your nomination clearly demonstrate why your confirmation and leadership are so needed at the agency.

Chair Buerkle, you have been steadfast in your efforts to advance the safety mission of the agency, even when you spent the majority of the last 2 years in the minority at the Commission.

I would like to ensure you have time this morning to address some recent questioning of your motives and your leadership at the Commission. As a nurse, lawyer, mother, and grandmother, I know how important safety is to you in your career in public service.

It is apparent that some are still trying to delay or halt your confirmation in the Senate because, by law, you are required to leave the Commission in October if you have not been confirmed.

That would leave the Commission at a deadlock, 2–2, only increasing uncertainty. Why that would be anyone's goal with an agency as important as the CPSC is beyond me.

I urge the Senate to advance your confirmation as soon as possible. I want you to know your hard work and dedication to protect Americans has not gone unnoticed.

The Consumer Product Safety Commission, or CPSC, was established in 1972. The Commission is charged with protecting the public against unreasonable risk of injuries and deaths associated with consumer products.

The CPSC's jurisdiction covers over 15,000 products that are sold to and used every day in our homes, our schools, businesses, and elsewhere.

However, the CPSC does not have jurisdiction over tobacco products, motor vehicles, aircrafts, boats, food, drugs, and the like.

CPSC's primary functions are to develop voluntary standards with industry or create mandatory standards where no adequate voluntary standard exists, to organize recalls of dangerous products that pose a risk to people, and to investigate potentially hazardous products.

The structure of the statute is critical. It recognizes the important of the agency having open lines of communication with the sectors of our economy that they regulate.

When something does go wrong, there are processes in place that take products off the shelves or websites as quickly as possible. This is why members of this committee have been such strong supporters of the fast track recall program, as one example.

The work you have done and your staff do is so important. I look forward to our discussion here today and I thank you all for being here.

I yield back.

[The prepared statement of Mrs. Rodgers follows:]

PREPARED STATEMENT OF HON. CATHY MCMORRIS RODGERS

Good morning and welcome to the Consumer Protection and Commerce Subcommittee hearing with the Consumer Product Safety Commission.

Thank you to Acting Chair Ann Marie Buerkle, our former colleague, as well as Commissioners Biacco, Feldman, Kaye, and Adler for being here today to discuss the Commission's mission and important work.

Even though it has only been 6 months with all five of you at the Commission, I'm looking forward to hearing directly from you.

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Chair Buerkle, you have been steadfast in your efforts to advance the safety mission of the agency, even when you spent the majority of the last 2 years in the minority at the Commission.

During your tenure, the Commission has implemented or revised more than 12 standards; helped improve window covering safety pushed industry to utilize flow restrictions on liquid nicotine packaging to improve safety and reduce risks to children; and has secured tens of millions of dollars in civil penalties.

I would like to ensure you have time this morning to address recent questioning of your motives and your leadership at the Commission. As a nurse, lawyer, mother, and grandmother, I know how important safety is to you and your career in public service.

It's apparent that some are still trying to delay and halt your confirmation in the Senate because—by law—you are required to leave the Commission in October if you have not been confirmed.

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The structure of the statute is critical. It recognizes the importance of the agency having open lines of communication with the sectors of our economy that they regulate. When something does go wrong, there are processes in place that take products off the shelves or websites as quickly as possible.

This is why members of this committee have been such strong supporters of the Fast Track Recall program as one example. The work you and your staff do is important. I look forward to our discussion today and thank you for being here.

I yield back.

Ms. SCHAKOWSKY. And now I am proud to yield 5 minutes to the chair of the full committee, Frank Pallone.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Madam Chair.

Few people have heard of the Consumer Product Safety Commission but it serves a critical role in protecting consumers from dangerous products. It is the agency that makes sure your coffee maker does not burn down your house, your baby does not die from a defective crib, your power drill doesn't electrocute you, your hot water heater does not poison you, your child's toy is not made of lead, et cetera, and these are all real examples of defective prod-

ucts that have been recalled, and they demonstrate the important role the Commission should play in protecting consumers.

In order to be fully effective, CPSC needs to be a proactive agency, not a reactive one. But, unfortunately, I am concerned that CPSC has become an inactive agency. The fact is that CPSC is issuing fewer recalls than in years past.

It is issuing fewer safety standards and it is imposing fewer and smaller penalties. The marketplace hasn't suddenly become safer, as our second panel will attest.

Instead, CPSC's inaction comes from the top and it leaves me wondering how many more dangerous products are out there and what, if anything, is being done by the Commission to prevent further deaths and injuries.

Inaction is simply not acceptable, but Acting Chairman Buerkle seems to be pushing just that after stating that one of her top priorities was, I quote, "reducing regulatory burdens" and she voted against imposing safety standards for infant slings, table saws, magnet sets, and portable generators and she also voiced her opposition to civil penalties and her hope that CPSC would not impose them.

So this is not a record that puts consumers' safety first, in my opinion, but again, it seems that is not the priority of the Acting Chairman.

She has been true to her word to reduce regulatory burdens. Under Acting Chairman Buerkle, CPSC has also failed to hold corporations accountable for selling hazardous products, at times even working with industry to, in my opinion, sabotage the agency's own efforts to save lives.

Under previous leadership, the CPSC began a rulemaking on portable generator safety, including standards for carbon monoxide emissions that result in an average of 73 deaths per year.

But after industry lobbyists convinced former EPA Administrator Scott Pruitt to assert jurisdiction over carbon monoxide emissions, the Acting Chairman Buerkle sided with the EPA and industry to stop the rulemaking and as of today, the EPA has taken no action, and people continue to die.

Now, when consumers complained that a defective wheel in Britax strollers was causing serious injuries, CPSC sued, seeking a recall over the objections of then Commissioner Buerkle.

After two Republican Commissioners joined CPSC, they voted to settle the litigation on terms favorable to the company, not to consumers, and the settlement did not even call the needed repair a recall, leaving parents confused and children at risk.

The trend of favoring industry over consumers is troubling and I want to hear from the Commissioners and consumer advocates about the direction that the Commission is headed.

I also want to hear about CPSC's actions on an array of specific hazards. Three years ago, I helped pass the Child Nicotine Poisoning Prevention Act, requiring child-proof packaging for liquid nicotine containers.

Those can kill children if ingested, and I am hearing that CPSC is not doing enough to keep these deadly products out of children's hands. I am also disappointed that the Commission voted against beginning a rulemaking on children's dressers last month and I

would like to know what CPSC is doing to prevent deadly furniture tipovers, which Chairman Schakowsky has been calling attention to for years.

I also want to know about CPSC's efforts to ensure the safety of sleeping infants and how it is incorporating pediatricians' advice into its evaluation of inclined sleepers and crib bumpers.

Consumer advocates have argued that these products are inherently dangerous and should be banned, yet they are still for sale at baby stores and online. And despite several deaths associated with inclined sleepers, CPSC wouldn't name the specific product until days before this hearing.

So it shouldn't take a congressional hearing to get CPSC to do its job and prevent babies from dying and I continue to have concerns about e-commerce sites letting unsafe counterfeit products be shipped directly to consumers' front doors. These products have no testing or quality control and are a growing danger.

So as you can see, there is a long list of dangerous products that remain on the market because CPSC has failed to do its job. It is long past time this committee conduct oversight of the CPSC and bring attention to these many product safety concerns.

So I want to thank the chairwoman for having this hearing and, you know, we have been talking about these for long before you were the Chair and now, finally, have an opportunity to do some good oversight, and I appreciate that.

Thank you.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Few people have heard of the Consumer Product Safety Commission (CPSC) but it serves a critical role in protecting consumers from dangerous products. It is the agency that makes sure your coffee maker does not burn down your house, your baby does not die from a defective crib, your power drill does not electrocute you, your hot water heater does not poison you, and your child's toy is not made of lead.

These are all real examples of defective products that have been recalled, and they demonstrate the important role the Commission should play in protecting consumers.

In order to be fully effective, CPSC needs to be a proactive agency, not a reactive one. Unfortunately, I'm concerned that CPSC has become an inactive agency.

The fact is that CPSC is issuing fewer recalls than in years past. It is issuing fewer safety standards. And it is imposing fewer and smaller penalties. The marketplace hasn't suddenly become safer-as our second panel will attest. Instead, CPSC's inaction comes from the top, and it leaves me wondering how many more dangerous products are out there and what, if anything, is being done by the Commission to prevent further deaths and injuries.

Inaction is simply not acceptable, but Acting Chairman Buerkle seems to be pushing just that after stating that one of her top priorities was "reducing regulatory burdens." She voted against imposing safety standards for infant slings, table saws, magnet sets, and portable generators. She also voiced her opposition to civil penalties and her hope that CPSC would not impose them.

This is not a record that puts consumers' safety first, but again, it seems that is not the priority of the Acting Chairman. She has been true to her word to reduce regulatory burdens. Under Acting Chairman Buerkle, CPSC has also failed to hold corporations accountable for selling hazardous products, at times even working with industry to sabotage the agency's own efforts to save lives.

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I want to know about CPSC's efforts to ensure the safety of sleeping infants, and how it is incorporating pediatricians' advice into its evaluation of inclined sleepers and crib bumpers. Consumer advocates have argued that these products are inherently dangerous and should be banned, yet they are still for sale at baby stores and online. Despite several deaths associated with inclined sleepers, CPSC wouldn't name the specific product until days before this hearing. It shouldn't take a Congressional hearing to get CPSC to do its job and prevent babies from dying.

I continue to have concerns about e-commerce sites letting unsafe counterfeit products be shipped directly to consumers' front doors. These products have no testing or quality control and are a growing danger.

This is a long list of dangerous products that remain on the market because CPSC has failed to do its job. It's long past time this committee conduct oversight of the CPSC and bring attention to these many product safety concerns.

Thank you, and I yield back my time.

Ms. SCHAKOWSKY. The gentleman yields back. I appreciate the comment.

And now I would like to recognize Mr. Walden, the ranking member of the full committee, for 5 minutes for his opening statement.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Well, good morning, Madam Chair, and thanks for having the hearing today with the Consumer Product Safety Commission.

I especially want to extend a warm welcome to our former colleague and friend, current Acting Chair of the CPSC, Ann Marie Buerkle. It is good to see you again.

Hopefully, your recent third vote of confidence by the Senate Commerce Committee will be the charm and your confirmation will move swiftly through the United States Senate.

In her short time as Acting Chair, Ms. Buerkle has put consumer safety first. Under her leadership, the Commission has, among other items, implemented or revised more than 12 safety standards, helped improve window covering safety, pushed industry to utilize flow restrictions on liquid nicotine packaging to improve safety and reduce risk to children, and has secured tens of millions of dollars in civil penalties against bad actors.

I want to thank you for your work, and I look forward to your continued commitment to safety as you continue on as our confirmed Chair. The CPSC is a critical safety agency that must have clear leadership.

There are significant constitutional questions with respect to actions taken by the CPSC and the absence of such leadership from President Trump's inauguration through the fall of 2017.

During the time, the agency consisted of only one Republican Commissioner, Acting Chair Buerkle, to three Democrat Commissioners, and such questions may require the agency to divert resources needed to fulfil its safety mission to deal with potential legal challenges.

It's imperative that the CPSC's process actually works to protect consumers and not lead to expensive and unneeded litigation. CPSC must rely on up to date scientifically sound data to base its decisions and not prejudge or litigate in the court of public opinion.

I am encouraged the agency is turning the corner with respect to these issues under Acting Chair Buerkle's leadership. CPSC protects consumers from unreasonable risks, and we know there are a lot of them out there, and against hazards from consumer products by working with industry to establish in many cases voluntary or industry-based standards by developing mandatory standards where industry-based standards are not sufficient and through recalls.

Given the size of the CPSC and the breadth of your jurisdiction, Congress had the foresight to encourage the CPS to engage industry to carry out its mission in a bipartisan effort, I might add.

However, some are attempting to discredit the open lines of communication between the agency and regulated industries. But shouldn't our goal be to protect consumers in the most efficient manner possible?

Having an open dialogue and an open line of communication with industry actually helps the CPSC solve problems earlier and protect consumers better.

We must continue encouraging the CPSC to engage industry and in-the-field experts on complex issues with consumer products. Industry can provide unique expertise and insights into what is happening in the marketplace and can help identify potential harms.

So it is no secret that bureaucratic government agencies do not move fast. Yet, because of industry's willingness to work with CPSC, programs like the Fast Track Recall Program, Retailer Reporting Program, and the small business Regulatory Robot are now up and running.

Cutting industry completely out of the process would benefit no one and would just increase the risk of keeping dangerous products potentially in the market longer.

The bottom line is that the CPSC does important work to help protect children and consumers by working with all stakeholders and safety remains the Commission's priority, as it should.

So I thank you all for being here. I thank you all for your service in this capacity. I know there's a lot on your plate, and you heard a few more items from up here on the dais.

So I look forward to hearing more about CPSC's agenda and its efforts to protect consumers.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Good morning and welcome to our subcommittee hearing today with the Consumer Product Safety Commission.

I would especially like to welcome our former colleague and current Acting Chair of the CPSC, Ann Marie Buerkle. Hopefully, your recent third vote of confidence by the Senate Commerce Committee will be the charm, and your confirmation will move swiftly through the Senate.

In her short time as Acting Chair, Ms. Buerkle has put consumer safety first. Under her leadership, the Commission has—among other items—implemented or revised more than 12 safety standards; helped improve window covering safety; pushed industry to utilize flow restrictions on liquid nicotine packaging to improve safety and reduce risks to children; and has secured tens of millions of dollars in civil penalties against bad actors.

I want to thank you for your work and look forward to your continued commitment to safety as confirmed Chair.

The CPSC is a critical safety agency that must have clear leadership. There are significant constitutional questions with respect to actions taken by the CPSC in the absence of such leadership, from President Trump's inauguration through the Fall of 2017. During that time, the agency consisted of only one Republican Commissioner, Acting Chair Buerkle, to three Democrat Commissioners. Such questions may require the agency to divert resources needed to fulfill its safety mission to deal with potential legal challenges.

It is imperative that the CPSC's process actually works to protect consumers and not lead to expensive and unneeded litigation. The CPSC must rely on up-to-date, scientifically sound data to base its decisions and not prejudge or litigate in the court of public opinion. I'm encouraged that the agency is turning the corner with respect to these issues under Acting Chair Buerkle's leadership.

The CPSC protects consumers from unreasonable risks, we know there are a lot of them out there, and hazards from consumer products by working with industry to establish voluntary, or industry-based, standards; by developing mandatory standards where industry-based standards are not sufficient; and through recalls.

Given the size of the CSPC and the breadth of your jurisdiction, Congress had the foresight to encourage the CSPC to engage industry to carry out its mission. In a bipartisan effort I would add.

However, some are attempting to discredit the open lines of communication between the agency and regulated industries.

But shouldn't our goal be to protect consumers in the most efficient manner possible? Having an open dialogue and an open line of communication with industry helps the CPSC solve problems earlier and protect consumers better.

We must continue encouraging the CPSC to engage industry and in-the-field experts on complex issues with consumer products. Industry provides unique expertise and insights into what is happening in the marketplace and helps identify potential harms.

It is no secret that bureaucratic government agencies do not move fast. Yet, because of industry's willingness to work with the CSPC, programs like the Fast Track Recall program, Retailer Reporting Program, and the small business Regulatory Robot are now up and running.

Cutting industry completely out of the process benefits no one and increases the risk of keeping dangerous products in the market longer.

The bottom line is that CPSC does important work to help protect children and consumers by working with all stakeholders and safety remains the Commission's priority, as it should.

Thank you to the Commissioners for your service in this capacity, I know there's a lot on your plate. You've heard of a few more items from up here on the dais. I look forward to hearing more about the CPSC's agenda and its efforts to protect consumers.

Thank you and I yield back.

Mr. WALDEN. If anyone else wants the remainder of my time, I would yield to the ranking member of the Health Subcommittee, Dr. Burgess.

Mr. BURGESS. Thank you, Mr. Walden, and I just also wanted to welcome our former colleague. Ms. Buerkle, you have been good enough to come and talk to me on several of the issues that have

occurred when I was chairman of this subcommittee several years ago.

And Commissioner Kaye, I certainly appreciate the time you invested in making the fireworks demonstration available to members of the subcommittee and staff.

I don't remember exactly where it was, but it was way out in the sticks and you did a great job with demonstrating the rigors that you go through to ensure that fireworks products are indeed safe.

So thanks all to the Commissioners for being here, and I will yield back to the ranking member.

Ms. SCHAKOWSKY. The gentleman yields back.

The Chair would like to remind Members that, pursuant to committee rules, all Members' written opening statements shall be made part of the record.

And now it is my pleasure to introduce our first panel of witnesses for today's hearing from the Consumer Product Safety Commission.

Again, it is such an honor that all of you would show up to this morning. Thank you.

I will go through all of them—all of you first. Commissioner Robert Adler, Commissioner Dana "Bye-ah-ko"—am I saying it right? "Bee-ah-ko?" OK, Baiocco. Acting Chairwoman Ann Marie Buerkle, Commissioner Peter Feldman, and Commissioner Elliot Kaye.

We want to thank all the witnesses for joining us today. We look forward to your testimony. At this time, the Chair will now recognize each witness for 5 minutes—you have all had experience, I think, with the lights—to provide an opening statement.

So we are actually going to move in alphabetical order, and we will begin with a statement from Commissioner Adler. And you are recognized for 5 minutes.

STATEMENTS OF ROBERT S. ADLER, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION; DANA BAIOCCO, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION; ANN MARIE BUERKLE, ACTING CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION; PETER A. FELDMAN, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION; ELLIOT F. KAYE, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

STATEMENT OF ROBERT S. ADLER

Mr. ADLER. Good morning, Chairman Schakowsky and Ranking Member Rodgers and the members of the Subcommittee on Consumer Protection and Commerce. Thank you for the opportunity to testify.

I am pleased to be here to discuss an agency that I have been associated with in some fashion since it opened in 1973 and where I have been a Commissioner since August 2009.

At the outset, I would point out that CPSC is far and away the smallest of the Federal health and safety agencies with the current funding level of $127 million and a staff of 539 FTEs and I want to put our budget in perspective.

I note that we have a sister agency, FDA. They recently asked for an increase in their budget—an increase in their budget that is five times the size of our entire budget.

Notwithstanding our modest budget, our jurisdictional scope is extremely wide, encompassing, roughly, 15,000 categories of consumer products found in homes, stores, schools, and recreational settings.

This October is going to mark the 47th anniversary of the passage of this landmark piece of legislation. Looking back, I think Congress and the agency should take great pride in what the agency has accomplished.

I can't go through all the accomplishments but I did want to focus at least for a moment on the dramatic drop in death and injuries to children.

Here are just a few statistics. There has been an over—over an 80 percent drop in childhood fatal poisonings, 70 percent drop in crib deaths, almost 90 percent reduction in baby walker injuries, and an almost complete elimination of childhood suffocations in abandoned refrigerators.

We have also seen dramatic drops in fatal electrocutions, residential fire deaths, and traumatic injuries from lawnmowers. In short, I think we offer an excellent return on investment.

I would also like to mention the tremendous strides we've taken to enforce and implement the Consumer Product Safety Improvement Act of 2008 since its passage about 10 years ago, and here I have to pause and thank Chairman Schakowsky for the critical role she played in the passage of that piece of legislation.

Among the actions we have taken, enforcing stringent limits on lead and phthalates in children's products, promulgating the strongest safety standard in the world for cribs, writing and continuing to write a series of standards—I believe the count is now 20—for durable infant products such as play yards and strollers. I am thrilled with our implementation of the Consumer Product Safety Improvement Act.

I wish I could share that same degree of pride when it comes to our other pieces of legislation. But I think there's a broad disconnect between the effectiveness of our rulemaking under CPSIA and under the other acts we enforce, and I am going to briefly explain.

When we were first established in 1973, we promulgated numerous critical safety rules dealing with hazards such as flammable children's sleepwear, dangerously shattering glass panes, and unsafe toys under the traditional rulemaking procedures in the Administrative Procedure Act.

I did a count. By my count, the agency wrote 24 safety rules in its first 8 years. That is about three a year. In 1981, however, Congress imposed a cumbersome of procedures on the agency that have hampered our rulemaking in the years since, and I did another count.

It has been 38 years since 1981. We have managed to eke out 10 safety rules under these revised procedures. So that is only about 1 every 3½ years.

What is even greater concern to me is we have only written one safety standard under these procedures in the past 10 years. To be

blunt, I have little doubt that lives have been lost and injuries incurred unnecessarily because of these delays in our rulemaking and with no particular improvement in the quality of the standards we write.

While I am discussing features of the Consumer Product Safety Act that I would like to see reformed, I must also mention an onerous restriction on information disclosure under which CPSC alone among all Federal agencies must operate and I refer to the provisions of Section 60 of the Consumer Product Safety Act.

Unlike any other health and safety act agency, when we receive a request for information in our files under the Freedom of Information Act, we can't simply disclose that if it would allow the public to determine the name of a manufacturer.

In that case, we must send the information to the manufacturer, wait for comments from the manufacturer, process the manufacturer's comments, and then and only then make a decision about whether we would release that information, all of this done, I might add, with the looming prospect of being sued if the company doesn't like what we are about to disclose.

And here is what is particularly frustrating about this provision. It applies to information where we are simply a repository—we are simply acting as a library. We didn't generate the information ourselves.

So if we got a request for a list of 50 names of manufacturers of widgets, in order to release that list we would have to send out 50 separate notices with 49 names redacted before we could proceed to release that information. That is costly both in terms of time and in resources at the agency.

One quick final point. I would like to share a concern that I have with an often vulnerable group—vulnerable group of which I am proud member—senior citizens.

We are one of the fastest growing demographics in the country. In fact, by 2030 one in five people in this country will be age 65 or older.

We are living healthier and we need to make sure we are living safer. Have I gone over my time?

Well, I apologize for that and I will—just a few additional words about senior citizens, but I can withhold.

Thank you.

[The prepared statement of Mr. Adler follows:]

Statement of Robert S. Adler, Commissioner

United States Consumer Product Safety Commission

Before the

House Committee on Energy and Commerce

Subcommittee on

Consumer Protection & Commerce

April 9, 2019

Good morning Chairman Schakowsky and Ranking Member Rodgers, and the members of the Subcommittee on Consumer Protection & Commerce. Thank you for the opportunity to testify today along with my fellow CPSC Commissioners. I am pleased to be here to discuss an agency that I have been associated with in some fashion since its opening in 1973 – and where I have been a Commissioner since August 2009.

At the outset, I would point out that CPSC is far and away the smallest of the federal health and safety agencies, with a current funding level for FY 2019 of $127 million and a staff of 539 FTEs. To put our budget in perspective, I note that for FY 2020, our official budget request is also for $127 million. By way of comparison, our sister agency, FDA, recently asked for $6.1 billion dollars for FY 2020, which represents a $643 million increase over its FY 2019 budget request. In other words, FDA's request for an *increase* is more than 5 times CPSC's *entire* budget.

Notwithstanding CPSC's modest budget, our jurisdictional scope is extremely wide, encompassing roughly 15,000 categories of consumer product found in homes, stores, schools, and recreational settings. Given this broad jurisdiction, the agency has adopted what I believe to be a thoughtful, data-based approach using its technical staff to figure out which products present the greatest risk and which are most susceptible to corrective measures. And, we address them using our regulatory and educational tools in a way designed to minimize market disruption while always making consumer safety our top priority.

Of course, the CPSC does not operate alone on product safety. We have always sought to make CPSC's various stakeholders partners in our quest to reduce or eliminate unreasonable risks. Included in this group are our friends in the consumer and business communities as well as the various standards development bodies that work with the agency.

This October will mark the 47th anniversary of the passage of the landmark Consumer Product Safety Act (CPSA). Looking back, I believe

Congress and the agency should take great pride in what the agency has accomplished, especially considering the immense scope of our mission.

What has the agency accomplished? As a starting point, I would cite the estimated 30 percent reduction in the rate of deaths and injuries associated with consumer products since the agency's inception. Of course, not all of this drop can be directly attributed to agency actions, but a lot of it can. And, I would particularly point to the dramatic drop in death and injuries to children. Let me highlight just a few of the many improvements in safety:

- An over 80% drop in childhood poisonings,
- An over 70% drop in crib deaths,
- An almost 90% reduction in baby walker injuries, and
- An almost complete elimination of childhood suffocations in abandoned refrigerators.

We have also seen dramatic drops in fatal electrocutions, residential fire deaths, and traumatic injuries from lawn mowers. In short, CPSC has produced an excellent return on investment. By our calculation a number of years ago, this drop in deaths and injuries has resulted in well over $16 billion in reduced societal costs – which is many times the resources the CPSC has been given to do its job. And, as a tiny agency, we have produced these benefits at a very low cost.

One further point: What makes these reduced injuries and fatalities so dramatic to me is that they occurred during a period when the population in the U.S. jumped from 220 million to 330 million – a roughly 50 percent increase. Drops this big in the face of a growing population represent a major step forward in safety.

I would also like to mention the tremendous strides the agency has taken to implement the Consumer Product Safety Improvement Act of 2008 (CPSIA) in the ten-plus years since its passage. Among the actions we have taken:

- Enforcing stringent limits on lead and phthalates in children's products;
- Promulgating the strongest safety standard for cribs in the world;
- Implementing rules of the new CPSIA requirement that firms have independent laboratories conduct third party testing of children's products before introducing them into the US market;
- Making mandatory a comprehensive toy standard, ASTM F-963;
- Writing, and continuing to write, a series of standards – I believe the count is now 20 – for durable infant products such as play yards and strollers, and;
- Developing new approaches to stopping dangerous imported products before they are sold to US consumers.

While I'm thrilled with our implementation of the CPSIA, I would simultaneously, with some frustration, point out the broad disconnect between the effectiveness of our rulemaking under CPSIA and our rulemaking under the infinitely more cumbersome procedures found in the other acts we enforce.

Let me briefly explain: When the agency was first established in 1972, we promulgated numerous critical safety rules dealing with hazards such as flammable children's sleepwear, dangerously shattering glass panes, and unsafe toys under the traditional rulemaking approaches found in section 553 of the Administrative Procedure Act. By my count, the agency wrote about 24 safety rules in its first 8 years – or about 3 per year. In 1981, however, Congress imposed numerous cumbersome provisions requiring new steps and findings on CPSC rulemaking that had the effect of stalling and lengthening our rulemaking efforts. In the following 38 years, we have managed to eke out only 10 safety rules under these revised procedures – or about 1 every 3.5 years. What's of greater concern is that we have written only one safety rule using these procedures in the past 10 years.

To be blunt, I have little doubt that lives have been lost and injuries incurred unnecessarily because of these delays in our rulemaking.

I would love to report that these cumbersome provisions of CPSA have resulted in dramatically improved safety rules that justify the extra time and effort in drafting them. Frankly, I cannot do so. For the most part, the quality of safety standards has remained unchanged – only the timeliness has changed. So, nothing would delight me more than to see Congress permit us to return to writing important safety rules under the time-honored, traditional provisions of the Administrative Procedure Act.

While I'm discussing features of the Consumer Product Safety Act that I'd like to see reformed, I must also mention the onerous information disclosure restrictions under which the CPSC alone among all health and safety agencies in the federal government must operate. I refer to the provisions of section 6(b) of the CPSA. Unlike any other health and safety agency, when the CPSC receives a request for information in its files under the Freedom of Information Act (FOIA), if a manufacturer's identity can be ascertained from the information in our files, we cannot simply respond with the information. Instead, we must first send the manufacturer the file for comments on the accuracy and fairness of releasing the information, process any comments the manufacturer submits, and determine whether or not to release this information in light of those comments. All of this done, I might add, with the looming prospect of being sued if the company doesn't like what we're about to disclose.

What's so frustrating about this process is that it applies to almost anything in our files even if we are simply a repository of the information – like a library. If, for example, we have obtained a simple list of 50 firms that make widgets and someone makes a FOIA request for the list, we must send out 50 different copies of the list with 49 names blanked out to each of the identified manufacturers and process each one's response to the list. No other agency in the government has to follow such time-consuming and

costly procedures. Each year, we must spend hundreds of thousands of dollars and delay sometimes for months or longer the release of information because of 6(b).

Let me be clear: I am not endorsing an approach in which the agency is free to disseminate inaccurate or unfair information will-nilly. Any time CPSC initiates a disclosure of information that identifies a manufacturer, I think we ought to inform them of our intention to do so and permit them to point out any problems with this information disclosure. Other agencies have been doing this effectively for many decades without serious problems. What I object to is having the government play data nanny to information that the public desperately needs in order to protect itself.

As a final point, I would like to share a concern I have about an often vulnerable group of which I am a proud member: senior citizens. Unfortunately, seniors do not necessarily get as much attention as they probably should. I say this because seniors are one of the fastest growing demographics in the country. Specifically –

- Roughly 40 million people in the U.S. are age 65 or older. This number is projected to more than double to 89 million by 2050.
- By 2030, one in 5 people in the US will be 65 or older.
- The United States currently contains more people age 65 and older than the entire population of Canada.
- Today, the "oldest old" – those 85 and older – have the highest demographic growth rate in the country. This group now represents 10% of the older population and will more than triple in number by 2050.

On the good news front, I can report that recent studies show that we're not only living longer, we're also living healthier. So, if we're to extend our lives as healthier adults, we also need to spend these years as safer ones. But, here the news is not so good. Although seniors currently make up

about 13 percent of the population, we account for roughly 65 percent of consumer product-related deaths.

Far and away the greatest product-related hazard for seniors is falls – comprising roughly 3/4 of the fatalities that we suffer. According to CDC, every 19 minutes a senior dies from a fall. Moreover, roughly one in four seniors in the US reports falling each year.

In fact, every year, 3 million people, including many seniors, go to an emergency room for injuries from falls, and 800,000 are hospitalized. And, for reasons that are unclear, CDC reports that fall fatalities have increased dramatically in recent years – up 31% from 2007-2016.

I'd next like to talk about fires. Fires in homes constitute an extremely serious problem for seniors. CPSC staff report that almost 400,000 residential fires occur annually, resulting in roughly 2,400 deaths, 12,500 injuries, and over $7 billion in property loss. And, the U.S. Fire Administration estimates that adults age 75-84 are nearly four times as likely to die in a home fire as the general population, while those over age 84 are nearly five times as likely to die.

In addition to these concerns, I should mention that there are a whole host of consumer products that harm all users, but disproportionately injure and kill seniors. Here are some of the products that do so.

- Chairs, sofas and sofa beds
- Power tools
- Residential Elevators
- Gardening equipment
- Ladders
- Carpets and rugs

The fact that I now fit in this demographic has definitely helped me understand what a serious challenge we face in the coming years as America ages.

I look forward to working with my colleagues and the members of this Subcommittee as we focus on our mission to protect citizens from risks of unreasonable injury or death.

Thank you. I'm delighted to answer any questions you have.

Ms. SCHAKOWSKY. And next, Commissioner, if you could move your name tag in front so we could see that. There we go.

So Commissioner Baiocco, you are recognized for 5 minutes. Thank you.

STATEMENT OF DANA BAIOCCO

Ms. BAIOCCO. Thank you, and good morning, Chairman Schakowsky, Ranking Member McMorris Rodgers, and members of the House Subcommittee on Consumer Protection and Commerce.

Thank you for inviting me here today and for providing all of the Commissioners the opportunity to testify before you today. This is the first time I have appeared before Congress and I believe that it is essential and it is a great responsibility that we discuss the status of the agency and also I would like to share with you my individual perspectives, goals, and ideas for making the agency successful.

While I have only been at the agency for about 10 months, it has been an honor to work with my fellow Commissioners to facilitate our statutory directives and to also explore ways to keep the agency current as possible with all of the different types of products and the ever evolving issues that are associated with the consumer product safety world.

The enormity of the agency's charge cannot be overstated. In the title to this hearing, you ask is the Commissioner—is the Consumer Product Safety Commission fulfilling its mission.

The answer is yes. In fact, during my short tenure, the agency has taken several safety-related actions including the vigorous enforcement of the Child Nicotine Poisoning Prevention Act of 2015.

We have finalized safety rules for high chairs, baby changing products, booster seats, portable hook-on chairs. We have voted to ensure that a mandatory standard to address furniture tipovers is finalized and we have developed and released a CPSC recall act to better inform consumers about recalled products.

We have expanded our safety collaboration with retail outlets, trade organizations, and consumer advocacy groups as it pertains to toys and the agency's new and progressive social media campaign is extremely well received.

However, given the great mission before us, I believe that the agency can and must do more. First, we must enhance the agency as a whole to better serve consumers.

To do this, the agency must commit to forward-looking investments that will make the agency more efficient, more nimble, and more effective.

For example, the agency should invest smartly in three basic upgrades. Improved equipment is one, additional and specialized personnel to revamp and oversee the agency's technology data capabilities and hazard identification systems, and third, a more robust plan for testing and studying new trends, products, and impending issues.

Merely redecorating an outdated system does not now and will not in the future allow the agency to serve the American public in the manner in which they deserve.

Given the speed with which new products enter the marketplace every day, the ease with which they get directly into a consumer's

home, and the complexity of the global supply chain, which includes products that do not comply with our safety rules and standards, real action must be taken to keep the agency relevant.

We must end the cyclical exercise of patching an already obsolete system that becomes more antiquated every day. We must ensure that a generous portion of the agency's budget, whatever it may be, is dedicated to transitioning the CPSC into a forward-looking agency rather than a reactive one.

We must provide our engineers with reliable and sound data to address and solve product hazards.

Second, the agency must be purposeful in its regulatory activities. Rulemaking, of course, is a key charge of the CPSC's mission and there are strict statutory directives that we must follow.

However, the agency must do a better job with this authority. For example, when an agency is promulgating a safety rule, it should do so swiftly and decisively. It must be legally sound and there must be a scientific reason to do so.

It serves no purpose to force a rule that does not solve the hazard or that leaves room for legal challenge because the rule lacks basis in data, science, or proper procedure.

All agency legal actions must be credible, rationally related to the hazard before it, and consistent with the rule of law.

Third, the CPSC should be the gold standard in engineering, testing, and problem solving. We must allow our engineers to be independent and solution oriented.

Our entire team must be in power to solve product hazards affirmatively when appropriate rather than be encouraged to merely opine on a proposed solution offered by interested stakeholders.

Finally, I think it's imperative that the agency implement programs to allow it to move ahead of the curve on emerging trends and impending issues.

To illustrate, the marketplace is currently demanding the production of more sustainable products, however that word is defined. To the extent sustainable means recycled reusable products, the agency must ensure that the market demand does not indirectly undue safety advancements that the agency has worked long and hard to accomplish.

The agency should be studying now, not reacting later, to any of these potential pitfalls.

Since joining the CPSC, I have been working on some individual initiatives to contribute to the agency's mission. One of those focuses on counterfeit products that is a deep pool of noncompliant products.

I am impressed—I am very impressed with the work that the agency's import surveillance team is doing on this initiative. They have developed excellent relationships with their custom and border control colleagues.

Ms. SCHAKOWSKY. Commissioner, you are going to have to wrap it up.

Ms. BAIOCCO. Oh, I am sorry.

My overarching goal as a Commissioner is to ensure that the CPSC is employing the best practices in all that we do. I have requested that the Commission conduct an internal review of the

agency staff directives and procedures to identify and enhance areas that need improvement.

That review, in my opinion, is critical to the integrity of the agency. If we have additional questions beyond today, I am available any time to answer them.

Thank you for the extra time.

[The prepared statement of Ms. Baiocco follows:]

Testimony of Dana Baiocco
Commissioner, U.S. Consumer Product Safety Commission

U.S. House of Representatives
Subcommittee on Consumer Protection and Commerce

April 9, 2019

"Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?"

Testimony of Commissioner Dana Baiocco
U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Consumer Protection and Commerce
April 9, 2019

Good morning, Chairwoman Schakowsky, Ranking Member McMorris Rogers, and Members of the House Subcommittee on Consumer Protection and Commerce. Thank you for inviting me to this hearing and for providing the Commissioners of the U.S. Consumer Product Safety Commission with the opportunity to appear before you today. This is the first time I have appeared before Congress for an oversight hearing and I believe it is a great responsibility to discuss the status of the Agency and to share with you my individual perspectives, goals, and ideas for making the Agency successful. While I only have been at the CPSC for 10 months, it has been an honor during that time to work with my fellow Commissioners to facilitate our statutory directives and to explore ways to keep the Agency as current as possible with the complex and ever-evolving issues that arise in the consumer product safety world.

The enormity of the Agency's charge cannot be overstated. In the title of this hearing, you asked, "Is the Consumer Product Safety Commission Fulfilling Its Mission?" The answer is "Yes." In fact, just during my short tenure, the Agency has taken several safety related actions including the vigorous enforcement of the Child Nicotine Poisoning Prevention Act of 2015. We have finalized safety rules for high chairs, baby changing products, booster seats and portable hook-on chairs. We have voted to ensure that a mandatory standard to address furniture tip-over hazards is finalized, and we have developed and released a CPSC "Recall App" to better inform consumers about recalled products. We have expanded our toy safety collaboration with retail outlets, trade organizations and consumer advocacy groups, and the Agency's new and

progressive social media campaign is extremely well-received. However, given the great mission before us, I believe that the Agency can and must do more.

First, we must enhance the Agency as a whole to better serve consumers. To do this, the Agency must commit to forward looking investments that make the Agency more efficient, nimble, and effective. For example, the Agency should invest smartly in three basic upgrades: (1) improved equipment; (2) additional and specialized personnel to revamp and oversee the Agency's technology, data capabilities, and hazard identification systems; and (3) a more robust plan for testing and studying new trends, products, and impending issues. Merely redecorating an outdated system does not now, and will not in the future, allow the Agency to serve the American public in the manner in which they deserve.

Given the speed with which new products enter the marketplace every day, the ease with which they get directly into consumers' homes, and the complexity of the global supply chain, which includes products that do no comply with our safety rules and standards, real action must be taken to keep the Agency relevant. Securing modern IT infrastructure is the core to addressing these challenges. We must end the cyclical exercise of patching an already obsolete system that becomes more antiquated every day. We must ensure that a generous portion of the Agency's budget is dedicated to transitioning the CPSC into a forward looking Agency rather than a reactive one. We must provide our engineers with reliable and sound data to address and solve product hazards.

Second, the Agency must be purposeful in its regulatory activities. Rulemaking, of course, is a key part of the CPSC's charge, and there are strict statutory directives that we must follow. However, the Agency can and must do a better job with this authority. For example, when the Agency promulgates a safety rule, it should do it swiftly and decisively, and have a

legally sound and scientific reason to do so. It serves no purpose to force a rule that does not solve the hazard or that leaves room for legal challenge because the rule lacks basis in data, science, or proper procedure. All Agency legal actions must be credible, rationally related to the hazard before it, and consistent with the rule of law. The Commission should not support any process that merely meets an "arbitrary and capricious" standard.

Third, the CPSC should be the gold standard in engineering, testing, and problem solving. We must allow our engineers to be independent and solution-oriented. Our entire team must be empowered to solve product hazards affirmatively, when appropriate, rather than be encouraged to merely opine on proposed solutions offered by interested stakeholders. In addressing product hazards, our engineers and compliance staff also should be reassured that they may accept and capitalize on opportunities where industry is willing to share sound testing results and successful programs that the Agency does not yet have. An "us versus them" mentality will impede good engineering principles. A true collaborative process is a united and ultimately a successful one.

Finally, I think it is imperative that the Agency implements programs that allow it to move ahead of the curve on emerging trends and impending issues. To illustrate, the marketplace is currently demanding the production of more "sustainable" products. However, the term "sustainable" has many meanings. To the extent that "sustainable" means, for example, recycled or reusable products, the Agency must ensure that this market demand does not indirectly undo safety advancements that the Agency has worked long and hard to achieve. The Agency should be studying now and not reacting later to any such potential pitfalls.

Since joining the CPSC, I have been working on some individual initiatives to contribute to the Agency's mission. One of those initiatives focuses on counterfeit products. Of course, the

CPSC does not have jurisdiction over Intellectual Property issues. However, my research has revealed that fake, "knock-off," and other brand copy-cat products are a deep pool of non-compliant goods. I am working with trade associations, large and small businesses, and other stakeholders to find ways to target and stop the flood of these risky products directly into consumers' hands.

I am immensely impressed with the work that the Agency's import surveillance team is doing on this initiative. Early in my tenure, I visited the Port of Newark where our port team, small as they may be, demonstrated their good work in stopping the inflow of these non-compliant products. The individuals working daily at the ports have developed excellent relationships with their Custom and Border Patrol colleagues to accomplish a lot on this front. They are doing an incredible job with their limited resources. I believe that the Agency should commit to allocating more resources to them so that they may expand that good work.

My office is also committed to working with the e-commerce community to develop better ways of patrolling the varying platforms for non-compliant goods. Similarly, I have opened discussions with several e-commerce hosts about direct recall notice, data-sharing to identify emerging hazards, and ways to better liaise with experts, who are studying consumer behavior so that the Agency may benefit from this information pool.

My overarching goal as a Commissioner is to ensure that the CPSC is employing best practices in all that we do. I have requested that the Commission conduct an internal review of the Agency's staff directives and procedures to identify and enhance areas that need improvement. That review, in my opinion, is essential to the integrity of the Agency.

It has been a challenging and rewarding opportunity to serve the American public as a CPSC Commissioner. Thank you for this opportunity to testify before you and for your good work on this Subcommittee. I look forward to answering your questions today and, I am always available to discuss in more detail my comments regarding Consumer Product Safety Commission in general and my perspectives, goals, and ideas for fulfilling the Agency's mission.

Ms. SCHAKOWSKY. I thank you.

And Acting Chairwoman Buerkle, it is yours for 5 minutes.

STATEMENT OF ANN MARIE BUERKLE

Ms. BUERKLE. Thank you very much.

Good morning, Chairman Schakowsky, Ranking Member McMorris Rodgers, and distinguished members of this committee.

Thank you for holding today's hearing on the Consumer Product Safety Commission. I had the honor of serving alongside the chairwoman and the ranking member and some of the subcommittee's members during my time in the House of Representatives and I am so very glad to be back on Capitol Hill to discuss the very important work of the Consumer Product Safety Commission.

I also appreciate the productive meetings with the chairwoman and the ranking member earlier this year. I hope today's hearing is another step towards a collaborative relationship with the committee.

I am so pleased to be joined by all of my colleagues today. We are a different composition of Commissioners since the last time we sat before this subcommittee. But we have the very same mission of keeping consumers safe.

Additionally, I want to highlight CPSC's dedicated staff. CPSC consists of an elite group of professionals who work hard every day and are committed to keeping consumers safe and it is humbling to work alongside such devoted and talented people.

Having the opportunity to lead CPSC is the culmination of many aspects of my life. I joined the Commission in 2013 after being nominated by then President Barack Obama. I was confirmed by voice vote by the Senate.

In February of 2017, I assumed the duties of the Acting Chairwoman. Prior joining the Commission and serving in Congress, I have spent my career in health care, first as a registered nurse and later as a New York State assistant attorney general representing a teaching hospital.

I have spent my life in advocacy and now it is truly an honor to lead the Consumer Product Safety Commission.

For our agency, 2019 got off to a challenging start with the Government shutdown. During the shutdown, CPSC operated with a skeleton crew of accepted employees.

These dedicated individuals reviewed more than 10,000 incident reports analysing information from a variety of sources including NEISS, our National Electronic Injury Surveillance System, the CPSC hotline, and SaferProducts.gov.

Operating according to the procedures specified in our shutdown directives, staff sought to identify any incidents that rose to the level of imminent hazard threat to human safety.

Once the Government reopened, all CPSC staff began working tirelessly to clear the backlog and return to normal operations. Specifically, they have opened and completed all investigations into incidents warranting an in-depth investigation, processed and reanalyzed the over 10,000 incident—other incidents, reviewed and assessed all Section 15(b) reports in our processing potential cases, evaluated all SaferProducts.gov reports received and published that

were eligible, and announced multiple recalls that occurred during the shutdown.

Beyond the valiant efforts of what the staff did and coping with the shutdown, I do want to talk this morning to the committee about our funding.

Certainty is critical to our agency and knowing that we are funded through the remainder of fiscal year 2019 is a relief.

However, additional funding in the coming fiscal year is essential to help us move more efficiently and effectively to execute our mission.

On March 28th, CPSC submitted its budget request to Congress at the level of $127 million for fiscal year 2020, a mark set by OMB and the President.

I am grateful for the level the President funded us, as it is higher than in years past, but our agency faces challenges in executing our mandate with such a limited level budget.

This morning, I am imploring each and every member of this subcommittee to advocate on behalf of the CPSC for a higher budget. To provide the CPSC more flexibility to accumulate larger balances needed for major investments, especially in information technology, I continue to advocate support to move a part of the CPSC budget to a no-year appropriation that would be available until expended.

This no-cost would give us the needed flexibility to use money across fiscal years for larger investments to deal with unexpected shortfalls and generally to make higher return uses of year-end balances.

CPSC not only needs to maintain the capabilities it currently has but, as discussed this morning, also to expand our effectiveness and our efficiency.

Each year we do not keep pace with inflation, more and more mission funding is redirected to offset cumulative inflation costs.

In addition, programmatically we need a more robust budget to ensure we are fully equipped to deal with the rapidly changing global marketplace where the types of products and how consumers buy and interact with those products is constantly evolving.

All of this requires consistent, adequate, and additional funding. CPSC's mission is a critical one. As a mother of six and a grandmother of 18, I know that nothing is more important than the safety of our children and our families.

The role of the Chairman is a critical one, and I do not take this responsibility lightly. I am committed to keeping our positive working relationship with Congress so together we can work to keep the consumers safe.

Thank you very much, and I look forward to answering your questions.

[The prepared statement of Ms. Buerkle follows:]

Testimony of Ann Marie Buerkle
Acting Chairman
United States Consumer Product Safety Commission

Hearing on "Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?"

U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Consumer Protection & Commerce

April 9, 2019

Good morning, Chairwoman Schakowsky, Ranking Member McMorris Rodgers, and distinguished members of the Committee: thank you for holding today's hearing on the Consumer Product Safety Commission (CPSC). I had the honor of serving alongside the Chairwoman, Ranking Member, and some of the subcommittee's members during my time in the House of Representatives, and I am glad to be back on Capitol Hill today to discuss the critically important work of CPSC. I also appreciate the productive meetings with the Chairwoman and Ranking Member earlier this year. I hope today's hearing is another step toward continuing a collaborative relationship with the committee.

I am pleased to be joined by all my Commission colleagues today. We are a different composition of Commissioners than the last time the agency sat before the subcommittee, but we have the same mission of keeping consumers safe. Additionally, I want to highlight CPSC's dedicated staff. CPSC consists of an elite group of professionals who work hard every day and are committed to keeping consumers safe. It is humbling to work alongside such devoted, talented people.

Having the opportunity to lead CPSC is the culmination of many aspects of my life. I joined the Commission in July of 2013 after being nominated by President Obama and confirmed, by voice vote, by the Senate. In February of 2017, I assumed the duties of Acting Chairman. Prior to joining the Commission and serving in Congress, I spent my career in healthcare, first as a registered nurse and later as a New York State Assistant Attorney General representing a teaching hospital. I have spent my life in advocacy and now, it is a true honor to lead the CPSC.

For our agency, 2019 got off to a challenging start with the government shutdown. During the shutdown, CPSC operated with a skeleton crew of "excepted" staff. These dedicated individuals reviewed more than 10,000 incident reports, analyzing information from a variety of sources, including National Electronic Injury Surveillance System (NEISS) hospitals, the CPSC Hotline, and SaferProducts.gov. Operating according to the procedures specified in our shutdown directive, staff sought to identify any incidents that rose to the level of an imminent threat to human safety.

Once the government reopened, all CPSC staff began working tirelessly to clear the backlog and return to normal operations. Specifically, they have: opened and completed all investigations into incidents warranting an in-depth investigation, processed and re-analyzed the over 10,000 other incidents, reviewed and assessed all Section 15(b) reports and are processing potential cases, evaluated all saferproducts.gov

reports received and published all that were eligible, and announced multiple recalls that occurred during the shutdown.

Certainty is critical to agency operations and knowing that we are funded through the remainder of Fiscal Year 2019 is a relief. However, additional funding in the coming fiscal year is essential to help us more effectively execute our mission. On March 28, 2019, CPSC submitted its budget request to Congress at the level of $127 million for FY 2020, a mark set by OMB and the President. I am grateful for the level the President funded us as it is higher than it has been in years past, but our agency faces challenges in executing our mandate with such a limited, level budget. This morning, I am imploring each member of this subcommittee to advocate for a higher budget for the CPSC.

To provide the CPSC more flexibility to accumulate larger balances needed for major investments, especially in information technology, I continue to advocate support to move a part of the CPSC budget to a "no-year" appropriation that would be available until expended. This no cost change would give us needed flexibility to use money across fiscal years for larger investments, to deal with unexpected shortfalls and generally make higher return uses of year-end balances.

CPSC needs not only to maintain the capabilities that it currently has, but also to expand our effectiveness and efficiency. Each year that we do not keep pace with inflation, more and more mission funding is redirected to offset cumulative inflation costs. In addition, programmatically we need a more robust budget to ensure we are fully equipped to deal with a rapidly changing global marketplace where the types of products and how consumers buy and interact with those products is constantly evolving. All of this requires consistent, adequate, and additional funding.

The CPSC is an active voice in advancing safety discussions on emerging issues such as e-commerce, the Internet of Things (IoT), and smart technology. We continue to work diligently to find solutions to longstanding, complex hazards such as furniture tipovers, portable generators, and recall effectiveness. And we continue to work to improve our data capabilities, both internally by enhancing our quality of data and our ability to analyze it, and externally by seeking ways to improve outward facing platforms like saferproducts.gov.

CPSC's mission is critical one. As a mother of six and grandmother of eighteen, I know that nothing is more important than the safety of our children and our families. The role of Chairman is a critical one and I do not take the responsibility lightly.

I am committed to continuing our positive working relationship with Congress so that together we can keep consumers safe.

Thank you again for the opportunity to speak to you today and for your service to our nation. I look forward to answering any questions you may have.

Ms. SCHAKOWSKY. Thank you. I appreciate your comments.

And now Commissioner Feldman, you are welcome to speak for 5 minutes.

STATEMENT OF PETER A. FELDMAN

Mr. FELDMAN. Good morning. I want to begin by thanking Chairwoman Schakowsky, Ranking Member McMorris Rodgers, members of the Subcommittee on Consumer Protection and Commerce for providing me this opportunity to appear before you today.

It has been a privilege to serve under the leadership of Acting Chairman Buerkle as a CPSC Commissioner since my confirmation last October. I am relatively new to the agency, and I previously served as senior counsel to Chairman Thune on the Senate Committee on Commerce, Science, and Transportation.

As a Senate staffer, I worked directly on CPSC oversight matters and, therefore, I understand the important function that hearings like this serve.

I also come to the agency with a deep understanding of the congressional intent behind the statutes governing the agency, its duties, and its limits under the law.

The title of this hearing asks an important question: is the Consumer Product Safety Commission fulfilling its mission.

My view is that the Commission is doing many things well, that there are areas in which we are making progress, and others in which we could be doing more to protect American consumers from dangerous products.

As a Commissioner, my priority is to advance the agency's safety mission through inclusiveness and compromise. In the short time I have been at the agency I am most proud of the opportunities that I have had to collaborate with my fellow Commissioners on bipartisan solutions.

These include bipartisan support to increase agency transparency in the form of an open meeting to approve the agency's budget request—the first such meeting in recent memory and a tradition I hope we will continue.

Along with Commissioner Baiocco, we have advanced the number of amendments with bipartisan support including efforts to strengthen the agency's data science expertise, to prioritize enforcement of the Child Nicotine Poison Prevention Act, and to accelerate a mandatory standard to protect children from furniture tipovers.

More work needs to be done but I am encouraged by this forward progress.

During my confirmation hearing in June of last year, I laid out a number of priorities I felt would achieve the Commission's goals of protecting American consumers from unreasonable risks of danger.

These include modernizing the Commission's data collection and processing capabilities to identify emerging hazards and to support its enforcement, standards, and regulatory work.

I testified that the Commission must rethink its market surveillance capabilities including with respect to e-commerce and new and emerging distribution models, and as a general matter, that the CPSC must advance safety through engagement with safety groups and the regulated community alike.

It must do so with transparency and clarity about its expectations, and these remain critical priorities necessary to advance CPSC's mission. Again, our work remains ongoing.

To further the goal of modernizing the Commission, I am excited that the agency is leading the creation of an interagency working group along with the Federal Communications Commission, the Federal Trade Commission, FDA, DOT, and NIST to tackle issues pertaining to the Internet of Things and connected devices.

More can be done to close the agency's skills gap with respect to new and emerging technologies and consumer products, and you mentioned this in your opening statement.

While I am pleased that the agency voted to accept our proposal to hire a chief data officer, more work remains to be done to ensure that this position is funded and implemented appropriately.

I also believe that the Commission should explore the creation of a chief technologist to expand staff expertise, as many of our sister agencies have done.

To further the goal of transparency, I maintain an open door and encourage all stakeholders the share their concerns with me. This invitation applies to consumer groups, trade associations, legislators, companies, individual consumers, and their families.

I have also worked to stress the importance of the Commission's independent inspector general and to highlight the numerous important recommendations that remain outstanding.

I have urged staff and the Commission to work to implement these recommendations expeditiously and will continue to do so.

In closing, I look forward to continuing our efforts to keep American consumers safe through a bipartisan, collaborative, and forward-looking agency.

Thank you, again, Madame Chairwoman, for holding this important hearing and for your work to protect consumers. I look forward to this important discussion and to responding to Members' questions.

Thank you.

[The prepared statement of Mr. Feldman follows:]

Statement for the Record

Peter A. Feldman
Commissioner
U.S. Consumer Product Safety Commission

"Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?"

To the
U.S. House Committee on Energy and Commerce
Subcommittee on Consumer Protection and Commerce

April 9, 2019

Good morning. I want to begin my remarks by thanking Chairwoman Schakowsky, Ranking Member McMorris Rogers, and the members of the Subcommittee on Consumer Protection and Commerce for providing me this opportunity to appear before you today.

It has been a great privilege to serve, under the leadership of Acting Chairman Buerkle, as a Commissioner of the United States Consumer product Safety Commission (CPSC) since my confirmation last October. I am relatively new to the agency and previously served as senior counsel to Chairman John Thune on the Senate Committee on Commerce, Science, and Transportation. As a Senate staffer, I worked directly on CPSC oversight matters and therefore understand the important function that hearings like this serve. I also come to the agency with a deep understanding of the congressional intent behind the statutes governing the agency, its duties, and its limits under the law.

The title of this hearing asks an important question. Is the Consumer Product Safety Commission fulfilling its mission? My view is that the Commission is doing many things well, that there are areas in which we are making progress, and others in which we could be doing more to protect American consumers from dangerous products.

As a Commissioner, my priority is to advance the agency's safety mission through inclusiveness and compromise. In the short time I've been at the agency, I am most proud of the opportunities I have had to collaborate with my fellow commissioners on bipartisan solutions. These include bipartisan support to increase agency transparency in the form of an open meeting to approve the agency's budget request, the first such meeting in recent memory and a tradition I hope we will

continue. Along with Commissioner Baiocco, we have advanced a number of amendments with bipartisan support, including efforts to strengthen the agency's data science expertise, to prioritize enforcement of the Child Nicotine Poison Prevention Act, and to accelerate a mandatory standard to protect children from furniture tip overs. More work needs to be done, but I am encouraged by this forward progress.

During my confirmation hearing in June of last year, I laid out a number of priorities I felt would achieve the Commission's goals of protecting American consumers from unreasonable risk of danger. These include modernizing the Commission's data collection and processing capabilities to identify emerging hazards and to support its enforcement, standards, and regulatory work. I testified that the Commission must rethink its market surveillance capabilities, including with respect to e-commerce and new and emerging distribution models. And as a general matter, the CPSC must advance safety through engagement with safety groups and the regulated community with transparency and clarity about its expectations.

These remain critical priorities necessary to advance CPSC's mission, and our work remains ongoing. To further the goal of modernizing the Commission, I am excited that the agency is leading the creation of an interagency working group, along with the FCC, FTC, FDA, DOT and NIST, to tackle issues pertaining to the Internet of Things and connected devices. More can be done to close the agency skills gap with respect to new and emerging technologies in consumer products. While I am pleased that the agency voted to accept our proposal to hire a Chief Data Officer, more work remains to ensure the position is funded and implemented appropriately. I

also believe the Commission should explore the creation of a Chief Technologist to expand staff expertise, as many of our sister agencies have done.

To further the goal of agency transparency, I maintain an open door and encourage all stakeholders to share their concerns with me. This invitation applies to consumer groups, trade groups, legislators, companies, and individual consumers. I have also worked to stress the importance of the Commission's independent Inspector General and to highlight the numerous, important recommendations that remain outstanding. I have urged staff and the Commission to work to implement these expeditiously and will continue to do so.

In closing, I look forward to continuing our efforts to keep American consumers safe through a bipartisan, collaborative and forward-looking agency. Thank you again, Madam Chairwoman, for holding this important hearing and for your work to protect consumers. I look forward to this important discussion and responding to members' questions.

Ms. SCHAKOWSKY. Thank you.

And now I would like to yield 5 minutes to Commissioner Kaye for his opening statement.

STATEMENT OF ELLIOT F. KAYE

Mr. KAYE. Thank you, Madam Chair.

Good morning, Chairman Schakowsky, Ranking Member McMorris Rodgers, and the members of the subcommittee. Thank you for holding this critical oversight hearing. I am pleased to be here with my friends and colleagues—Acting Chairman Buerkle and Commissioners Adler, Baiocco, and Feldman.

Today, we are representing the work of approximately 550 dedicated career staff at the Consumer Product Safety Commission. I am truly honored to work with them and my fellow Commissioners in furtherance of the CPSC's mission to save lives and protect the public from unreasonable risks of harm associated with consumer products.

Every day, our actions affect the lives of all Americans whether they realize it or not. We take very seriously our jurisdiction and its accompanying responsibility to keep consumers safe.

When the CPSC is at our best, we are using our limited resources and full authorities to make products safer through strong consumer protection standards.

When the CPSC is at our best we are leading the charge to end persistent hazards such as furniture tipping over and killing young children or toddlers strangling on dangerous window blind cords.

When the CPSC is at our best, we are actively seeking recalls of dangerous products with comprehensive and consumer-friendly recalls using our litigation authority when it is necessary.

We are assessing and pursuing real civil penalties as appropriate to deter bad actors from selling recalled goods and failing to report to us as they are required to do so under the law.

When the CPSC is at our best, we are funding innovative safety research, writing effective testing protocols, and driving much safer product designs to market. We are anticipating safety problems with emerging technological innovations such as the Internet of Things or electronic rideshare scooters.

I believe that the CPSC and our outstanding staff can do many of these things. I have seen them do it. But even at our best, we still need help from Congress. While this is not an exhaustive list, we need revisions to our statutes to eliminate unnecessary hurdles to developing mandatory safety standards.

We need enhanced authorities to get dangerous products recalled and off the market quickly. We need additional authorities to assess fines at our ports to discourage repeat offenders from trying to bring violative and defective products into our country, and we need the anti-consumer safety and anti-transparency requirement of Section 6(b) of the Consumer Product Safety Act to be eliminated so we can provide the public with vital product safety information in a timely manner.

People die because of 6(b). It is as simple as that. We also desperately need more resources. I know this is not an appropriations hearing but our current budget of $127 million is just not enough.

It is truly amazing to me how underfunded consumer product safety is. It is kind of sad, really. It is also totally unnecessary.

With Congress' support for additional authorities, adequate funding, and continued robust oversight, we can stay true to our safety mission.

Thank you again for the invitation to speak with you about the CPSC and, of course, I look forward to answering all of your questions.

[The prepared statement of Mr. Kaye follows:]

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

STATEMENT OF COMMISSIONER ELLIOT F. KAYE
TO THE SUBCOMMITTEE ON CONSUMER PROTECTION AND COMMERCE
OF THE U.S. HOUSE OF REPRESENTATIVES ENERGY AND COMMERCE COMMITTEE

HEARING ON "PROTECTING AMERICANS FROM DANGEROUS PRODUCTS: IS THE CONSUMER PRODUCT SAFETY COMMISSION FULFILLING ITS MISSION?"

APRIL 9, 2019

Good morning, Chairman Schakowsky, Ranking Member McMorris Rodgers and Members of the Subcommittee. Thank you for holding this critical oversight hearing and for inviting us to speak about the important work of the United States Consumer Product Safety Commission (CPSC or Commission). I am pleased to be here with my friends and colleagues: Acting Chairman Buerkle and Commissioners Adler, Baiocco and Feldman.

Today, we are representing the work of approximately 550 dedicated CPSC career staff. I am truly honored to work with them and my fellow Commissioners in furtherance of the CPSC's mission of saving lives and protecting the public from unreasonable risks of harm associated with consumer products.

The CPSC is tiny compared to our sister federal health and safety agencies, such as the U.S. Food and Drug Administration or the National Highway Traffic Safety Administration. Our budget has hovered around $127 million the past few years. Accordingly, we run a lean operation and provide an excellent return on investment considering our increasingly complex global economy with billions of consumer products entering commerce each year.

Every day our actions affect the lives of all Americans, whether they realize it or not. From a child sleeping in her crib, to the toys that she plays with, to the smoke and carbon monoxide alarms that warn her parents of imminent danger, to the child–

resistant packaging that keeps her from getting into poisonous medicines and household cleaners, we take very seriously our jurisdiction and its accompanying responsibility to keep consumers safe.

When the CPSC is at our best, we are using our limited resources and our full authorities as a federal regulatory agency to drive both voluntary and mandatory standards development to make consumer products safer. We are funding innovative safety research, writing effective testing protocols and driving much safer product designs to market.

When the CPSC is at its best, we are leading the charge to end persistent hazards such as furniture tipping over and killing young children, infants suffocating in unsafe sleep environments and toddlers strangling on dangerous window covering cords. To that end, I have published a statement that outlines the steps necessary to end ten of the most persistent consumer product safety hazards that continue to take lives and devastate families.[1]

When the CPSC is at its best, we are addressing hazards associated with exposures to classes of toxic chemicals in toys, art supplies, kitchenware, playgrounds, clothing, furniture and household cleaners.[2]

When the CPSC is at our best, we also are concurrently using our enforcement authorities aggressively and appropriately to robustly enforce our existing laws and regulations and keep unsafe products out of the marketplace. We are promptly recalling dangerous products with comprehensive and consumer-friendly recalls and corrective action plans,[3] using our litigation authority when necessary. We are assessing and pursuing civil penalties as appropriate to deter bad actors from selling recalled goods and failing to report to us as required under Section 15(b) of the Consumer Product Safety Act (CPSA). And, we are creating a level playing field and an environment where good actors can thrive. We do this by enforcing safety-oriented

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[1] See my statement on persistent hazards at: https://www.cpsc.gov/s3fs-public/Commissioner%20Kaye%20Consumer%20Product%20Safety%20Persistent%20Hazards%20Paper%20%20April%202019%20%28Final%29.pdf?Dgcsfq65qctBf5z2X2VhrRvERv7wlXi5.

[2] For one example of the importance of the CPSC's work on chronic hazards, see my statement on organohalogen fire retardants: https://www.cpsc.gov/s3fs-public/Commissioner_Kaye_Statement_on_Organohaloen_Fire_Retardants_Petition_9.20.17.pdf?caGuQ1LWIZyZBwqIgZwED0EpFIDVtCjQ.

[3] See my statement on the six basic principles of consumer-friendly recalls at: https://www.cpsc.gov/about-cpsc/commissioner/elliot-f-kaye/statements/statement-of-commissioner-elliot-f-kaye-on-consumer.

voluntary and mandatory standards and removing from the market the products of those few bad actors who do not have safety in mind.

When the CPSC is at our best, we are prioritizing our presence at the ports and are working with our partner agencies both domestically and internationally to stop violative or unsafe products from entering the stream of commerce.

When the CPSC is at our best, we are anticipating safety problems with emerging technological innovations. We are able to keep pace with the global expansion of the Internet of Things and stay ahead of the potential effects on consumer safety from all aspects of the market for networked products.[4] We are dedicating resources to research and understand high-energy density battery technology to prevent batteries from combusting and harming people and their property. We are keeping abreast of and promoting safety in fast-moving tech trends, such as electronic rideshare scooters.

When the CPSC is at its best, we give careful thought to special, vulnerable populations, such as children and senior citizens.

I believe that the CPSC and our outstanding staff can do all of these things. I have seen them do it, and whether you all have seen it too, we are all safer because of the CPSC staff.

But even at our best, we still need help. Even our best is sometimes not good enough to prevent some deaths and injuries. For that, we desperately need additional authorities and adequate funding.

While this is not an exhaustive list, we need revisions to our statutes to eliminate unnecessary hurdles to developing mandatory safety standards. We need enhanced authorities to get dangerous products recalled and off the market quickly. We need additional authorities so we can assess fines at our ports to prevent violative and defective products from reaching the stream of commerce. And, we need the anti-consumer safety and anti-transparency requirements of Section 6(b) of the CPSA to be eliminated so we can provide the public with vital product safety information in a timely manner. People die because of Section 6(b). It is that simple.

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[4] See my paper setting forth a framework for safety across the Internet of Things at: https://cpsc.gov/s3fs-public/A_Framework_for_Safety_Across_the_Internet_of_Things_1-31-2019_0.pdf?1KJ.t4Tn04v9OtEBr2s0wyLAP.KsuuQ3.

We also desperately need more resources. When Congress last reauthorized our agency in 2008, it voted overwhelmingly to incrementally increase our funding levels annually, authorizing our budget at approximately $136 million for Fiscal Year 2014. We have yet to be funded at that level despite our budget justifications.

I know this is not an appropriations hearing, but our current budget of $127 million is just not enough. At every budget cycle, we cut important and meaningful projects that could ultimately save lives and decrease the pain and suffering of millions of American families because there is just not enough money to do everything that needs to be done.[5]

We lack funding for anything more than the most basic research and demonstration projects. We lack funding for adequate coverage of dangerous products coming into the country through our ports. We lack funding to adequately monitor online sales channels. We lack funding to maintain our data infrastructure so it operates smoothly and securely well into the future. We lack funding for timely fulfillment of FOIA requests. We lack funding to recruit and retain our talented investigators, enforcement officers, engineers, scientists, economists, communication specialists, lawyers and support staff.

It's truly amazing to me how underfunded consumer product safety actually is. It's kind of sad, really. It is also totally unnecessary.

With Congress' support for additional authorities, adequate funding and continued robust oversight, we can stay true to our safety mission.

Thank you, again, for the invitation to speak to you about the CPSC and the life-saving work undertaken by our staff. I look forward to answering questions you may have.

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[5] See my statement and amendment to the CPSC's FY 2020 Budget Request to Congress: https://cpsc.gov/about-cpsc/commissioner/elliot-f-kaye/statements/Statement-of-Commissioner-Elliot-F-Kaye-on-the-Fiscal-Year-2020-Performance-Budget-Request-to-Congress.

Ms. SCHAKOWSKY. Thank you. And now we will begin questioning from the members of the committee—of the subcommittee—and I will begin.

So I want to talk a bit about furniture tipovers, and I hear you talking about a final—about a mandatory standard being developed. But in the meantime, I think that—I have been really disappointed in the speed of which we've seen these dangerous products being taken off the market.

Every 14 days a child dies from a tipover and, Commissioner Adler and Kaye, at the CPSC March meeting you pushed for a more streamlined process for getting stronger standards for the children's furniture but you were outvoted at that—at that meeting and I wonder if each of you can explain what you were trying to do and how it would have helped save lives.

Let us start with Commissioner Adler.

Mr. ADLER. Thank you very much for that question.

I think when Commissioner Kaye and I proposed our amendment we understood that it would apply just to children's clothing storage units but on the philosophy that even if you can't protect everyone that doesn't mean you shouldn't protect anyone.

The big advantage of moving under this special streamlined provision of the Consumer Product Safety Act is speed. We could have a clothing storage unit rule for children probably within months whereas I guarantee it is going to take us years under the more slow and cumbersome procedures in the Consumer Product Safety Act before we can enact a standard.

And I just want to make one quick point. The standard for clothing storage units is probably, if we were to do it, word for word what we would do under these more cumbersome procedures.

It will just be a little bit broader in scope than doing a children's clothing storage unit. So I regret that our colleagues did not agree with us on that point.

Ms. SCHAKOWSKY. Commissioner Kaye?

Mr. KAYE. Thank you, Madam Chair.

I think Commissioner Adler certainly summed up all the important points on why we proposed the amendment. I would also just add, and this goes to the topic of this hearing—is the agency doing enough—in my mind, this is one of those issues where we should be pursuing every authority we have.

Whatever is tools available to us, we should be doing that with regard to this hazard. And so I think while we both looked at moving under 104, as Commissioner Adler mentioned, is not maybe a perfect solution, it certainly is a tool that is available to us.

It would make a difference in the marketplace. It would accelerate rule making and would send a signal, which I think is important. It would send a signal to industry that we are not leaving any tool unused and that is the larger piece of the theme that you are looking at and I think is so critical in your question.

Ms. SCHAKOWSKY. Thank you.

Let me—also, one of the problems with voluntary standards is that they are really hard to enforce, and I hope and expect that if the CPSC is deferring to a voluntary standard for now that it is monitoring compliance adherence to that standard.

So Acting Chairman Buerkle, how is the CPSC ensuring that furniture is meeting the voluntary standard and how soon do you think that we can have a more robust final mandatory standard to make sure that these kids are safe?

Ms. BUERKLE. Thank you very much, Chairwoman Schakowsky.

And let me just reiterate how significant this issue is and one of the top priorities of the agency where we have invested a lot of funding into doing testing to inform the agency.

With regards to the 104 process, the concern was that it was just addressing too narrow a slice of dressers and just a small—too small of the number of dressers.

There are millions and millions of dressers out there. This past February at ICPHSO I addressed to the public that the agency would begin, and our compliance deputy director sent out a letter to industry advising them that we will now be enforcing the voluntary standard and to make sure their dressers are compliance with the voluntary standard that is currently in place.

However, I also sent a letter to the ASTM Committee advising them to go to 60 pounds and to broaden the scope of dressers to 27 inches and above because that has been a topic, as you know, as we have discussed, a topic that was—has just been languishing in the ASTM Committee and, hopefully, that right now, as we speak, is being balloted.

Ms. SCHAKOWSKY. Let me just say that I have a piece of legislation called the STURDY Act that I hope all of you will look at. Just like the Consumer Product Safety Improvement Act, I think that this is an issue that could use some legislation. I am hoping that the Commission will support it.

I now yield to the ranking member for 5 minutes of questions.

Mrs. RODGERS. Thank you, Madam Chair.

To Acting Chair Buerkle, I just wanted to give you a chance here at the beginning of today's hearing if you wanted to respond to any of the recent attacks that we've seen recently on your record of public service and especially safety-focused public service.

Ms. BUERKLE. Thank you very much.

As I mentioned in my opening statement, there is nothing more important to me than safety and I have said from the outset safety is not political nor should it be political in how we keep consumers safe and we enforce our statute.

The recent story, and I will speak to that and take the opportunity and then I want to very quickly segue into the good things the agency has done, but it is important to understand one of the narratives was that I don't—I am not in favor of recalls.

But I think it's also import to note that we already had a recall with Britax in 2017 just after I became the Acting Chairman. There was also an allegation that I kept my fellow Commissioners in the dark.

I think it is really important to understand that the Commissioners, all of us, were informed about this very issue in June of 2016, before I ever became Chairman, in September of 2016 before I ever became Chairman, and then subsequently in April of 2017.

So there was never any attempt to keep my colleagues in the dark. Two of those reports I wasn't even in the Chairman's office. And, additionally, Commissioners have the opportunity to meet

with senior staff on a regular basis and are informed about what's going on at the Commission.

And then I think, most importantly, the issue of the why settle—why should we settle with Britax instead of allowing that to go the course throughout litigation—and I think it's very important when we make decisions as an agency and as Commissioners, which we are the decision-making body, we take all of these factors into account.

And when I thought about the Britax and the opportunity to settle that issue rather than prolonged litigation, I compared it to a recent situation that we had at the CPSC where, again, a firm did not want to do a recall.

So we sued them to do the recall, which is precisely what happened in the Britax matter. That complaint was filed in the former case in 2012.

In 2019, 7 years later, the district court opinion on reconsideration held that requirement and that trying to force the recall as unlawful and they vacated it.

So in a 7-year period, we used valuable resources of the agency, and the consumer never got the safety information, never had a remedy for the recall.

And so in the case of Britax, it seemed to me, let us get that information to the consumer. Let us make sure that consumer understands how to get that stroller to work correctly. Let us settle this. It is what our staff advised us to do, and that is what happened.

And so in the case of Britax the complaint was filed in 2018 and in November of 2018 there was a settlement agreement, and now we will monitor that plan very closely and we will also make sure they issue—they will send us reports about the recall and we will monitor those very closely that they have complied with the settlement agreement.

I just—if I could take a minute, I think it is really important to talk about the good work of the agency. We heard it from my colleague, Commissioner Baiocco.

But we—in the last 2 years since I have been Chairman, we have passed six mandatory standards. We revised eight mandatory standards. We have NPRs out for two durable nursery products.

We have an ANPR for a clothing storage unit tipover, three critically voluntary standards—three critically important voluntary standards have been enacted and are in effect.

One is window coverings that went into effect 2018—critically important; second is, I mentioned, with the tipovers—they are balloting those to 60 pounds and under 27 inches—27 inches and above—as we speak today; and portable generators.

Two voluntary standards are in place that will keep the consumers safe now. They are in the market. Those are three critically important voluntary standards of the agency through the hard work of our staff has accomplished.

Furniture tipovers we've talked about. I think one of the important issues to this committee is SaferProducts.gov. It is a way for the consumer to access information and we are in the process of—we had a public hearing on it.

We did an RFI. The staff will collect all of that information, come back to the Commission, and help us to understand what can we

accomplish quickly, what will take more funding and, again, that is one of the projects that I would really appreciate additional funding for to make SaferProducts.gov more robust.

We have continued coordination with other Government agencies, making sure that we are—there are no gaps between our safety work. Recall effective—this has become a priority of the agency.

We had a workshop, an RFI follow-up, and as Commissioner Baiocco pointed out, safer products—excuse me, the new Recall App has been launched, thanks in part to her hard work on that issue.

And, most importantly, we have stopped millions of unsafe products at the ports and that is something I would like to talk about when we get to recall effectiveness.

So thank you.

Mrs. RODGERS. OK. Thank you. My time has expired. I do have further questions. I will submit them to the record.

Ms. SCHAKOWSKY. And now let me yield to the chairman of the full committee, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Madam Chair.

I mentioned in my opening that Congress passed the Child Nicotine Poisoning Prevention Act in 2016 that requires liquid nicotine containers to meet special packaging requirements of the Poison Prevention Packaging Act, including child proofing and flow restrictions.

The letters CPSC issued on implementation and enforcement requirements have been confusing, in my opinion. One letter failed to advise companies of the flow restrict or requirements.

Another mentioned them but indicated that CPSC would be issuing future guidance, raising questions of whether companies must comply with the flow restriction requirements in the meantime.

And I think that flow restriction is a serious concern and was included in the law for a reason. Now, I have here a product called the Milkman, which was purchased online, and this is with vaping, right.

It's a bottle of liquid nicotine that has no flow restrictor at all and if you open it up—if you want to, you can, but at your own risk—if you open it you can see that it could be simply dumped out in an amount that could easily kill a child and these kinds of containers are still readily available in stores and online. This one was purchased online.

So when I asked you, Chairwoman Buerkle, what is CPSC doing to ensure that it enforces the law—because this is illegal—and including, you know, surveillance of stores, websites, you know, that makes its expectations clear to companies so they don't—I mean, they are not allowed to sell this.

Ms. BUERKLE. Thank you very much, Chairman Pallone. Thank you for the question.

I would reiterate your concern with regards to liquid nicotine. In 2016 when the statute was passed and my colleague, Mr. Feldman, at the time was in the Senate and was very active in his work on that issue—in 2016 the agency immediately issued letters, putting companies on notice, putting firms on notice that we would now begin enforcing the Child Nicotine Poison Prevention——

Mr. PALLONE. Are they still for sale?

Ms. BUERKLE. Subsequent to that, we have sent out additional letters on the exact issue you speak of—the flow restrictors.

Mr. PALLONE. Are those the ones that came from Commissioners Feldman and Baiocco? I have—I said after the—after the letters I mentioned they sent out letters, I guess in February, that indicated CPSC would be issuing guidance and you issued a joint statement expressing concern about the confusion it may cause and reiterating CPSC's duty to immediately enforce the law.

Is that subsequent? Is that what you're talking about now?

Ms. BUERKLE. Yes. Subsequent to the letters that were sent out advising of the Child Nicotine Poison Prevention Act—subsequent to that, the agency developed a testing methodology in addition to what was already in the statute and they are now enforcing that. And again, that gets back to the limitations we have in terms of funding.

This e-commerce situation that you are calling to our attention is critical and additional funding for just e-commerce——

Mr. PALLONE. All right. Well, I appreciate that. But you say that they're enforcing it now. But how? What are they doing to enforce it?

Ms. BUERKLE. They have put together a plan. They will go—they'll physically go into a brick and mortar store where there are these products—where these products are sold. But in addition to, as with other issues, we also do online surveillance to see whether or not these products are safe, are available, and if they are available then they will go——

Mr. PALLONE. All right. Well, take a look at this one, because this one is still for sale, all right? I appreciate it. And I will give you—our staff will get back to you.

But, I mean, I just hope that we are going to see more enforcement action because, clearly, it is not enough at this point.

Now, I just wanted to mention one thing about—yes, I don't suggest everyone take a—let's put it away for now.

So let's talk about counterfeit products for a minute. Last year, I sent letters to five major e-commerce retailers asking what they're doing to stop dangerous counterfeit products from being sold on their platforms and these fake products may be made from shoddy materials or little or no quality control.

I am still concerned that sites like Amazon are not doing enough to police the sellers. Can I just ask either—well, Commissioner Feldman, you have previously spoken of the need for CPSC to be more engaged in this area. Can you tell me what CPSC is doing to protect consumers from these counterfeit products and what more should be done?

I know we are running out of time, but if you would try to answer it for me I would appreciate it.

Mr. FELDMAN. The issue of counterfeit products runs much broader than our jurisdiction has to do specifically with safety. But where you have a counterfeit product, where IP considerations are being ignored, there is a high degree of correlation that in fact the necessary safety and certification testing that goes along with that is also being ignored.

I see that this light is blinking red. But I do think that we have a lot more that we can be doing to engage online platforms and to expand our market monitoring capabilities to take a look at direct-to-consumer shipments.

In many ways, the counterfeit issue is not exclusively but it is predominantly an e-commerce issue and I agree that some additional resources and efficiencies with respect to our existing resources can be better leveraged to make progress in this area. But I thank you for raising the question. Thank you.

Mr. PALLONE. Thank you.

Thank you, Madame Chair.

Ms. SCHAKOWSKY. And now I recognize Mr. Latta for 5 minutes.

Mr. LATTA. Thank you, Madame Chair, and to our Commissioners, thanks very much for being with us today. I really appreciate it.

And the Internet of Things is an issue I've been focused on in my time in Congress and especially in the last Congress I introduced the Smart IoT Act, which directed the Department of Commerce to create a compendium of essentially who is doing what at both the Federal level and at industry.

And I also formed the Internet of Things Working Group with my friend, Representative Welch from Vermont, and we should focus on minimizing agency overlap and duplicative burdens that hamper innovation.

If I could start, Chairman, with you, if I may. What interagency efforts have you been able to undertake at the CPSC on the issue of the Internet of Things?

Ms. BUERKLE. Thank you very much for the question, Congressman Latta.

We, first of all, have taken this issue very seriously and understand the implications it can have for safe products. We had a public hearing on IoT and had many stakeholders come in and testify as to what they saw our role as the agency and very—it was a very robust discussion.

Subsequent to that, as my colleague, Commissioner Feldman alluded to, we have and we are taking the lead. As a small agency, we are taking the lead in the Internet of Things.

We have a person who is detailed to my office who is running the IoT initiatives and, again, what Commissioner Feldman said that we will be having, in April, a intergovernmental discussion and meeting just to discuss the very issues that you have raised—who is doing what, what do we consider our jurisdiction to be, and how will we address making sure these products are safe.

And that as was, again, Commissioner Feldman mentioned, our jurisdiction isn't the privacy but when that hack or that breach or that malfunction of the software occurs, how it affects the safety of the product—that is our concern.

And so we all need to be talking to each other as Government agencies, making sure that we have all of the bases covered, making sure we are not crossing over and getting in each other's way but also having a mechanism to discuss this once a hazard is identified.

Mr. LATTA. Well, thank you. And if I could maybe continue on.

Commissioner Feldman, because, again, in your testimony you talk about the working group that you put together with the FCC, FTC, FDA, DOT and NIST, and I am interested because, again, we want to make sure that, you know, we are protecting the consumer out there, especially when you see what's happening in hacking and all, especially when you see with the working group you're putting together.

What do you envision that you will be doing with the—with the Commission with the other agencies and departments?

Mr. FELDMAN. Yes, sir, and thank you again for you work on the Smart IoT Act. That's a piece of legislation that I think advances goals similar to what is currently underway at CPSC.

The purpose of the working group is interagency coordination, not regulation. I think it's important at this stage in the game with the nascent technology that agencies are aware of the respective efforts on connected devices across the Federal Government.

CPSC is a safety regulator. We are not a security regulator. I see—or a privacy regulator, as the Acting Chairman mentioned. That's a set of responsibilities that falls to agencies like the Federal Trade Commission and the Secret Service.

But that said, there are situations that are likely to arise where a security vulnerability and a safety risk share a common nexus. When those situations arise where there is a problem that is a crisis that emerges that implicates a number of agencies' jurisdictions, at this stage I think having agency staff speaking to one another so that in those critical 24 hours of a crisis CPSC staff isn't calling somebody at NIST or FTC or Secret Service to introduce themselves and have a question about jurisdiction when those critical minutes are ticking away.

So in that respect, I think taking these steps at this stage is a worthwhile effort.

Mr. LATTA. Thank you.

Chairman Buerkle, in the CPSC 2020 budget request, you state that the CPSC will prioritize its resources on the products with the highest consumer product safety risk.

Can you elaborate on how you accomplish this and will your decision about also be guided by scientific, solid, and reliable data?

Ms. BUERKLE. Thank you. Yes. Thank you for that question.

CPSC is a data-driven agency and it is critical to us that we have access to robust data. It is also critical that we have the ability to analyse that date to make sure we have a good understanding of the issues and the incidents that are out there.

It has only been compounded now with e-commerce and some developments, and so in our budget those initiatives which don't deal with our day-to-day initiatives and efforts or more traditional models will go by the wayside because we don't have the capabilities because of the lack of funding, because of our budget essentially hasn't kept current with inflation. Our contracts go up, wages go up, and then that takes away from our critical mission budget.

So it's important and why we all—I think all of us would agree the agency needs additional funding.

Mr. LATTA. Well, thank you very much. My time has expired.

Ms. BUERKLE. Thank you very much.

Ms. SCHAKOWSKY. And now I yield to Congresswoman Castor for 5 minutes.

Ms. CASTOR. Well, thank you, Chairwoman Schakowsky, for holding this important hearing. It has been too long since this committee held a proper oversight hearing.

For example, our colleagues on the other side of the aisle have not had the Consumer Product Safety Commission here since May of 2015. So I am pleased that you and Democratic majority are reclaiming our vital oversight duties.

Over the past 2 years, a number of major hurricanes made landfall in the United States—Harvey, Maria, Irma, Michael. Devastated communities across the country and coming from Florida I am particularly sensitive to this.

After hurricanes sweep through, many Americans are left without power for days or weeks and, in some cases months. After Hurricane Maria, Puerto Rico was without power for 11 months.

In the aftermath, portable generators can supply emergency power to those in desperate need. However, portable generators can be deadly. They emit 450 times the amount of carbon monoxide as an idling car.

On average, 73 people die each year from carbon monoxide exposure from generator exhaust. After Hurricane Irma, at least 12 Floridians lost their lives because of portable generators and according to the CPSC's own data, generators killed 849 people or caused brain damage or sickness in many more from 2005 to 2016.

In 2016, the Commission recognized that something needed to be done and the Commissioners voted 4–1 to go forward with a notice of proposed rulemaking for a mandatory portable generator safety rule. That rule, which could prevent numerous deaths, has still not gone into effect.

Acting Chair Buerkle, in 2016 you were the lone Commissioner who opposed moving forward with a mandatory portable generator safety rule. That means out of the five Commissioners, you were the only one to oppose such rule, and you stated that you favored a voluntary standard over a mandatory standard.

How many preventable deaths need to occur before the Commission under your leadership issues a mandatory safety standard?

In other words, do you foresee any circumstance where you would support a mandatory rule?

Ms. BUERKLE. Thank you very much, Congresswoman Castor, for that question.

First, let me just tell you how important and seriously the CPSC takes the issue of carbon monoxide poisoning. It is one that we have spent a tremendous amount of resources on in trying to address the hazard.

I would tell you that the ANPR for the mandatory standard began in 2006. The NPR was published in 2016. So 10 years elapsed before we ever did anything to get an NPR.

Apparently, there was difficulties in developing the technology. We waited for a study to come from the University of Alabama, which was a low-emission technology.

In the meantime, industry—and there are actually, at the end of the day, two voluntary standards with shut-off technology that

really make the consumers safe and they have addressed the hazard, so we hope.

Ms. CASTOR. A lot of manufacturers even didn't want to adopt longer cords. I mean, that's not something that takes a lot of research and time. But they wouldn't go along with that.

And why wouldn't you sign a letter to retailers that was circulated by the other Commissioners urging retailers to stop generators with new safety features?

Ms. BUERKLE. I think, first and foremost, because the generators weren't available and the letter was going to cause confusion. The letter—the generators that had the new technology that was compliant with the voluntary standards was not available until approximately a year and a half later.

And so sending out a letter——

Ms. CASTOR. You were in the minority on that, though. Why did you provide that draft letter to industry representatives and note that you intended to discourage the other Consumer Product Safety Commissioners from sending that letter?

Ms. BUERKLE. I disagree on the first premise—that I provided the letter—because no letter was ever provided to PGMA, and that's very important, and I never would have provided it until——

Ms. CASTOR. Commissioner Kaye, you thought that it was important for the Commission to adopt a mandatory portable generator safety rule. Is that right? Could you tell us why?

Mr. KAYE. That is correct, and if the chairman would indulge me for a moment on the answer. This goes back to what I said in my opening when the——

Ms. SCHAKOWSKY. Quickly, because she's out of time. Go ahead.

Mr. KAYE. When the CPSC is at its best, it's driving research and the staff led to the breakthrough that caused us to move forward with that mandatory standard, and even if the voluntary standard is perfect there is a good part of the market that would never comply with the standard, and so we need a mandatory standard to enforce it anyway.

Ms. CASTOR. Thank you.

Ms. SCHAKOWSKY. Thank you. The gentlewoman yields back and now let me recognize Mr. Bucshon for 5 minutes.

Mr. BUCSHON. Thank you, Madam Chairwoman, and Chair Buerkle, good to see you. You were elected with me in 2010 and part of the doctors—the nurse caucus. So it's good to see you.

I want to ask you, there's been some conversation this morning about additional funding for the agency. In the previous budget increases the agency spent a significant amount of money on a new logo, for example.

So my guess—that spurs a question. How would you approach the calls for additional funding for the agency in an environment of limited resources?

And I guess I am asking what are the critical funding priorities that would be addressed with everyone's request for more funding which, by the way, I am not against, based on what you have said.

Ms. BUERKLE. Thank you very much for the question.

Because since I have been at the agency and I find myself in a peculiar position as a conservative in the House of Representatives, always talking about spending, once I got to the agency and real-

ized what the agency needed to function properly and to function well, I began to ask for increased funding since I've been at the agency.

We need—the agency is a data-driven agency. We need to improve our sources of data and we need to improve our capability of looking at data and analyzing that data.

And so those kinds of system improvements require substantial amount of money. In addition, we heard from my colleague, Commissioner Baiocco, about in terms of the system itself.

We have heard from the agency from our IT person our system is old. It's got some issues with it, and rather than just cobbling together and making it worse, we need to really look at our systems to make sure across sectors of the agency. Various areas can communicate.

There's a lot of modernization that needs to occur at the agency in addition to just improving our ability to collect data and then analyze that data.

Mr. BUCSHON. So I am assuming—I haven't read your budget request but I am assuming that is outlined—that type of information is outlined to Congress?

Ms. BUERKLE. It is. It is in an appendix.

Mr. BUCSHON. Because I have always found it helpful, you know, when agencies come and request more money that it's helpful to Congress to outline specific priorities because as I kind of half jokingly said the new logo thing, you know, I have found, since my time in Congress and I am in my fifth term, that although I don't necessarily agree with Congress line by line telling you how to spend you money, it is helpful when we are making decisions on increasing funding to have those priorities in front of us. So I would encourage that.

Ms. BUERKLE. And if I could just add one more thing and that is what we are dealing with at the agency is that the traditional brick and mortar scenario that we are all used to that so much of our work is geared towards, now we shift with e-commerce, IoT. We've talked about these issues this morning.

Mr. BUCSHON. Yes.

Ms. BUERKLE. And to be able to look at the modernization, to look at the way consumers are accessing and buying goods is critically important as well.

Mr. BUCSHON. OK.

Commissioner Feldman, I understand that some recall completion rates are very low while others are 100 percent. Can you explain why relying solely on the recall completion rate of products could be misleading?

Mr. FELDMAN. Thank you for the question.

I previously served on the Senate Commerce Committee where that particular subcommittee had jurisdiction not only over CPSC that deals with consumer products but also over the National Highway Transportation Safety Administration that deals with automotive recalls.

In the automotive recall scenario, you are talking about in most households the largest family asset short of real property, and even in that context where automotive safety defects are extremely like-

ly to result in death and injury, those recall completion rates are low.

In the consumer product context, you're dealing with consumer products that are at a lower price point that tend to be disposable, and there are issues that we find in terms of getting the recall numbers to a level that are acceptable in terms of the agency's ability to affect direct notice. I think that that's a perennial challenge that we are facing. But I think you're asking the right questions.

Mr. BUCSHON. OK. Thank you. I yield back.

Ms. CASTOR [presiding]. The gentleman from Texas, Mr. Veasey, is recognized for 5 minutes.

Mr. VEASEY. Thank you, Madam Chair. I wanted to ask Ms. Buerkle a question, and I know that because of your work there that you understand how important this Commission is, particularly for consumers that have confidence in the products that they use on a daily basis.

You know, there is a recall now out on a child's seat because of some turnovers and some deaths that have occurred with this particular child seat. Even toasters—like everyday appliances like toasters that we use sometimes can occur and deaths.

Sometimes it doesn't have anything to do with the product itself but just the consumer use. But sometimes it can be because of a faulty product and we've seen recalls in those.

And I think that Representative Castor, talking about the generators and some of the concern with carbon monoxide poisoning and deaths is something that is really real and I think that you would agree that those are real consumer safety issues, correct?

Ms. BUERKLE. I would certainly agree with that.

Mr. VEASEY. So could you clarify what you meant earlier? Because I didn't—I wanted to give you a chance when you said that you didn't believe in recalls.

Because, obviously, and with—if there are faulty generators or toasters or child seats, you would—if those products were faulty I am assuming you would want them recalled. So what did you mean earlier when you said you didn't believe in recalls?

Ms. BUERKLE. What I was explaining to the Ranking Member McMorris Rodgers, there was a narrative out there that I am not in favor of recalls and in fact that is not true and that was my opportunity to explain of course I am in favor of recalls.

If there is—and 99.9 percent of our recalls are voluntary. Firms come to us, they report, and they work closely with our staff to not only make sure that the recall is effective and it is done properly but to share in the message and the media—accessing the media.

And then beyond that, our staff works very closely with the firm to make sure they are doing what they said they would do in terms of the recall.

So yes, recalls are very important to me. It's a critical part of our mission.

Mr. VEASEY. Thank you very much. I appreciate that.

I wanted to ask also a question to Mr. Adler, particularly as it relates to consumers over the age of 65.

As you know, we have about 10,000 Baby Boomers a day turning 65 years old and I am really concerned specifically about product safety as it relates to, you know, older Americans, Baby Boomers

that are aging very rapidly, particularly the Baby Boom generation, because their intent is to be more active than the generation before them as it relates to living independently, being able to go and continue to travel and do all sorts of things and we, obviously, want to keep them safe.

And I was just wanting to know if you could talk about some of the work that the Commission is doing to address some of the issues regarding senior citizens because this, I think, is going to continue to be a big issue as this large group of our population grows.

Mr. ADLER. Thank you so much, and as I said, I am a proud member of the senior citizen population. So it is an issue of great concern to me.

And I didn't make one point that I really did want to stress here. Right now, seniors constitute about 13 percent of the population. We constitute 65 percent of consumer product-related deaths.

The majority of those are from falls on things like stairs and flooring, which can be improved. There are a substantial number that occur with respect to fires.

Seniors die at a much higher rate when it comes to fire hazards. Just think of somebody walking around in robe and pajamas and getting their arms too near to an open flame, or sometimes leaving an open flame on when they go to sleep.

So in addition to being a healthier group we need to be a safer group, and things that I think the Commission can do—and I put these into three categories.

The first is sometimes there are products that are just exclusively for seniors. Those are products like adult bed rails and products like emergency medical alerts, and those are things that we can focus on the same way we focus on products especially made for children.

In addition, there are a lot of products that harm all consumers but they disproportionately affect seniors. My own view is that where we find something that is truly disproportionately harming and killing seniors we ought to have a streamlined procedure for writing safety standards that address senior hazards in the same way we have specific 104 procedures for addressing risks that apply to children.

In addition, even if we are not going to regulate a product I do think we need to encourage manufacturers to note that their products are harming seniors in disproportionate ways and at least to encourage them to take safety steps and I will give you one quick example.

Climbing a ladder—I don't think anybody over the age of 75 should climb ladders higher than their waist. But if they are going to do that, I would hope manufacturers would put railings on the ladders so they would be safer.

So there are many things that I think the Commission ought to be doing.

Mr. VEASEY. Thank you.

Ms. SCHAKOWSKY [presiding]. I thank the gentleman for his question because I was going to ask for extra time to let you finish your thought that you had started in your opening statement.

And now I yield to Mr. Griffin——

[Side comments.]

Ms. SCHAKOWSKY. OK. So now I yield to Ms. Matsui for 5 minutes.

Ms. MATSUI. Thank you, Madam Chair.

In 2013, California amended TB 117, the State's technical bulletin on fire safety standards for furniture flammability to significantly reduce the presence of potentially dangerous flame retardant chemicals in furniture.

As you are aware, commonly used flame retardants in furniture have been found to be associated with adverse health effects including fertility complications, certain types of cancer, heart defects, and hormone disruption.

Commissioner Adler, is CPSC currently examining a national flammability standard that would reduce the need for potentially hazardous flame retardants?

Mr. ADLER. Thank you for that question, and I would like to answer it in two ways. First of all, the Commission has directly addressed the issue of chemical hazards because one of the things that we are investigating is the possibility of addressing organohalogens, which are the flame retardants that are found in many, many children's products, and that is something that we are working vigorously on in particular to address them as a class of hazard, not one by one.

Ms. MATSUI. Right.

Mr. ADLER. With respect to the California standard, which is TB 117, this is a fascinating exercise to me because the Chairman supports adoption of TB 117. The industry supports it. A lot of public health groups do.

But there is one group that doesn't, and that is CPSC staff, and they have raised a number of very, very strong technical objections to the adoption of TB 117.

But I would like to go back to a point that I had raised earlier. We can't just adopt a California safety standard as—in a very simple process the way we can use under our 104 rulemaking. We would have to go through these elaborate procedures that are very cumbersome in order to adopt something like TB 117.

So I know the Commission is working—the Commission staff are working——

Ms. MATSUI. Well, I do hope that we do proceed as quickly as possible on this.

Mr. ADLER. And I am sure that——

Ms. MATSUI. I know there might be some disputes. But let us try to move forward with this.

I think this is such an important issue. I really do. I mean, this has been out there for quite a while and we really need to deal with this.

We should study this further and adopt uniform standards that will reduce the need for dangerous chemicals and furniture, and it's time we acted upon this.

In 2015—this is another issue—the Office of Management and Budget issued a memoranda requiring all publicly accessible Federal websites to provide service only through an HTTPS connection by the end of 2016.

HTTPS protocol ensures that a consumer's connection is encrypted from the devices all the way to the Federal Government's systems. Regular http connections sent in plain text can be intercepted and exploited by anybody or anything between a user and the website including someone using public wifi.

The website created by the Federal Government to monitor HTTPS deployment stated that 78 percent of Federal Government domains are compliant with CPSC at 88 percent.

Ms. Buerkle or entire panel, are you aware of this work, if any what needs to be—remains to be done?

Ms. BUERKLE. Thank you for your question, Congresswoman.

I would appreciate the opportunity to get back to you and get the current status of the agency and then we will report back to you as to what is happening and where we are with compliance.

Ms. MATSUI. OK. I am anxious to receive that.

The Internet of Things has the potential to transform the services around us. For instance, connected devices can remotely monitor a diabetic's glucose levels or a patient in the ICU's vital signs, which in turn can help provide data to better treat patients and address issues potentially before they become symptomatic.

And many consumers already have connected devices to their homes and on the go when tracking personal fitness information to intelligence speakers and connected transportation services.

But I am concerned if we do not do more we risk becoming overly reliant on technologies developed by foreign actors or standards that provide an unfair advantage to technologies developed in foreign markets.

That is why I am working on legislation to ensure we support a multi stakeholder approach to this issue that promotes U.S. leadership on this process.

The entire panel—as CPSC continues to grabble with IoT devices, do you see over reliance on foreign technologies as a potential issue facing consumer product safety?

Mr. FELDMAN. I will answer that.

Yes, I think you are raising a valid concern. You mentioned that you're working to develop legislation in this area. I would want to commend your leadership in that respect and welcome an opportunity to review a draft of your legislation if and when that's available.

I think IoT makes all sorts of connectivity possible and there have been some exciting developments in this area, as you cited in your question.

CPSC has a role to play with respect to connected devices that present an unreasonable risk of injury to consumers. I am aware that CPSC is—that our staff is in communication with standard-setting organizations like Underwriters Laboratory and other to develop our own standards with respect to connectivity and safety of IoT devices. I am eager to watch how this standards activity progresses. I see my time has expired.

Ms. MATSUI. Yes, it has, and thank you. My time has expired too. I yield back.

Ms. SCHAKOWSKY. Next, I yield to Mr. McNerney for 5 minutes of questions.

Mr. MCNERNEY. I thank the chairwoman, and I thank the Commission for your testimony. I was here for it.

So, Chairwoman Buerkle, I am the cochair of the congressional Artificial Intelligence Caucus. One of the things I am trying to understand is how Federal agencies are using artificial intelligence to improve their operations and how they can serve the American public.

Do you have any examples of how the Commission is using AI today?

Ms. BUERKLE. Thank you for your question, and let me begin by saying mostly what initiatives are happening now are machine learning and training machines to—the technology to recognize incidents and recognize patterns of hazards and incidents.

We do not use any AI currently. But, again, that would be something that if Congress increased our appropriations that would be something that would give us the flexibility to look at AI and make sure we understand, first of all, to increase the amount of data coming to the agency and then, most importantly, to have the capability to analyse it.

Mr. MCNERNEY. That is kind of a recurring theme, that you need more resources.

Ms. BUERKLE. Indeed.

Mr. MCNERNEY. Is the agency considering how it might use artificial intelligence in the future?

Ms. BUERKLE. Yes, we are, and I welcome any of my colleagues to comment on that. But we certainly are looking at ways to make our jobs easier and help us to identify the issues that are before us.

Ms. BAIOCCO. One of the ways that I believe that that would help the agency immensely is in hazard identification prior to the injury or hazard occurring.

If you just watch on a Sunday afternoon on NFL, there are opportunities and you see them, say—the announcers put up the AI and say, there is a 50 chance of this happening or a 60 chance of this linebacker taking the ball this way.

We should be doing that with the same type of technology, the same type of software, to identify what hazards are coming down the pike and what the percentage of it is. I think that's the first place we would start.

Mr. MCNERNEY. Any other Commissioners?

Mr. FELDMAN. And to that end, I thought it was a good idea, and I mentioned this in my opening statement, that the Commission explore the hiring or identification of a chief technologist at the agency.

I know that the Federal Trade Commission, the Department of Transportation, FCC, our sister agencies, have all done this with good results.

Having somebody on staff to expand our technological expertise and identify how exactly the agency can leverage technologies like AI to help better identify emerging hazards, et cetera, would be useful.

I was disappointed that our amendment to include that in this year's budget request was ultimately not accepted. But I think

there are opportunities and I would love to continue a dialogue with you to explore how we may make that come to a head.

Mr. MCNERNEY. Very good.

Yes, there is a significant difference between the administration's budget request and what actually got appropriated.

Commissioner Kaye, you have previously spoken about the need for civil penalties to deter bad conduct. Would you elaborate on that?

Mr. KAYE. Yes. Obviously, Congressman, it is one of the important tools that Congress gave the agency to try to deter companies from not engaging in certain misconduct.

And so during the time that I was Chair I recognized that the agency was not pursuing civil penalties consistent with the direction that Congress had given in the Consumer Product Safety Improvement Act, which called for higher civil penalties when warranted.

We were basically taking the same fact patterns and applying the same pre-CPSIA levels to our evaluation. So my direction to staff was to heed the word of Congress and to vastly increase as required what we were seeking.

And thanks to the leadership of our then general counsel and her staff, we were very successful in doing that.

Mr. MCNERNEY. So do you have any data?

Mr. KAYE. We do have data and I am sure the agency can provide it and the numbers and the cases that were pursued and what those penalties look like.

Mr. MCNERNEY. OK. I have about a 3-minute question, so I am going to just yield back at this point.

Ms. SCHAKOWSKY. Mr. Guthrie, you're recognized for 5 minutes.

Mr. GUTHRIE. Thank you, Madam Chair. I appreciate that very much and, sorry, there was another hearing going on so I've been back and forth. So I didn't get quite the full discussion, but I was going to ask a question of Chair Buerkle and it kind of relates, I think, to what was going on. I didn't get the whole context of that.

But it's civil penalties. I know during your time on the Commission you voted against civil penalties and you have also overseen the largest civil penalty ever imposed by the Commission. So could you just explain your philosophy in respect to civil penalties and when imposing—when you voted against them and why you were there when the largest one was moved forward? Just give your philosophy on civil penalties.

Ms. BUERKLE. Thank you. My problem, and one of the reasons I don't always vote for a civil penalty is process wise I find—and if I could just opine 1 minute on the fact that when you are in the Chairman's office versus when you are a Commissioner in the minority I think you have a little more leeway.

But once you are in the leadership role you have a different role to play that is to keep the agency running, to send a message to those who may not reported timely or to deter others from doing likewise.

So to your point, we did enact the largest civil penalties. But my concern is we are transparent and that the factors that we use in order to reach the amount of a civil penalty are consistent and

transparent and that, to me, is the most important thing about civil penalties.

How did we get to that number? Sometimes I will disagree with my colleagues on the amount of the civil penalty. I will say that we also, not only for failure to report timely, but we also will enact a civil penalty for sale of recalled goods, which we have also done.

Mr. GUTHRIE. OK. Thanks. And I know I had a manufacturer of table saws and—well, was in my district. After redistricting they moved forward, and I know you issued a statement on April 27, 2017, of the publication for proposed standard for table saws and you found the proposal deficient you said in two counts.

And the big concern of the manufacturing, I mean, wasn't the safety of the table at all—matter of fact, quite the opposite—was a mandated technology they felt that was patented and they felt like it was going to be a mandated monopoly in that technology.

That was their concern with that. Could you just talk about—I know you found that proposal to be deficient—and talk about that?

Ms. BUERKLE. Thank you. Yes. That is my concern as well. There is no question about making table saws safer and that certainly is—that would be a goal of the Commission for sure and the agency.

But right now, I have concerns about whether or not any rule that we would promulgate would create a monopoly for one person and I don't think that's the role of government.

I will say, though, that the agency has been aggressive. We did a 2016 study but, more importantly, a 2017 study to try to link the injuries to the type of saw so we can be more informed in our decision making.

The staff is preparing a package—a briefing package to all the Commissioners to let us know what was—what they discovered in not only the surveys but then the survey went out for comment. That comment period is closed and that will all be coming to the Commission to understand the status right now of table saws.

Mr. GUTHRIE. All right.

Commissioner Feldman, I saw you shaking your head. So if you want to add into——

Mr. FELDMAN. With respect to table saws, I agree with the competition issues that were raised. I think I addressed the question from a more basic level.

There have been some updates to the existing standard—voluntary standard with respect to new guards and safety add-ons. That sort of—under the statute dictates our posture with respect to how, if at all, we are able to proceed with the mandatory standard.

I am not—I want to be careful in what I say because I would like an opportunity to confer with agency staff about the effectiveness of the existing standard and whether it adequately eliminates or reduces the risk and now that that standard has been out there for some time whether or not there is substantial compliance from industry.

Those are the two factors that we need to get to in order to move to a mandatory standard but——

Mr. GUTHRIE. OK. Thanks.

Mr. FELDMAN. Thank you.

Mr. GUTHRIE. And I am getting short on time for my next question. So welcome back to Capitol Hill. It is always great to see you.

Ms. BUERKLE. Thank you very much.

Mr. GUTHRIE. I enjoyed serving with you. So thank you very much, and I yield back.

Ms. SCHAKOWSKY. The gentleman yields back and now I call on Mr. Rush for 5 minutes to ask your questions.

Mr. RUSH. I want to thank you, Madam Chairlady, and I certainly appreciate you and the ranking member having this hearing this morning, and I appreciate your longstanding leadership on all issues related to consumer protection.

In 2008, I served as the chairman of this subcommittee. At that time, it was known as the Subcommittee on Commerce, Trade, and Consumer Protection, and I was proud to author the Consumer Product Safety Improvement Act—CPSIA—back in 2008.

So I am familiar with the issues that the CPSC faces, and while I am very pleased that we are here today and discussing how far the CPSC has come, I know you and I would agree that there is much work that remains to be done by this agency.

And I want to ask the Acting Chairman Buerkle, the CPSC's notice of proposed rulemaking to amend Section 6(b)—that removes some of the self-imposed burdens being added in 2014, a long time ago, but we made little progress since then.

And maybe you can tell me, Chairman Buerkle, what's the status of the proposed rulemaking? And what are—maybe you can also tell me—tell the committee what accounts for the delay and when can we expect the Commission to move this process forward?

Ms. BUERKLE. Thank you very much, Congressman, and thank you for all of your work on CPSA and improvements—all of the work you have done to keep consumers safe.

With regards to 6(b) and the proposed rule, if I have your permission I am interested—my colleague, Elliot Kaye——

[Side comments.]

Ms. BUERKLE. He indicated to me that I can blame him for the delay. When 6(b)—I think that's very gracious of you—the NPR came out, there was just a tremendous amount of concern about the issues and what 6(b) protects and doesn't protect.

And so the entire NPR was tabled, and at this time, quite honestly, there is no work being done on that issue.

Mr. RUSH. So are you saying then that we are still at a point where you all are not moving forward at all? You can't tell me when you are going to break this logjam up?

Ms. BUERKLE. All I can say is there is no work being done on 6(b). It is an NPR. I think at this point if we were to bring the NPR back up it would have to be a new package, because it is so old.

Mr. RUSH. Well, Commissioner Kaye, you stated that people are dying because of Section 6(b). Those are your statements. Am I quoting you correctly?

Mr. KAYE. That is correct, and——

Mr. RUSH. What rationale is there for maintaining Section 6(b) then?

Mr. KAYE. If I may distinguish, Congressman Rush, between the statutory provision of 6(b), which exists because of Congress, and the regulatory burden we added upon ourselves.

When I became Chair in 2014, I had to make a calculated decision with the limited resources we had. I had inherited the proposed rule from my predecessor, and at that point I made the judgment because we had so many persistent hazards that were pending—window blind cords, portable generators, ROVs—that the time was better spent on addressing those hazards that continue to kill people as opposed to something that I felt Congress ultimately could take care of very easily, which is repeal of the statutory provision, and that is really what I am urging.

I think that if we were to pass the NPR, it would fiddle around the edges of 6(b), but it's not going to change the fundamental issue that I mentioned in my opening statement. Only Congress repealing 6(b) would do that.

Mr. RUSH. I want to thank you, Madam Chair. I yield back.

Ms. SCHAKOWSKY. I now yield to Mr. Cárdenas for 5 minutes.

Mr. CÁRDENAS. Thank you very much, Madam Chairwoman, and thank you for having this important hearing.

As a grandparent of two children, trust me, this Commission that was started in 1972 hopefully will protect my grandchildren much better than it protected me.

I was a toddler before 1972. I won't say what years but just say that the purpose of it is, I think, what makes this country so respected around the world is that we care about human life.

We care about what can be done better. We care about making sure that we—there are sometimes winners and losers in the jobs that we do.

But at the same time, the big winner is, especially when it comes to public safety, is every person, whether the child is newborn or they are somebody who decides that they want to still work in the sawmill at the age of 80 or 90 because that's what they love to do they should be able to do it safely.

I want to go to the—in 2018, CPSC published a consumer alert stating that it was aware of infant deaths associated with inclined sleep products and alerting consumers to be aware of the hazards.

Unfortunately, CPSC at that time didn't specify which products had resulted in infants deaths. So I am not sure how helpful this alert was for parents and grandparents who were trying to avoid dangerous products.

Coincidentally timed with this hearing, CPSC released another alert this past Friday to warn consumers about the Fisher-Price Rock 'N Play, noting that CPSC is aware of 10 deaths in the Rock 'N Play since 2015.

I am curious as to what changed between the consumer alert in 2018 and just last Friday. Section 6(b) of the Consumer Product Safety Act requires CPSC to notify the manufacturer before public disclosure of certain information and that the information disclosed is accurate and reasonably related to the effectuating the purposes of the Consumer Product Safety Act.

The main purpose of that act is, quote, "to protect the public against unreasonable risks of injury associated with consumer products," end quote.

So to you, Chairman Buerkle, when did you notify Fisher-Price of the alert issued this past Friday?

Ms. BUERKLE. We have been working with Fisher-Price over the last several, I will say—at least the last year and even more so, and I have provided to the chairwoman a time line with regards to what the agency has been doing and how seriously we are taking this issue because it is a grave concern.

What occurred between the generic notice and this last notice was one death and so we went specifically out with that more specific information.

Mr. CÁRDENAS. So communicating with the corporation involved it's part of your rules. I get that. But how comfortable are you with how long it took between the initial warning and then the specific warning?

Ms. BUERKLE. Well, it—that is a very important question. It isn't as if nothing happened and our staff—our staff does all of the engagement and our staff is engaged with any firm that we are trying to get someone to do a recall with.

But they—and we have other—several other initiatives that, again, I hesitate to publicly state here but Chairwoman Schakowsky has an entire time line of all the activities that we are doing because this is a serious issue for the agency.

Mr. CÁRDENAS. OK. That is fine. With my limited time, I just want to make sure that the public is aware that even with these incredibly responsible corporations, in my opinion, unfortunately what happens is sometimes the corporation themselves look at certain things as a cost of doing business, and let me tell you, when it comes to the cost of doing business versus the life of a child, no comparison, in my opinion. Absolutely none.

So when it comes to working with a corporation to try to get it right—and I understand the responsibility that you have to have. You certainly don't want to find yourselves in a litigation situation where a corporation will have one over on you and besides the situation—hopefully, it gets corrected—and then on top of that, they walk away with a few million dollars because they were unduly damaged because we were way too aggressive and we didn't mind our p's and q's.

So but the thing is I would hope that you are fortified with enough staff and team members to do the job as efficiently and quickly as possible.

My last question is how comfortable are you with the funding level for your organization to be able to do its job efficiently and effectively?

Ms. BUERKLE. As I mentioned several times here this morning, I think that we do need to have increased funding in order to—even just to keep pace with inflation, but beyond that to be able to look at emerging hazards, increase our data capabilities, increase our technology.

Mr. CÁRDENAS. Thank you, Madam Chair. I will be more blunt. It sounds like you are way underfunded. Thank you.

Ms. BUERKLE. That is correct.

Mr. CÁRDENAS. In my opinion.

Ms. BUERKLE. Thank you.

Ms. SCHAKOWSKY. I yield now for 5 minutes to Congresswoman Dingell.

Mrs. DINGELL. Thank you, Madam Chair.

It is great to see you all. I am sorry we are running between two hearings because both of you are really, really important.

News reports indicate that several companies determined they needed to issue recalls during the Government shutdown, and with most of the CPSC shut down and most staff furloughed no one knew how to proceed or help guide companies through the process.

Some companies held off. Some companies posted recall notices on their websites. And then you later announced some of these recalls yourself on your own website but not others.

So I guess I will start with Acting Chairman Buerkle. How is it that no one knew how to handle a recall during the shutdown and how did CPSC inform companies how they were to address recalls during the shutdown?

Ms. BUERKLE. Thank you very much for your question.

So I think, if I can speculate why they didn't know how to handle a recall is because 99.99 percent of our recalls are voluntary recalls and a reporting agency works so very closely with staff, and staff determines and works with them to determine what the terms of the corrective action plan will be—what the press release will say.

And so I think for a recalling firm there was confusion as to how do we do this without CPSC. What was made clear during the shutdown was that duties—the duty to report if a product could present a substantial product hazard, that duty did not go away and I am very pleased to say that industry reported during the shutdown to the same level they do when we are not shut down.

But as soon as the Government was back opened, our agency worked very closely with any of those firms that had a recall during the shutdown to make sure that we issued another press release, we put out the notice, and we followed our ordinary course.

Mrs. DINGELL. So I have heard from some—we have all heard that there were companies that they didn't know how to alert you if there was a dangerous product and consumers didn't know what to do.

Were they able to report an incident on SaferProducts.gov so other consumers could see it?

Ms. BUERKLE. The good news is that the SaferProducts.gov website was under contract. It was not affected by the shutdown and consumers could report there and, again, that was one of the data sources that was reviewed by our accepted staff during the shutdown to make sure none of those reports in SaferProducts.gov rose to the level of imminent hazard to health and safety.

Mrs. DINGELL. According to your shutdown procedures, only 20 of your 550 employees were expected to work during the shutdown. How were you conducting import surveillance at U.S. ports with only a handful of staff?

Ms. BUERKLE. The risk assessment methodology—the RAM, as we call it—continued to run. But we were limited, quite frankly, and——

Mrs. DINGELL. So there were holes?

Ms. BUERKLE. As I mentioned in my opening statement, the shutdown was a difficult way for our agency to begin 2019 and I am very proud of what staff has done to catch up. But the ports were a problem and a challenging one.

Mrs. DINGELL. One of my—I am going to switch subjects—one of my colleagues called me because he didn't know that you were here—French Hill, actually a Republican—occasionally, you know, we do work in a very bipartisan way—and had a child from his district killed by an elevator—a tragic accident—and asked me to raise what is a concerned product—what is the Commission doing about ensuring these home-installed elevators are safe and children aren't dying?

I don't—whichever one of you, but probably——

Mr. FELDMAN. Mrs. Dingell, thank you for the question.

You are raising a serious issue. Just recently we had an opportunity to meet with families and are aware of fatalities that have occurred with respect to the elevators.

I would hesitate to comment more about what is going on with respect to agency and potential enforcement in this area. I would like an opportunity to confer with staff and get back to you with a more fulsome answer.

Mrs. DINGELL. But you are addressing it now it's a serious problem?

Mr. FELDMAN. I am aware of the issue and I am aware and understand very, very fully that it is a serious issue.

Mrs. DINGELL. So I think all of us here care and I would ask that French Hill from Arkansas also be included because it was his constituent—someone he knew—that died.

Thank you.

Mr. FELDMAN. Yes, ma'am.

Ms. SCHAKOWSKY. Thank you. The gentlewoman yields back, and now I yield to Mr. Carter.

Mr. CARTER. Thank you, Madam Chair, and thank all of you for being here. This is an extremely important subject and we appreciate all of your efforts in this—in this area.

I have the honor and privilege of representing the coast of Georgia, and we have two major seaports: the port of Savannah and the port of Brunswick. So this is of importance to us.

And I wanted to start with you, Ms. Buerkle, and ask you if you could just help me to understand how CPSC works with—it is my understanding you have worked with CBP to intercept potentially harmful shipments that are coming through our ports.

I am a little bit uneducated in this area. If you could just help me.

Ms. BUERKLE. Thank you very much for your question, Congressman Carter.

The CPSC is very engaged and we have a very robust relationship with CBP. We are colocated at about 26 ports—major ports throughout the country and we also work with them at Sea-Tac along with some other Government agencies as well—any Government agency that has an interest in products coming into the country.

And so in that process we have what I referred to earlier was a risk assessment methodology. That is a system we have set up on algorithms to look at products coming into the country to see if they rise to a certain level, if it's a new importer, if they have a previous history, and that is how we identify products coming into the port.

So our compliance officers who are at the various ports we do not have the authority to seize the product but CBP does. But then we will conduct any inspection. We do a lot of on-site testing.

We do a lot of XRF technologies and identifying whether or not there's violative products coming in, and many of those products then will go to our lab in Rockville, Maryland for further testing.

Mr. CARTER. One of the ports that we have in our district is the port of Savannah, which is the second largest container port on the Eastern seaboard, so this is extremely important to us.

And as I understand, you have had some success, I believe, in 2017 in the port of Charleston that there were some—a shipment of toy scooters that were found to have high levels of lead contamination. So that would be an example of something you're talking about?

Ms. BUERKLE. That would be a very good example of it and there are multiple other examples, and I am hopeful that all of the efforts at the ports where products are coming in may be one of the reasons why our recall numbers could be—I am just speculating here but I think we should really understand when we stop products from coming into the country that are dangerous, they never get into the consumers' hands. Therefore, a recall isn't necessary, and that, to me, prevention is the most important part of that.

Mr. CARTER. OK. Yes, ma'am?

Ms. BAIOCCO. Yes. I would like to add to that because this deals with the port of Savannah. I worked with a small business in Georgia who had a product that they identified as being counterfeit and was coming in only at the port of Savannah.

So they gave me a description and a sheet of paper that showed the product, what color it comes in and what it doesn't, and how it's packaged, and anything else was not the product—should not be coming in.

So I was able to take that down to our—to the people who work at the port. They were able to talk with their coworkers at CBP and when they opened a box and saw this particular product was pink and not red, it's a noncompliant product and they were able to stop it.

So not all of the things that we are doing are high tech but they do work. But I thought that would be a good example, particularly in your jurisdiction.

Mr. CARTER. Well, thank you. I appreciate that.

This past weekend I had the opportunity to travel with the Port Caucus here in Congress to Antwerp, Belgium, and they were showing us some of the products.

In fact, he had one that was somewhat comical. It was Adidas that had been spelled Abibas. So I hope that you all catch something like that.

But, nevertheless, just—I have got just about a minute left. The 6(b) program—I guess that is a program that is very important, particularly for manufacturers, too, so that they aren't necessarily—you know, so they have the opportunity to make sure that they are guilty or at least they are innocent until proven guilty.

So can you just very briefly, Ms. Buerkle, explain the 6(b) program?

Ms. BUERKLE. Sure. Congress and CPSA and then CPSIA address the issue of making sure that the information that we put out is fair and accurate, and that is the 6(b) protection.

I know that there's a lot of discussion about 6(b) and the value of 6(b), because also in CPSIA Congress also developed and implemented SaferProducts.gov website and I think that affords the consumer the ability to go in and to search and to be able to access information about safety data.

So I hope that there is a good balance there. But if Congress wants to change that authority that is their decision.

Mr. CARTER. OK. Well, thank you very much. Again, thank all of you for your work in this area. It is extremely important in the 1st District of Georgia as well.

Thank you, Madam Chair, and I yield back.

Ms. SCHAKOWSKY. The gentleman yields back.

And now Congresswoman Blunt Rochester will have 5 minutes for questions.

Ms. BLUNT ROCHESTER. Thank you, Madam Chair, and thank you to all of you for your testimony and your attendance today. I want to focus first on internet-connected consumer products and cyber security.

We have heard talk about the Internet of Things, the fact that your phone can actually control your alarm system, your lights in your house, your heating, and we also know that these devices can be hacked or disabled due to faulty software, potentially causing physical safety hazards.

So one example that was particularly troubling to me was in Wired magazine. There is an article about scooters that can be controlled or hacked, accelerating or breaking them by people external to the person.

So researchers found that not just the scooters, which we have seen fleets of those in different cities, but even hover boards can have this kind of problem.

Someone being able to control your device from a remote location is deeply alarming for many reasons, not the least of which is your life can be in jeopardy.

So it raises questions about security and safety of these devices within the Internet of Things, including our kitchen appliances and locks and wearables.

Commissioners Kaye and Feldman, you have both spoken about some of these challenges before. How can CPSC address these alarming safety challenges?

Mr. FELDMAN. Thank you for the question and thank you for raising the Wired article. I am familiar with it and I have referred it to agency staff for further review. If it is OK with you I would like to follow up offline and give you and update.

Using that as the example, the vulnerability and the particular exploit, as I understand it, in that case had to do with a Bluetooth vulnerability.

I have concerns and the agency has pointed out in its budget request to Congress that we have an expertise gap with respect to understanding new and emerging technologies including things like Bluetooth. That is why I, along with Commissioner Baiocco, advanced an amendment to hire a chief technologist.

I know that sister agencies like the Federal Communications Commission and the Federal Trade Commission have brought individuals on in that role.

They tend to be academic Ph.D.s that split their time between academia and advising the Commission about things like Bluetooth exploits.

I think we need to understand the technicalities behind those particular vulnerabilities before we can address them in a meaningful way.

I would also say that we are not in and of ourselves a security regulator in the sense that the Federal Trade Commission or the Secret Service is. That is why I think it is important that the agency has taken the step that it has taken to convene an interagency working group so that our staff can communicate with their counterparts across the independent and Cabinet agencies so that at the very least we are all talking to each other and operating off a common set of facts.

Ms. BLUNT ROCHESTER. Commissioner Kaye?

Mr. KAYE. Thank you, Congresswoman. I am not even sure we can really call this an emerging technology anymore because it has emerged, and that is a major concern that I have. In 2017, the CPSC staff did an excellent report on emerging technologies and I think they surfaced at that point, and we are happy to get you a copy.

I think they surfaced the issues enough at that point to know that there are concerns that consumers should have about these products and that when there is that vulnerability there could be safety implications.

Because I am not a patient individual, especially when it comes to safety, after waiting a period of time, hoping that something else would emerge and not seeing it, my personal office staff and I drafted a paper of best practices that we have circulated and that we are happy to get you as well, that we feel like our bare minimum really that should be adopted across the board to provide some comfort to consumers that these products are not going to operate in an unsafe fashion.

Ms. BLUNT ROCHESTER. Thank you.

You know, I actually am skipping all the questions I have in the middle because you brought up the chief technologies and also a chief data officer.

I am big on the future of work. It's really important to me, even to the point of starting a bipartisan caucus here, and you have heard other Members talk about it as well.

Commissioner Feldman, you mentioned something about opportunities that we can explore, I guess, in the interim, and I know—I have heard the testimony so far about the needs that you really do have from a personnel basis.

Are there things that we can do right now?

Mr. FELDMAN. I believe that there are, and that is why I thought our amendment to add that position to our agency was timely. Looking across the—CPSC is a small agency. It is a resource constrained agency. Simply throwing more money at the agency isn't always the right answer. I think that there are efficiencies to be had.

When you look at our current staffing levels, we have around 30 vacancies right now. It is possible to pull within those existing vacancies, I believe, to supplement our expertise.

I think it is critical that we do that. I see my time has expired.

Ms. BLUNT ROCHESTER. Thank you. Thank you, Madam Chair.

Ms. SCHAKOWSKY. The gentlewoman yields back.

Mr. Griffith, you have been very patient. When I say he waived on while not sitting on this subcommittee, we appreciate your coming and welcome you now for 5 minutes to ask your questions.

Mr. GRIFFITH. Thank you very much, and I appreciate you allowing me we waive on to this committee.

Acting Chairman Buerkle, I have some brief questions on the furniture tipover issue, and I want everybody to know I really appreciate what you all are doing. I am just trying to figure out some things and try to decide what action I should take or not take.

But when my now-11-year-old was about 3 he pulled a grandfather or grandmother clock over on him. The good news is he destroyed the clock but he was fine. A little shaken up, but it was a light enough piece of furniture that it didn't cause him any problems other than, you know, it stressed Mom and Dad.

But I do appreciate what you all are doing in this regard, because I do think it is important that we make sure they're safe.

So I guess a couple of my questions were—the leading question would be how did you all arrive at the figure of 60 pounds versus 56 or 62 or 63 as the appropriate test weight to modify the current standard?

Ms. BUERKLE. I would answer that question and then I would welcome any of my colleagues to answer it as well.

But the voluntary standards group, what they were doing was they were basing it on the age and that has been the discussion of the anthropromatic data that the average weight for a 5-year-old is up to 72 months old, and so that weight is 60 pounds. Some would argue it's even slightly higher. But 60 pounds is where this issue has been stuck for a long period of time.

Mr. GRIFFITH. And is that because after 5 they start to think a little bit better about climbing up on top of stuff?

I am just trying to get the thought process. Anybody can answer it.

Ms. BUERKLE. I think what is happening is that some are looking at where the injuries are occurring and they are saying what age group—why don't you focus on those.

But I think we have seen some fact patterns, most recently where it has kind of enlightened, I will say, the agency and how staff is looking in this issue and the question is will 60 pounds address the hazard or is it something else that will address the hazard, and I want to reassure this committee that our agency has invested significant funding and our staff is doing robust testing to help inform us on this issue.

In the meantime, as I mentioned earlier, we are taking some steps in the interim to try to make sure that this hazard is addressed.

Mr. GRIFFITH. And is there some data, and obviously it's an ongoing process, but is there some data regarding those who have com-

plied with the voluntary requirements and those who have not as to whether there are less accidents, more accidents, et cetera?

Ms. BUERKLE. The agency is—as I mentioned earlier, the agency has put manufacturers on notice that there will be—there will be testing to make sure that the current dressers that are out there are compliant with the 2014 standard because that is a concern we have heard.

I know within the industry there are companies that are concerned that not everyone is complying with the standard. It is time that we level the playing field and I believe that that letter to manufacturers will help.

Mr. GRIFFITH. That you sent earlier?

Ms. BUERKLE. Yes.

Mr. GRIFFITH. Yes, ma'am. But do you have any data as to those that are complying and those that aren't as to whether there are more injuries or more severe injuries? Or is it anecdotal?

Ms. BUERKLE. It is anecdotal at this point.

Mr. GRIFFITH. Now, you probably already answered this. But because I am not on the committee and don't hear these issues regularly, I am just wondering if you can tell me basically what the process would be to establish a mandatory standard.

What sort of data would be required and is there a cost-benefit analysis? Of course, I would have to agree with one of the previous people who said for saving a child's life it is hard to do a cost-benefit analysis. What would be that process for a mandatory requirement?

Ms. BUERKLE. So it would be onerous to get us to a mandatory standard, as my colleagues mentioned. Our Section 7 and Section 9 rule making—we have to make those findings and it is important that the agency does because what will happen is we'll get overturned in the courts if we don't make that finding.

So as we explore possibilities to address this hazard, when I met with Congresswoman Schakowsky and mentioned it earlier today, the STURDY Act, that a piece of legislation may be a more effective and a quicker way to go.

Mr. GRIFFITH. All right, and I appreciate that.

I appreciate all of you being here today, and I know it has been a long morning. But it has been very informative and it's always good to see you, Madam Chair.

And I yield back.

Ms. SCHAKOWSKY. Well, that concludes the first panel. I think all Members have—how many days?

[Side comments.]

Ms. SCHAKOWSKY. At this time, I will ask the staff to prepare the witness table such as we may begin the second panel shortly.

We do ask that Members may submit questions to you, and I hope that all of you will respond promptly to those inquiries.

So thank you. Appreciate it.

[Pause.]

Ms. SCHAKOWSKY. So we will now hear from our second panel. This is kind of the second-panel syndrome. Often, people—I am hoping that some will come in and out.

And before I introduce everyone, I want to just thank this panel. I want to particularly thank the advocates without whom I think it would be hard to make the kind of changes that we need.

But I also want to say that behind every one of the issues that we are talking about are very brave parents who step forward, often in the midst of very tragic situations, to bring these issues to our attention and turn their pain into power as advocates.

And, you know, this isn't just about policy. This isn't just about rules and regulations or even budgets. This is about real people. That is what I actually appreciate so much about this committee—this subcommittee.

So let me introduce the panel: Rachel Weintraub, who is the legislative director and general counsel for Consumer Federation of America; Mr. Remington Gregg, Counsel for Civil Justice and Consumer Rights at Public Citizen; Mr. Mike Gentine—pronounced correctly?—counsel at Schiff Hardin, LLP; and Ms. Nancy Cowles, executive director of Kids in Danger.

I want to thank all our witnesses for joining us today. We look forward to your testimony.

At this time, the Chair will recognize Ms. Weintraub for 5 minutes to provide her opening statement.

STATEMENTS OF RACHEL WEINTRAUB, LEGISLATIVE DIRECTOR AND GENERAL COUNSEL, CONSUMER FEDERATION OF AMERICA; REMINGTON A. GREGG, COUNSEL FOR CIVIL JUSTICE AND CONSUMER RIGHTS, PUBLIC CITIZEN; S. MIKE GENTINE, COUNSEL, SCHIFF HARDIN, LLP; NANCY COWLES, EXECUTIVE DIRECTOR, KIDS IN DANGER

STATEMENT OF RACHEL WEINTRAUB

Ms. WEINTRAUB. Chairman Schakowsky, Ranking Member McMorris Rodgers, and members of the subcommittee, I appreciate the opportunity to provide testimony today.

I am Rachel Weintraub, general counsel and legislative director of Consumer Federation of America. CFA is a nonprofit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education.

The CPSC's mission impacts every American every day to protect the public from unreasonable risks of death or injury associated with the use of consumer products.

This mission relies upon full use of agency authority to issue mandatory standards, assess civil and criminal penalties, work on voluntary standards, and conduct recalls as well as educating consumers.

I am going to focus my testimony on a number of key product safety issues facing American consumers. But please see my written testimony from my full—from my full comments.

Decades of deaths and injuries caused by window covering cords and extensive advocacy efforts led to last December's WCMA standard. A recent Pediatrics Journal article reported that approximately 11 children die and 80 suffer near fatal incidents every single year as a result of window cord strangulation.

The new version of the window covering voluntary standard requires that window coverings sold as stock or as-is must be cordless.

This standard should also require that custom products be cordless and the CPSC must monitor the marketplace for compliance, especially online.

CFA's initial research has found inconsistently online with stock products being sold with cords as well as a lack of consistent warnings.

Flame retardants can be found in numerous types of consumer products that have been associated with serious human health problems.

CFA and other groups filed a petition urging the agency to adopt mandatory standards to protect consumers from hazards caused by the use of nonpolymeric additive form organohalogen flame retardants in children's products, furniture, mattresses, and casing surrounding electronics.

While the agency has voted to move forward with our petition and acknowledge that CPSC has clear authority, much more must be done.

On the Internet of Things, the Gartner firm estimated that by the end of 2017 there would be 8.4 billion connected things in use worldwide of which more than 5 billion would be consumer applications and that by 2020 this would more than double.

The CPSC must lead efforts to address and prevent product safety risks posed by connected products. CPSC's last May's hearing gathered stakeholder input. Commissioner Kaye issued a white paper this year and we are aware of some interagency activity.

But it is not clear what the CPSC is doing and how they are leading in this area. For example, in electronic scooters, Bluetooth module was hacked and the hacker was able to control the braking and acceleration of the scooter.

The CPSC must take enforcement action to protect consumers from this unequivocal product safety hazard.

On liquid nicotine, there has been confusion about enforcing this important law. At first the CPSC misinterpreted the start date, delaying application, and then did not include flow restrictors in its 2018 guidance letter to industry.

The CPSC has since clarified the law but we remain concerned about the CPSC's enforcement and the fact that noncompliance, as we saw in the first panel, remain on the market.

The CPSC must monitor much more carefully, must take enforcement actions for noncompliant products, and we urge the IOG to investigate the CPSC's delayed and misinterpretation of the law.

On electric scooters, the growth of electric scooters and the injuries they cause has been profound. Consumer Reports had identified 1,500 scooter injuries across the country from late 2017 with numerous gaps in data collection and reporting.

Again, the CPSC should be leading this effort. The CDC is working with the Austin Public Health Department on investigation. But the CPSC must do much more.

On portable generators, much more needs to be done. On average, there are about 70 deaths and several thousand nonfatal inju-

ries every year associated with CO poisoning from portable generators.

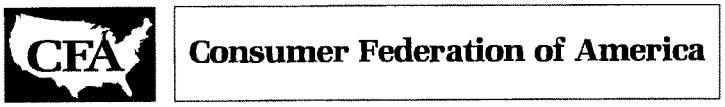
We need a mandatory standard, we need compliance, and we need to make sure that fewer people are dying from using portable generators in emergencies.

In conclusion, the CPSC plays a critical role in ensuring that consumers are safe from product hazards and this subcommittee plays an important CPSC oversight role.

We look forward to working with the subcommittee and the Commission to prevent deaths and injuries from consumer products.

Thank you very much.

[The prepared statement of Ms. Weintraub follows:]



April 9, 2019

Testimony of Rachel Weintraub,

Legislative Director and General Counsel, Consumer Federation

Before the

U.S. House of Representatives Committee on Energy and Commerce

Consumer Protection and Commerce Subcommittee

Hearing on

"Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling its Mission?"

Chairman Schakowsky, Ranking Member McMorris Rodgers, and Members of the Subcommittee, I appreciate the opportunity to provide testimony today about whether American consumers are being protected from dangerous products and whether the CPSC is fulfilling its mission. I am Rachel Weintraub, Legislative Director and General Counsel at Consumer Federation of America (CFA). CFA is a non-profit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education.

The CPSC is an incredibly important independent agency. Its mission impacts every American, every day: to protect the public from unreasonable risks of injury or death associated with the use of consumer products. The CPSC has numerous tools to fulfill this mission and all of these tools must be used singularly or in combination to effectively protect consumers. For the CPSC to fulfill its mission, it relies upon the authority Congress granted to the Agency through the passage of the Consumer Product Safety Act. The CPSC's mission relies upon Agency action to issue mandatory standards, assess civil and criminal penalties, work on voluntary standards, conduct recalls, and educate consumers. The use of these tools, in combination, has historically led to the most effective consumer protections.

We hope that the Agency increases its focus on mandatory standards. For example, the FY 2019 Op Plan included 12 mandatory standards in various stages of rulemaking, while the FY 2020 Budget Request[1] includes 7 such rulemakings. Acknowledging that some of the rulemakings in 2019 will be finalized, the decrease in the number does indicate that the CPSC can and should dedicate at least the same resources to the same number of rulemaking proceedings, and not less, in FY 2020. It is

[1] https://www.cpsc.gov/s3fs-public/FY%202020%20Congressional%20Justification.pdf?2rDJohfEbN6lAgu5l_kLtcV3W1W_JNqo at 26.

imperative for consumers and for the regulated community that CPSC's laws are enforced rigorously and consistently and that all of the tools Congress gave to the CPSC are used.

I am going to focus my testimony on key product safety issues facing American consumers.

I. Window Coverings

Last December, a new version of the window covering voluntary standard went into effect, which for the first time, requires some window coverings to be cordless. The standard requires window coverings sold as stock products (products sold "as is" in terms of color, design features, size) to be free of dangerous accessible cords. While it is significant that a subset of window coverings will, for the first time, be cordless, there is much more work to do to prevent consumers from the strangulation hazards posed by corded window coverings.

This updated version of the ANSI/WCMA standard was preceded by decades of mounting death and injuries caused by window covering cords, and extensive advocacy efforts by CFA, Parents for Window Blinds Safety, the American Academy of Pediatrics and others to protect children from the strangulation hazard posed by these cords. As a recently published Pediatrics journal article reported, approximately eleven children die and 80 children are treated for entanglement and near fatal injuries every year as a result of window cord strangulation.

We are concerned that non-compliant products could be sold online and that hazardous corded stock inventory will be liquidated throughout 2018 and 2019. Further, the CPSC should rigorously monitor the marketplace to ensure that loopholes do not exist that allow for more products to be considered custom which would minimize the effect of the standard. CFA's initial research has found great inconsistency online with stock products being sold with cords as well as a lack of consistent warnings. The CPSC should prioritize reducing deaths and injuries from corded window coverings and should take steps to ensure that there is widespread compliance with the voluntary standard and work to ensure the immediate development of an effective voluntary standard that limits the strangulations risks posed by custom products

II. Flame Retardants in Consumer Products

Flame retardants can be found in numerous types of consumer products and are chemicals that have been associated with serious human health problems, including cancer, reduced sperm count, increased time to pregnancy, decreased IQ in children, impaired memory, learning deficits, hyperactivity, hormone disruption and lowered immunity. These chemicals migrate continuously out from everyday household products into the air and onto dust. As a result, 97 percent of U.S. residents have measurable quantities of toxic flame retardants in their blood. Children are especially at-risk because they come into greater contact with household dust than adults do. Studies show that children, whose developing brains and reproductive organs are most vulnerable, have three to five times higher levels of flame retardants than their parents.

The CPSC received a petition from the American Academy of Pediatrics, American Medical Women's Association, Consumer Federation of America, Consumers Union, Green Science Policy Institute, International Association of Fire Fighters, Kids in Danger, Philip J. Landrigan, M.D., M.P.H., League of United Latin American Citizens, Learning Disabilities Association of America, National Hispanic Medical Association, Earth Justice and Worksafe.

The petition urges the CPSC to adopt mandatory standards under the Federal Hazardous Substances Act to protect consumers from the health hazards caused by the use of nonpolymeric, additive form, organohalogen flame retardants in children's products, furniture, mattresses and the casings surrounding electronics.

While the CPSC has voted to move forward with our petition and has acknowledged that the CPSC has clear authority under the Federal Hazardous Substances Act to regulate potentially toxic chemicals, that there is clear legal precedent for the CPSC to regulate a class of chemicals, and that there is strong scientific evidence documenting the hazards posed to consumers by these chemicals, a CHAP process has been convened to protect consumers from the health hazards posed by flame retardants, while not diminishing fire safety protections. We urge the Commission to take significant steps to reduce the risks posed by these chemicals.

III. Internet of Things

The research firm Gartner estimated that by the end of 2017 there would be 8.4 billion "connected things" in use worldwide, of which more than 5 billion would be consumer applications, and that by the year 2020 these numbers will have more than doubled.[2] As more and more consumer products are connected, it is imperative that the CPSC lead efforts to address and prevent product safety risks posed by connected products.

While the Internet of Things (IoT) offers many potential benefits for consumers, there are many concerns as well, including concerns about safety and security. It is crucial for policymakers to put adequate protections in place.

The CPSC had a hearing last May which sought to gather stakeholder input about the CPSC's role in regulating connected consumer products. While the hearing was substantive, it is not clear what the CPSC is doing to protect consumers from the risks posed by connected consumer products. At the May hearing, CFA identified product risks and recommended that such risks posed by connected products should be addressed as early as possible in the design of the products. Manufacturers of connected products must show the same commitment to addressing product risks regardless of whether the cause is due to a software, hardware, or other design defect. While mandatory standards are often preferable because they are enforceable, voluntary standards efforts are underway and CFA as well as the CPSC are involved in ASTM's efforts to develop a standard for connected products. We also urged the Commission to create an Interagency Working Group with the Federal Trade Commission, NIST and any other agency that shares jurisdiction over and has knowledge of connected products. The Interagency Working Group should have clear goals, clear deadlines, and a commitment to effectively address the risks posed by connected products.

The public would benefit from the sharing of agency expertise and knowledge and from a joint commitment to addressing the risks posed by connected products. We understand that some interagency efforts have begun but are not aware of the specific agency activity. Commissioner Kaye has released a White Paper on this topic as well.[3] Finally, and unfortunately, we know of reports[4] that an electronic

[2] Press release February 7, 2017, *available at* https://www.gartner.com/newsroom/id/3598917.
[3] https://www.cpsc.gov/about-cpsc/commissioner/elliot-f-kaye/statements/statement-of-commissioner-elliot-f-kaye-regarding-a
[4] https://www.wired.com/story/xiaomi-scooter-hack/

scooter's Bluetooth module was hacked and that the hacker was able to control the braking and acceleration of the scooter. The CPSC must take enforcement action to protect consumers from this unequivocal product safety hazard and from all product safety risks posed by connected products.

IV. Liquid Nicotine

According to a 2018 article in Pediatrics,[5] there were 8,269 liquid nicotine exposures among children less than6 years old reported to U.S. poison control centers from January 2012 to April 2017. The Child Nicotine Poisoning Prevention Act became law in January of 2016 and gave the CPSC the authority to ensure that packaging of liquid nicotine comply with the Poison Prevention packaging. Unfortunately, the CPSC has struggled to effectively enforce this law. Initially the CPSC misinterpreted the start date of the law, unnecessarily delaying application of this important rule to all products on the marketplace. Compounding that delay, the CPSC then did not include flow restrictors in its initial 2018 guidance letter to industry. While we are encouraged that the CPSC has since clarified that the law requires flow restrictors and given industry notice of the test it will use for enforcing that standard, we remain concerned about the CPSC's role in enforcing this important law, given that clearly noncompliant products remain ubiquitously available on the market. We urge the Commission to immediately and effectively enforce the law, monitor the market and take enforcement actions for those products that don't comply. We also urge the CPSC's Office of Inspector General to investigate the CPSC's interpretation and enforcement of the law.

V. Electric Scooters

The growth of electric scooter in the world and in states and cities across the United States has been profound. Along with increased numbers of these products across the country are increased reports of injuries. A Consumer Reports investigation identified 1,500 electronic scooter injuries across the country from late 2017, with numerous gaps in data collection and reporting."[6] The CPSC, however, has not released data on electronic scooters nor publicly announced efforts to take action to monitor, investigate, track or reduce incidents. The CDC has announced that it will conduct an investigation into these incidents with the Austin Public Health Department "after spreading reports of injuries and deaths related to scooters in cities including the District, Los Angeles and Dallas; it also follows recent news of scooter failures and breakdowns."[7] The CDC investigation will focus on "developing and evaluating methods to find and count the number of injuries related to dockless electric scooters."[8] The CPSC should be engaging in this type of investigation and leading efforts to enforce reporting obligations, recall unsafe products, track and release incident data and take other actions to protect consumers.

VI. Senior Safety

In 2014, under Commissioner Adler's leadership, the CPSC introduced a Senior Safety Initiative. At that time 65% of product related deaths occurred to seniors who made up 13% of the population. The population of seniors is growing, predicted in 2030 to comprise 20% of the population and the

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[5] Govindarajan P, Spiller HA, Casavant MJ, et al. E-Cigarette and Liquid Nicotine Exposures Among Young Children. *Pediatrics.* 2018;141(5):e20173361

[6] https://www.consumerreports.org/product-safety/e-scooter-ride-share-industry-leaves-injuries-and-angered-cities-in-its-path/

[7] https://www.washingtonpost.com/transportation/2019/03/15/cdc-is-studying-e-scooter-injuries/?utm_term=.931c039fd4cd

[8] https://www.washingtonpost.com/transportation/2019/03/15/cdc-is-studying-e-scooter-injuries/?utm_term=.931c039fd4cd

fall death rate for older adults increased 30% in the United States from 2007 through 2016.[9] The CDC also documents that in 2015, medical costs for falls, just one injury pattern senior's experience, totaled more than $50 billion.[10] The CDC predicts that since the U.S. population is aging, both the number of falls and the costs to treat fall injuries are likely to rise. Thus, vastly more must be done by the CPSC and others to address this issue. Certain consumer products, such as liquid laundry packets have caused numerous deaths of seniors, yet the current voluntary standard has a focus exclusively on children. CPSC should lead efforts, based on their own data collection efforts, to ensure that voluntary standard effort, mandatory standard efforts, enforcement, other actions, contemplate senior use and injury and death patterns, and revive, update, and prioritize a new Senior Safety Initiative.

VII. Civil and Criminal Penalties

A critical aspect of CPSC's authority is enforcement of CPSC's rules and laws. Based on numerous past recalls, we understand that there are numerous civil penalties that are currently pending but have not yet been assessed. We urge the agency to effectively take actions to protect consumers and enforce its laws. We are concerned that in the last quarter of 2017, there were no civil penalties[11] and that in fiscal year 2018 there was one civil penalty.

In FY 2019, thus far, CPSC has collected 2 civil penalties, ranging from $3,850,000 to $1,000,000; and no criminal penalties. In FY 2018, the CPSC collected 1 civil penalty for $27,250,000; and no criminal penalties. In 2017, the CPSC has collected 6 civil penalties, ranging from $5,800,000 to $3,800,000; and no criminal penalties. In 2016, the CPSC has collected 5 civil penalties, ranging from a record $15,450,000 to $2,000,000; and no criminal penalties. In FY 2015, the CPSC collected 10 civil penalties, ranging from $4,300,000 to $700,000; and no criminal penalties. In FY 2014, the CPSC collected 4 civil penalties, ranging from $600,000 to $3,100,000; and no criminal penalties. In FY 2013, the CPSC collected 7 civil penalties, ranging from $400,000 to $3,900,000; and one criminal penalty of $10,000. In FY 2012, the CPSC collected 10 civil penalties, ranging from a consent decree, to monetary penalties ranging from $214,000 to $1,500,000 million dollars; and no criminal penalties. In FY 2011, the CPSC collected 14 civil penalties, ranging from a consent decree for a permanent injunction, to monetary penalties ranging from $40,000 to $960,000; and one criminal penalty for $16,000. In FY 2010, the CPSC collected 7 civil penalties, ranging from $25,000 to $2,050,000 million; and no criminal penalties. In FY 2009, the CPSC collected 37 civil penalties, ranging from $25,000 to $2,300,000; and no criminal penalties.

Of note is the Department of Justice's recent criminal indictment of two officials for failing to comply with the CPSC's rules.[12] This is an important signal to industry.

We are concerned about the recent trend of fewer civil penalties assessed, and expect for the civil penalty asses for numerous vehicles of one manufacturer, the lower civil penalty assessments. Civil and criminal penalties serve an important deterrent effect to non-compliance with the laws enforced by the CPSC and we urge the CPSC to prioritize this important element of its enforcement responsibilities when the violations represent problematic disregard for the CPSC's laws.

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[9] https://www.cdc.gov/homeandrecreationalsafety/falls/adultfalls.html
[10] https://www.cdc.gov/homeandrecreationalsafety/falls/fallcost.html
[11] See https://www.stericycleexpertsolutions.com/wp-content/uploads/2018/02/ExpertSolutions-RecallIndex-Q42017.pdf
[12] https://www.justice.gov/opa/pr/two-corporate-executives-indicted-first-ever-criminal-prosecution-failure-report-under

VIII. Section 6(b)

Section 6(b) of the Consumer Product Safety Act is one of the most anti-consumer, anti-transparency provisions in existing laws. Section 6(b) requires that before the CPSC can name a company publicly, it must seek their permission.

The impact of this provision is vast. While the CPSC has historically collected consumer complaints, most are hidden from the public for sometimes long periods of time until and if a recall is announced. This means that too often, consumers are unwittingly using products that CPSC and manufacturers know pose safety hazards. Further, the reach of 6(b) impacts the CPSC's ability to name specific product in their research such as what occurred with lead kits in 2007[13] when the CPSC found numerous home lead kits unreliable but did not name them, and in a furniture stability study in 2016.[14] The CPSC identified furniture that did not meet existing voluntary safety standards but did not name the products (nor take enforcement action to protect consumers). Section 6(b) also acts as an obstacle to obtaining information from the CPSC through requests through the FOIA process. SaferProducts.gov is written outside of the scope of section 6(b) which provides important information about products that pose a risk of harm. We urge the Subcommittee to evaluate the necessity of 6(b) and the impact it has on consumer safety.

IX. Portable Generators

Portable generators in or near homes pose a hidden hazard to consumers who do not realize the serious risk of carbon monoxide (CO) poisoning that these products pose. On average, there are about 70 deaths and several thousand non-fatal injuries every year associated with CO poisoning from portable generators.[15]

The CPSC began rulemaking in 2006 and published an ANPR in December 2006 to consider whether there may be an unreasonable risk of injury and death associated with portable generators.[16] Currently two voluntary standards (UL 2201 and ANSI/PGMA G300) address the safety aspects of portable generator carbon monoxide emissions.

We urge the CPSC to expeditiously complete and release the findings of its evaluation of the efficacy of each standard, assess the impact of these standards on the marketplace, take enforcement actions to protect consumers from products that do not comply with an adequate standard, and if the determination is made that neither of the two voluntary standards are adequate or otherwise fail to meet requirements for the CPSC to make them binding and enforceable, we urge the Commission to issue a final mandatory safety standard addressing the risk of carbon monoxide poisoning associated with these products.

X. Recall Effectiveness

The vast majority of consumers who own a recalled product never find out about the recall. Most recall return rates, if publicized at all, hover around the 30% mark. While there are now requirements for recall registration cards and online mechanisms for a subset of infant durable products, much more must be done to ensure that consumers find out about recalls of products that

[13] https://www.cpsc.gov/id/node/19866
[14] https://www.cpsc.gov/s3fs-public/Product%20Instability%20or%20Tip%20Over%20Report%20August%202016_1.pdf
[15] CPSC, Proposed Rule: Safety Standard for Portable Generators, 81 Fed. Reg. 83556-83615 (Nov. 21, 2016).
[16] https://www.federalregister.gov/documents/2016/11/21/2016-2692/safety-standard-for-portable-generators

they own and to ensure that consumers effectively repair or remove the hazardous product from their home. We urge the CPSC to prioritize this issue and take actions that will result in recalling companies more effective recalling their products. We urge the CPSC to work with manufacturers of infant and toddler durable products to maximize awareness about product registration.

The CPSC should lead efforts to increase direct notice to consumers; expand the use of marketing strategies and technology; consider consumer and business incentives to promote effective recalls and consider disseminating additional information on best practices. The Agency should also use all of their tools to communicate about recalls such as sharing every recall on twitter and facebook, something that KID identified, the agency has not been doing.

XI. CPSIA Implementation

The implementation of the CPSIA has been and should continue to be of the highest priority for the CPSC. The CPSC has been effectively prioritizing CPSIA implementation. The CPSC has promulgated more rules that it ever has in its history and has done so in a relatively short period. The rules are substantively strong and have an important and positive impact on consumers.

Because of the rules promulgated by the CPSC, numerous infant durable products including full-size cribs, non-full-size cribs, infant walkers, play yards, and strollers must now meet new robust mandatory standards. The crib standard which went into effect in June of 2011 is of particular significance as it is the strongest crib standard in the world and offers our nation's infants a safe sleep environment, which their parents have a right to expect. For all of these products, third party testing and certification requirements are required.

The CPSC has additional infant durable product rules to promulgate under section 104, the Danny Keysar Child Product Safety Notification Act. We urge the CPSC to continue to commit the staff time and resources necessary to prioritize the promulgation of these rules as quickly as possible, as the CPSC's work has not kept pace with the timeline established by the CPSIA. We have been concerned about CPSC's past delay of the standards for high chairs and stationary activity centers. In addition, the CPSC has the authority to add additional products under section 104 and we urge them to use this authority to protect infants and toddlers. The promulgation of mandatory safety standards for rules under section 104 is a critical component of the CPSIA that consumers recognize as necessary to ensure safety when using children's products.

XII. High Powered Magnet Sets

We were alarmed by the Unites States Court of Appeals for the Tenth Circuit decision that struck down the CPSC's high powered magnet set rule that we supported strongly. We are concerned by the consequences of that decision. Already, more rare earth magnets are entering the market, creating hidden hazards that could severely injure or even kill children who swallow more than one magnet. We urge that the CPSC take strong action to ensure that doctors and consumers are educated about these hazards as well as work to reissue the rule, carefully monitor the marketplace and incidents and take action, including to promulgate a mandatory rule if the data indicates increasing incidents.

XIII. Furniture Tip-Overs

According to the CPSC's most recent data, every two weeks, a child dies as a result of a piece of furniture, appliance or television falling on him or her. Further, each year, more than 38,000 children are injured as a result of a piece of furniture, appliance or television tipping over. Between 2000 and 2011, there were 363 tip-over related deaths. Eighty-two percent of those deaths involved children younger than 8 years old.[17] While the ASTM standard for furniture has been modestly strengthened, much more needs to be done to improve the standard. Further, increased efforts are necessary to bring all of the stakeholders together to collectively address this increasingly problematic, multifaceted and dangerous injury pattern. We support the #anchorit campaign that seeks to educate consumers about the need to secure furniture to the wall. Further, while we applaud the recall last year of 29 million IKEA dressers associated with 7 deaths, we are deeply concerned about the inadequacy and ineffectiveness of the recall and urge the CPSC as well as IKEA to do much more to reach out to consumers to encourage them to return the dressers and obtain a refund. We support that the CPSC is moving forward with a rulemaking to address these serious issues. We also support legislation, such as the Sturdy Act, to require the CPSC to promulgate a strong mandatory standard that will reflect real world use, make furniture stable, and prevent tip-overs.

XIV. Laundry Packets

Highly concentrated single-load liquid laundry detergent packets pose a serious risk of injury to children when the product is placed in their mouths. According to the American Association of Poison Control Centers (AAPC):

> "Some children who have put the product in their mouths have had excessive vomiting, wheezing and gasping. Some get very sleepy. Some have had breathing problems serious enough to need a ventilator to help them breathe. There have also been reports of corneal abrasions (scratches to the eyes) when the detergent gets into a child's eyes."[18]

In 2019, thus far, according to the American Association of Poison Control Centers, there have been 2.097 children 5 and younger exposed to laundry packets, in 2018 there were 9, 445,[19], in 2017, 10,883[20] children 5 and younger were exposed[21] to laundry packets, in 2016, 13,004 children 5 and younger were exposed to laundry packets.[22] In 2015, there were 13, 112 exposures and in 2014 there

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[17] CPSC Report, Preliminary Evaluation of Anchoring Furniture and Televisions Without Tools, May 2015. Available on the web at: http://www.cpsc.gov//PageFiles/182505/Tipover-Prevention-Project-Anchors-withoutTools.pdf

[18] Laundry Detergent Packets, American Association of Poison Control Centers, http://www.aapcc.org/alerts/laundry-detergent-packets/

[19] See https://aapcc.org/track/laundry-detergent-packets

[20] See https://aapcc.org/track/laundry-detergent-packets

[21] The American Association of Poison Control Centers defines "exposure" to mean when someone has had contact with the substance in some way; for example, ingested, inhaled, absorbed by the skin or eyes, etc. Not all exposures are poisonings or overdoses., https://aapcc.org/track/laundry-detergent-packets

[22] https://aapcc.org/track/laundry-detergent-packets

were 12, 204.[23] In 2013, poison centers received reports of 10,777 exposures to highly concentrated packets of laundry detergent by children 5 and younger.[24]

According to a Consumer Reports article from 2017,[25] laundry pods pose risks of death to adults with dementia. Consumer Reports includes CPSC data indicating "8 deaths related to ingesting liquid laundry packets in the U.S. between 2012 and early 2017 that have been reported to the Consumer Product Safety Commission. Two of the cases were young children and six were adults with dementia."[26]

According to a 2016 *Pediatrics* study,[27] child exposures to laundry detergent packets rose 17% from 2013 to 2014. Children exposed to laundry detergent packets were 5 to 23 times more likely to be hospitalized and 8 to 23 times more likely to have a serious medical outcome than children exposed to other detergent types or forms. In addition, the deaths of two children were associated with laundry detergent packets.

Based on two years of data, the National Poison Data System (NPDS) reported that 769 children required hospitalization for injuries that included seizures, vomiting blood, fluid in the lungs, dangerously slow heartbeats, respiratory arrest, gastric burn, and comas, as a result of ingesting the contents of these packets. An analysis of this data published in the November 14, 2014, edition of *Pediatrics*[28] found that in 900 NPDS cases, 42% involved packets that were stored within sight or left out, 11% of cases involved temporarily open outer packages, and another 9% of cases involved improperly stored packets.

In a policy statement issued by the AAPC on laundry packets they stated: "The American Association of Poison Control Centers (AAPCC) supports rigorous safety efforts pertaining to single-load liquid laundry packets (Laundry Packets), e.g., through packaging, labeling, product design, information dissemination, storing, handling and usage education, or otherwise."[29]

While the voluntary standard addresses the packaging container of the packets to some degree, the burst strength and flavor of the packets and includes warning labels, more should be done. CFA and other organizations have urged that the voluntary standard not only ensure that the outer packages are child resistant, but also require that the packets are individually wrapped to prevent ingestion or eye. Multiple layers of safety are needed to protect children from hazards posed by laundry packets – particularly given

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[23] Laundry Detergent Packets, American Association of Poison Control Centers, https://aapcc.org/track/laundry-detergent-packets

[24] American Association of Poison Control Centers https://aapcc.org/track/laundry-detergent-packets

[25] http://www.consumerreports.org/laundry-cleaning/liquid-laundry-detergent-pods-pose-lethal-risk/

[26] Ibid.

[27] Pediatric Exposures to Laundry and Dishwasher Detergents in the United States: 2013-2014; Gary A. Smith Mallory G. Davis, Marcel J. Casavant, Henry A Spiller, Thiphalak Chounthirath ; OI: 10.1542/peds.2015-4529 Pediatrics 2016;137; originally published online April 25, 2016; Available on the web at: http://pediatrics.aappublications.org/content/pediatrics/137/5/e20154529.full.pdf

[28] Pediatric Exposure to Laundry Detergent Pods, Amanda L. Valdez, Marcel J. Casavant, Henry A. Spiller, Thiphalak Chounthirath, Huiyun Xiang and Gary A. Smith, *Pediatrics*; originally published online November 10, 2014; http://pediatrics.aappublications.org/content/early/2014/11/05/peds.2014-0057

[29] AAPCC Position Statement on Single-Load Liquid Laundry Packets https://aapcc.s3.amazonaws.com/files/library/AAPCC_Laundry_Packet_Position_Statement.pdf

that a significant number of children have gained access to loose detergent packets, and when they do, injury can be almost immediate. Critically, all relevant data should be reviewed to determine whether the voluntary standard is effectively reducing incidents.

In addition, CFA believes that the most effective way to prevent laundry packet incidents is to require child-resistant packaging to cover liquid detergent packets; address the design and color of the packets, so that they aren't as attractive to children or adults; address the composition of the packets, so that the consequences of exposure are less severe; and ensure the adequacy of the warning labels, to properly inform consumers about the risk.

We further urge the CPSC to carefully monitor the incident data to ensure that incidents are decreasing. If the data indicates that the voluntary standard is not successfully addressing the hazard posed by laundry packets, we urge the CPSC to move forward with an effective mandatory standard.

XV. Conclusion

The CPSC plays a critical role ensuring that consumers are safe from product hazards and this Subcommittee plays an important CPSC oversight role. We urge the Commission to use all of the tools Congress gave it to protect consumers from potentially hazardous consumer products. We urge the Commission to address the issues we outlined today as soon as possible as many pose urgent hazards to consumers. We look forward to working with this Subcommittee and with the Commission to address these issues.

Ms. SCHAKOWSKY. Let me now call on Mr. Gregg for 5 minutes of testimony.

STATEMENT OF REMINGTON A. GREGG

Mr. GREGG. Good afternoon, Chair Schakowsky, Ranking Member McMorris Rodgers, and members of the subcommittee.

On behalf of Public Citizen and now more than 500,000 members and supporters, thank you for giving me the opportunity to testify.

My written testimony explores a wide range of issues but I would like to talk to you about two areas of concern—removing Section 6(b) of the Consumer Product Safety Act from law and ensuring robust enforcement of product safety laws.

According to a Public Citizen report, the CPSC took an average of 209 days to warn the public about hazardous products in 46 cases from 2002 to 2008 in which the Commission levied fines against the manufacturers.

We believe that the Commission took so long to notify the public in part because of the requirements of 6(b). 6(b) restricts the CPSC from publicly disclosing any information from which the public can readily ascertain the identity of a manufacturer or private labeller unless certain criteria are met.

The requirement has the effect of stopping or slowing the flow of pertinent information from getting to the public. Withholding information from parents, children, and other users of these products for such an unreasonable amount of time puts all families at risk.

The law unnecessarily hamstrings the agency with restrictions that, to our knowledge—and this is key—no other similarly situated government health and safety agency has to endure. The requirements of the 6(b) are outdated. They are anti-consumer.

When Congress passed the Consumer Product Safety Improvement Act in 2008, rather than remove 6(b) from statute, Congress decided to require the CPSC to create SaferProducts.gov, and we are pleased that Congress did that.

It is clear that SaferProducts.gov has become a critical tool for protecting consumers from potential hazards and helps to close the time gap between the manufacturer learning of a hazard and the information actually reaching consumers.

But what was clear a decade ago is even clearer today. Section 6(b) restrains the CPSC in its ability to proactively disclose safety hazards to the public. There isn't a lot of 6(b) case law.

But what is out there shows that companies have used it not to ensure that accurate information is out in the public domain but to delay critical information from being released.

There is a very big difference between correcting objectively and accurate information and simply delaying or killing the release of information that could be potentially damaging to the companies' bottom line.

Congress should ask itself what is the point of 6(b). Does it now or has it ever helped the agency effectively carry out its mission to keep products that have the potential to injure or cause death out of the marketplace, and if not, why keep it around? Why give industry insiders and corporate America the reins to legislating?

In terms of criminal and civil penalties at the agency, there is now a disinclination to place the safety of consumers over industry

loyalty and a steady decrease in the number of penalties imposed on corporate bad actors.

Criminal and civil penalties serve as an important tool to discourage companies from cutting corners on manufacturing products and they also create an incentive to ensure that manufacturers quickly report product defects.

The data clearly suggests that Commission leadership is prepared to continue a less enforcement is best attitude. We urge the Commission to make it clear—Congress, excuse me, to make it clear that the agency—that its mission is to protect the public from unreasonable injury or death and it requires the Commission to promulgate robust rules to protect consumers and hold corporate wrongdoers accountable with strong penalties that serve as an effective deterrent.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Gregg follows:]

Written Testimony of

Remington A. Gregg

Counsel for Civil Justice and Consumer Rights, Public Citizen

before the

Subcommittee on Consumer Protection and Commerce

Committee on Energy and Commerce

U.S. House of Representatives

on

"Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling its Mission?"

April 9th, 2019

Good afternoon Chair Schakowsky, Ranking Member McMorris Rodgers, and Members of the Subcommittee:

Thank you for inviting me to testify before you. My name is Remington A. Gregg, and I am counsel for civil justice and consumer rights at Public Citizen. Public Citizen is a national non-profit organization with more than 500,000 members and supporters. We represent the public interest through legislative and administrative advocacy, litigation, research, and public education on a broad range of issues that include product safety and consumer rights in the marketplace. While we care about a large range of product safety issues that we urge the U.S. Consumer Product Safety Commission (CPSC or Commission) to address, this testimony focuses on the areas that Public Citizen works on most closely: increasing transparency, improving the effectiveness of the Commission, holding corporate wrongdoers accountable, and ensuring that companies that recall dangerous products do a better job of getting harmful items out of people's homes.

I. Section 6(b) of the Consumer Product Safety Act contributes to the agency's lack of transparency

In January 2008, a Public Citizen report revealed that the Consumer Product Safety Commission took an average of 209 days to warn the public about hazardous products in the 46 cases from 2002 to 2008 in which the Commission levied fines against the manufacturers.[1] It was clear that while information regarding dangerous products was known by the manufacturers and the agency, it was withheld for unreasonable amounts of time from parents, children, and other users of these products. Consumers remained at risk while the dangerous products stayed on the market. We found that the delay in reporting dangerous products or issuing recalls was partially caused by the agency's lack of urgency at the time, as well as a lack of resources. However, it was also unnecessarily hamstrung by limitations within its governing statute—restrictions that do not apply to other, similarly situated government agencies.

1. 6(b) unnecessarily shields important health and safety information from the public

Section 6(b) of the Consumer Product Safety Act restricts the CPSC from publicly disclosing any information from which the public can readily ascertain the identity of a manufacturer or private labeler of a consumer product unless certain criteria are met, which can have the effect of stopping the flow of pertinent information from getting to the public. As a result, Section 6(b) has restrained the CPSC's ability to proactively disclose safety hazards to the public. Section

[1] Taylor Lincoln, *Public Citizen: Hazardous Waits: CPSC Lets Crucial Time Pass Before Warning Public About Dangerous Products* 2 (2008), *available at* https://www.citizen.org/sites/default/files/hazardouswaits.pdf.

6(b) is outdated, anti-consumer, and intended solely to protect the reputation of businesses that put harmful products on the market.

As currently written, section 6(b) restricts the CPSC from publicly disclosing any information from which the public can readily ascertain the identity of a manufacturer or private labeler of a consumer product, unless: (1) the Commission takes reasonable steps to ensure the information is accurate, (2) disclosure is fair in the circumstances, and (3) the disclosure is reasonably related to effectuating the purposes of the CPSA and other laws administered by the Commission.[2]

When Congress passed the Consumer Product Safety Improvement Act (CPSIA) in 2008, rather than remove 6(b) from statute, Congress decided to require the CPSC to create saferproducts.gov. We are pleased that Congress required the Commission to create the database to give consumers more information to enable them to avoid purchasing dangerous products. It is clear that saferproducts.gov has become a critical tool for protecting consumers from potential hazards and helps to close the time gap between the manufacturer learning of a hazard and the information actually reaching consumers—an unfortunate result of Section 6(b). It was obvious when the CPSIA was enacted that a database would not completely eradicate the problems caused by 6(b). With ten additional years of knowledge, this assertion is even truer today. While we continue to applaud the database, true transparency requires 6(b) to be removed from law.

Section 6(b) has restrained the CPSC in its ability to proactively disclose safety hazards to the public. To our knowledge, no other federal agency that deals with public health and safety is subject to similar public disclosure restrictions. 6(b) negatively affects consumers by unnecessarily shielding critical product safety information from public view. There is no legitimate justification for this law, and Congress should eliminate it. We have repeatedly encouraged the CPSC to make the case to Congress as we do so now.

2. **Until Congress removes 6(b) from the law, it should require the Commission to finalize rulemaking aimed at easing the law's restrictions**

Until Congress eliminates Section 6(b), the CPSC must prioritize the rulemaking that it has begun in order to increase proactive disclosures by the Commission.[3] Like the statute, section 6(b)'s implementing regulations are outdated and pro-industry.[4]

The 30-year old CPSA rule is emblematic of the avoidable obstacles that thwart the Commission's ability to modernize and advance consumer safety. Advances in technology and communication since the rule's adoption have gone unaddressed. Unnecessary delays swallow

[2] 15 U.S.C. §2055(b).
[3] Information Disclosure Under Section 6(b) of the Consumer Product Safety Act, 79 Fed. Reg. 10712 (proposed Feb. 26, 2014)(to be codified at 16 C.F.R. pt. 1101).
[4] *Id.*

up efficient dissemination of public safety information. One obvious example is the Commission's inability to publicly disseminate information that has previously been publicly disclosed which simply gives business and manufacturers another built-in opportunity to influence the process before releasing critical product safety information.

Public Citizen supports the goals of the proposed rule, which would greatly serve consumers and maximize transparency and openness including: (i) ensuring the information subject to the 6(b) Information Disclosure Regulation conforms with, and does not go further than, the statutory language of Section 6(b), thereby ensuring the regulation is not more restrictive of public disclosure of product information than required by current law; (ii) exempting publicly available information from the 6(b) Information Disclosure Regulation, including information posted on the consumer product safety information website; (iii) eliminating redundant notice requirements to manufacturers regarding information that is substantially similar to a previous disclosure; and (iv) eliminating the restriction on public disclosure of manufacturer comments.[5]

Since the Commission issued a Notice of Proposed Rulemaking in February 2014 to amend the 30-year old rule implementing section 6(b), the rulemaking has seen little traction.[6] Section 6(b) puts American lives and health at risk with burdensome procedures and delays that block public disclosure of crucial information on dangerous products. Section 6(b) is a relic that handcuffs the CPSC's core regulatory function of warning the public about potentially defective products and compels the CPSC to waste already scarce budgetary resources on procedures that do no serve any consumer protection or product safety goal.

We urge the Commission to continue with the proposed rulemaking without further delay. In the meantime, the Commission must dedicate sufficient resources in order to respond to FOIA requests in a timely manner and consistent with its statutory obligations. The average reported time for responding to simple and complex requests is 25 and 67 working days, respectively.[7] Public Citizen still has not received requested documents from a FOIA request that was submitted on September 25, 2018.[8] We urge the Commission to redouble its efforts to speed up its response time and continue to reduce its FOIA backlog.

II. The Commission must collaborate with technologists with technical expertise to make saferproducts.gov better

We strongly support the consumer product safety database saferproducts.gov, which was created by Section 212 of the CPSIA. We appreciate the CPSC's commitment to this critically important

[5] *Id.*
[6] *Id.*
[7] *Consumer Product Safety Commission*, https://www.foia.gov/ (last visited Apr. 5, 2019).
[8] FOIA Request from Public Citizen to Consumer Product Safety Comm'n (Sept. 25, 2018) (acknowledging receipt of the request on November 19, 2018) (on file with the author).

consumer tool and encourage the Commission to enhance its utility. If administered correctly, with some small modifications, it could far better serve the mission of providing a central national repository for critical product safety information, and become a more effective tool to avert death or injury to the public.[9]

We recommend that the CPSC make the website's visibility a top priority and dedicate resources to advertising it on social media and in any media statements or responses issued by the Commission. Specifically, we strongly urge the Commission to implement the recommendations in the saferproducts.gov report issued by the Consumer Federation of America, Consumers Union, Kids in Danger (KID), Public Citizen, and the U.S. Public Interest Research Group (U.S. PIRG),[10] which stated, "there is room to improve both the database itself and how the CPSC collects, uses, and disseminates data."[11] We recommended that the Commissioner do so in the following ways:

- Work to increase the database's use by healthcare professionals, consumers and advocates;
- Fold additional data sources from other CPSC databases and resources into saferproducts.gov;
- Increase the data analysis that the agency performs, expand and improve the data categories of harm that are listed in the database, and annually report the data's findings. All of this will help the agency and the public understand if there are: (1) patterns in the reports of harm that the CPSC should know about and (2) potential product types that the agency and manufacturers should be aware of that are most likely to cause hazards to a consumer's safety.

While some of these recommendations (which are discussed more extensively in the report) could be easy to implement, some may be more challenging. As the Commission considers improvements to saferproducts.gov, Public Citizen has continuously urged the Commission to

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[9] To this end, in 2013 Public Citizen Litigation Group represented consumer groups as intervenors in a case against a company attempting to block the CPSC from publishing a consumer product report about one of its products on SaferProducts.gov. After a district court order granted the company's motion to seal the case and proceed under a pseudonym, Public Citizen Litigation Group appealed the order to the U.S. Court of Appeals for Fourth Circuit, which held that the district court's sealing order violated the public's right of access under the First Amendment and that the court abused its discretion in allowing Company Doe to proceed under a pseudonym. *Company Doe v. Public Citizen*, 749 F.3d 246 (4th. Cir. 2014). In June 2014, the district court ordered the entire record in the case, including the district court's opinion, unsealed. The court also amended the caption to name the plaintiff, "The Ergo Baby Carrier Inc." *The Ergo Baby Carrier, Inc. v. Tenenbaum et al.*, No. DKC 11-2958 slip op. (D. Md. June 12, 2014).

[10] *See generally*, Consumer Federation of America, *Safer Products.gov: Five Years Live* (2016), available at https://consumerfed.org/wp-content/uploads/2016/11/11-29-16-SaferProducts_Report.pdf.

[11] *Id.*, at 5.

collaborate with technologists and innovators, including those who have experience in the private sector, to collaborate in order to implement the recommendations that we have made to the Commission. Thus far, to our knowledge, they have failed to take our advice.

III. Public Citizen applauds the use of civil and criminal penalties against corporate wrongdoers

1. Criminal and civil penalties should be used robustly in order to serve as an effective deterrent tool

When Congress passed the original Consumer Product Safety Act in 1972, it not only created the Consumer Product Safety Commission (CPSC or Commission) but gave it the Commission the authority to impose monetary penalties against product manufacturers for placing unsafe products into the marketplace. Criminal and civil penalties serve as an important tool to discourage companies from cutting corners when manufacturing products and they also create an incentive to ensure that manufacturers quickly report product defects.

The CPSIA amended the Consumer Product Safety Act in several important ways, including by increasing the cap on penalties from $8,000 to $100,000 per violation, and from $1.825 million to $15 million for a series of related violations.[12]

Over the last ten years, the CPSC has used its broadened authority wisely and has increased the amount that it imposes on companies. In 2017, for example, the CPSC imposed a record fine against Polaris, a recreational off-road vehicle (ROV) manufacturer for multiple product safety violations including, among other things, failing to notify the CPSC about defects in some of their ROVs. By the time Polaris notified the Commission, the company had received 150 complaints about ROVs catching fire, including a fire that resulted in the death of a 15 year-old passenger. While CPSIA gave commissioners discretion to use increased penalties in the judgements imposed on companies, and they had been making use of the higher penalty possibilities, that trend has slowed since the Trump administration came into power. According to a recent Public Citizen report, in Trump's first year in office, the CPSC [i]mposed about $21.4 million in penalties with an average penalty of $5.3 million. That was down from $37.3 million a year earlier..."[13]—Barack Obama's last year in office. In addition, according to our research, the Trump administration-run CPSC has "completed no enforcement actions in the fourth quarter of 2017 or the first quarter of 2018." The CPSC imposed its first penalty against in April 2018.

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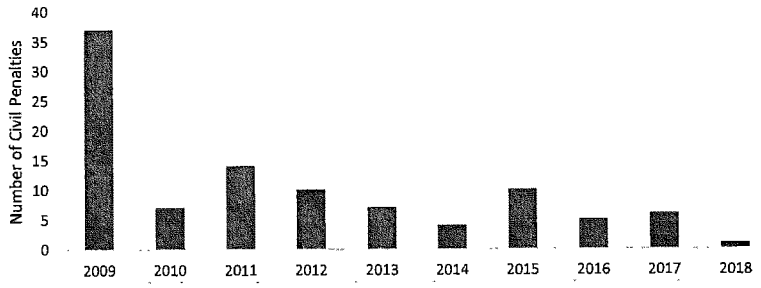
[12] *Consumer Product Safety Improvement Act Tenth Anniversary Album* 38 (2018), *available at* https://consumerfed.org/wp-content/uploads/2018/08/cpsia-anniversary/?page=1.

[13] Rick Claypool et al., *Corporate Impunity: "Tough on Crime" Trump is Weak on Corporate Crime and Wrongdoing* 34 (2018), *available at* https://www.citizen.org/sites/default/files/corporate-enforcement-public-citizen-report-july-2018.pdf.

Number of CPSC Civil Penalties
2009-2018



[14]

2. The dip in enforcement is the direct result of current Commission leadership

This dip in enforcement actions is likely due to new leadership at the agency. CPSC Acting Chair Ann Marie Buerkle has consistently voted against imposing civil penalties on companies. In fact, during her tenure (both as acting chair and a commissioner), our report noted that Buerkle voted against imposing penalties "in 16 out of 21 instances for companies that failed to report problems with their products." Buerkle's seeming aversion to using civil penalties is one of the reasons why Public Citizen spoke out in October 2017 and April 2019 in opposition to her being the permanent head of the CPSC.[15] When asked about Public Citizen's reasons for opposing her nomination, Acting Chair Buerkle refused to answer the questions and simply stated that on her watch the agency has "fulfilled its obligation under the statutes."[16]

Congress empowered the CPSC with the responsibility of imposing penalties on companies when they place dangerous products into the marketplace and fail to report or otherwise open consumers up to injury or death. Civil penalties are a tool that should be used robustly, both to protect consumers against harm and to carry out Congress's intent when it increased the CPSC's civil penalty authority a decade ago. While we hope the agency will reverse the current trend under Acting Chair Buerkle and instead go back toward imposing meaningful civil penalties on

[14] Information in the graph was compiled by Consumer Federation of America.
[15] Letter from Lisa Gilbert, Vice President for Legislative Affairs, Pub. Citizen, and Remington A. Gregg, Counsel for Civil Justice and Consumer Rights, Pub. Citizen, to United States Senate (Apr. 2019) (on file with author); Letter from Lisa Gilbert, Vice President for Legislative Affairs, Pub. Citizen, and Remington A. Gregg, Counsel for Civil Justice and Consumer Rights, Pub. Citizen, to United States Senate (Oct. 4, 2017) (on file with author).
[16] C-Span, Washington Journal, *available at* https://www.c-span.org/video/?c4743248/ann-marie-buerkle-role-cpsc (Aug. 2, 2018).

corporate wrongdoers in furtherance of its important mission to ensure that only safe products make it into the marketplace, this unfortunately seems unlikely.[17]

The Commission under Acting Chair Buerkle's leadership has shown a disinclination to place the safety of consumers over industry loyalty. For example, according to the Washington Post, the CPSC collected 200 consumer-submitted reports from 2012 to 2018 of a "spontaneous failure of the stroller wheel" for the Britax jogging stroller.[18] Nearly 100 adults and children reported injuries as a result, including torn ligaments, smashed teeth, sustained facial lacerations, and one child bled from his ear canal.[19] After extensive engineering tests and investigations, CPSC staff found that children could suffer "potentially life-threatening injuries."[20] The manufacturer refused the request for a voluntary recall of nearly 500,000 strollers. In February 2018, the CPSC sued to force a recall, but Acting Chair Buerkle, who has broad control over the Commission's agenda, reportedly slowed the action. The dispute ended in November 2018 with a weak settlement with the company, approved on a party line Commission vote.

Acting Chair Buerkle also hired as the agency's General Counsel a former member of the board of directors for the Portable Generators Manufactures Association. This choice shows a lack of appreciation for the important mission of the agency to protect Americans from unreasonable injury and death.

This month, the Department of Justice (DOJ) brought the first criminal charge against corporate wrongdoers for failing to promptly notify the Commission that a product presented a risk of injury or death to consumers.[21] The two corporate executives, who sold residential dehumidifiers in the United States, allegedly failed to disclose for at least six months that the dehumidifiers could catch fire. DOJ also alleges that the corporate executives continued to sell the dehumidifiers to retailers with false certifications that the products met safety standards while also withholding information about the product catching fire from retailers and insurance companies that paid for damages that resulted from the fires. Under that law, "manufacturers, importers, and distributors of consumer products" are required to "immediately" report information to the CPSC that reasonably supports the conclusion that a product contains a defect

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[17] *See generally* Alan Zibel, *Consumer Carnage: How Federal Enforcement of Consumer-Protection Laws Has Declined Under Trump* (2019), *available at* https://www.citizen.org/sites/default/files/consumeragencies.pdf?eType=EmailBlastContent&eId=eb0584cf-dbf0-4251-b01a-b0e86d86066a.

[18] https://www.washingtonpost.com/business/economy/after-hundreds-of-crashes-this-britax-jogging-stroller-faced-recall-then-trump-appointees-stepped-in/2019/04/02/faf23c20-4c06-11e9-b79a-961983b7e0cd_story.html?noredirect=on&utm_term=.83981741c6c9.

[19] *Id.*

[20] *Id.*

[21] Press Release, Department of Justice, Two Corporate Executives Indicted in First-Ever Criminal Prosecution for Failure to Report Under Consumer Product Safety Act (Mar. 29, 2019), *available at* https://www.justice.gov/opa/pr/two-corporate-executives-indicted-first-ever-criminal-prosecution-failure-report-under.

that could create a substantial product hazard or creates an unreasonable risk of serious injury or death.[22] While long overdue, Public Citizen is encouraged that the Department is using its authority to hold the most blatant corporate wrongdoers criminally responsible. We urge the Commission to work with the Department of Justice to identify others who should be prosecuted under this statute.

IV. Ensuring Effective and Prompt Recalls

The agency has been largely unsuccessful in getting consumers to return unsafe products to retailers, and recall rates remain shockingly low. The average rate at which consumers participate in corrective actions is about 6% for all product types.[23] In 2017, the Commission hosted a workshop on recall effectiveness. Public Citizen was eager to collaborate with the Commission to help find innovative ways to improve the outreach and effectiveness of recalls. Along with Consumer Federation of America and Kids in Danger, we submitted a list of recommendations to make the workshop productive and impactful, such as inviting technology and marketing experts and academics to the workshop for their input.[24] Unfortunately, these recommendations were not incorporated into the workshop, nor has there been follow-up actions to that meeting other than a recently released report.[25] We urge the Commission to continue this important conversation by expanding voices on this topic beyond those initially assembled to ensure that all viewpoints are solicited and the right expertise is in the room. It cannot be overstated how important it is for the Commission to actively solicit the views of especially technologists and those with experience innovating with the federal government.

Moreover, Congress should closely monitor why the agency has failed to hold Ikea responsible for its unacceptably low rate recall rate of defective dressers. Sadly, the defective model dresser has injured 91 and killed 8 children after the dresser tipped over onto them.[26] But since the high-profile recall was announced in 2016, Ikea has only given 175,000 refunds and re-installed 268,000 dangerous dressers despite the fact that the recall affected more than 17 million dressers.[27]

Ikea is just one company where the Commission should be required go farther to ensure more effective recalls. To that end, we urge the Committee to seek information from the Commission

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[22] 15 U.S.C. § 2064.
[23] Letter from Consumer Organizations to the U.S. Consumer Product Safety Commission (Sept. 5, 2018), *available at* https://consumerfed.org/wp-content/uploads/2018/09/consumer-comments-on-recall-effectiveness.pdf.
[24] Id.
[25] Joseph F. Williams, *Recall Effectiveness Workshop Report* (2018), *available at* https://www.cpsc.gov/s3fs-public/Recall_Effectiveness_Workshop_Report-2018.pdf?R1VyLltrl8M__id.2vkAklHoUZjaSCab.
[26] *IKEA Reannounces Recall of Malm and Other Models of Chests and Dressers Due to Serious Tip-Over Hazard; 8th Child Fatality Reported; Consumers Urged to Choose Between Refund of Repair*, IKEA.COM (Nov. 21, 2017), https://www.ikea.com/us/en/about_ikea/newsitem/112117-MALM-and-Chest-of-drawers-Recall.
[27] We do not have updated statistics, but urge the Committee to seek them from the Commission and/or Ikea.

on what it is doing to push Ikea to do more to get these unsafe dressers out of homes and generally where else the CPSC is seeing very low product returns, meaning these dangerous products are currently posing threats to Americans health and safety.

V. Conclusion

The Commission faces many challenges. Until Section 6(b) is removed from the law, the agency will be constrained and thwarted from releasing certain important information without agreement from manufacturers. In the interim, it is critical to improve the profile and usability of saferproducts.gov so that the public, advocates, and Congress have the most accurate picture of product safety hazards and to help track harmful product trends. Moreover, the data suggest that Commission leadership is prepared to continue a "less enforcement is best" attitude. We urge Congress to make it clear to the agency that its mission to protect the public from unreasonable injury or death requires it to promulgate robust rules to protect consumers and hold corporate wrongdoers accountable with strong penalties that serve as an effective deterrent.

Public Citizen is acutely aware of the CPSC's enormous jurisdictional obligations and the challenges posed by disproportionately modest resources. Despite this, we believe that if the Commission proceeds with a mandate to prioritize consumer safety above all else—including above the interests of business and industry—the CPSC can fulfill its decree to advance product safety and protect the lives and health of Americans.

Thank you for the opportunity to provide comments and I look forward to your questions.

Ms. SCHAKOWSKY. The gentleman yields back.

And now I am happy to give 5 minutes for an opening statement to Mr. Gentine.

STATEMENT OF S. MIKE GENTINE

Mr. GENTINE. Thank you very much, Chair Schakowsky, Ranking Member McMorris Rodgers, and Members.

Good afternoon, and thank you for inviting me to appear before you today. Thank you as well for holding this hearing to talk about the vital work of the Consumer Product Safety Commission.

First, I should note that I am appearing in my personal capacity. My opinions are my own, may not represent those of any previous or current form employer or client.

I am honored to share this panel with three tireless consumer advocates, each of whom I have come to know and respect even though we may sometimes disagree about how we pursue our shared goal of advancing consumer safety.

I've also had the privilege of working alongside many of the talented dedicated staff at CPSC who devote their lives to protecting consumers. Every officer and employee of the CPSC is a public servant in the truest sense of that term and they all deserve our thanks.

The notice for this hearing asks a simple question: is the Consumer Product Safety Commission fulfilling its mission.

From my perspective, the answer is equally simple. Yes.

As you know, CPSC is charged with protecting against unreasonable risks of injury associated with consumer products. Since 1972, CPSC has worked alongside the consumer products industry to fulfill that mission.

Most of that work goes unnoticed, from thousands of incident reports to hundreds of recalls to dozens of standards, CPSC is continuously engaged in a variety of efforts that most consumers never see but that benefit every consumer.

The third of these activities—working on standards bodies—has been criticized of late, and I fear that criticism comes from some misunderstandings about the role that voluntary consensus standards play.

First, while they are legally voluntarily standards, myriad influences drive manufacturers toward compliance. These include retailers who demand certification for shelf space and CPSC staff and civil courts who use voluntary consensus standards and defect determinations.

Second, they are consensus standards. They are the products of collaboration between all interested stakeholders including CPSC staff, whose opinions carry great weight.

Indeed, consensus standards can be more collaborative than rulemaking. By the time an agency issues an NPR, much of its thinking is developed if not cemented. Voluntary consensus standards start with collaboration.

The consensus bodies also offer safety advantages. They are a force multiplier for CPSC staff. They are made up of product-specific experts and they are better able to adapt to developing hazards and emerging innovation.

CPSC also has tools to make these mandatory—excuse me, these nominally voluntary standards more mandatory. It can give standards for durable infant and toddler products the same effect as mandatory rules.

It can rely on a standard, creating a reporting obligation for noncompliant companies, and it can force recalls or prevent importation of products whose readily observable characteristics show they do not comply with the standard.

With these tools, CPSC can use voluntary consensus standards to provide a safer, more level playing field rather than one that slants in favor of the noncompliant company.

As with the voluntary consensus standards process, the information disclosure provisions of Section 6 of the CPSA have been criticized of late. But that criticism ignores three key principles.

First, Section 6 creates process requirements. It does not prescribe or proscribe any outcome. Second, it asks CPSC to take reasonable steps to ensure the fairness and accuracy of its disclosures. Why would we want the agency to do anything else?

And third, CPSC has multiple vehicles consistent with due process that allow it to either shorten or eliminate the modest time these steps require.

Some point out that other agencies are not subject to the same restrictions. This is a half truth. Other agencies also do not have the same access to information.

Section 6 assures companies that CPSC will handle carefully information that other agencies never receive. That assurance enables candid discussions that better inform CPSC staff.

Without it, those conversations would be more limited and consumers would be less safe.

There are areas in which I believe the agency can improve. First, for an example and as raised by Congresswoman Matsui, I agree with the industry and consumer advocate consensus that CPSC should adopt California's Technical Bulletin 117.

This flammability standard has proven effective and manufacturers can meet it without the use of chemical flame retardants.

Second, CPSC's import surveillance program can only physically surveille a handful of ports. The agency needs data tools that can more reliably distinguish between higher risk and known compliant products before their arrival.

And third, CPSC's fast track voluntary recall program should recover its speed, as some recalls are taking months for approval.

CPSC must, of course, do its due diligence. But it is not in anyone's best interest if staffing constraints unnecessarily impede companies whose sole aim is to act swiftly to protect consumers.

I began with two assertions—that CPSC is fulfilling its mission and that its successes come from the public service of the talented dedicated people who make up the agency.

I believe strongly in both. While the agency should always seek to improve, consumers can draw comfort from their faithful watchdog in Bethesda.

Thank you.

[The prepared statement of Mr. Gentine follows:]

Written Statement of S. Mike Gentine Before

The Subcommittee on Consumer Protection & Commerce of the

U.S. House Committee on Energy & Commerce

"Protecting Americans from Dangerous Products:

Is the Consumer Product Safety Commission Fulfilling Its Mission?"

Tuesday, April 9, 2019

Mike Gentine
House Subcommittee on Consumer Protection & Commerce
4/9/2019

Chair Schakowsky, Ranking Member McMorris Rodgers, and members, thank you for inviting me to appear before you today. And thank you, as well, for holding this hearing to talk about the vital work being done at the Consumer Product Safety Commission.

First, I should note that I am appearing today in my personal capacity. My opinions are my own opinion and may not represent those of any former or current employer, firm, or client

I am honored not only to be speaking with you, but also to be sharing this panel with [three] tireless consumer advocates, each of whom I have come to know and respect during my time in the CPSC world. We all share a vision of a consumer products marketplace free of unreasonable risks, even though we may disagree on how to realize that vision.

I have also had the privilege of working alongside many of the talented, dedicated career staff at CPSC, who devote their time and energy to understanding and addressing potential unreasonable risks consumers may face. Every officer and employee of the agency is a public servant in the truest, noblest sense of that term, and they all deserve our thanks.

CPSC's Mission

The notice for this morning's hearing asks a simple question – "Is the Consumer Product Safety Commission Fulfilling Its Mission?" From my perspective, the answer is equally simple: Yes.

As you know, the CPSC is charged with protecting the public against unreasonable risks of injury associated with consumer products. Since its creation in 1972, the CPSC has worked alongside the consumer products industry to fulfill that mission. Much of that work, however, goes unnoticed and unheralded. Each year – from thousands of incident reports to hundreds of to dozens of standards activities – CPSC is continuously engaged in a variety of efforts that most consumers never see, but that benefit every consumer.

More Consensus than Voluntary

The third of these activities – collaborating with voluntary, consensus standards bodies – has been the target of significant criticism recently. I fear that criticism is founded on some misunderstandings about the role voluntary, consensus standards play in protecting consumers.

First, we should unpack the terminology. It is true that they are voluntary standards in the sense that noncompliance does not carry the threat of government sanction, but there are a variety of influences that drive manufacturers toward compliance. Just to name three:

- Many retailers condition shelf space on compliance and certification to relevant voluntary standards;
- Failing to comply with an applicable standard can damage a brand; and
- CPSC staff and courts in civil litigation can and do view voluntary standards as drawing a de facto line between defective and non-defective products.

Second, they are genuinely consensus standards, the products of collaboration between manufacturers, retailers, consumers, and other stakeholders. These stakeholders include CPSC staff, whose opinions carry great weight and can often be dispositive, particularly regarding juvenile products, because of both staff's valuable expertise and the agency's role.

Indeed, collaboration can be more meaningful in standards development than in notice-and-comment rulemaking. By the time any agency even requests comment, much of its thinking on an issue is frequently cemented. By contrast, the voluntary, consensus standards process embeds collaboration from the outset.

The voluntary, consensus standards process offers a number of advantages over mandatory rulemaking, each of which contributes to greater consumer safety.

- First, they are a vital force multiplier. In Fiscal Year 2019, CPSC is engaged with 76 different standards. The agency simply does not have the resources to develop mandatory rules for even half that number, and a CPSC massive enough to do so would be one whose price tag taxpayers would be loath to pay and whose burden on regulated industry would likely far outweigh the safety benefit it would provide.

- Second, the standards bodies are made up of product-specific experts. CPSC staff, by virtue of their number, must necessarily be generalists. A CPSC mechanical engineer may work on strollers in the morning and generators after lunch. While their broad expertise makes them valuable partners on an array of subjects, CPSC staff do not have the luxury of being as immersed in any one product as people who design, produce, or use that product every day.

- Third, the voluntary standards process is faster and nimbler than mandatory rulemaking can ever be. Much is made of the burdens imposed on CPSC by Section 9 of the CPSA (15 U.S.C. § 2058). I think this criticism is generally overwrought – how would it benefit anyone, for example, for CPSC to impose anything but the least burdensome rule it can to achieve its safety objective? Even accepting these arguments, though, APA notice-and-comment rulemaking is almost always a question of years, while voluntary, consensus standards can evolve in months or, on discrete, pressing issues, weeks. These standards are better able to adapt to both developing hazards and emerging innovations.

Returning to the voluntary nature of these standards – which, as mentioned, can often be fairly described as nominal – CPSC has a variety of tools available to make them closer to mandatory.

- First, under Section 104 of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. § 2056a), CPSC can adopt and strengthen standards for durable infant or toddler products, giving them the same force of law as Section 9 rules. I cannot agree with the impulse to stretch this term beyond any meaning. However, for those products that are genuinely within the scope of what Congress meant by that term, Section 104 provides the best of both worlds: the force of a mandatory rule with the collaboration, expertise, and agility of a voluntary, consensus standard.

- Second, under the unfairly maligned Section 9 of the CPSA, CPSC can formally rely on a standard that it believes would adequately reduce a hazard and would likely see substantial compliance. While this does not turn the standard into a rule, it does create a reporting obligation for any company whose products do not comply, marking that company as separate and apart from its industry and providing a basis for enforcement.

- Third, under Section 15(j) of the CPSA (15 U.S.C. § 2064(j)), CPSC can use the presence or absence of readily observable markers of compliance with an effective, widely adopted standard as the basis for deeming by rule that a product presents a substantial product hazard. This places the standard on a middle-ground footing: Noncompliance does not expose a company to penalties, but the product is subject both to mandatory recall and to refused entry at the ports. (15 U.S.C. § 2066(a)(4)).

These tools allow voluntary, consensus standards to strengthen CPSC's hand in dealing with the distinct minority of manufacturers who choose to ignore their peers' efforts to protect consumers. This provides a more level playing field, rather than one that slants in the favor of the noncompliant manufacturer.

In Defense of Fairness and Accuracy

Another area of CPSC policy that has come under scrutiny based on what I believe are misunderstandings of its role is the information disclosure procedures reflected in Section 6 of the CPSA, particularly Section 6(b). These procedures are exactly that – procedures; they do not prescribe or proscribe any outcome, but they have been painted as some kind of gag order. This is simply inaccurate.

All 6(b) requires is that CPSC take reasonable measures to ensure that its public statements about a company are fair and accurate. It is in no one's interests – least of all consumers' – for CPSC to make unfair, inaccurate statements. These could only add to consumer confusion and risk diminishing their trust in CPSC's brand.

Critics may point to the requirement that CPSC retract any product-specific statement it later determines to have been inaccurate. However, as a court noted when CPSC was not even three years old:

> "Once the government condemns a product as inherently dangerous and unfit, that denouncement may well be tantamount to an economic death knell. Where a product is once shrouded with suspicion, especially suspicion cast upon it by the government, the harm is irretractable." *Relco, Inc. v. Consumer Prod. Safety Comm'n*, 391 F.Supp. 841, 846 (1975) (holding the Commission's duty to protect accuracy and fairness so essential that it could not be delegated to staff).

At the same time, where a pressing public need compels CPSC to speak more quickly than Section 6(b) ordinarily contemplates, the agency has several options for doing so. The agency can file an administrative complaint under Section 15 or an imminent hazard action under Section 12. It can make a "health and safety" finding under Section 6 to shorten the notice periods. And, where a

potential hazard relates more to a category than to a particular product, CPSC Section 6 does not even apply.

Not only are the costs of the Section 6 procedures generally overstated, but its benefits are at least equally understated. In addition to helping CPSC avoid informational missteps, these protections give companies greater confidence in engaging with CPSC staff. The threshold for reporting information to CPSC is – quite deliberately – set very low, much lower than the bar for mandating a recall. Necessarily, then, CPSC staff receive mountains of information that never does and never would form the basis of any product action. Nonetheless, consumers benefit because CPSC staff has greater visibility.

Critics often contrast Section 6 with other agencies' statutes, noting that other agencies are not subject to the same restrictions. While that is true, it is only half of the truth: Other agencies do not have the same statutory access to information in the first place. NHTSA, for example, only receives potential defect-related information when a company has determined the defect exists. The TREAD Act broadened this somewhat in specific categories, but not to CPSC's level: CPSC receives "information which reasonably supports the conclusion" that a defect may exist. Different levels of confidence carry different responsibilities.

Opportunities for Improvement

As I said at the outset, I do believe the Consumer Product Safety Commission is Fulfilling Its Mission. However, like any human endeavor, there are areas in which the agency can improve.

First, I agree with the consensus of the upholstered furniture industry and with consumer advocates concerned about the presence of chemicals that CPSC should adopt California's Technical Bulletin 117-2013, regarding furniture flammability. This standard has proven effective, and manufacturers can meet it without using flame retardants. While I do not fully share the alarm with which some view these chemicals, I do believe that, to the extent we can achieve our safety goals without them, we should do so. If nothing else, this allows a product to be just as safe at lower cost, which makes it available to more consumers.

Second, CPSC should adopt ASTM 2057-17, concerning furniture tip-over. I realize conversations about improving that standard are ongoing – as they should always be with any standard or rule – but using CPSC's tools to increase compliance benefits consumers and protects compliant domestic industry against noncompliant, generally imported product.

Additionally, there are three areas of CPSC activity that I believe could benefit from additional resources.

First, CPSC's importation authority is one of its most immediate opportunities to protect consumers. However, the agency can only staff handful of the 328 ports of entry into the United States. CPSC cannot – and should not attempt to – fill this gap with personnel alone. Modern data analytics can provide the same benefit without the costs. If CPSC had the data tools to more reliably identify higher-risk shipments on paper, it could better target its enforcement efforts, inspecting more of those shipments while allowing known-compliant products to enter commerce

unimpeded. The agency has taken great strides in this direction, but further commitment would be a benefit to all.

Second, CPSC's broader toolset for risk assessment should be modernized. One of its key tools – the National Electronic Injury Surveillance System or NEISS – is widely regarded as the gold standard in product-related epidemiology. However, it has tarnished with age. NEISS relies on manual coding of records gathered from emergency room personnel, who are rightly more concerned with treating their patients than with asking detailed questions about products. This leaves CPSC with information that has many errors, holes, or inconsistencies. The agency is working to improve NEISS – such as by extending it to urgent care facilities – but a more significant investment in data quality would allow the agency to concentrate its resources on the areas of greatest concern.

Third and finally, CPSC's award-winning Fast Track voluntary recall program has been a great benefit to consumer safety. However, in recent years, the word "Fast" has lost some of its meaning, with some Fast Track recalls taking months and months for approval. While of course CPSC must do its due diligence, it is not in anyone's best interest to unnecessarily impede companies whose sole aim is to take swift action to protect consumers. CPSC should rededicate itself to working with these companies to quickly resolve Fast Track recalls, so that these products are remedied promptly.

Conclusion

I began this testimony with two assertions: That the CPSC is fulfilling its mission, and that its successes are the result of the tireless efforts of the talented, dedicated public servants who make up the agency. While the agency can and should always look for ways to improve, consumers can take comfort in their reliable watchdog in Bethesda.

Ms. SCHAKOWSKY. The gentleman yields back.

And now I welcome Ms. Cowles for 5 minutes for her opening statement.

STATEMENT OF NANCY A. COWLES

Ms. COWLES. Thank you, Chairman Schakowsky, Ranking Member McMorris Rodgers, and subcommittee members for this opportunity to testify before you about the CPSC's mission.

KID is a nonprofit organization dedicated to protecting children by fighting for product safety. We were founded in 1998 by two Chicago parents whose son, Danny, was killed in a poorly designed and untested portable crib.

As Danny's mother foresaw when she testified before a House subcommittee in 2004, improved children's product safety will be Danny's legacy.

Last month, we released our report on 2018 recalls. We found that the number of recalls overall was the lowest since 2003 and the number of children's products recalls as well as the units of children's products recalled were the lowest since we started tracking in 2001.

It is tricky to say whether low recall numbers are a good thing, pointing to safer products or a sign of lax enforcement, leaving dangerous products on store shelves and in our homes.

Indicators this year such as other less effective actions in lieu of recalls make us worry that now it is the latter.

After filing suit last year for a recall of the BOB strollers with almost a hundred injuries, CPSC settled for an information campaign that is explicitly not a recall and lasts only 1 year.

Unlike recalled products, these BOB jogging strollers can be legally sold in the secondhand market, meaning we will see continuing injuries.

KID has also looked at recall effectiveness numbers reported by recalling companies to CPSC each year. For this year's report, we were unable to get that data due to a lack of response from the CPSC's FOIA office.

But according to the CPSC in the hearing that was held, that number is under 10 percent. One example is the 2016 recall of IKEA dressers. Publicly available information shows that fewer than 2 percent of these dressers have been returned to IKEA for a refund.

IKEA has focused their messaging almost exclusively on anchoring the dressers rather than returning them for a refund and getting them out of homes.

Every 10 days a child dies when a dresser or other furniture tips over on them and crushes them. Every 18 minutes a family rushes a child to the emergency room for that same hazard.

There is no Federal standard to stop manufacturers from making unstable furniture. The voluntary ASTM standard lag behind the evidence that all of these incidents provide.

Industry has been dragging their feet for years and children are paying the price. Several families whose children were killed by furniture and TV tipovers have joined together to form PAT, Parents Against Tip-Overs.

The group participates in the voluntary standards settings, has met with CPSC leadership, and, I dare say, will be in to see each of you if they haven't already.

As Lisa Siefert of Barrington, Illinois, said when she joined KID last month to announce support for legislation on this issue, if action had been taken when her son, Shane, was killed 7 years ago, these other families could be home with their children now.

An effective standard would include all storage units and testing protocol, would represent all children under 72 months, and include tests to account for real-world use.

We also need that strong standard to be mandatory so that every family can be sure that the furniture they purchase is stable.

We support the STURDY Act to achieve this goal. We've heard about 6(b). I will just say parents should not have to wait on the manufacturer's timetable before learning that their child is sleeping in a deadly crib, playing with a lead-tainted toy, or riding in a stroller prone to losing a wheel.

Section 6(b) should be repealed or, at the very least, should be—more should be done to weaken its negative impact on safety.

Through the implementation of Section 104, or Danny's Law, of the CPSIA, CPSC has successfully implemented strong mandatory standards for 20 types of durable infant and toddler products.

Five from the original list remain, however. Either they have been passed but the effective date has not been reached or they are still pending.

But last year was CPSIA's tenth anniversary. More than a decade after passage of this landmark legislation, consumers still have no assurance that all nursery products are tested for safety before they reach store shelves.

We believe just as standards of all these new designs introduce potential hazards, the group of products covered by Danny's Law should also evolve as new products enter the market.

Among children's products safety issues a safe sleep environment is an overriding concern. Suffocation, most of it in a sleeping environment, is the leading cause of unintentional death in infants.

The number of sleep-related deaths in infants is a public health emergency. We heard this from this week's warning on Fisher-Price Rock 'N Play that these products carry risk of suffocation and death.

Consumer Reports released an article documenting the additional hazard of positional asphyxia in younger babies that was not in CPSC's warning. This products and others that pose the same hazard should be recalled.

Again, thank you for allowing me to testify today. We appreciate the attention and oversight that your committee is bringing to these important issues.

[The prepared statement of Ms. Cowles follows:]

Testimony of Nancy A. Cowles
Executive Director, Kids In Danger

To the House Sub-Committee on Consumer Protection and Commerce, *Protecting Americans From Dangerous Products: Is The Consumer Product Safety Commission Fulfilling Its Mission?*

April 9, 2019

Thank you, Chairman Schakowsky, Ranking Member McMorris Rodgers and Subcommittee members for this opportunity to testify before you today regarding the U.S. Consumer Product Safety Commission's mission. I offer this testimony on behalf of Kids In Danger (KID).

KID is a nonprofit organization dedicated to protecting children by fighting for product safety. The organization was founded in 1998 by Linda Ginzel and Boaz Keysar, both University of Chicago professors, after the death of their son Danny in a poorly designed and inadequately tested portable crib. A portion of the 2008 Consumer Product Safety Improvement Act (CPSIA) was named after Danny. As Danny's mother, Linda, foresaw when she testified before the then House Subcommittee on Commerce, Trade and Consumer Protection in 2004, "improved children's product safety will be Danny's legacy."

Recalls and Recall Effectiveness

Since 2001, KID has been reporting on children's product recalls annually. Last month, we released our report on 2018 recalls. We found the number of recalls overall was the lowest since 2003; and the number of children's product recalls as well as units of children's products recalled were the lowest since we started tracking[1].

It is tricky to say whether low recall numbers are a good thing – pointing to safer products – or a sign of lax enforcement, leaving dangerous products on store shelves and in our homes. Indicators this year, such as other less effective actions in lieu of recalls and fewer findings of design defects in the recalls that were announced, make us worry it is the latter.

Almost all recalls are voluntarily agreed to by the manufacturer. Only rarely has CPSC used its authority to call for a mandatory recall. One example was in the news just last week. After filing suit last year for a recall of the BOB strollers with almost one hundred injuries from front wheels' disengagement, CPSC ended up settling for an information campaign that is explicitly not a recall and lasts only one year – almost a month of which was wasted during the government shutdown. Unlike recalled products, these BOB jogging strollers can be legally sold in the secondhand market, meaning that we will see continuing injuries well into the future.

[1] https://kidsindanger.org/wp-content/uploads/2019/03/KID-2019-Recall-Report.pdf

It is hard enough with an official recall to fix or remove products from use. Announcing the recall is only part of the job of the agency – it does no good if most of those recalled products remain in homes and in use.

In past reports, KID has looked at recall effectiveness numbers reported by recalling companies to CPSC. But we could not do that analysis this year due to lack of response from the Freedom of Information Act (FOIA) office at CPSC. But looking at other publicly available data there is general agreement that the number is somewhere under 10% -- meaning most recalled products remain in use in homes and child care facilities.[2]

One example is the 2016 recall of IKEA dressers. Originally reported at 29 million[3], that number was revised to 17 million[4] a year later. Whatever the number, publicly available information shows fewer than 2% of those dressers have been returned to IKEA for a refund. IKEA has blocked our requests for more information on the recall effectiveness numbers. Other consumers, both before and after the recall, asked for and received anchoring kits, but there is no available data on how many were used to secure the unstable dressers. We also do not believe that anchoring is an effective recall remedy for these dressers since they will be moved, sold, or set out in the alley and someone else can use them without the anchor. We know that nine children have died in IKEA furniture tip-overs, one after the start of an 'information campaign'[5] in 2015 – like the current Britax BOB jogging strollers action -- and another since the 2016 recall. An additional child has died in a tip-over incident involving a dresser IKEA has not recalled. IKEA has focused their messaging almost exclusively on anchoring the dressers rather than returning them for a refund and getting them out of homes.

Furniture Tip-over

But it isn't just IKEA. Every 10 days a child dies when a dresser or other furniture tips and crushes them. Every 18 minutes a family rushes a child to the emergency room for the same hazard[6].

There is no federal standard to stop manufacturers from making unstable furniture. The voluntary ASTM standard lags behind the evidence all these incidents provide. Industry has been dragging their feet for years and children are paying the price. But things are beginning to change. CPSC Acting Chairman Buerkle has called on industry to increase the test weight and include shorter dressers in the ASTM standard and advised that CPSC will take enforcement action against dressers that don't meet the current voluntary standard. These are important first steps.

Several families whose children were killed by the IKEA dressers have joined with other families who lost children to furniture and TV tip-overs to form PAT – Parents Against Tip-overs.

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[2] https://www.slideshare.net/USCPSC/cpsc-recall-effectiveness-workshop-recall-data
[3] https://cpsc.gov/Recalls/2016/Following-an-Additional-Child-Fatality-IKEA-Recalls-29-Million-MALM-and-Other-Models-of-Chests-and-Dressers
[4] https://cpsc.gov/Recalls/2018/IKEA-Reannounces-Recall-of-MALM-and-Other-Models-of-Chests-and-Dressers-Due-to-Serious-Tip-over-Hazard
[5] https://www.cpsc.gov/newsroom/news-releases/2015/ikea-offers-free-wall-anchoring-repair-kit-for-chests-and-dressers
[6] https://anchorit.gov/why-anchor-it/

This group now participates in the voluntary standard meetings, has met with CPSC leadership and staff and I dare say will be in to see you all if they haven't already. As Lisa Siefert of Barrington, Illinois said when she joined KID last month to announce our support for legislation on this issue – if action had been taken when her son Shane was killed seven years ago, these other families could be home with their children instead of speaking out to keep other children safe.

An effective standard would include all clothing storage units: right now, shorter dressers are excluded even though deaths have been reported with those shorter dressers. In addition, the testing protocol would use weights that represent all children under 72 months – those most likely to be involved in a tip-over incident -- and include tests to account for real world use. This would include furniture on carpeting, drawers loaded with clothing, more than one drawer extended and dynamic testing. All of these are features involved in tip-over injuries and deaths. We also need that strong standard to be mandatory – so every family can be sure the furniture they purchase is stable. We support legislation, such as the STURDY Act to achieve this goal. The ASTM process has proven to move too slowly, and many members resist needed changes to protect children.

The good news is that while furniture testing by KID[7] along with Shane's Foundation, and testing by Consumer Reports[8] and the CPSC[9] show that furniture is in the market that does not even meet the current weak standard, there are also units that exceed the standard and can meet some of the tougher testing that is being considered.

KID's TEST program, which works with engineering students, has produced some interesting prototypes that address this very serious issue. These furniture prototypes were designed to resist tipping as effectively as a restraint strap. Other alternative routes should be explored, and manufacturers should be challenged to innovate safer products. We cannot ignore the fact that most furniture in America is not anchored to the wall. We can work to both increase the use of anchoring devices and focus on improving furniture design to reduce the need for anchors.

Section 6(b)

The development of SaferProducts.gov was in part, a compromise on transparency in the Consumer Product Safety Improvement Act. Consumer advocates and others were calling then for a repeal of section 6(b) of the Consumer Product Safety Act. Simply put, 6(b) is a gag order – restricting CPSC's ability to warn the public about product hazards and keeping consumers in the dark about dangerous products they have in their homes and use daily with their families.

While SaferProducts.gov was set up to require public posting of consumer reports of product incidents and injuries, repealing 6(b) would allow many other reports and safety issues to be made public. Parents should not have to wait until a full recall effort is complete before learning their child is sleeping in a deadly crib, playing with a lead-tainted toy, or riding in a stroller prone

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[7] https://kidsindanger.org/wp-content/uploads/Furniture_Stability_Report_Final_(1)1.pdf
[8] https://www.consumerreports.org/furniture/furniture-tip-overs-hidden-hazard-in-your-home/
[9] https://www.cpsc.gov/s3fs-public/Product%20Instability%20or%20Tip%20Over%20Report%20August%202016_1.pdf

to losing a wheel. Section 6(b) should be repealed or at the very least, more should be done to weaken its negative impact on public safety.

Section 104

Through the implementation of the Consumer Product Safety Improvement Act (CPSIA) Section 104 – Danny's Law - the CPSC has successfully implemented strong mandatory standards for 20 types of durable infant and toddler products –leaving five in process.

Last year was CPSIA's 10-year anniversary – more than a decade after passage of this landmark legislation, consumers still have no assurance that booster seats, high chairs, gates, changing tables, and infant inclined sleep products are tested for safety to a strong standard before they reach store shelves. There are standards for booster seats, high chairs and changing tables, but the effective dates of mandatory compliance have not been reached.

And products such as baby nests, crib hammocks and other potentially hazardous products have entered the market and are not covered by any standard. While a strong standard won't eliminate all injuries, we have seen with other products that it makes a difference.

I'd like to address the products included in Section 104. This list was originally created in 2001 and updated in 2008 when CPSC began work on the CPSIA. Other products such as slings and infant inclined sleep products were added later as incidents pointed to the need for a safety standard. We believe that Section 104 should apply to all infant and toddler durable products. Parents will assume that any juvenile product they buy to care for their infant or toddler will be tested for safety to a strong standard. Just as standards evolve as new designs introduce new potential hazards, the group of products covered under Danny's Law should evolve as new products enter the market. If CPSC had adhered to the timeline set out by CPSIA and adopted standards at the rate of two every six months, we would have thirty-six product types covered by the testing and safety that a mandatory standard brings. Parents should have confidence that all the durable infant and toddler products – not just those that were commonplace when the bill was adopted -- are safe.

Safe Sleep

Among children's product safety issues, a safe sleep environment is an overriding concern to KID. Suffocation – most of it in a sleeping environment – is the leading cause of unintentional death in infants. Almost three times more infants (under 12 months) die in sleep environments (3,607)[10] than all children under 13 years old die in motor vehicle related crashes as occupants in cars, pedestrians or on bicycles (1023)[11]. Danny Keysar died in a recalled portable crib. Whether they are bassinets, portable cribs, play yards, cribs, or some newly designed product or accessory, sleep products must meet the highest standards for safety. These products are intended to be safe

[10] https://www.cdc.gov/sids/data.htm
[11] https://www.iihs.org/iihs/topics/t/child-safety/fatalityfacts/child-safety/2016

for a child even without an adult in direct supervision. The number of sleep related deaths in infants is too high and is not showing signs of decreasing – it is a public health emergency.

Crib Bumper Pads

Crib bumper pads are an unnecessary risk to sleeping infants. The American Academy of Pediatrics (AAP) warns against the use of crib bumper pads in their safe sleep guidelines. Because of that and the history of suffocation and possible link to Sudden Unexpected Infant Death (SUID) almost all hospitals tell parents not to use crib bumpers in the crib. A 2016 report in the Journal ***Pediatrics*** noted that the suffocation rate from bumper pads was increasing.[12] Most major retailers such as Wal-Mart, Target and IKEA have removed bumpers from their shelves. Ohio, Maryland and the city of Chicago have banned the sale of padded bumper pads. Almost every childcare facility in the country is prohibited from using bumpers.

But CPSC has announced rulemaking under section 104 on crib bumper pads and ASTM International, the voluntary standards organization, is responding to the CPSC's Notice of Proposed Rulemaking by looking at firmness of crib bumper pads. A standard that doesn't fully address the risk and gives a false sense of safety to parents is more dangerous than no standard. Any mandatory standard should prohibit padded bumpers.

Inclined Products

Products such as car seats, swings, bouncers, etc. are often used as alternative sleeping equipment by caregivers. However, recent research has thrown this practice into question.[13] Researchers have found that it can take as little as four minutes for an unattended infant to suffocate in these inclined products. A young baby, Shepard Dodd, died in Oklahoma on April 6, 2015 when he was left to sleep in a car seat at childcare.

Infant inclined sleep products mimic this reclined, but not flat, sleeping position and have great appeal to parents whose babies seem to have trouble sleeping. The CPSC has added infant inclined sleep products to the Section 104 list to promulgate a mandatory standard. But as we saw from last week's joint warning on the Fisher Price Rock 'n Play Sleeper, those products can carry similar risks and lead to deaths. Children can become entrapped in an unsafe position and suffocate. This week, ***Consumer Reports*** released an article[14] documenting additional deaths under the age the warning covers and the additional hazard of positional asphyxia in younger babies. We agree with Consumer Reports that the warning does not do enough to protect children and the product, and other products that pose the same hazard, should be recalled.

The AAP warns against infants sleeping on an incline. Canada does not allow products with an incline either for sleep. All sleep products must meet the Cribs, Cradles or Bassinets regulations to be sold.[15]

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[12] https://www.jpeds.com/article/S0022-3476(15)01284-6/pdf
[13] https://www.jpeds.com/article/S0022-3476(15)00345-5/pdf
[14] https://www.consumerreports.org/recalls/fisher-price-rock-n-play-sleeper-should-be-recalled-consumer-reports-says/
[15] https://lois-laws.justice.gc.ca/eng/regulations/SOR-2016-152/page-1.html

Other sleep products

Beyond safety and health, there are two main concerns of all new parents – is my baby eating and growing and is my baby sleeping? Products that help parents achieve either of these flood the market. Nevertheless, they are not all safe – especially sleep products. From cushions to prop up babies, to specific products such as the Nap Nanny or other inclined cushions, to products intended to help babies share an adult bed: these products enter the market with little or no testing. There are no standards for these products. Entrepreneurs are struck with great ideas – usually in the middle of the night when they are sleep deprived and up with their own babies and rush to market without considering potential hazards. Products intended for infant sleep must be safe enough to leave a child unattended.

Again, thank you for allowing us to testify here today. The CPSC is a small agency with a big mission. We appreciate the attention and oversight your committee can bring to increase the effectiveness of the agency and help keep children safe.

Kids In Danger is a nonprofit organization dedicated to protecting children by improving children's product safety Our mission is to save lives by enhancing transparency and accountability through safer product development, better education and stronger advocacy for children. Learn more at www.KidsInDanger.org.

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Ms. SCHAKOWSKY. Thank you all for your important testimony.

I want to just say a special thank you to Commissioner Adler and Commissioner Baiocco. Thank you for staying for the testimony of Panel II. No, I understand you have other things to do. But I am very happy that you were and are here.

So now we will turn to our Members for 5 minutes and I will—questions, and I will begin.

It is so tempting and I think I will go to that, to look at some of these particular incidents that are now threatening our children and I do want to see if we could get answers that deal with the item, for example, of furniture tipovers but also how that reflects on the Commission and how we can improve.

You know, right now, the CPSC launched the Anchor It! campaign in 2011 to explain to parents why they need to anchor the furniture against the wall.

So we are now talking about an 11-year effort to reduce the number of deaths and, as was pointed out, they continue and the injuries continue at a rapid pace.

So it seems to me that, first of all, this idea of anchoring, if you are a renter and you are told put a hole in the wall so that you can anchor that dresser, some will say, absolutely not, because I want my down payment on the apartment and I am not going to put a hole in the wall that is effective.

But how can we allow an 8-year problem or maybe even more to go on with these furniture tipovers? Anyone who wants to answer.

Ms. Cowles?

Ms. COWLES. Yes, I will start on that. We worked very hard on this issue. We have participated in the ASTM furniture subcommittee, which I have to say, I work on a lot of ASTM committees. They are all a little bit frustrating for the consumer advocates. But this one in particular there has just been stonewalling of progress in that committee.

We also—we support the Anchor It! campaign. There is a need right now, because furniture is unstable for parents to consider and look at ways to make sure that they have stable furniture and one of those is anchoring.

But the long-term solution is to make stable furniture. There are ways to do this. We work with university students who have some great designs that cannot tip over. They are as effective as a strap holding it to the wall. We appreciate the comments made by Chairman Buerkle recently saying that she would enforce the voluntary standard, saying that calling for additional weight in the testing.

That one in particular is probably getting stuck right now in the ASTM committee. We——

Ms. SCHAKOWSKY. Not only weight but aren't we going to have a test where kids' weights are actually——

Ms. COWLES. That was not part of her commitment at this point. We certainly look for that in the future. That is what is going to be necessary to do.

But in terms of enforcement, in 2016 KID and Shane's Foundation did research. We found noncompliant dressers as did CPSC that same year, Consumer Reports last year. This statement that was made in February we still see very few. We have seen no fur-

niture recalls in the past year and 4 months—3 months of this year.

So it's OK to talk, but we need to start seeing action on this because, again, just picture every 10 days a child is dying and the number of that group and PAT is just growing and they don't want their core to grow.

Ms. SCHAKOWSKY. Ms. Weintraub, you mentioned a whole bunch of different things that we need to do at the CPSC. How come it has taken so long to address them?

Ms. WEINTRAUB. I think that's a great question and there are many factors to it. I think you need political will. I think the agency needs to use the tools at their disposal.

Based on the safety hierarchy, warnings are the weakest thing we could do. We need the Rock 'N Play to be recalled. We need the Britax to be recalled. We need civil penalties that are meaningful and not merely a cost of doing business, and with the voluntary standards CPSC by statute relies on voluntary standards but those process, while they may meet the technical definitions of consensus, they vary widely and, as Nancy mentioned, it is a very difficult process. There are few consumers. Sometimes the standard is already completely baked when consumers have any access to it.

There are many issues and I think 6(b) is one that pervades everything. There is the rule itself, which I think Mr. Gentine outlined some of those things. But there is also the culture.

The culture of 6(b) and the shadow of 6(b) is so vast that it impacts everything the agency does and gives companies negotiating with the agency huge amounts of power and, ultimately, consumers suffer as a result.

Ms. SCHAKOWSKY. Thank you. Boy, 5 minutes just goes rushing by.

I am going to yield now to the ranking member, who says it's OK to just say "Mrs. Rodgers."

Mrs. RODGERS. There we go. New improved.

Thank you, Madam Chair, and I appreciate everyone being here and sharing testimony today.

I wanted to start with Mr. Gentine, and from your testimony it's clear that you're a proponent of voluntary standards.

Can you please explain why they help protect consumers?

Mr. GENTINE. I think, from the outset, the first is simply a matter of scale. CPSC in this current fiscal year is engaged in 76 different voluntary standards activities on top of the mandatory rulemakings on top of recalls, et cetera.

There is simply no way. I know we have talked a lot about CPSC's budget and I would join the chorus to say that it should be a bit higher.

But a CPSC that was big enough to engage directly in all of those issues, some of which are more on the level of monitoring and looking for continuous improvement would be a CPSC that carries an awfully large price tag and, frankly, would be intrusive in ways that I don't believe it's intended to be.

It's intended to be a partner with industry, with consumers, with advocates in building a safer consumer products market.

So I think, again, for one, just a matter of economy or staffing realities that CPSC cannot get into all of those issues. But beyond

that, I think the fact that they're closer to the individual products at issue is key for me.

The standards bodies, as Ms. Cowles mentioned, have engineers on them who have designed and worked on those products—those specific products their entire career. CPSC—550 people—a fraction of those are engineers. They have to be generalists. They cannot—they do not have the luxury of focussing their careers on one product.

So I think there is a greater expertise and, again, a staff multiplying effect that is vital for consumers.

Mrs. RODGERS. Thank you. How old is the oldest open rule on CPSC's agenda and should the Commission consider cleaning up the docket, moving forward?

Mr. GENTINE. To answer those, I suppose, in reverse, one, CPSC definitely should. There are rules that have been around for a while and I can't confidently assert that it's the oldest but the oldest one I am aware of is the open rulemaking on upholstered furniture flammability.

The NPR in that was issued actually shortly before a certain Mr. Simpson sort of took a ride in a white Bronco. So it's now of legal drinking age, which I suppose is a good thing for an NPR. I am not sure.

So I think the reality that that drives home is that CPSC has been in this issue for a while and hasn't come to a conclusion, and I take Commissioner Adler's point that there are some process issues about adopting California's standard.

I think they can be overcome and, more importantly, I think they should be overcome. Staff has some reservations about that. But I think the opportunity exists to lock in what we already have, which is a very good standard from California, and then pursue whatever is left.

Mrs. RODGERS. OK. Another question on Section 6(b), which we have talked about some this morning. It has been characterized by some as a kind of gag order.

Would you speak to that description and why the procedures laid out in Section 6(b) are important for consumers?

Mr. GENTINE. Sure, and I think one thing I would take issue with is the notion that it is somehow there is a power for companies in that. There really isn't much power because the only—the only enforcement mechanism prior to a Commission statement is a willingness to litigate against CPSC in open court, and we don't see a lot of that for very good reasons.

And there is no poststatement enforcement mechanism beyond requiring CPSC to correct any inaccuracy. There is no mechanism for a company to get any kind of redress for what is simply a process violation.

So I think, you know, there is a nuance to this issue that has been cast aside and, again, it's important because, as Ms. Cowles talked about, you know, the difference between the number of recalls and the number of reports that is there for a reason. That was a deliberate choice by Congress to set a reporting threshold that's very, very low—much lower than a recall threshold.

As a result of that, especially as companies take CPSC's message and when in doubt report, that means CPSC is getting a lot of information that would not form the basis of a recall.

And I am not sure how it is in consumers' best interest to flood the market with even more ostensibly safety-related messages that don't have any concrete action to them and, frankly, may not have a basis in reality.

Mrs. RODGERS. The title of today's hearing is, "Is the Consumer Product Safety Commission Fulfilling Its Mission?" You answered yes. Would you just elaborate a little bit more on why you believe that to be the case?

Mr. GENTINE. Certainly, and I keep going back to my good friend, Commissioner Adler, who has got probably the longest running perspective on this agency.

And as he pointed out, there have been dramatic reductions in all sorts of deaths and injuries, and some of that is the direct result of the Commission's actions but more of it is the way the Commission has engaged with industry with consumer stakeholders to bring attention to issues and to address them where they can be addressed through design or manufacture.

So I think, frankly, those numbers speak for themselves and, of course, there is more to be done. There will always be more to be done.

Perfect is not attainable. But the fact that we haven't gotten to an unattainable state does not mean CPSC isn't fulfilling its mission and I think it is.

Mrs. RODGERS. Thank you. I yield back.

Ms. SCHAKOWSKY. And I now call on Mr. McNerney for 5 minutes.

Mr. MCNERNEY. Well, I thank the chairman—the chairwoman—and I thank the panelists.

You will notice I am wearing pink today. I wanted to show my softer side so I shouldn't have any troubles.

First of all, on recalls, recalls don't do any good if people don't know about it, if they are not able to or don't know about it or don't want to—don't have any way to get their product recalled.

So, Ms. Weintraub and Ms. Cowles, your groups participated in a recall effectiveness workshop in 2017. Now that it's 2 years later, have there been any improvements?

Ms. WEINTRAUB. Not that we have seen concretely. The notes were publicized, which took a while to happen. But, unfortunately, there are fewer recalls. There are more announcements about products that we think should be recalled but that aren't.

I think a key principle about recall effectiveness, and we have to call an enforcement action a recall—that triggers consumers knowing more about it. If something is a recall or if something is an education campaign, a lot of people aren't going to find out about it.

So, at a minimum, it needs to be called a recall and both the CPSC and manufacturers need to do everything they can to communicate that information to consumers and we know that that is not happening, especially due to Nancy's great report.

Ms. COWLES. Yes, and I will just add to that. So not only did we see the number of recalls go down last year, we saw CPSC came

to Facebook in 2017 and reported 75 percent of the recalls on their Facebook page.

And social media isn't the panacea. It's not the total answer. But it shows an intent. Certainly, consumers follow it. Last year, that dropped to 45 percent. So they are already dropping back from the one tool that they added to their arsenal.

And actually I mentioned Linda was here in 2004 and she said something that is still true today. These companies know exactly how to reach us when they are trying to sell us a product.

They need to use those very same tools when they are trying to get the product out of the market. That means marketing. Rachel worked hard to try and get marketing experts for CPSC to invite to that hearing.

They were not invited. There are tools. These are companies that do great outreach to consumers. They know how to reach us. They can get these products back if it was a priority of both theirs and the agency's.

Mr. MCNERNEY. Does the agency have the tools to compel these businesses to use their resources to publicize recalls?

Ms. COWLES. Well, that is the issue, right, and Chairman Buerkle alluded to it earlier when she said it was better to take this very sad action with Britax.

It really does nothing to make consumers whole than to keep fighting for a recall when a company doesn't want to do it. The companies are really in the driving seat with the recall. They edit the press release. They determine what they are willing to do.

One of the rules that is pending would put into place mandatory things that would have to be done for every recall and that has just not gone anywhere.

And so, unfortunately, you know, there is just not enough pressure on companies to reach some number above 10 percent of the products recalled.

Mr. MCNERNEY. OK.

Mr. Gregg, what are some actions that the agency could take to get information out about recalls?

Mr. GREGG. Well, I think that one important next step would be to get that chief technologist or experts who actually know more about technology.

In the previous administration I worked at the White House Office of Science and Technology Policy, and that was one of the big things we did which was to try to ensure greater use of technology to reach the whole of the American people as well as making government better.

And right now what we are seeing is just an inability to do that and you can do—there are things that can be done. Just think about what we do—what we use with our phone right now. We use it for everything.

And you could—you could use it when you go and buy something and you could use the bar code and you could scan it and you would know—and you could—the company would know all of your information and as soon as there was a recall could push out a notification there has been a recall.

That can be done. Now, do we want that to be done? That's probably a decision and policy question that we have to grapple with.

But the technology is out there, which is the important point, and the agency needs to lead into it.

Mr. MCNERNEY. Well, I mean, one of the deterrents of bad products is that you get put on a recall and then customers aren't going to—they are going to be more cautious about your products.

So companies are going to naturally resist this.

Mr. GREGG. And that is what they are doing right now, yes.

Mr. MCNERNEY. OK. Moving on a little bit, you—emergency rooms are monitored for product safety. But what about urgent care centers and other avenues that people go to that aren't being monitored that could be monitored?

Ms. WEINTRAUB. So that is true. Currently, the CPSC has a system called NEISS. It is a representative sample of 100 hospitals and for those selected hospitals they intake product safety incident information and CPSC then makes national estimates. And as of now, the NEISS system is—does not include urgent care centers.

However, I would say that the NEISS system is one of the best systems. Even with limitations that we have, CDC relies on it. Other countries use it as a model.

So while it could definitely be improved, it is imperative that it remain in effect as it is a very important source of safety information.

Mr. MCNERNEY. OK. I will yield back.

Ms. SCHAKOWSKY. And I thought I heard Acting Commissioner—or Chairman Buerkle say that she wanted to include urgent care data, going forward. So, hopefully, we can help make that happen.

Mr. Bucshon for 5 minutes.

Mr. BUCSHON. Thank you very much.

First of all, I am going to start out by saying I think—I am going to go by the assumption that over 500 employees and the Commissioners at the agency are on all of our sides, trying to do the best they can to make sure the consumers are safe as you are, too.

So basing it from that, sometimes I think we make the assumption there is nefarious activity here and I think a lot of times it has to do with legal and sometimes policy—legal barriers and policy differences that we need to debate and that is why this hearing is so important.

Quickly, Mr. Gregg, in your written testimony you said an average of 209 days to warn the public in 46 cases between 2002 and 2008. I was just interested in what is the start date for the average.

Because if it is from the initial complaint to the CPSC or is it from when it is determined to be valid complaint or is it when the fine is levied, because I think that is important.

Because the reason is let me just say is because I think it is a long time, it seems like, on the face of it. But the reality is is that, you know, from a competitive standpoint if all you had to do was complain to the agency about your competitor's product and they sent out a warning, you know, I am just using an extreme example.

So what is—kind of in short, what is the time—what is the start date on that?

Mr. GREGG. That would be from the—when the—I will double check but I am almost positive it is from the date that the agency

gets that—gets warning that there is something afoot that they need to look into.

Mr. BUCSHON. OK. So that is what I am trying to clarify because, I mean, you could send a warning, right, about a product or anyone could send a warning.

And so I think it is important to—as in the context of Section 6(b) I guess, you know, it is important to make sure that there are—they are valid and then to move as quickly as possible to get that warning out to the consumers.

Mr. GREGG. The one thing I would add to that, which I just wanted to ensure we get on the record, the policy discussions are important.

You know, the Supreme Court has interpreted 6(b) to be—that FOIA is included in 6(b). So, again, that is something that this agency has and no other agency has where, for example, information can't go into the public in the FOIA context. So we can have that discussion but it's hamstringing in other ways, too.

Mr. BUCSHON. I get that.

Mr. Gentine, do you think the CPSC could ever handle implementing mandatory standards for every product under their jurisdiction?

Mr. GENTINE. No. No. Again, as a matter of scale and, frankly, you know, in a lot of situations we've talked today about some voluntary standards that people believe need improvement and, certainly, every standard every rule—every human activity can always be improved.

But there are a lot of voluntary standards covering products within CPSC's jurisdiction that aside from sort of regular cyclical review aren't ever at issue because they are working very well and they are keeping those products—keeping those consumers safe.

So I don't think—I don't think CPSC ever could issue rules to cover all 15,000 products in its jurisdiction and I don't think it should even if it were possible.

Mr. BUCSHON. It doesn't seem practical, at least with the current staffing levels, to make that happen. I think you commented that to try to do something like that would just massively expand the staffing levels and the money required to do that.

Mr. GENTINE. Correct, and that is——

Mr. BUCSHON. When they—when it sounds like from what you just said that in many—in most cases voluntary standards are being complied with?

Mr. GENTINE. Correct. And not only where——

Mr. BUCSHON. Many times.

Mr. GENTINE. Where there are gaps, you know, that is what CPSC is there to do, to help fill the gaps one way or another.

Mr. BUCSHON. Yes. And, again, can you just reiterate again? You already commented on this a little bit. Like the top three areas where you think maybe there can be some improvement at the CPSC?

Mr. GENTINE. Sure. One of them——

Mr. BUCSHON. I think this is an important point. That is why I want you to kind of reiterate again.

Mr. GENTINE. Certainly. One of them I did mention was TB 117, the upholstery furniture flammability standard. One that is in my

written comments but didn't, you know, meet the 5-minute cut was on the question of tipover. Again, there are certainly open questions about the adequacy of that standard and how its testing works.

But I think at a minimum to take that standard and make it mandatory would at least help ensure that noncompliant products aren't getting in and then we can talk about moving the standard—moving the standard forward.

And I think, again, we come back to resource constraints. I say I don't want a CPSC big enough to write rules on all 15,000 of its products.

But I think a CPSC with more robust resources than it has now that would allow it to get into more data and technology issues and would allow it to speed recalls along I think would benefit everyone.

Mr. BUCSHON. Yes. I mean, I think particularly as it relates to children, you know, because obviously they can't report that my crib isn't working properly, right?

So, I mean, in that respect, you know, you could create a prioritization of what things should be mandatory maybe and involuntary and credit—kind of prioritize what things are the most at risk for the consumers, particularly children.

Mr. GENTINE. Certainly. Thank you.

Mr. BUCSHON. Yes. I yield back.

Ms. SCHAKOWSKY. Well, that completes our second panel. I want to thank you all so very much.

I wanted to make a comment and if you would like to, Ranking Member, also. One of the takeaways that I have that seems pretty unanimous is that the Consumer Product Safety Commission needs more resources.

And I hope we are thinking big. When I think about all the problems that—and the dangers that are out there that are under the jurisdiction of the Consumer Product Safety Commission, we have an agency that started small and all we have had are sort of incremental increases that pretty much, relative to other agencies, keep it small.

And so I hope we can be bold in our thinking about and begin with what does the Consumer Product Safety Commission really need to be effective in handling all that is under its jurisdiction and go for that kind of increase and, perhaps, authorities that would make it a more effective agency because it is so important.

And I yield to the ranking member, if you want to make any comments.

Mrs. RODGERS. Well, thank you, Madam Chair, and I do want to say thanks again to everyone who testified, the consumer advocates as well as the Commissioners for being here today. It is great to see all of the positions filled on the Consumer Product Safety Commission.

I am hopeful that we will see Ann Marie Buerkle confirmed shortly in the Senate so that we can continue to move forward on addressing these important issues.

And I too would acknowledge that there was broad agreement that there needed to be more support, more resources, more funding for the Commission in order to—for them to continue to do the

good work that they are doing and I look forward to working with everyone to make sure that this Commission is doing everything possible to protect our consumers, our families, our children from the many, many products that are out there, and thank you again for this hearing.

Ms. SCHAKOWSKY. Thank you. I would like unanimous consent to enter into the record the following documents: a letter from the Electronic Privacy Information Center; a letter from CPSC Acting Chair, Ann Marie Buerkle, to ASTM International; a letter from the National Association of Manufacturers.

I seek unanimous consent. Without objection, they are entered into the record.

[The information appears at the conclusion of the hearing.]

Ms. SCHAKOWSKY. And the committee hearing is—oh, wait. Let us see. I do want to again thank the witnesses for their participation in today's hearing.

I remind Members—there you are, Members—that pursuant to committee rules you have 10 days—business days—to submit additional questions for the record to be answered by witnesses who have appeared. I ask each witness, as I did earlier, to please respond promptly to any such questions that you may receive at this time.

The subcommittee is adjourned.

[Whereupon, at 1:19 p.m., the subcommittee adjourned.]

[Material submitted for inclusion in the record follows:]

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April 5, 2019

The Honorable Janice D. Schakowsky, Chair
The Honorable Cathy McMorris Rodgers, Ranking Member
U.S. House Committee on Energy and Commerce
Subcommittee on Consumer Protection & Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Schakowsky and Ranking Member McMorris Rodgers:

We write to you regarding the hearing on "Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?"[1] American consumers face unprecedented privacy and security threats from Internet-connected devices. The unregulated collection of personal data and the growth of the Internet of Things ("IoT")[2] has led to staggering increases in identity theft, security breaches, and new cybersecurity threats. The CPSC should regulate Internet-connected devices. Privacy and security are integral to consumer safety.

EPIC is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.[3] EPIC is a leading advocate for consumer privacy, and has led the effort to establish the authority of the Federal Trade Commission ("FTC") to safeguard consumer privacy and more recently to explore the impact of the Internet of Things.[4] EPIC also urged the Consumer Product Safety Commission ("CPSC") to address the hazards of weak privacy and security in IoT products.[5]

Today, the IoT network is the weak link in consumer products. IoT devices track personal data generated by consumers' activities and lifestyles. IoT devices pose significant privacy concerns that could threaten physical danger.

EPIC brought the Google Home Mini complaint[6] to the CPSC precisely because the design defect of the consumer device created a specific risk to consumers. The Acting Chairman of the

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[1] *Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?*, 116th Cong. (2019), H. Comm. on Energy & Commerce, Subcomm. on Consumer Protection & Commerce, https://energycommerce.house.gov/committee-activity/hearings/hearing-on-protecting-americans-from-dangerous-products-is-the-consumer (Apr. 9, 2019).
[2] EPIC, Internet of Things (IoT), https://epic.org/privacy/internet/iot/.
[3] *See* EPIC, *About EPIC*, https://epic.org/epic/about.html.
[4] EPIC Comments to the Federal Trade Comm'n, *On the Privacy and Security Implications of the Internet of Things* (June 1, 2013), https://epic.org/privacy/ftc/EPIC-FTC-IoT-Cmts.pdf.
[5] Sunny Kang, EPIC International Consumer Counsel, *The Internet of Things and Consumer Product Hazards*, Testimony, CPSC (May 16, 2018), https://www.youtube.com/watch?v=-YSDEkWuxUo&feature=youtu.be.
[6] Coalition Letter to U.S. Consumer Product Safety Comm. On Google Home Mini (Oct. 13, 2017), https://epic.org/privacy/consumer/Letter-to-CPSC-re-Google-Mini-Oct-2017.pdf.

CPSC responded to EPIC, stating that "CPSC's authority will not generally extend to situations solely related to consumer privacy or data security, that do not pose a risk of physical injury or illness, or property damage."[7]

The CPSC response reflects a profound lack of understanding about the IoT and the new threats facing consumers. As renowned security expert Bruce Schneier has said: "The Internet is dangerous—and the IoT gives it not just eyes and ears, but also hands and feet. Security vulnerabilities, exploits, and attacks that once affected only bits and bytes now affect flesh and blood."[8]

Hackers, criminals, and foreign adversaries exploit IoT vulnerabilities to launch network attacks that cause millions of dollars in damage and have devastating impacts on real people.[9] Hackers could conceivably exploit vulnerabilities on "smart" refrigerator to carry out a denial of service attack against the network of a city or hospital. In the past few months alone there have been several such attacks. A ransomware attack known as SamSam took down the entire municipality of Farmington, New Mexico and two hospitals by exploiting vulnerabilities in IoT devices.[10] The city of Atlanta spent 2.6 million dollars to recover from a ransomware attack that impacted municipal functions including the Police Department and the judicial system.[11] It would defy reason to say that unsecured IoT devices do not harm consumers.

Privacy and security hazards should be regulated in the manufacture and design of consumer products. Companies have little incentive to maintain strong standards without regulation. And consumers do not have enough information to evaluate the privacy and security of these products themselves. This has alarming implications for toys that target children's data, and internet-connected home systems like smoke detectors and security cameras.

Therefore, manufacturers—not consumers—must bear the responsibility to ensure the security of their products.[12] We agree with the UK Government's assessment that "There is a need to move away from placing the burden on consumers to securely configure their devices, and instead ensure that strong security is built in by design."[13]

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[7] CPSC Acting Chairman Ann Marie Buerkle, *Response to EPIC and Consumer Privacy Organizations* (March 23, 2018), https://epic.org/CPSC-response-GoogleHomeMini-3.23.18.pdf.
[8] Bruce Schneier, *IoT Cybersecurity: What's Plan B?*, Schneier on Security (Oct. 18, 2017), https://www.schneier.com/blog/archives/2017/10/iot_cybersecuri.html.
[9] Bruce Schneier, *Click Here to Kill Everyone*, N.Y. Magazine (Jan. 27, 2017), http://nymag.com/selectall/2017/01/the-internet-of-things-dangerous-future-bruce-schneier.html (describing an attack that used millions of DVRs and other insecure IoT devices to take down Twitter, Netflix, Reddit, and other sites down from the internet).
[10] Bill Siwicki, *71% of IoT medical device ransomware infections caused by user practice issues*, Healthcare IT News (March 5, 2018), http://www.healthcareitnews.com/news/71-iot-medical-device-ransomware-infections-caused-user-practice-issues.
[11] Lily Hay Newman, *Atlanta Spent $2.6M to Recover from a $52,000 Ransomware Scare*, Wired (April 23, 2018), https://www.wired.com/story/atlanta-spent-26m-recover-from-ransomware-scare/.
[12] *See* Alan Butler, *Products Liability and the Internet of (Insecure) Things: Should Manufacturers Be Liable for Damage Caused by Hacked Devices?*, 50 U. Mich. J. L. Reform 913 (2017), http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1193&context=mjlr.
[13] UK Department for Digital, Culture, Media & Sport, *Secure by Design: Improving the cyber security of consumer Internet of Things Report* (March 2018),

Current voluntary standards are lax. And current safety regulations are outdated. They are not adequate to address the security hazards of IoT devices. The CPSC should establish mandatory privacy and security standards, and require certification to these standards before IoT devices are allowed into the market stream.

The code of practice proposed by the UK government serves as a useful framework for security standards for IoT. In particular, manufacturers should adopt the following:[14]

1. No default passwords
2. Implement a vulnerability disclosure policy
3. Keep software updated
4. Securely store credentials and security-sensitive data
5. Communicate securely
6. Minimize exposed attack surfaces
7. Ensure software integrity
8. Data protection
9. Make systems resilient to outages
10. Monitor system telemetry data
11. Make it easy for consumers to delete personal data
12. Make installation and maintenance of devices easy
13. And validate input data

This guidance necessitates privacy and security by design. If the CPSC implements this code of practice, it will shift the responsibility of product safety back to manufacturers where it belongs.

Congress should act to empower regulators to protect consumers from the risks posed by the IoT. We ask that this letter be entered in the hearing record. EPIC looks forward to working with the Subcommittee on these and other issues impacting the privacy and security of American consumers.

Sincerely,

Marc Rotenberg
Marc Rotenberg
EPIC President

Caitriona Fitzgerald
Caitriona Fitzgerald
EPIC Policy Director

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686089/Secure_by_Design_Report_.pdf.

[14] *Id.*

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

ACTING CHAIRMAN ANN MARIE BUERKLE

February 27, 2019

Richard Rosati
ASTM Subcommittee Chair for F15.42, Furniture Safety
ASTM International
100 Barr Harbor Drive
West Conshohocken, PA 19428

Dear Mr. Rosati,

As you are aware, the staff of the Consumer Product Safety Commission has embarked on a major testing program to evaluate the stability of popular clothing storage units currently on the market. The program will also evaluate new test configurations, conditions and procedures, with a view towards identifying potential improvements to the current voluntary standard, ASTM 2057-17. I have asked the staff to keep your subcommittee well informed as this process moves forward.

In the meantime, there are two actions that your subcommittee could take that would improve the current standard significantly. One is to increase the test weights (fig. 5) used in section 7.2 Stability with Load of the standard from 50 to 60 pounds. The other is to expand the scope of the standard to include clothing storage units that are between 27 and 30 inches in height.

Previous testing at the CPSC and elsewhere has shown that many clothing storage units already can withstand tipping at higher test weights. Until the results of CPSC's test program are known, I believe this is the best available step to strengthen the standard and improve the stability of clothing storage units. Adopting this approach would also end the unproductive debate about the exact age of children the current standard was intended to protect.

February 27, 2019
Page 2

Testing has also shown that units below 30 inches in height are capable of meeting the performance requirements of the standard, even at higher test weights. CPSC data show that tipovers of such shorter units can cause significant injuries to young children and even death. Expanding the scope of the standard to include these units will help prevent these tragic events.

I urge you and the subcommittee to move ahead with these improvements to the standard at your earliest possible convenience. I appreciate all of the work that the subcommittee has done on this issue. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

[redacted]

Ann Marie Buerkle
Acting Chairman

Graham Owens
Director, Legal & Regulatory Policy

April 9, 2019

The Honorable Janice D. Schakowsky
Chairman
Subcommittee on Consumer Protection & Commerce
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Subcommittee on Consumer Protection & Commerce
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Schakowsky and Ranking Member McMorris Rodgers,

On behalf of the National Association of Manufacturers (NAM), the largest industrial trade association and the voice for the almost 13 million men and women who make things in America, I submit these comments for the record for the April 9, 2019 hearing entitled "Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?"

Manufacturers of consumer products are committed to providing safe products and ensuring a well-functioning and credible product safety regime — one that gives all stakeholders the necessary confidence that products meet all applicable safety standards and regulations. To support this commitment, the NAM has long been a leader in the fight to improve the Consumer Product Safety Act and the Consumer Product Safety Improvement Act to ensure the laws works for consumers, manufacturers, and importers. In developing and maintaining such a credible product safety regime, the NAM understands and supports the need for effective regulation and oversight by Congress and federal agencies such as the Consumer Product Safety Commission ("CPSC" or "Commission") because it complements manufacturers' long-time commitment to safety and excellence.

To this end, we applaud the subcommittee for holding this hearing and your ongoing leadership in improving the safety of consumer products while seeking to minimize unnecessary burdens imposed on stakeholders. The subcommittee's attention to the effectiveness of agency regulations, as well as their impact on manufacturers in the United States, is immensely important, and the NAM particularly appreciates that special attention has been focused on the CPSC. As an independent regulatory agency, the CPSC is not beholden to various laws and executive orders that direct executive branch agencies to employ sound regulatory principles or subject the data and science used by the CPSC to justify policy decisions to review by an objective third party. For these reasons, congressional oversight of the CPSC is particularly important in order to ensure the Commission works in collaboration with industry in advancing the CPSC's congressionally-mandated mission of protecting the public from unreasonable risks of harm.

Manufacturing in the United States

Manufacturing is enjoying a resurgence in the U.S., with renewed growth occurring after years of dwindling output and a diminishing percentage of the labor force. According to the NAM's most recent quarterly outlook survey, from Q1 of 2019, today's manufacturing sector is strong, confident, and optimistic.[1] For the ninth quarter in a row, manufacturers reported record optimism — with an average of 91.8 percent saying they were positive about their own company's outlook, compared to an average of 68.6 percent across 2015 and 2016.[2] Thanks to this optimism, manufacturers are growing, investing, and creating jobs.

In the most recent data, manufacturers contributed $2.33 trillion to the U.S. economy in the first quarter of 2018.[3] This figure has risen since the second quarter of 2009, when manufacturers contributed $1.70 trillion.[4] Over that same time frame, value-added output from durable goods manufacturing grew from $0.86 trillion to $1.26 trillion, with nondurable goods output up from $0.84 trillion to $1.07 trillion.[5] In 2017, manufacturing accounted for 11.6 percent of GDP in the economy.[6] Manufacturing also has the highest multiplier effect of any economic sector. For every $1.00 spent in manufacturing, another $1.89 is added to the economy.[7] In addition, for every individual working in manufacturing, there are another four employees hired elsewhere.

Improving the Effectiveness of the CPSC

A. Congress Should Promote, Not Discourage, Open Communications Between Manufacturers and the CPSC

Congress plays a critical role in ensuring a well-functioning product safety regime for many reasons, but one of the most important aspects of this role is fostering a system that encourages industry and the CPSC to work as partners rather than combatants. Indeed, Congress made it clear in the Consumer Product Safety Act (CPSA) that the CPSC must work closely with industry when it mandated that the Commission first rely on voluntary standards created by industry where the standards would eliminate or adequately reduce the risk of injury addressed and there is likely to be compliance with the voluntary standards.[8] In other words, the CPSC has no authority to act unilaterally to impose mandatory standards unless it first works with industry to create and utilize voluntary standards.

The CPSA also requires industry to work closely and communicate regularly with the CPSC. Section 15(b) of the CPSA requires every manufacturer, importer, distributor, and retailer of consumer products to report immediately to the Commission when the firm obtains information which reasonably supports the conclusion that such product distributed in

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[1] NAT'L ASS'N OF MFRS., NAM MANUFACTURERS' OUTLOOK SURVEY: FIRST QUARTER 2019 (March 5, 2019), https://www.nam.org/outlook/.
[2] *Id.*
[3] NAT'L ASS'N OF MFRS., TOP FACTS ABOUT MANUFACTURING (last visited April 8, 2019), https://www.nam.org/Newsroom/Facts-About-Manufacturing/.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] 15 U.S.C. § 2056(b)(1).

commerce contains a defect which could create a substantial product hazard or that such product creates an unreasonable risk of serious injury or death.[9]

Indeed, Congress felt so strongly about the need for consumer product manufacturers to openly communicate with the CPSC—particularly in reporting potential problems with their products without fear that the reputation and brand of a manufacturer is not irreparably harmed unless the CPSC first ensures that the information reported is accurate and fair—that it included multiple sections in the CPSA prohibiting the Commission from disclosing certain information about manufacturers. Section 6(b) "prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer unless the Commission has taken "reasonable steps" to assure (1) that the information is accurate, 2) that disclosure of the information is fair in the circumstances, and 3) that disclosure of the information is reasonably related to effectuating the purposes of the CPSA and of the other laws administered by the Commission."[10] Similarly, Section 6(a) of the CPSA prohibits the Commission from disclosing confidential business information.

Legal obligations aside, however, it is simply in the best interest of consumers' safety for the CPSC and industry to work collaboratively. This collaborative relationship includes the need for there to be an open and direct line of communication between manufacturers and the CPSC. As such, Congress should use its oversight authority to continue encouraging an open and cooperative relationship between industry and the CPSC to ensure that the Commission is the first organization manufacturers turn to for guidance when they have questions or concerns regarding a product's safety.

B. Make Fast-Track Fast Again

Instituted by the CPSC in August 1995, the fast-track program provides companies who are willing and able the ability to move quickly with a voluntary recall of their product. The fast-track program eliminates procedural steps from the traditional recall process, which includes CPSC staff's technical evaluation of a product to determine if a defect exists that could harm consumers. This procedure, called a preliminary determination, can take several months. Shortly after its introduction, the fast-track program garnered immense praise for its effectiveness, being named a 1998 winner of Harvard University and the Ford Foundation's prestigious Innovations in American Government award, an awards program of the Ford Foundation and Harvard bestowed upon ten programs that "have taken a fresh approach to a problem in government."[11]

The issue, however, is that the program's signature quality—that of being fast—seems to have been recalled itself. Often, this fast track program is slowed down not by any substantive reviews by either the agency or the manufacturer whose product is being voluntarily recalled, but rather by the Commission disagreeing with the wording of a press release. This bureaucratic hold up is not good for consumers, the Commission, or manufacturers. Congress should therefore use its oversight authority to ensure the Commission works to get the fast track program fast again to ensure that unsafe consumer products can be recalled voluntarily as quickly and efficiently as possible.

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[9] 15 U.S.C. § 2064(b).
[10] 15 U.S.C. § 2055(b).
[11] https://www.cpsc.gov/Business--Manufacturing/Recall-Guidance/Innovations-in-American-Government-Award-Fast-Track-Recall-Program.

Improving Regulations Issued by the CPSC

The president does not exercise similar authority over independent regulatory agencies like the CPSC as he does over other agencies within the executive branch. Independent agencies are not required to comply with the same regulatory principles outlined in executive orders and OMB guidance as executive branch agencies and often fail to conduct meaningful analysis to determine expected benefits and costs.

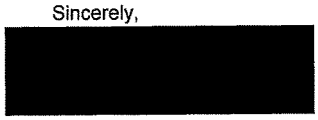
Congress should require independent regulatory agencies to conduct robust cost-benefit analyses of their significant rules and subject their analysis to third-party review through the Office of Information and Regulatory Affairs (OIRA) or a similar office. Congress should also confirm the president's authority over these agencies. Consistency across the government in regulatory procedures and analysis would only improve certainty and transparency of the process.

Independent regulatory agencies are required to comply with the Regulatory Flexibility Act (RFA), but agencies are adept at utilizing loopholes in current law to escape many of the substantive requirements as Congress intended. Independent regulatory agencies are not accountable to the OIRA, however, nor does OIRA participate in interagency review of their rules, accountability mechanisms to ensure executive branch agency compliance with the RFA are even less meaningful for them.

Issuing more efficient and effective regulations not only requires oversight, but also the collection and utilization of data to ensure policy is based on evidence rather than anecdotes. For modern manufacturers, data-driven decisions are central to 21st-century business operations. Federal agencies, on the other hand, often employ 20th-century technologies, struggling to collect data—and share that data—among agencies. As noted above, independent agencies are even less likely to participate in interagency coordination and review, thus perpetuating this problem. As a result, agencies go about the regulatory process without an understanding of what other agencies are doing in the same space. Manufacturers bear the burden of this process, often sending the same information to multiple agencies or even multiple departments within the same agency.

Manufacturers stand ready to work with Congress and the CPSC to ensure that the agency discharges its critical mission in a responsible, collaborative, and effective manner. We all share the Commission's goal of ensuring that products on the market are safe, and that consumers can trust the products they purchase.

Sincerely,



Graham Owens

cc: Members of the U.S. House of Representatives' Committee on Energy and Commerce

CPSC COMMISSIONER ROBERT ADLER'S RESPONSE

TO QUESTIONS FOR THE RECORD FROM THE HONORABLE ROBIN L. KELLY

1. ***QUESTION:* Do you think, given the current state of our nation's gun violence epidemic, if the CPSC were empowered – under the law, and with adequate resources and funding – to regulate firearms it would have a demonstrable impact in reducing gun violence?**

ANSWER: My short answer is "perhaps," but I need to explain in more detail my concerns about the issues raised by your question.

Before answering the question, I would like to go on record as deploring the easy access to firearms – especially assault weapons – and lax regulation of these dangerous products that exists in the United States today. Were it in my power, I would impose severe restrictions on the sale and use of firearms.

As one who has variously worked at, studied, written about, and followed CPSC since its beginning, I would like to share some history about gun issues at the agency. When the Commission was established in 1972, Congress went out of its way to bar the agency from regulating guns.[1] Notwithstanding this prohibition, Congress left untouched the agency's ability to regulate the safety of bullets, which then existed under the Federal Hazardous Substances Act – an Act previously enforced by FDA, but which transferred to CPSC upon passage of the Consumer Product Safety Act.[2]

In June 1974, an anti-gun group, the Committee for Hand Gun Control, Inc. of Chicago, petitioned the Commission for a rule banning the sale of bullets for most hand guns. Although the Commission denied the petition on the basis of a lack of jurisdiction, a court subsequently overturned the agency's determination and directed it to consider the group's petition.[3] Accordingly, on February 14, 1975, the Commission published a notice in the Federal Register soliciting comments on the petition's merits.

To say the least, these developments ignited a major public outcry – almost exclusively from opponents of gun control. The controversy soon reached Congress, which almost

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[1] Congress did so through the use of highly technical language that undoubtedly obscured its intent. See Consumer Product Safety Act, 15 USC § 2052(a)(1)(E) which states that the term "consumer product" does not include

> Any article which, if sold by the manufacturer, producer, or importer would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article.

[2] FDA never seriously considered banning bullets. Instead, the agency limited its enforcement efforts to instances of defective ammunition that misfired or exploded inappropriately.

[3] Committee for Hand Gun Control, Inc. v. Consumer Product Safety Commission, Civ. Action No. 74-1387.

immediately extended its prohibition on CPSC firearm jurisdiction to include bullets as well as guns, thereby effectively rendering the bullet petition inoperative.[4]

I mention this moment in gun control history for several reasons. First, once the Commission's Federal Register notice was published, we at CPSC were inundated with correspondence from gun supporters in an unprecedented fashion. So great was the volume of mail that we were forced to hire a staff person to do nothing but open letters – carefully setting aside for law enforcement authorities the various threats directed at the Commission and its personnel. As I recall, the agency received hundreds of thousands of letters opposing any action by CPSC. In addition, we received numerous calls and letters from members of Congress similarly opposing any agency action.

My point is not that anyone at CPSC objected to hearing from the public or the Congress, but that we faced such a volume of protests that we had to divert substantial resources simply to read and respond to the correspondence that we received – not to mention the various law suits filed against us by the National Rifle Association and other affiliated groups. Unfortunately, as the smallest and least funded health and safety agency,[5] we found these demands on time and staff resources to be extremely burdensome.

Turning more specifically to your question, in order for CPSC to address gun violence, we would have to do so through a combination of safety standards for firearms and effective consumer education. Given the extremely controversial nature of such approaches, I suspect any step we would take to lessen the dangers of firearms would be both costly and time-consuming. My own view is that we would need, at a minimum, significant additional statutory authority and greatly expanded funding – on the order of a 2-3 fold increase in our budget, if not more.

Second, a threshold question for Congress regarding added statutory authority for CPSC would be the nature of such authority. On one hand, Congress could limit our authority to ensuring that firearms and ammunition be free from defects that would interfere with the effective functioning of these products. In other words, we could be directed to guarantee that firearms and ammunition shoot as intended instead of unexpectedly or unreasonably misfiring or malfunctioning.

On the other hand, Congress could provide expanded authority to the Commission to regulate specific weapons or ammunition that presented an unreasonable risk of harming innocent people even when these products operated exactly as intended.

In my opinion, limiting CPSC to the first type of authority would do little to prevent gun violence. If anything, it might lead to more mayhem because of improved functionality of these

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[4] Pub. L. 94-284 (May 11, 1976).

[5] To put our budget in context, I would compare a sister agency, FDA, with CPSC. FDA's request for a budget *increase* for FY 2020 exceeded CPSC's *entire* budget by five times.

products. Providing us with the second type of authority might well lead to reduced incidents of violence, but this approach would clearly require political action that might be difficult to muster.

To be blunt, I fear that providing authority to CPSC even with greatly expanded resources would likely force us to turn our attention almost exclusively to the regulation of firearms. This would be to the detriment of regulating the safety of the roughly 15,000 other product categories under our jurisdiction.

Accordingly, I have reluctantly concluded that giving CPSC the primary authority to regulate firearm safety would so fundamentally alter the nature of our mission that I would prefer to see such authority provided to a much larger and more politically powerful agency than CPSC.

2. ***Question**: What can we – as a committee and Congress – do additionally to further empower the CPSC to help keep us safe and tackle our nation's gun violence epidemic, including increasing the Commission's funding?*

One small, but significant, step might be to authorize CPSC to broaden our data collection efforts to capture more precise data on the frequency and severity of firearm injuries. Although I am not an expert on the various restrictions on CDC's (and other agencies') ability to compile data on gun violence, I gather that the government has at least a modest ability to track the annual death and injury statistics associated with gun violence. As it turns out, CPSC has an excellent tool for compiling data and making national estimates of injuries associated with consumer products – our National Electronic Injury Surveillance System, known as NEISS. We gather data from a statistically representative group of hospital emergency rooms across the nation on a daily basis and use this data to make national estimates of injuries.

As I understand it, CPSC compiles some data on injuries associated with guns for CDC, but the sample size is smaller than what we typically collect and the estimates are therefore somewhat less reliable than those we compile for most consumer products. For most policy issues, a starting point typically needs to be the accumulation of accurate data. And, having a reliable source of data might help move the debate forward.

Submitted: May 3, 2019

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

COMMISSIONER DANA BAIOCCO

The Honorable Robin L. Kelly
U.S. House of Representatives
2416 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Kelly,

Thank you for your written questions following the April 9, 2019 hearing before the Subcommittee on Consumer Protection and Commerce. I have enclosed my responses using the Word document I received. I am available to discuss these and any other issues further at your request.

Sincerely,

[redacted]

Dana Baiocco
Commissioner

Enclosure

cc: The Honorable Frank Pallone, Jr.
Chairman, Committee on Energy and Commerce

The Honorable Greg Walden
Ranking Member, Committee on Energy and Commerce

The Honorable Jan Schakowsky
Chair, Subcommittee and Consumer Protection and Commerce

The Honorable Cathy McMorris Rodgers
Ranking Member, Subcommittee on Consumer Protection and Commerce

Responses to Additional Questions for the Record

Subcommittee on Consumer Protection and Commerce
Hearing on
"Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?"
April 9, 2019

The Honorable Dana Baiocco, Commissioner
U.S. Consumer Product Safety Commission

The Honorable Robin L. Kelly:

According to the National Center for Injury Prevention and Control, more than 31,000 men, women and children die annually from gunshot wounds in the United States. The burden of gun violence has taken an incredible toll on our nation. A recent study on gun violence found that the loss of quality of life, psychological and emotional trauma, decline in property values and other legal and societal consequences stemming from gun violence cost an estimated $174 billion, with the government absorbing $12 billion in costs.

The wide-ranging impact of gun violence is real, and the consequences are too great to ignore. It's critical that we act now to make our communities safer from guns. A bill that I introduced this Congress would amend the Consumer Product Safety Act and remove the exclusion of pistols, revolvers and other firearms from the Consumer Product Safety Commission's (CPSC) definition of "consumer product." This would allow the CPSC – which already oversees hazardous products that pose a threat to American consumers – to issue safety standards for guns and ammunition that will help reduce gun-related deaths.

The CPSC currently has jurisdiction over more than 15,000 kinds of consumer products used in and around the home, like teddy bears and bicycles. However, guns, which kill thousands of Americans every year, are virtually the only consumer product not regulated for health and safety. Regulation of the design of guns and ammunition can save lives and prevent serious injuries. If the CPSC can regulate relatively benign consumer products, it certainly should also be allowed to regulate guns, which pose a far greater threat to consumers. By allowing the CPSC to regulate guns, we'll be taking responsible steps in promoting common sense safety reforms that will reduce gun-related deaths. The sole task of the CPSC is to protect Americans from the dangers of certain consumer products, and by preventing them from regulating easily accessible firearms, we fail to adequately protect the everyday American from an epidemic of gun crime.

The mission of the CPSC is to protect consumers from an unreasonable risk of injury or death associated with use and foreseeable misuse of a consumer product. According to CPSC's data gathered through the National Electronic Injury Surveillance System from approximately 100

Emergency Departments throughout the country, about 22 percent of firearms injuries are unintentional. It is clear that guns pose a risk to consumers.

In that spirit, I ask an open question to all of you:

1. Do you think, given the current state of our nation's gun violence epidemic, if the CPSC were empowered – under the law, and with adequate resources and funding – to regulate firearms it would have a demonstrable impact in reducing gun violence?

   No

2. What can we – as a committee and Congress – do additionally to further empower the CPSC to help keep us safe and tackle our nation's gun violence epidemic, including increasing the Commission's funding?

   The U.S. Consumer Product Safety Commission (CPSC) has jurisdiction over gun locks and safes. Some studies suggest that when firearms are safely and properly stored and locked, firearm-related incidents, especially among children, are reduced.[1] Ensuring the safe design, manufacture, and sale of these products contributes directly to a safer environment. Furthermore, getting non-compliant and/or counterfeit versions of these products off the market quickly and/or stopping them at the ports is also essential. Thus, Congress might consider empowering the Agency to fortify its activities in these areas so that CPSC may contribute to the overall gun safety effort.

   It is also crucial that the Agency fully understand new technologies that are incorporated into products already under its charge. A 2017 CPSC Staff Report entitled *Potential Hazards Associated with Emerging and Future Technologies*[2] discusses how consumers are using new and emerging technologies to produce products at home. Three dimensional (3D) printing devices, for example, are available in the marketplace and some suggest that weapons can be made using this technology.[3] Whether and how guns, locks, safety devices, or any other product can be made or altered using non-traditional methods and new technologies are subject matters that CPSC must fully understand. Therefore, Congress can help CPSC prioritize the study and evaluation of new technologies, including (but not limited to) 3D printers, to ensure that the Agency is able to recognize associated safety hazards before they cause unreasonable harm to the American public.

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[1] *See, e.g.*, Miller, M., Azrael, D., Hemenway, D., Vriniotis, M., *Firearm Storage Practices and Rates of Unintentional Firearm Deaths in the United States*, Harvard Injury Control Research Center, Harvard School of Public Health, 661-667 (2005).

[2] *See, e.g.*, *Potential Hazards Associated with Emerging and Future Technologies (Rep.)* (Jan. 18, 2017), retrieved on May 3, 2019 from U.S. Consumer Product Safety Commission website: https://www.cpsc.gov/s3fs-public/Report%20on%20Emerging%20Consumer%20Products%20and%20Technologies_FINAL.pdf

[3] *See, e.g.*, Zhou, Marrian, "3D-printed Gun Controversy: Everything You Need to Know" C-net, https://www.cnet.com/news/the-3d-printed-gun-controversy-everything-you-need-to-know/ (accessed on May 3, 2019).

In a fast-paced world filled with emerging technologies, CPSC must be empowered to meet this challenging situation with a full complement of resources. As I noted in my written and opening remarks before the Subcommittee on April 9, I believe that CPSC must invest in modern technology and hazard identification systems, and develop promptly a robust plan to study and wholly understand new trends, products, and impending technology issues, which would include those that could ultimately impact the safe storage, operation, and use of firearms. Preparation and knowledge is key to CPSC's ability to contribute to the safety issues you raise.

Additional Questions for the Record

Subcommittee on Consumer Protection and Commerce

Hearing on

"Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?"

April 9, 2019

The Honorable Ann Marie Buerkle, Acting Chairman, U.S. Consumer Product Safety Commission

The Honorable Jan Schakowsky

1. Many people keep portable fuel containers in their homes. These products are prone to dangerous flame jetting and can quickly burn anyone nearby. The use of an inexpensive flame mitigation device can prevent flames from entering portable fuel containers and igniting the vapors, but current law does not require containers to have this safety mechanism in place. In 2015, CPSC wrote to ASTM International to offer its expertise and assistance in developing standards and test methods for flame mitigation devices for portable fuel containers. Please provide an update on these efforts.

   Response: Following CPSC staff's September 29, 2015 letter to ASTM International requesting an update on research on flame mitigation devices (FMDs) in gasoline containers, staff worked with the ASTM subcommittee members to develop a standard test method for assessing performance of FMDs on gasoline containers. As a result, ASTM published a new standard, ASTM F3326-19, *Standard Specification for Flame Mitigation Devices on Portable Fuel Containers*, in January 2019, with specific performance standards for FMDs on gasoline containers.

   CPSC staff have also been working with a separate subcommittee to develop a new voluntary standard for disposable fuel containers. CPSC previously contracted work in FY16 and FY18 for technical research to assist in developing a draft standard test method for FMDs on disposable fuel containers.

   Another major component of staff's work is to expand consumer awareness of the hazards of flame jetting. CPSC staff have collaborated with other stakeholders including the U.S. Chemical Safety Board, the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, the National Fire Protection Association, the American Chemical Society, the Fairfax County, VA Fire Department, the Portable Fuel Container Manufacturers

Association, Underwriters Laboratories, and the American Burn Association to educate consumers on this hazard.

2. Bed rails can be a hazard for seniors through entrapment, strangulation, and suffocation. CPSC staff received reports of 140 senior deaths associated with adult portable bed rails over the past 10 years. In 2013, CPSC received two petitions to ban or issue a mandatory standard for adult portable bed rails. Since then, it has been working with ASTM International to develop a voluntary standard, which was finalized in 2017.

    a. Has CPSC determined whether the voluntary standard eliminates or adequately reduces the risk of injury?
    b. If so, has CPSC determined whether substantial compliance with the voluntary standard is likely?
    c. What is the status of the petitions?

    Response: CPSC has determined that the new voluntary standard, ASTM F3186 - 17 "*Standard Specification for Adult Portable Bed Rails and Related Products,*" which was published in 2017, is expected to address entrapment, strangulation and suffocation. CPSC staff believes that the voluntary standard, if complied with, will reduce the risk of injury.

    The Commission considered the two petitions as one petition (CP 13-1), and in 2014 voted to defer the petition so staff could work with stakeholders to develop a voluntary standard. After staff completes its evaluation of the compliance with the voluntary standard, staff will provide the Commission with a briefing package on the standard's effectiveness and the level of expected compliance so the Commission can consider how to proceed with respect to the petition(s).

3. In 1983, CPSC closed an investigation of Federal Pacific Electric "Stab-Lok" circuit breakers, citing budget constraints. In 2011, CPSC clarified that it had closed the investigation without making a determination as to the safety of the circuit breakers. Several experts have expressed concern about the safety of these products.[1]

    a. Has CPSC received any incident reports regarding "Stab-Lok" circuit breakers since it closed its investigation in 1983? If so, please list them.

    Response: CPSC staff identified 32 reports of incidents between 1995 and 2018 positively associated with Federal Pacific Electric Stab-Lok breakers. 11 of the 32 incidents reportedly occurred after 2011. The table below list the incidents.

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[1] *Despite Previous Safety Concerns, This Circuit Breaker Is Still in Homes*, Washington Post (May 9, 2018) (www.washingtonpost.com/lifestyle/home/despite-previous-safety-concerns-this-circuit-breaker-is-still-in-homes/2018/05/08/8927af86-4ef9-11e8-b725-92c89fe3ca4c_story.html).

b. Has CPSC taken any subsequent action to investigate the safety of these products since 1983? If so, what action? If not, why not?

When the Commission re-evaluated this matter in 2011, it was concerned about the failure of these FPE breakers to meet UL calibration requirements, but was unable at that time to link those failures to the development of a hazardous situation. As noted above, there has not been an appreciable change in the incident data to warrant further reexamination for this issue, although staff continues to monitor for any emerging trends.

Incident	Date	Description	Severity of injury
1	3/1/1995	WHEN A SHORT OCCURRED AS A MAN WAS WORKING ON THE ELECTRIC FURNACE IN HIS HOME, THE CIRCUIT BREAKER IN THE ELECTRIC PANEL BOX FAILED TO TRIP. NO INJURY, FIRE HAZARD.	Incident, No Injury
2	2/8/2000	A HOUSE FIRE APPEARS TO HAVE STARTED IN THE CIRCUIT BREAKER BOX. THE HOME WAS BUILT IN 1986. NO INJURY.	Incident, No Injury
3	3/2/2000	A 25 YEAR OLD CIRCUIT BREAKER BOX DID NOT TRIP CAUSING A BUILDING FIRE NO INJURY.	Incident, No Injury
4	5/28/2002	NOBODY WAS INJURED WHEN A 50-AMP SUB-PANEL CIRCUIT BREAKER DID NOT TRIP, AND THE 60-AMP BREAKER ON THE MAIN PANEL PARTIALLY TRIPPED WHEN AN ELECTRIC CLOTHES DRYER IN A HOME HAD A SHORT CIRCUIT ON A HEATING ELEMENT.	Incident, No Injury
5	3/1/2004	A RESIDENTIAL CIRCUIT BREAKER FAILED TO TRIP DURING A DIRECT SHORT CIRCUIT. THE BREAKER IS LOCATED IN AN EXTERIOR MOUNTED ELECTRIC PANEL. NO INJURY.	Incident, No Injury
6	Unknown, Received 8/2005	A HOME INSPECTOR, WHILE INSPECTING THE ELECTRICAL PANELS IN SEVERAL HOMES FOUND LIVE WIRES SCORCHED DUE TO SPARKING. ALSO FIRE HAD DESTROYED A COUPLE OF HOMES WHEN THE CIRCUIT BREAKER IN THESE PANEL FAILED TO TRIP. NO INJURY.	Incident, No Injury
7	12/9/2006	A WOMAN STATED THAT THE CIRCUIT BREAKER BOX CAUSED HER ELECTRIC WATER HEATER TO STOP WORKING. SHE HAD A CIRCUIT BREAKER FAILURE & A CASCADE FAILURE FROM THE WATER HEATER. NO INJURY.	Incident, No Injury
8	1/8/2007	CONSUMER REPORTS SIGNIFICANT HEAT, SPARK & CORROSION WITHIN ELECTRICAL SERVICE PANEL. NO INJURY.	Incident, No Injury
9	1/20/2007	A MALE CONSUMER REPORTS THAT HIS CIRCUIT BREAKER WAS DAMAGED TO THE POINT WHERE THE TOP AND BOTTOM OF A PORTION OF THE HOUSING HAD A HOLE BURNED THROUGH IT. SEVERAL OF HIS ELECTRICAL OUTLETS DID NOT WORK AS A RESULT. NO INJURIES.	Incident, No Injury
10	9/10/2007	THE COMPLAINANT HAD TWO INCIDENTS WERE HE TURNED ON A WALL SWITCH FOR AN OVERHEAT FIXTURE AND THE SWITCHES BEGAN TO ARC AND SMOKE. BOTH TIMES THE ELECTRIC CIRCUIT BREAKER(S) IN THE MAIN ELECTRICAL PANEL DIDN'T TRIP. THERE WERE NO INJURIES.	Incident, No Injury
11	3/1/2008	A 66 YEAR-OLD FEMALE CONSUMER REPORTED THAT THE CIRCUIT BREAKER FAILED TO TRIP. NO INJURIES.	Incident, No Injury
12	11/23/2008	CONSUMER REPORTS THE CIRCUIT BREAKER OF AN APARTMENT BUILDING WAS WARM TO THE TOUCH, ARCING & SPARKS WERE COMING FROM THE PRODUCT. IT WAS DISCOVERED THE CIRCUIT BREAKER HAD A HOLE BURNED INTO THE BACK OF THE UNIT. NO INJURY.	Incident, No Injury

13	1/24/2009	CIRCUIT BREAKER FAILED TO TRIP OPEN WHEN A CIRCUIT WAS SHORTED OUT AND IT BURNT UP INTERNALLY. NO INJURY.	Incident, No Injury
14	7/10/2009	74 OLD FEMALE CONCERNED ABOUT FAILURES OF TWO CIRCUIT BREAKERS. ONE OTHER HAD BURNED WIRE FROM OVERHEATING.	Incident, No Injury
15	10/10/2009	BREAKER FAILED TO TRIP AFTER INSULATION FAILED ON DISHWASHER HOT WIRE FROM VIBRATION & AFTER ELECTRIC STOVE LOWER BURNER TURNED BRIGHT WHITE & MELTED A SECTION. ANOTHER BREAKER ALSO FAILED TO TRIP AFTER COMPUTER POWER SUPPLY BURNED UP.	Incident, No Injury
16	12/14/2009	A 54 YOF FEMALE RECEIVED AN ELECTRICAL SHOCK & FELL ACROSS HER KITCHEN FLOOR WHILE PLUGGING A LIGHT. THE CIRCUIT BREAKER HAD NOT TRIPPED. HER BREAKER PANEL HAS AN ENORMOUS FAILURE RATE & NEEDED IMMEDIATE REPLACEMENT.	Level of care not known
17	3/30/2010	CIRCUIT BREAKER KEEPS TRIPPING FOR THE BATHROOM WITH OR WITHOUT A LOAD ON.	Incident, No Injury
18	1/12/2011	Caller has lived in modular stationary mobile home since 2007 and from the first day she had problems with the breaker panel. On numerous occasions the owner/manager of the mobile home park switched breakers or parts from other panels in park. On many occasions when she would plug electrical products into an outlet she states that sparks would come out of outlet before she plugged into outlet. The mobile home she is living in is 40 yrs old, has had rats that she believes that they may have chewed on wiring. January 12, 2011 she had two space heaters running as well as her [hot tub/spa] when her friend smelled burning. She went to the breaker box, said there was burning, the main line coming into the box was red hot and melting so she disconnected it and did without heat for the night. The next morning she contacted the owner of the mobile home park who she says found amusement with her report of burning did come to her mobile home but did not wish to repair.	Incident, No Injury
19	4/14/2011	A 23 YEAR OLD FEMALE CONSUMER LOST POWER TO TWO BEDROOMS. SHE TESTED THE CIRCUIT BREAKER USING THE "TEST" BUTTON. WHEN POWER WAS NOT RESTORED, SHE REMOVED THE COVER FROM THE PANEL BOX AND DISCOVERED THE CIRCUIT BREAKER WAS BURNED. SHE DID NOT WITNESS FIRE OR SMOKE AND THE INCIDENT DID NOT CAUSE A SMOKE ALARM TO ACTIVATE. NO OTHER CIRCUIT BREAKERS TRIPPED DURING THE INCIDENT.	Incident, No Injury

20	5/7/2011	I am a home owner. I would like to share some information with you about the hazards of electrical panels / circuit breakers. I believe you are already aware of this issue. I urge you, please, to accelerate the replacement of these dangerous panels, perhaps through a public awareness campaign and other methods. When we bought our home, we were made aware of the hazards by the home inspector. He called it a major defect. As I understand it, it is not only the circuit breakers that are the problem, but other areas of design inside the panel as well. (When we had an electrician replace it, he found scorch marks inside.) As noted above, we have since replaced the panel but are aware that other homes in both our old and new neighborhoods have more of these panels. From research, there are many, many more of these panels across America.	Incident, No Injury
21	12/4/2011	The other night, our electric [REDACTED] dryer overheated/caught fire and filled the basement with smoke. The smoke alarm alerted us to this danger. When we went into the laundry room, the dryer was still running and the air was thick with smoke. The dryer was too hot to touch on any of the metal surfaces (sides and top). We opened the door to stop the cycle and yanked out the clothes which were also too hot to touch. In retrospect, that was probably the wrong thing to do in case they had actually been in flames. Most likely, lint got on the elements and burned. However, the dryer KEPT RUNNING even after it overheated/caught fire. We had to unplug it with a pot holder. The breaker DID NOT TRIP. My concern is that the purpose of the circuit breaker is to stop the electricity to an overheated or burning appliance to stop the electricity. In this case that did not happen.	Incident, No Injury
22	6/18/2012	Caller is an electrician for a large housing complex where not for the first time that when he changed the breaker to downsize it to a 15 amp, 2 pole, the wire stays dangled and energized posing a burn hazard. This has happened on eight breakers, occurring in the higher amp breakers but not with the lower amp breakers. The 15 amp breakers in the complex have been downsized from 20 amps to 15 amps. The breakers inside are 20 amps and the breakers outside are 100 amps in an enclosed area. The caller identifies this as a safety hazard and would ask that it be investigated before there is a fire.	Incident, No Injury

23	10/17/2012	In September of 2006 I began a remodel of my home. While changing out light fixtures I became aware of a CIRCUIT BREAKER that, when switched off, did not disconnect the circuit. I purchased a replacement and installed it. In October of 2012 I was informed that my breakers, were sub-standard and unsafe. (Our housing complex maintenance dept. WEB-SEARCH) An electrician came to my home and tested my breakers. One 15 amp breaker would not trip when and excessive load was applied. My panel was replaced with [REDACTED] equipment. My duplex "other half" was inspected visually. Its breaker panel contained breakers with significant "CHARRING" around the bus contact areas. The panel was replaced. Our duplex was constructed in 1987.	Incident, No Injury
24	1/9/2013	Our realtor informed us that we would need to change our electric panel circuit breaker box in order to put our house on the market. We contacted an electrician. He confirmed that these panels are "deadly" and "scare" him. We will need to replace the unit. However, this item continues to be sold on-line even though the manufacturing is no longer in business. There has never been a recall for the product and consumers are spending significant dollar amounts out of their own pockets to replace these malfunctioning circuit breakers.	Incident, No Injury
25	3/21/2013	I have just found out, I have a REDACTED circuit breakers' box, which is known to be hazardous!	Incident, No Injury
26	5/15/2014	Since the 1980's I've researched and published public information on the hazards of circuit breakers, including the US CPSC documents, independent research, and more than 170 reports of field failures of the product. I've also addressed (and recommend against) the use of replacement circuit breakers as there is not only no evidence that these products have corrected the original design and performance flaws in the product line, there is some evidence both in limited independent tests as well as field failure reports that replacement breakers, at a rate far above usual industry failure rates, perhaps 14% failure rate or higher as opposed to less than 0.01% failures across most of the industry.	Incident, No Injury
27	7/13/2014	Breaker panel preventing the sale of my home.	Incident, No Injury
28	2/24/2016	My new insurance company is reusing coverage until I replace an unsafe product, breaker panel. This is in my condo that was built in 1972. There have been a recall issued on this product. I only have until the end of March to get this completely replaced. This condo is being rented at this time. Time is of the essence!	No Incident, No Injury

29	12/7/2016	I filed one report, but cannot find it on the web site. So, I am filing the report again. Our family had the horror of being a home with a circuit breaker panel box. It dated from a previous owner add-on in the early 1960s, and by the 1990s, spot outlet fires began to occur. Audible hums from the walls and dimming of lights while those had occurred, along with flickering lights when the washing machine was running were thought of as strange, but not anything was thought to be coming from the circuit breaker panel box. This changed, however, when in December 2016, a burning odor began emanating from the circuit breaker panel box itself when an upright vacuum cleaner was in use, and later on, when a circuit breaker had tripped, and an electrical burning odor was noticed. The circuit appeared to not have functioned properly. Power was out to certain parts of the house, but the burning odor was there. No flames were noted.	Incident, No Injury
30	5/16/2017	Found a melted down panel in a residence. Breaker failed to trip causing the main service cable to melt down along with the breaker. The wire reached temperatures hot enough to weld the main lug to the copper wire. Active sparking and glowing wires when arriving at the property.	Incident, No Injury
31	5/11/2018	This report regards the residential circuit breaker panel and circuit breakers. A recent (May 2018) story indicated that the CPSC intends to revisit the issue of the likelihood that this product and configuration will cause fires in homes because the circuit breakers fail to trip in circuit overload conditions. This is NOT a failure report, but I cannot find where to file a positive statement. BACKGROUND: My specific interest is that I have in my home a panel that I installed in the late 1980s, using a panel and breakers my wife found at a yard sale. No doubt, this panel was pulled out as a result of the criticism at the time. I am not a licensed electrician, so I knew nothing of the apparent controversy. As with several rental and residence properties I had owned, I installed the panel consistent with code requirements after obtaining a permit from local county authorities.	No Incident, No Injury
32	5/25/2018	Panel showed evidence of arcing and smoke according to my electrician.	Incident, No Injury

4. At the hearing, during discussion of the Britax settlement, you stated that CPSC "will monitor that plan very closely and we will also make sure they issue, they will send us reports about the recall and we will monitor those very closely, that they've complied with the settlement agreement." According to the *Washington Post*, Britax failed to notify consumers, dealers, retailers, and secondary markets about the "information campaign" as required by the settlement.[2]

[2] *Britax Missed Deadline to Send Some Notices About Its BOB Strollers, Despite Deal with Federal Agency*, Washington Post (Apr. 9, 2019) (www.washingtonpost.com/business/economy/britax-missed-deadline-to-send-some-notices-

a. How could Britax fail to fulfill these obligations if CPSC was monitoring compliance very closely?

Response: The Consent Agreement and Order require Britax to submit quarterly reports to the CPSC staff that include the number of views of the Information Campaign, and the number of consumers who took advantage of the particular incentives. The first quarterly report was submitted on April 10, 2019. It is customary for staff to review a firm's compliance with a corrective action plan by monitoring the reports received by a firm, and that procedure was followed here.

Britax also provided additional information regarding its compliance with the terms of the Consent Agreement, and staff has been in communication with the Firm regarding the Firm's obligations under the Agreement and Order.

b. What action will CPSC take in response to this apparent breach of the settlement?

Response: The CPSC has not yet determined what actions it may take in response to various concerns about the Britax matter.

c. Has CPSC determined whether any other terms of this settlement have been breached? If so, which terms?

Response: The Commission has made no determination on these matters as of this date.

d. Has CPSC reviewed its other settlements to determine whether they have been violated? If so, please list all violations and any action CPSC has taken in response.

Response: In the case *In the Matter of Baby Matters, LLC*, CPSC Docket 13-1, staff monitored compliance with a May 2013 Consent Agreement that required the firm to maintain a recall website for five years. Staff determined in June 2016 that Respondent Baby Matters, LLC had not properly maintained the website as required by the Consent Agreement, and required the firm to correctly display the recall website. The firm then corrected the website.

In the case of *In the Matter of Maxfield and Oberton Holdings, LLC*, CPSC Docket 12-1, staff monitored a May 2014 Consent Agreement that required the Respondent timely to transfer funds into a Recall Trust to provide refunds to consumers. Staff determined in May 2015 that Respondent had not timely transferred money to the trust in accordance with the schedule established in the Consent Agreement. Staff contacted Respondent to ensure compliance, and Respondent then transferred the funds as required.

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about-its-bob-strollers-despite-deal-with-federal-agency/2019/04/09/5a1ca832-57c1-11e9-9136-f8e636f1f6df_story.html).

In both cases, staff was able to resolve the matter and promptly bring the firm into compliance.

5. How does your office ensure that commissioners get information regarding investigations and enforcement actions? Is there a protocol for informing commissioners at specific times?

Response: Commissioners receive regular updates from various staff offices including the offices of the Executive Director, Compliance and Field Operations, General Counsel, Hazard Identification and Reduction, Communications, Legislative Affairs, Import Surveillance, International Programs, Financial Management and the Small Business Ombudsman, as well as others. Commissioners may also request briefings from staff on specific issues they may be interested in.

Specifically, the Office of Compliance and Field Operations provides multiple reports on a recurring basis to ensure that Commissioners get information on investigations and enforcement actions, including monthly status reports, weekly briefings by the Office of the Executive Director and biweekly briefings with the Director of the Office of Compliance and Field Operations. In addition to these regularly scheduled briefings, the Office of Compliance and Field Operations also provides ad hoc briefings to Commissioners on emerging topics of interest.

During my tenure as Acting Chairman, I have made sure that other Commissioners have received more information on Compliance matters than I was privy to when I was a Commissioner.

The Honorable Robin L. Kelly

According to the National Center for Injury Prevention and Control, more than 31,000 men, women and children die annually from gunshot wounds in the United States. The burden of gun violence has taken an incredible toll on our nation. A recent study on gun violence found that the loss of quality of life, psychological and emotional trauma, decline in property values and other legal and societal consequences stemming from gun violence cost an estimated $174 billion, with the government absorbing $12 billion in costs.

The wide-ranging impact of gun violence is real, and the consequences are too great to ignore. It's critical that we act now to make our communities safer from guns. A bill that I introduced this Congress would amend the Consumer Product Safety Act and remove the exclusion of pistols, revolvers and other firearms from the Consumer Product Safety Commission's (CPSC) definition of "consumer product." This would allow the CPSC – which already oversees hazardous products that pose a threat to American consumers – to issue safety standards for guns and ammunition that will help reduce gun-related deaths.

The CPSC currently has jurisdiction over more than 15,000 kinds of consumer products used in and around the home, like teddy bears and bicycles. However, guns, which kill thousands of Americans every year, are virtually the only consumer product not regulated for health and safety. Regulation of the design of guns and ammunition can save lives and prevent serious injuries. If the CPSC can regulate relatively benign consumer products, it certainly should also be allowed to regulate guns, which pose a far greater threat to consumers. By allowing the CPSC to regulate guns, we'll be taking responsible steps in promoting common sense safety reforms that will reduce gun-related deaths. The sole task of the CPSC is to protect Americans from the dangers of certain consumer products, and by preventing them from regulating easily accessible firearms, we fail to adequately protect the everyday American from an epidemic of gun crime.

The mission of the CPSC is to protect consumers from an unreasonable risk of injury or death associated with use and foreseeable misuse of a consumer product. According to CPSC's data gathered through the National Electronic Injury Surveillance System from approximately 100 Emergency Departments throughout the country, about 22 percent of firearms injuries are unintentional. It is clear that guns pose a risk to consumers.

In that spirit, I ask an open question to all of you:

1. Do you think, given the current state of our nation's gun violence epidemic, if the CPSC were empowered – under the law, and with adequate resources and funding – to regulate firearms it would have a demonstrable impact in reducing gun violence?

Response: I have concerns on whether CPSC is the appropriate agency to regulate firearms, even with additional funding. Gun violence is a problem with many causes, many of which the CPSC is not set up to address. We are a small agency with an already large mission. I

am proud to say that the CPSC works every day to prevent injuries and deaths, and has made great progress on many hazards. I think adding firearms to that mission could easily become an all-consuming exercise. Depending on the authority given to the CPSC, it is possible that there could be an impact on firearm incidents but the cost to CPSC's core mission should not be dismissed.

2. What can we – as a committee and Congress – do additionally to further empower the CPSC to help keep us safe and tackle our nation's gun violence epidemic, including increasing the Commission's funding?

Response: As I mentioned at the hearing, CPSC needs additional funding and resources to help us accomplish our mission. The committee and Congress can assist us most by providing those resources. Currently, CPSC does enforce the safety of gun safes, other firearms locking devices and youth-resistant firearm containers. CPSC participates in voluntary standards on locking devices and youth-containers and recently called for updates to these standards. Earlier this year we issued a recall of a gun safe that could fail and allow access to the firearms inside. Our efforts related to these products help prevent needless tragedies related to guns. I am aware of proposals to expand CPSC's authority on this issue. I stand ready to carry out any law Congress may enact.

The Honorable Cathy McMorris Rodgers

1. Acting Chair Buerkle, I am strongly concerned about the open table saw rulemaking that would grant a government mandated monopoly to one company, using unclear data, with no FRAND licensing terms. The courts have struck down the agency when it's gone too far – most recently in the 10th Circuit.

   a. What are your process reform priorities for the Consumer Product Safety Commission's (CPSC) agenda, and how we can ensure safer products for consumers and less taxpayer funds are at risk of being tied up in litigation?

   Response: I agree with your concerns and believe the priority should be consumer safety. A priority of mine has been that staff works within the confines of our governing statutes. In rulemaking, it is essential that we meet all statutory requirements so that any action we take will withstand legal scrutiny.

2. Acting Chair Buerkle, I believe in streamlined and efficient government – which requires interagency cooperation and public private partnerships. I'm concerned about the risk of duplication with limited resources in some of the discussion around Internet of Things activities. Can you describe the Commission's interagency work and how you plan to avoid duplicative regulations, particularly with initiatives around internet-connected consumer products?

   Response: I also believe in streamlined and efficient government with an emphasis on collaborations with all of our stakeholders, including our sister agencies. The Internet of Things (IoT) presents new and unique challenges and opportunities for the CPSC, because internet connectivity introduces new capabilities over a wide spectrum of products. We recognize the importance of collaborating with other federal agencies and our stakeholders to avoid duplicative efforts and reach consensus on the best approach to keep consumers safe.

   To that end, CPSC is taking a three-pronged approach to address the safety of internet connected consumer products:
   - development of voluntary standards (domestic and international),
   - collaboration and coordination with other federal agencies and foreign governments, and
   - collaboration and coordination with our stakeholders.

   Under my leadership, CPSC staff established an Interagency Working Group on Consumer Product Safety of Internet Connected Products. Participating agencies include the National Institute of Standards and Technology's (NIST) National Cybersecurity Center of Excellence (NCCoE), the Food and Drug Administration (FDA), the Federal Trade Commission (FTC), the Federal Communications

Commission (FCC), the Department of Energy (DoE), and the Department of Homeland Security (DHS).

The CPSC's Interagency Working Group serves as a focal point for information sharing, research, and enforcement activities specific to internet connected consumer products. The purpose of the Interagency Working Group is to articulate each agency's roles and responsibilities on internet connected products, identify potential gaps that agencies are experiencing, find opportunities to learn from each other in a collaborative manner, create an opportunity for interagency-cooperation, promote the development of voluntary, consensus-based standards, and for CPSC to develop high level best practices baselines to ensure that connected consumer products are secure by design.

Additionally, as Acting Chair, I have advanced the concept of "tech to tech" meetings with our stakeholders. These have been very productive in the development of voluntary standards. The agency has increased its number of public meetings and interactions with all of our stakeholders.

3. Acting Chair Buerkle, in a typical case where Section 6(b) of the Consumer Product Safety Act would apply, what is the process the Commission currently undergoes to provide a company notice of public disclosure of information?

Response: The most common case is a request for a company's records pursuant to the Freedom of Information Act. In this case, CPSC's FOIA Office provides notice to the company via its electronic FOIA Public Access Link (PAL) or certified U.S. mail to inform them that a request was made for records pertaining to them. A copy of the potentially responsive records (with redactions for any exempt inter- or intra-agency communications, or personally identifiable information (PII)) is attached to the notice and the company is given 15 business days to respond with comments as to why the records should or should not be disclosed.

4. Acting Chair Buerkle, please explain the statutory options the Commission has to notify the public of imminent hazards, such as an action filed pursuant to Section 12 of the Consumer Product Safety Act?

   a. If necessary, can the Commission file an administrative complaint? If so, please explain.
   b. If necessary, can the Commission make a "health and safety finding" under Section 6 to shorten the notice period? If so, please explain.

Response: Section 12 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2061, gives the Commission authority to file an action in a U.S. District Court against an "imminently hazardous consumer product" for seizure of such product or against any person who is a manufacturer, distributor or retailer of such product, or both. An "imminently hazardous consumer product" is defined as a consumer product which

presents imminent and unreasonable risk of death, serious illness, or severe personal injury. Filing an action under section 12 in Federal court could provide temporary and permanent injunctive relief in the form of an order requiring public notice, recall, or refund after hearing by the court.

Section 15(c)(1) of the CPSA, 15 U.S.C. § 2064(c)(1) allows the Commission to notify a manufacturer that a product is an "imminently hazardous consumer product" where it has filed an action under section 12. In such circumstance, the Commission can order the manufacturer to cease distribution of the product and notify all persons that transport, store, or distribute the product to cease distribution. The Commission can further order the manufacturer to notify appropriate state and local health officials, and the public. Under section 15(c)(3) of the CPSA, if the district court determines that the product is not an "imminently hazardous consumer product" under section 12, the Commission must rescind its order.

The Commission may also issue such an order after filing an administrative complaint under section 15(c)(1) against a manufacturer and determining, after a hearing under 5 U.S.C. § 554, that a product distributed in commerce presents a substantial product hazard and that notification is required in order to adequately protect the public from such substantial product hazard.

Section 12(c) of the CPSA, 15 U.S.C. § 2061(c) provides that the Commission, where appropriate, shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product where a section 12 proceeding is filed in District Court.

Where the Commission has filed an action under section 12 of the CPSA, or initiated a Rulemaking or Adjudicatory proceeding, section 6(b)(4) of the CPSA makes inapplicable the 6(b)(1) public disclosure requirements for a manufacturer's advance notice and opportunity to comment on product specific information (which includes a provision for a public health and safety finding to shorten the applicable notice period).

5. Acting Chair Buerkle, if a potential hazard relates more to a category of consumer products, rather than a particular product associated with a specific company, does Section 6(b) apply? If not, please explain.

Response: Section 6(b)(6) of the CPSA, 15 U.S.C. § 2055(b)(6), governs the Commission initiation of the public disclosure of information that reflects on the safety of a consumer product or class of consumer products, whether or not the public could ascertain readily the identity of any manufacturer or private labeler. Section 6(b)(6) requires the Commission to establish procedures designed to ensure that such information is accurate and not misleading. Section 6(b)(7) of the CPSA, 15 U.S.C. §

2055(b)(7), requires the Commission, where it has made a public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product or upon the practices of any manufacturer, private labeler, distributor or retailer of consumer products, shall in an equivalent manner, publish a retraction of such inaccurate or misleading information.

6. Acting Chair Buerkle, I have serious concerns with agencies issuing guidance as a basis for agency action. Will you commit to working within your statutory authority and avoiding extra-statutory actions?

   Response: I share your concern related to agencies utilizing guidance as a method to circumvent proper administrative procedure. I believe any agency policy, rulemaking or other administrative action should follow CPSC's statutes and proper procedure.

7. Acting Chair Buerkle, I am always concerned with protecting consumers and small businesses while fostering an environment that supports innovation. Please provide an update on the Regulatory Robot and how the Commission will think about how burdens on small businesses impact consumer safety and choice under your leadership?

   Response: The Small Business Ombudsman (SBO) office provides businesses the information they need to ensure they are making and importing compliant products. To better assist small businesses in identifying applicable requirements to their product, in 2018 the SBO released an enhanced version of the Regulatory Robot which is now available online at https://business.cpsc.gov/robot. The Robot 2.0 asks users to identify their product category and answer a few short, intuitive questions to generate an end report listing applicable labeling, testing, and product certification requirements. The Robot is available entirely in English and Chinese (simplified), and available for some product categories in Spanish, Vietnamese, and Bahasa Indonesia.

   Throughout my CPSC tenure, I have stressed the importance of hearing from all stakeholders, including small businesses. I regularly rely on feedback received by the SBO to understand and consider ways that we may be able to eliminate unneeded regulatory burdens without compromising safety. In 2017, CPSC issued a request for information on ways to reduce regulatory burdens. Staff have compiled responses to that request and we are examining ways we can move forward with some of the suggestions we have received.

8. Acting Chair Buerkle, you have repeatedly stated that voluntary safety standards are generally preferable to mandatory ones. There many misconceptions about voluntary standards, which are not in fact voluntary for industry. Please explain why they are preferable, and whether they are faster than rulemaking proceedings at the CPSC.

Response: The Consumer Product Safety Act expresses a strong preference for voluntary standards rather than government-imposed mandatory standards for most products. Voluntary standards are developed through a structured, consensus-driven process by standards setting organizations such as ASTM, ANSI and UL. The committees that set these standards include participants from the regulated community, consumer advocates, testing labs and the CPSC. Voluntary standards often become widely adopted due to market forces (such as purchasing requirements established by the retail sector or consumer preference for certified products) and the fact that there is buy-in from the regulated industry and stakeholders as they are developed.

CPSC-promulgated mandatory standards generally take much longer to develop than the voluntary standard process. Apart from durable nursery products and other statutory exceptions, CPSC has promulgated only two mandatory standards in the last 14 years. The most recent one was vacated by the courts. Mandatory standards are also harder to update as opposed to voluntary standards which are continually being updated to keep up with emerging hazards and trends.

I am not opposed to mandatory standards if a voluntary standard is found to be insufficient for addressing the hazard or it is not being widely complied with, as our statute dictates.

9. Acting Chair Buerkle, in the CPSC 2020 Budget Request, you state that the CPSC will collaborate with other agencies and industry to advance consumer product safety. I'm pleased to hear you will work with other agencies, and hopefully avoid wasteful duplication. Can you explain why collaboration is important and what, if any, efforts are underway?

Response: Staff actively participates in the development of consensus-based consumer product safety standards which includes consumer advocacy groups, industry, testing labs and other stakeholders. Staff anticipates participating in 74 voluntary standards activities in FY19 for products including numerous juvenile products, Internet of Things and interconnected devices, high-energy density rechargeable batteries and many others.

In addition to the CPSC establishing the Interagency Working Group described in the response to question 2, CPSC works with numerous other agencies to fulfill its mission. One of the more successful partnerships CPSC has is with U.S. Customs and Border Protection. CPSC has built an effective import program that includes co-locating CPSC investigators to work side by side with CBP staff at the largest ports of entry. As an agency with limited resources, CPSC would not be able to do the critical work of intercepting high risk products before they reach consumers without CBP's help.

CPSC's Risk Assessment Methodology (RAM) targeting system utilizes a feed of import data from CBP, and when combined with CPSC's internal data, helps our staff

prioritize shipments to stop for examination. CPSC also has staff co-located at CBP's Commercial Targeting and Analysis Center – or CTAC - in Washington DC. Along with other government agencies that have an interest in targeting commercial shipments, CTAC serves as a fusion center to coordinate activities and share information.

As Acting Chairman, I am involved in addressing the tough policy issues facing government agencies in the area of trade facilitation and trade enforcement. I currently serve as the Vice-Chair of the Border Interagency Executive Council (BIEC). The BIEC is comprised of senior leaders from various agencies with jurisdiction over imports and exports. As budgets become tighter it is more important than ever that agencies work together to find solutions that make sense in terms of protecting the public while efficiently using taxpayer dollars.

10. Acting Chair Buerkle, you and several of your colleagues have indicated publicly that transparency and stakeholder engagement have been one of your key priorities. Do you intend to establish a formal trade advisory group to inform the agency on such issues as import screening and enforcement? Please walk us through your analysis.

Response: I do not oppose a formal trade advisory group, but the costs of such an approach can be substantial. I have tried to achieve the same objectives at lower cost by increasing stakeholder engagement and transparency throughout the agency. I continue to be open to more formal advisory groups if the agency's appropriation allows.

11. Acting Chair Buerkle, this Committee worked on bipartisan legislation addressing liquid nicotine and required child-proof caps on containers. What actions has the Commission taken on this issue, and what are you seeing in the marketplace as a result of this legislation?

Response: In fiscal year 2017, CPSC launched an inspection program to evaluate industry compliance with the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA). Over 300 establishment inspections were conducted. The majority of violations found during these inspections concerned certification-related violations. There were a small number of violations that concerned special packaging violations. These generally involved low volumes of inventory in which the establishment chose to destroy the violative products during the on-site inspection. In addition, a few establishments were found to be manufacturing liquid nicotine products in-house and not using special packaging. In these cases, CPSC staff worked with these firms to bring their products into compliance.

In April 2019, CPSC launched a new compliance effort. In addition to child-resistance, this program also is evaluating compliance with the CNPPA's flow restriction requirements. Collection of products for testing and determination of their

compliance is ongoing, and we will take appropriate action to remove violative product from the market.

CPSC continues to work to inform and educate industry members, including suppliers and retailers, to promote compliance with the law. Staff has issued several letters this year to provide guidance on the packaging and certification requirements of the CNPPA as well as supplying testing protocols for restricted flow.

12. Acting Chair Buerkle, please give us an update on the Fast Track Recall process. Are there any barriers to this program reaching its full potential, and are there any ways that Congress could improve the program?

Response: The Fast Track program has been in place 22 years, and has proven to be a valuable tool for responding quickly to address hazardous consumer products both in the marketplace and with consumers. Between FY14 and FY18, CPSC has, in conjunction with firms, removed approximately 433 million products that posed a safety concern from the marketplace — approximately 45% of all product removals over that time period were under the Fast Track program.

Our staff is currently evaluating the Fast Track program to identify areas for improvement. Once our evaluation is complete, I will inform the Committee should improvements to the program need support from Congress.

Additional Questions for the Record

Subcommittee on Consumer Protection and Commerce
Hearing on
"Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?"
April 9, 2019

The Honorable Elliot F. Kaye, Commissioner
U.S. Consumer Product Safety Commission

The Honorable Robin L. Kelly:

According to the National Center for Injury Prevention and Control, more than 31,000 men, women and children die annually from gunshot wounds in the United States. The burden of gun violence has taken an incredible toll on our nation. A recent study on gun violence found that the loss of quality of life, psychological and emotional trauma, decline in property values and other legal and societal consequences stemming from gun violence cost an estimated $174 billion, with the government absorbing $12 billion in costs.

The wide-ranging impact of gun violence is real, and the consequences are too great to ignore. It's critical that we act now to make our communities safer from guns. A bill that I introduced this Congress would amend the Consumer Product Safety Act and remove the exclusion of pistols, revolvers and other firearms from the Consumer Product Safety Commission's (CPSC) definition of "consumer product." This would allow the CPSC – which already oversees hazardous products that pose a threat to American consumers – to issue safety standards for guns and ammunition that will help reduce gun-related deaths.

The CPSC currently has jurisdiction over more than 15,000 kinds of consumer products used in and around the home, like teddy bears and bicycles. However, guns, which kill thousands of Americans every year, are virtually the only consumer product not regulated for health and safety. Regulation of the design of guns and ammunition can save lives and prevent serious injuries. If the CPSC can regulate relatively benign consumer products, it certainly should also be allowed to regulate guns, which pose a far greater threat to consumers. By allowing the CPSC to regulate guns, we'll be taking responsible steps in promoting common sense safety reforms that will reduce gun-related deaths. The sole task of the CPSC is to protect Americans from the dangers of certain consumer products, and by preventing them from regulating easily accessible firearms, we fail to adequately protect the everyday American from an epidemic of gun crime.

The mission of the CPSC is to protect consumers from an unreasonable risk of injury or death associated with use and foreseeable misuse of a consumer product. According to CPSC's data

gathered through the National Electronic Injury Surveillance System from approximately 100 Emergency Departments throughout the country, about 22 percent of firearms injuries are unintentional. It is clear that guns pose a risk to consumers.

In that spirit, I ask an open question to all of you:

1. Do you think, given the current state of our nation's gun violence epidemic, if the CPSC were empowered – under the law, and with adequate resources and funding – to regulate firearms it would have a demonstrable impact in reducing gun violence?

   RESPONSE:

   If Congress wants to expand the CPSC's jurisdiction, we would need a significant boost in annual funding in order to discharge any additional regulatory responsibilities.

2. What can we – as a committee and Congress – do additionally to further empower the CPSC to help keep us safe and tackle our nation's gun violence epidemic, including increasing the Commission's funding?

   RESPONSE:

   Over the years CPSC staff have worked on two voluntary standards addressing the hazards associated with children accessing firearms: the voluntary standard for Youth-Resistant Firearm Containers (ASTM F2456) and the voluntary standard for Nonintegral Firearm Locking Devices (ASTM F2369). In 2018, CPSC staff sent a report and letter to ASTM with recommendations to strengthen these voluntary standards. Going forward, CPSC staff should continue to monitor and participate in these voluntary standards efforts.

Additional Questions for the Record

Subcommittee on Consumer Protection and Commerce
Hearing on
"Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?"
April 9, 2019

Ms. Rachel Weintraub, Legislative Director and General Counsel
Consumer Federation of America

The Honorable Jan Schakowsky:

1. Safety advocates have called for the use of flame arrestors on portable fuel containers to prevent flashback explosions, which can lead to injuries and death. CPSC does not currently have a mandatory standard in place that requires the use of these devices. Do you believe a standard is necessary to reduce this hazard?

Yes. I agree that flame mitigation devices or flame arrestors should be required to be included in the manufacturing of portable fuel containers to prevent injuries and deaths caused by flashback explosions, which occur when vapors coming from these containers ignite. The voluntary standard is not adequate and is failing to address this hazard. I believe that a mandatory standard that effectively addresses the hazards posed by flashback explosions by requiring flame mitigation devices such as flame arrestors is necessary.

2. In 2013, Consumer Federation of America petitioned CPSC to adopt a mandatory standard for adult portable bed rails to address risks of asphyxiation and entrapment associated with their use. Since then, a voluntary standard has been adopted. Do you believe that the voluntary standard adequately addresses the risks or is further action necessary? If you believe that further action is warranted, do you believe that Congress should direct CPSC to adopt a mandatory standard for adult portable bed rails?

In 2013, Consumer Federation and other groups petitioned the CPSC urging them to promulgate a mandatory standard for adult portable bed rails. ASTM published F3186-17, *Standard Specification for Adult Portable Bed Rails and Related Products,* on August 30, 2017. I believe that to assess whether the voluntary standard is adequate in addressing the suffocation, strangulation and entrapment hazards posed by these products, further information is necessary. Specifically, the CPSC should immediately make available: death and injury data from before and after the existence of the voluntary standard, compliance information with the voluntary standard, indicating what percentage of the manufacturers of this product are complying with this standard. We understand that the CPSC "has not assessed the market to determine whether there

is likely to be substantial compliance with the standard."[1] And instead the CPSC is testing a random sample of 35 adult portable bed rail products and is planning to deliver these results along with an update on death and injury data in FY 2019.[2] We believe that this analysis must occur immediately, urge the CPSC to engage in broader market place assessment than the 35 random sample tests proposed, and urge the immediate release of death and injury data. If this data indicates that the voluntary standard is failing to address the strangulation, entrapment, and suffocation hazard posed by these products, we urge that an effective mandatory standard be promulgated.

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[1] July 18, 2018 Memo from George A. Borlase and Michael Taylor to the Commission, regarding "July 2018 Update to Petition CP-13-1 Request for a Ban or Standard for Adult portable Bed Rails" available on the web at https://www.cpsc.gov/s3fs-public/July%202018%20Update%20to%20Petition%20CP%2013-1%20Adult%20Portable%20Bed%20Rails%20-%20July%2018%202018.pdf?4iH.nu0RcuJMBe2HefKigVGRFGvtQaM_

[2] Ibid.

Additional Questions for the Record

Subcommittee on Consumer Protection and Commerce
Hearing on
"Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?"
April 9, 2019

Mr. Mike Gentine, Counsel, Schiff Hardin LLP

The Honorable Cathy McMorris Rodgers:

1. Mr. Gentine, in your experience, does product price effect overall recall completion rate? How should data about recall completion rates be reported to note for how consumers treat products depending on their cost? Please explain.

   First, I believe far too little reliable, scientific-quality research has been done regarding consumer recall response behavior. This leaves all stakeholders to rely on anecdotal observation and inhibits companies' ability to tailor recall approaches to maximize recall remedy adoption. I believe all could benefit from CPSC's partnering with an entity experienced in such research – such as the White House Office of Science & Technology Policy – to broaden understanding of consumer behavior.

   Drawing primarily from such anecdotal observation (supplemented by some quantitative analysis of recall responses) CPSC has observed that product price is a significant driver of observed recall completion rate. This observation is consistent with my experience, and I believe product price is second only to hazard severity in motivation consumers to act in some fashion. Further, I believe it is the most important factor in consumers' decision to avail themselves of the remedy prescribed by the recall. Even for a severe hazard, an inexpensive product is more likely to be simply discarded. While this frustrates companies' and CPSC's efforts to track recall effectiveness, it is entirely rational consumer behavior.

   Unfortunately, tracking this rational behavior is likely impossible. For example, consumers who do not feel that returning a recalled product for a replacement is worth their time are unlikely to take the time to return confirmation cards.

2. Mr. Gentine, are any stakeholders, including consumer groups, able to engage in the voluntary standard process? If so, what has your experience been with various stakeholders engaging with the standards setting process?

All stakeholders, including consumer groups, are able to engage in the voluntary standard process. In my experience, not only are consumer groups able to participate, they are ably represented by some of the same people who shared the witness table with me.

a. Are the voluntary standard setting bodies comprised of representatives from various stakeholder groups?

These bodies are comprised of representatives from all stakeholder groups and make significant efforts to continue that representation. Not only are consumer groups and CPSC staff are not only represented, but their opinions are given significant weight.

3. Mr. Gentine, in your testimony you state that voluntary standards are a vital force multiplier. Please explain why.

CPSC's total staff hovers around 550 or less. While many of these slots are allocated to engineers and human factors experts – among the most vital contributors to standards-setting exercise – others must be comprised of a variety of other skillsets in order for CPSC to pursue its safety mission or even keep the lights on. As such, CPSC cannot conceivably work directly to monitor trends among all of the 15,000-plus product categories within its jurisdiction, much less spend the time necessary to advance safety standards in each of them all the time. Moreover, a CPSC massive enough for such direct, resource-intensive involvement would be both far costlier and a much greater burden on the American economy, with scant return on those investments – very few product categories merit this level of activity at any given moment, and that number continues to diminish as the collaborative efforts of CPSC, consumer groups, manufacturers, retailers, and other stakeholders continues to advance overall consumer safety. By working with and through the voluntary, consensus standards bodies, CPSC can leverage the expertise and the time of experts from many disciplines and all stakeholders. It is the standards-setting version of cloud computing.

4. Mr. Gentine, please explain the ways companies are incentivized to follow voluntary standards for product safety?

First, CPSC staff use compliance or (particularly) non-compliance with applicable voluntary, consensus standards as factors in making defect determinations under Section 15 of the Consumer Product Safety Act (CPSA) (15 U.S.C. § 2064). Thus, companies who comply with such standards are less likely to face requests that they recall their products. CPSC should ensure that its use of this factor never approaches establishing a de facto *rule and exposes the agency to criticisms of backdoor rulemaking, but consideration of compliance with voluntary, consensus standards is an appropriate means of leveraging the work of these bodies to enhance CPSC's ability to protect consumers.*

Second, the CPSA identifies an industry's general rate of compliance with its relevant voluntary, consensus standards as a factor in the use of several of CPSC's authorities, including establishing mandatory rules (15 U.S.C. § 2058(a)) and designating readily identifiable characteristics of non-compliance with a voluntary, consensus standard whose presence or absence necessarily creates a substantial product hazard (15 U.S.C. § 2064(j)). Where all but a few members of an industry comply with a voluntary, consensus standard, that industry may ask CPSC to formally rely on the standard under Section 9 of the CPSA (15 U.S.C. § 2058(b)(2)(B)), creating an obligation for non-complying companies to identify themselves by reporting to the CPSC, which agency staff can then use in defect determinations as described above.

Third, non-CPSC actors create incentives for compliance with voluntary, consensus standards. Of these, the most notable are retailers and litigation. Many retailers require compliance with and certification to relevant voluntary, consensus standards before they will stock products on their shelves, while juries may consider a product's compliance or non-compliance in determining whether its manufacturer is liability for a litigant's alleged injuries associated with a product.

5. Mr. Gentine, I understand recall completion rates vary drastically depending on the product and the recall. Why is relying solely on a recall completion rate potentially misleading when evaluating whether the Commission is fulfilling its safety mission? Do you have any suggestions to improve the data reporting on this issue?

Reported recall completion rates do vary significantly. However, those rates can be dramatically misleading. Particularly for simple, inexpensive products, consumers may opt to simply discard a product rather than return it for a refund or a replacement or obtain a repair. This inclination to discard is also related directly to the age of the product and inversely to the consumer's perception of the hazard; these factors are linked to each other, as a consumer who has used and enjoyed a product for years without experiencing the potential hazard is less likely to view that hazard as compelling, particularly if the remedy is a refund upon surrender of a product the consumer enjoys and wants to keep.

Additionally, the fulfillment of CPSC's safety mission extends well beyond recalls. As CPSC, consumer advocates, manufacturers, retailers, and other stakeholders have labored over decades to improve the overall safety of consumer products, many potential sources of defects and hazards – and thus recalls – have been either eliminated or dramatically reduced. Thus, even with an infallible means of capturing recall response, those data could only be a measure of recalls, not of CPSC's broader mission success.

Finally, CPSC's use of the term "recall" to encompass purported remedies beyond what the CPSA contemplates – repair, replacement, and refund – further

complicates any attempt to understand true recall effectiveness rates. Not only is there no mechanism for consumers to report, for example, that they have been duly warned by a "recall to warn," but these non-statutory remedies are frequently perceived as relating to less-serious hazards, eroding consumers' motivation to respond not only to that recall but to the word "recall" as a whole.

Perfecting data reporting on recall effectiveness will likely always prove a high hurdle, as the incentives for consumers to either self-remedy in a way that cannot be captured (such as discarding a product) or to fail to act altogether likely cannot be offset or overcome. Thus, a significant portion of consumer behavior in any particular will remain beyond CPSC's knowledge. As such, CPSC should focus its efforts not on collecting recall responses in the moment, but on better understanding consumer decision-making and then tailoring recalls to that understanding. The implicit assumption that informing consumers of the existence of a possible hazard is sufficient to motivate not only behavior but behavior in precisely the manner CPSC desires has been proven faulty.

6. Mr. Gentine, in your written testimony, you highlight that standards bodies are made up of product-specific experts which help develop voluntary standards. How important do you believe having experts involved in the standard setting development is to the process? Please explain.

CPSC technical staff – including its engineers, epidemiologists, and human factors professionals – are talented, dedicated public servants, and their role in advancing safety – including through voluntary, consensus standards bodies – is vital. However, given the mismatch between their number and the scope of the agency's jurisdiction, they must be generalists in their field. A mechanical engineer may work on trash cans one day and portable generators the next.

By contrast, other members of voluntary, consensus standards bodies – including both industry representatives and consumer advocates – are in daily contact with the function of the particular products covered by any given standard. Many have devoted decades-long careers to a single, narrow product category. This provides them more intuitive insight into the operation of that product category than CPSC staff have the luxury to develop.

Further, those experts understand not only the products, but how consumers use – or misuse – those products. This better enables them to predict how consumers will respond to safety-minded changes and identify potential negative unintended consequences, such as consumers disabling or circumventing safety features.

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