

**NOMINATIONS TO THE U.S. DEPARTMENT
OF COMMERCE, THE U.S. DEPARTMENT
OF TRANSPORTATION, AND THE
CONSUMER PRODUCT SAFETY COMMISSION**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

—————
JUNE 11, 2014
—————

Printed for the use of the Committee on Commerce, Science, and Transportation



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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CONTENTS

	Page
Hearing held on June 11, 2014	1
Statement of Senator Rockefeller	1
Statement of Senator Nelson	2
Statement of Senator Thune	3
Statement of Senator Klobuchar	6
Statement of Senator Blumenthal	67
Statement of Senator Ayotte	79

WITNESSES

Bruce H. Andrews, Nominee to be Deputy Secretary, U.S. Department of Commerce	7
Prepared statement	8
Biographical information	9
Victor M. Mendez, Nominee to be Deputy Secretary, U.S. Department of Transportation	17
Prepared statement	18
Biographical information	19
Peter M. Rogoff, Under Secretary for Policy-Designate, U.S. Department of Transportation	28
Prepared statement	30
Biographical information	31
Marcus D. Jadotte, Nominee to be Assistant Secretary for Industry and Analysis, International Trade Administration, U.S. Department of Commerce	38
Prepared statement	39
Biographical information	40
Hon. Robert S. Adler, Nominee to be a Commissioner, Consumer Product Safety Commission	47
Prepared statement	48
Biographical information	50

APPENDIX

Letter dated June 25, 2014 to Hon. Robert Adler, Acting Chairman, U.S. Consumer Product Safety Commission from Hon. John Thune, Ranking Member, U.S. Senate Committee on Commerce, Science, and Transportation	83
Letter dated July 17, 2014 to Hon. John Thune, Ranking Member, Committee on Commerce, Science, and Transportation from Robert S. Adler, U.S. Consumer Product Safety Commission	84
Prepared statement of Rep. Henry A. Waxman, Ranking Member, Committee on Energy and Commerce	90
Response to written questions submitted to Bruce H. Andrews by:	
Hon. Mark Pryor	90
Hon. Mark Begich	91
Hon. John Thune	92
Hon. Kelly Ayotte	94
Response to written questions submitted by Hon. John D. Rockefeller IV to Victor M. Mendez and Peter M. Rogoff	95
Response to written questions submitted to Victor M. Mendez by:	
Hon. Maria Cantwell	97
Hon. John Thune	99

IV

	Page
Response to written questions submitted to Peter M. Rogoff by:	
Hon. Maria Cantwell	101
Hon. John Thune	102
Response to written question submitted by Hon. John Thune to Marcus D. Jadotte	104
Response to written questions submitted to Hon. Robert S. Adler by:	
Hon. John Thune	104
Hon. Roy Blunt	115
Hon. Dean Heller	118
Hon. Ron Johnson	124

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WEDNESDAY, JUNE 11, 2014

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:41 p.m., in room SR-252, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA**

The CHAIRMAN. I apologize to everybody, except you, Mr. Andrews.

[Laughter.]

Senator THUNE. Here we go again.

The CHAIRMAN. OK. We have got some important folks here—Department of Commerce, Department of Transportation, Consumer Product Safety Commission. And it says here, at least, that it is a particular pleasure for me to see Mr. Bruce Andrews, from Syracuse. The Orange, with just a hint maybe of some athletic scandal at the student stuff—

[Laughter.]

The CHAIRMAN.—associated with Syracuse. I mean, I don't know if that is true or not, but it is now part of the record.

[Laughter.]

Mr. NELSON. Are we going to have a hearing about that?

[Laughter.]

The CHAIRMAN. No. No. No, because you have got a Florida State University guy here, too.

Mr. NELSON. Oh.

The CHAIRMAN. You see? In good form. OK.

Now, Bruce is a trusted aide and adviser. He worked forever for this committee as its General Counsel and just sort of had marvelous instincts. I regret to say, and I told the fellow outside, the Congressman who you grew up with and went to school with, that the only problem that you have in life is that you will have to live the rest of your life out knowing that I am just two or three steps ahead of you on baseball trivia.

[Laughter.]

The CHAIRMAN. Otherwise, you are perfect. You are a proud product of upstate New York. You were always very tuned into rural problems, which is important for Senator Thune and myself. You are kind of a big urban guy.

Senator THUNE. Both rural and urban.

The CHAIRMAN. Both rural and—you are just showing off, you know?

Anybody who spent—this, I love this part. Anybody who spent time with Bruce knows him to be smart, stubborn, wily, and an operator with a pragmatist's approach to getting things done. So I like that combination, which is true, you get stuff done.

You are liked on both sides of the aisle. You were here. You are now, in your present job. You know the House and the Senate so well, and you are going to be Chief of Staff to Secretary Pritzker. I think that is really good news for the Department of Commerce, and not meaning to show my bias, I plan on voting for you three times.

[Laughter.]

The CHAIRMAN. I am confident that Bruce will provide a strong and effective leader in this role. It is a very difficult role. I mean, there is the Chief of Staff and there is a Deputy, and then how all that works, but you understand all of that. You are comfortable with all of that, and you are comfortable with power. You are comfortable with standing back when that arrives at a settlement more quickly.

You have got to stay on top of the agency's management challenges. It is a large agency. You are a good organizer. Secretary Pritzker is an incredible organizer. I think she is the best Secretary of Commerce I have ever known. And you are committed to making the Department a consumer-friendly advocate for the American people.

Our next nominee is going to be introduced right now by Senator Nelson.

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Well, thank you, Mr. Chairman, and yes——

The CHAIRMAN. Oh, no.

Senator THUNE. No, that is all right. That is fine.

The CHAIRMAN. Do you want to make a statement?

Senator THUNE. No, no. Go ahead. Go ahead.

The CHAIRMAN. OK.

Senator NELSON. I defer to the handsome Senator from South Dakota.

[Laughter.]

Senator THUNE. Go ahead. He has teed you up.

[Laughter.]

Senator NELSON. Indeed, I met——

The CHAIRMAN. He has 10 pages there.

Senator NELSON.—Marcus Jadotte two decades ago when he was a graduate student at Florida State, and he had been positioned in the Florida legislature, in the Governor's office, and Chief of Staff for two members of the Florida delegation up here. He has also

been in the private sector with NASCAR, and he has moved up the ranks.

He is here with his wife, Jennifer, and their two children, Marcus and Sofia, and—

The CHAIRMAN. Tell them to stand up.

Senator NELSON. Would you all stand and be recognized? Welcome.

And if he is confirmed, and I hope we do, as Assistant Secretary for Industry and Analysis, it is going to be an important liaison between U.S. industry and government, and his extensive experience between the Government sector and the private sector is going to allow him to even facilitate that communication between the two. I think Secretary Pritzker knows what she is doing in seeking him to be one of the leadership of her team.

And I want to also say that I want to recognize Commissioner Bob Adler in the Consumer Product Safety Commission. A number of us worked very hard years ago to try to reform and reauthorize the CPSC. We wanted to get it off its duff when it was doing nothing, and since his appointment, he has worked very hard on that reform.

Now, you see, that wasn't 10 pages.

The CHAIRMAN. No, it wasn't.

Senator NELSON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Nelson.

And now, I turn to the esteemed co-leader of this committee.

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. I thank you, Mr. Chairman.

And I want to welcome all of our nominees to the Committee today, and you are under consideration for senior positions in Department of Commerce and Department of Transportation, as well as the renomination of the current Acting Commissioner, Acting Chairman, I should say, of the Consumer Product Safety Commission.

DOT, of course, plays a key role in the infrastructure of the Nation. It is important that its senior leadership be in place to work with Congress and the array of stakeholders as we seek to improve safety and maintain and expand the Nation's transportation networks.

These transportation networks fundamentally underpin the Nation's economy. So it is important that those who directly oversee these networks have the experience and skills necessary to manage this critical enterprise.

I will be asking Mr. Mendez and Mr. Rogoff about their perspectives on some of the challenges facing the Highway Trust Fund, as well as their broader views on the state of the Nation's transportation networks. These nominees already have track records of valuable service to DOT, and I suspect there will be considerable support for their nominations.

The Department of Commerce plays an important role on a diverse range of issues, from managing satellite programs within the National Oceanic and Atmospheric Administration to managing the Federal Government's radio spectrum holdings. Senior leaders at

the Department of Commerce must manage a wide range of challenging programs.

If confirmed, Mr. Andrews and Mr. Jadotte will have no shortage of issues and problems to tackle. I am guessing that Mr. Andrews may have observed many nominees from this side of the dais and thought to himself, "I can do that."

[Laughter.]

Senator THUNE. You think? Or maybe he was just thinking that while he was looking at us, Mr. Chairman, but either way, he is going to have his chance.

I will be asking Mr. Andrews about his views on how best to manage the risks facing the Department of Commerce, particularly with respect to its satellite programs. I am also interested in Mr. Andrews' views on the progress of the FirstNet program, the nationwide public safety network that will be funded by the proceeds from the broadcast spectrum auction currently planned for next year.

Finally, Mr. Chairman, the Consumer Product Safety Commission plays a leading role in overseeing the safety of a wide variety of consumer products. This is important work, and I am looking forward to hearing how the Commission is faring in meeting its mission and obligations.

As I have stated previously, the CPSC is a creature of Congress, created in 1972 by the Consumer Product Safety Act, and as such, its authority is very carefully bounded by the law. I am aware that some have characterized the Commission as being too unaccountable and overreaching as a regulator that does not always abide by the boundaries prescribed by Congress.

I will look forward to asking Mr. Adler, who has served as Acting Chairman of the CPSC over the past 8 months, about issues such as third-party testing, where Congress mandated that the CPSC pursue opportunities to reduce testing burdens, but where the Commission has thus far failed to adopt any meaningful reforms.

Another issue surrounds the Buckyballs case, where many legal experts observed an apparent overreach in Federal regulatory power when the CPSC sought to pierce the so-called corporate veil of a lawful corporation selling a legal product, a step that is traditionally reserved for cases of fraud or criminal conduct.

All of us support the CPSC's mission of ensuring consumer safety, but I am hoping that Mr. Adler will be able to address my misgivings about what appears to be a regulatory agency that has ignored some of its congressional moorings.

Mr. Chairman, before we turn to the nominees for their prepared remarks, I also would like to underscore the importance of two pressing issues that relate to matters that this committee is closely involved with, the one being the Highway Trust Fund, which is going to be depleted here next month or the month after. And as we look toward a long-term solution, I hope we can come up with a short-term solution that at least addresses the immediate crisis in front of us, recognizing how important it is that we fund our highway and transportation infrastructure in this country.

And then, second, is the Internet tax moratorium, which is set to expire on November 1. And this committee has had a role in establishing that, if you go back to 1998. We have to act before the

August recess on that as well because if we don't, there will be tens of millions of Americans who will be receiving notifications from their Internet and wireless phone providers about new taxes that would kick in just before the holiday season.

So I raise this topic because the tax moratoriums have been very instrumental when it comes to ensuring that broadband infrastructure investments are made, which is a win-win not just for consumers, but for our economy. And those of us who serve on the Finance Committee are also very interested in this issue, and I have worked with the Chairman there, Senator Wyden, on a permanent extension of the Internet tax moratorium and have appreciated the work of Senator Ayotte on this legislation on this committee and note that we have all of our members on this side as co-sponsors. A number of Democratic colleagues are co-sponsors.

And I hope that we can, in addition to getting the Highway Trust Fund gap dealt with, also pass this bipartisan legislation before August so that we ensure that American consumers and businesses aren't faced with new charges and unnecessary taxes on their phone and cable bills come November of this year.

So, Mr. Chairman, I appreciate having these nominees before us today and look forward to their testimony, and thank you for holding the hearing.

The CHAIRMAN. Thank you.

I am going to continue my opening statement.

I welcome Victor Mendez, who is the President's nominee to be Deputy Secretary for the Department of Transportation. A lot of transportation experience, and serving as Administrator of Federal Highways and the Director of the Arizona Department of Transportation.

And Peter Rogoff, who has been mentioned already, is nominated to be Under Secretary of Transportation for Policy at the Department of Transportation. Peter is a familiar face to many of us here. Many years in the Senate Appropriations where he served both with Patty Murray and a fellow named Robert C. Byrd, if I am not mistaken.

Mr. Mendez, Mr. Rogoff, I am looking forward to hearing your perspectives on our transportation funding, which my able colleague has already mentioned, and I expect that, if confirmed, you will pay close attention to the transportation challenges of the State of West Virginia. You could do a minimalist effort with South Dakota.

[Laughter.]

The CHAIRMAN. As you both know, the Highway Trust Fund is going broke this summer, and the question that I am fascinated by is, at what point is it that contractors stop bidding because our short-term solution is too short-term, and they are expecting more short-term? So, in other words, how does that get in the way of or not get in the way of the right people bidding on important road, bridge projects, et cetera?

States are already canceling and slowing down important projects, and on the other hand, allowing our transportation to run out of money is not an option.

The Senate is hard at work finding a solution. Last month, EPW Chairman Boxer marked up a long-term, 6-year highway bill. In

the Finance Committee, Senator Thune and myself, others of my colleagues and I are in the process of trying to find funding for our infrastructure needs, whether it is 6 years or shorter. And I am very hopeful, and I think I have some reason to be optimistic after our meeting that we will reach a deal before the August recess, which would be very good news.

I worry that any solution that can pass this Congress will again be, however, a short-term fix, and that is why I want this discussion about when is it that contractors begin to pull back or charge more?

I am a firm believer that the Federal Government has a major responsibility when it comes to investing in our Nation's infrastructure. We have to be leaders. Others aren't going to do it. This is not a private sector job. We can share responsibility, but basically, it is Federal and State that does this. That is the way it has been. That is really our proper role.

And we need to be leaders on this committee. We are in some things, and we are not as much on others as we should be. We need to create a coherent and unified mission for our Federal Surface Transportation Programs and invest in those programs. We have to invest.

Since becoming chairman, I have made safety a top priority for this committee, and recent safety incidents, such as the GM recalls, crude oil train derailments, truck crashes, highlight the need to find out just how much progress we really have made.

And as an interesting dichotomy, for example, Senator Klobuchar, you remember with pilots, we wanted to make sure they got a full 8 hours of sleep, and that is now working. But on the other hand, at the same time, at essential air service airports, it is hurting because there are fewer pilots who are so trained, et cetera. So I want to discuss that also.

And Mr. Robert Adler, who has been spoken of, Consumer Product Safety Commission, an incredibly important post you joined in 2009. You are already recognized as a leading consumer protection scholar, teacher, and advocate.

And I really appreciate all of you being able to being willing to do public service. I mean, you know, we have a, what, the Congress has a 9 percent approval rating. That may be a point or two higher than we deserve. But public service, I fully believe, is one of the very best ways that one can serve out of life, and you are all prepared to do that, and I admire each of you greatly for that.

Amy, do you want to say anything?

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Well, I am just very excited about the nominees here, working in areas I care a lot about and my state does in the area of exports with Commerce. And also, both Mr. Mendez and Mr. Rogoff have been out in Minnesota, and we have some really exciting news this weekend with our light rail between Minneapolis and St. Paul opening. So we thank you for that.

And obviously, I also do a lot of work with the CPSC from the day I got here on consumer issues, and we have really appreciated the work done on lead in children's toys, as well as the pragmatism

on some of the issues with that legislation. And then, finally, the swimming pools, which we have had some success with.

So thank you, Mr. Adler.

The CHAIRMAN. Mr. Andrews, can we start with you, sir? And you can shoot back any bullets you want at me.

[Laughter.]

STATEMENT OF BRUCE H. ANDREWS, NOMINEE TO BE DEPUTY SECRETARY, U.S. DEPARTMENT OF COMMERCE

Mr. ANDREWS. Chairman Rockefeller, Ranking Member Thune, and members of the Committee, thank you for having me here today regarding my nomination as the Deputy Secretary of the U.S. Department of Commerce.

It is a great honor to be back at the Commerce Committee, although to your point, Senator Thune, I recall it being much more fun on that side of the dais than it is on this side of the dais.

I would first like to introduce my wonderful family, who are here with me today. My wife, Didem; my daughters, Ella and Dahlia; my parents, Bill and Ginger Andrews, and my brother David, who came from Syracuse, New York, for this hearing.

Mr. CHAIRMAN. Can they stand, please?

[Applause.]

Mr. ANDREWS. It is a true honor to be nominated to be the Deputy Secretary of Commerce. When I first moved to Washington, D.C., 24 years ago, I planned to stay for only a few years and then move back to my hometown of Syracuse, New York, where I would mention the basketball is much better.

From a young age, my father, a World War II combat infantryman who spent his entire life engaged in his community, and my mother, a social worker who devoted her life to helping others, taught me and my siblings the importance of public service and giving back to your community and to your country. I have carried and nurtured my commitment to public service throughout my professional career.

During both my work in the public and private sectors, I have had the opportunity to see the important work of the Department of Commerce from a variety of perspectives. In my position as Chief of Staff to the Secretary, I have served as a senior leader in the Department, overseeing its operations, including our 12 bureaus and over 44,000 employees, and have been heavily involved in creating and implementing the Department's strategic plan.

During my tenure, I have become familiar with every aspect of the Department and Secretary Pritzker's vision for it. If confirmed, I will work hard to advance the Department's agenda and continue to build on our success as the voice of business and workers in the administration.

My experience in the private sector at Ford Motor Company gave me a strong appreciation for the ways in which the Department of Commerce can help create the favorable conditions to help American businesses thrive. And as General Counsel of this committee, I had the unique opportunity to see the operations of the Commerce Department from an oversight perspective and understand the importance of the Department working closely with Congress.

If confirmed, I will apply these skills and experiences to help American businesses and workers achieve success in the global marketplace. That is what we do at the Department of Commerce. We help the American public and businesses by creating the conditions for economic growth through our diverse programs.

I have seen firsthand the valuable work of the Department and its hard-working employees. Under Secretary Pritzker's leadership, the Department is laser focused on developing and implementing our Open For Business agenda.

One of the key elements underlying the Department's strategic plan is the focus on customer service and providing high-quality assistance to our stakeholders. Like a business, we have a number of customers who rely on our services and products, and we are very focused on delivering value for our customers and the American taxpayer.

In order to deliver value, it is critical that the Department is well run. The Deputy Secretary serves as the Chief Operating Officer of the organization and is very focused on the Department's operations. Secretary Pritzker made operational excellence one of the key pillars of the Department's strategic plan because we need to constantly improve our efficiency and the Department's operations. And if confirmed as Deputy Secretary, this will be one of my primary objectives.

I have had the honor to work for a number of great leaders during my career—Secretary Pritzker, Alan Mulally and Mark Fields at the Ford Motor Company, and you, Senator Rockefeller. And one of the things that I have learned from these experiences is that leadership matters. Leaders set the vision and the tone for an organization and play a key role in leading the team.

I am proud of our team at Commerce and excited for the opportunity to help lead the Department as Deputy Secretary. If confirmed, I look forward to working with the Commerce team and this committee to strengthen the Department, help our stakeholders, grow the economy, and make our country a better place.

Thank you for your consideration of my nomination. I am happy to respond to any questions that members of this committee may have.

[The prepared statement and biographical information of Mr. Andrews follow:]

PREPARED STATEMENT OF BRUCE H. ANDREWS, NOMINEE TO BE DEPUTY SECRETARY,
U.S. DEPARTMENT OF COMMERCE

Chairman Rockefeller, Ranking Member Thune, and Members of the Committee, thank you for having me here today regarding my nomination as the Deputy Secretary of the U.S. Department of Commerce. It is a great honor to be back at the Commerce Committee, although I recall it being more fun on your side of the dais than this side.

I would first like to introduce my wonderful family who is here with me today—my wife Didem; my daughters, Ella and Dahlia; and my parents, Bill and Ginger Andrews, who came from Syracuse, New York for this hearing.

It is a true honor to be nominated to be the Deputy Secretary of Commerce. When I first moved to Washington, D.C. 24 years ago, I planned to stay for only a few years and then return to my hometown of Syracuse, New York. From a young age, my father, a World War II combat infantryman, who spent his entire life engaged in his community, and my mother, a social worker who has devoted her life to helping others, taught me and my siblings the importance of public service and giving

back to your community and your country. I have carried and nurtured my commitment to public service throughout my professional career.

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If confirmed, I look forward to working with the Commerce team and with this committee to strengthen the Department, help our stakeholders, grow the economy, and make our country a better place.

Thank you for your consideration of my nomination. I am happy to respond to any questions members of the Committee may have.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used):

Bruce Huntington Andrews.

2. Position to which nominated: Deputy Secretary, U.S. Department of Commerce.

3. Date of Nomination: May 22, 2014.

4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: U.S. Department of Commerce, 1401 Constitution Ave, NW, Washington, D.C. 20230.

5. Date and Place of Birth: February 24, 1968; Syracuse, NY.

6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Didem Nisanci (wife), Promontory Financial Group, Washington, D.C., Managing Director; children: Ella Andrews—age 10; Dahlia Andrews—age 8.

7. List all college and graduate degrees. Provide year and school attended.

College: Haverford College, Bachelor of Arts, 1990.
Graduate: Georgetown University Law Center, JD, 1997.

8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

**Indicates management-level position.*

U.S. Department of Commerce: Chief of Staff, Office of the Secretary (10/2011 to present)*

U.S. Senate Committee on Commerce, Science, and Transportation: General Counsel (03/2009–10/2011)*

Ford Motor Company: Vice President (03/2007–03/2009)*

Friends of Congressman Tim Holden: Campaign Manager (06/2002–11/2002)*

Quinn Gillespie & Associates: Partner (01/2000–03/2007)*

Arnold & Porter, LLP: Associate (09/1997–12/1999)

Congressman Tim Holden: Legislative Director (01/1993–06/1997)*

Congressman Gus Yatron: Legislative Assistant (07/1991–12/1992)

Senator Alan Cranston: Staff Assistant (09/1990–07/1991)

9. Attach a copy of your resume. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years. None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years.

Haverford College, Class Representative

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

No Greater Sacrifice Foundation

Position: Executive Patron

Dates: 09/2008 to Present

American Constitution Society

Position: Member

Dates: Approx. 2001–2008

116 Club

Position: Member

Dates: 04/2009–11/2011

District of Columbia Bar Association

Position: Member

Dates: 11/1997 to Present

New York Bar Association

Position: Member

Dates: Membership issued 01/1998; membership currently inactive.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Political Contributions

Recipient	Date	Amount
Democratic Senatorial Campaign Committee	10/8/2008	\$500
Dingell, John D. Mr. via John D. Dingell for Congress	7/28/2008	\$1,000
Childers, Travis W. via Childers for Congress	7/21/2008	\$500
Kratovil, Frank M. Mr. Jr. via Frank Kratovil for Congress	6/24/2008	\$500
Cazayoux, Donald J. via Cazayoux for Congress	4/22/2008	\$500
Democratic Senatorial Campaign Committee	4/18/2008	\$500
Maffei, Daniel Benjamin Mr. via Friends of Dan Maffei	3/31/2008	\$500
Adler, John H. via Adler for Congress	3/31/2008	\$500
Democratic Congressional Campaign Committee	3/19/2008	\$1,000
Cahir, William John via Cahir for Congress	3/17/2008	\$500
Cahir, William John via Cahir for Congress	2/5/2008	\$500
Democratic Congressional Campaign Committee	12/18/2007	\$1,000
Stabenow, Debbie via Stabenow For U.S. Senate	12/13/2007	\$500
Democratic Senatorial Campaign Committee	10/31/2007	\$500
Clinton, Hillary Rodham via Hillary Clinton for President	9/29/2007	\$1,000
Klein, Ron via Klein for Congress	6/30/2007	\$500
Rodriguez, Ciro D. via Ciro D. Rodriguez for Congress	6/30/2007	\$500
Pryor, Mark Lunsford via Mark Pryor for U.S. Senate	6/29/2007	\$500
Carney, Christopher P. via Carney for Congress	6/29/2007	\$500
Hill, Baron Paul via Hoosiers for Hill	6/28/2007	\$500
Clinton, Hillary Rodham via Hillary Clinton for President	6/26/2007	\$1,000
Pelosi, Nancy via Nancy Pelosi for Congress	6/21/2007	\$1,000
Murphy, Patrick J. via Patrick Murphy for Congress	6/21/2007	\$500
America's Leadership Pac	5/22/2007	\$500
Rockefeller, John Davison IV via Friends of Jay Rockefeller	3/28/2007	\$500
Democratic Senatorial Campaign Committee	3/20/2007	\$500
Landrieu, Mary L. via Friends of Mary Landrieu, Inc.	1/31/2007	\$1,000
Cantwell, Maria via Friends of Maria	9/30/2006	\$500
Democratic Congressional Campaign Committee	9/29/2006	\$500
Tester, Jon via Montanans for Tester	7/11/2006	\$1,000
Ford, Harold E. Jr. via Harold Ford Jr. for Tennessee	6/15/2006	\$1,000
Sanders, Bernard via Friends of Bernie Sanders	5/23/2006	\$1,000
Democratic Senatorial Campaign Committee	5/23/2006	\$500
Casey, Robert P. Jr. via Bob Casey for Pennsylvania Committee	3/31/2006	\$1,000
McCaskill, Claire via McCaskill for Missouri	3/30/2006	\$1,000
Pederson, Jim via Pederson 2006	2/15/2006	\$1,000
Democratic Senatorial Campaign Committee	10/28/2005	\$1,000

Political Contributions—Continued

Recipient	Date	Amount
Bingaman, Jeff via A Lot of People Who Support Jeff Bingaman (2000)	6/30/2005	\$500
Casey, Robert P, Jr, via Bob Casey for Pennsylvania Committee	6/29/2005	\$1,000
Carper, Thomas R. via Carper for Senate	3/14/2005	\$500
Democratic Senatorial Campaign Committee	3/14/2005	\$500
Higgins, Brian via Brian Higgins for Congress	10/4/2004	\$500
Salazar, John Tony Mr. via John Salazar for Congress	9/30/2004	\$500
Kerry, John F. via John Kerry for President Inc.	8/9/2004	\$750
Obama, Barack via Obama for Illinois Inc.	6/25/2004	\$500

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements. None.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

Co-authored Government Contractors chapter in *Political Activity, Lobbying Laws and Gift Rules Guide* (Chapter 11, Glasser Legal Works, 2nd Issue, 1999); and *Congressional Gift Rules: New Congressional Gift Rules: A Summary* (Arnold & Porter, 1998).

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony. None.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have over 20 years of professional experience that has prepared me for the position of Deputy Secretary at the U.S. Department of Commerce. This wide range of experience includes holding a senior position at the Department of Commerce; experience in the private sector; and serving on the staff of the U.S. Senate. I am honored to be nominated for the Deputy Secretary position, and if confirmed, would like to serve in this role because I am deeply committed to the mission of the Department to help create the conditions for economic growth in the United States.

In my current position as Chief of Staff to the Secretary of Commerce, I have been one of the leaders in the Department—overseeing the operation of the Department (including its 12 bureaus and over 40,000 employees), and have been heavily involved in creating and implementing the Department's strategic plan. I am very familiar with every aspect of the Department and Secretary Pritzker's vision for it. If confirmed, I would be honored to help advance the Department's agenda in a new leadership role as Deputy Secretary.

My experience in the private sector at Ford Motor Company gave me a strong appreciation for the ways in which the Department of Commerce can help to create the conditions to help American businesses thrive. The Department's work in international trade and investment, data, innovation, research and development, and even the weather, contributes to the ability of American businesses to be successful. My experience at Ford provided me significant insight on how the United States Government can work with American businesses to help advance U.S. competitiveness.

As General Counsel of the Senate Commerce Committee, I had the unique opportunity to see the operations of the Commerce Department from an oversight perspective and appreciate the importance of the Department working closely with Congress. In the Committee's oversight of the Department, I saw a number of the high risk areas and gained a better understanding of the importance of several of the Department's operations to Committee members. If confirmed, I will apply the skills and experience I have gained during my career to my work as Deputy Secretary to help American businesses and workers achieve success in the global marketplace.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

The Deputy Secretary plays a key role as the Chief Operating Officer of the Department in overseeing the operations and internal controls of the Department. To this end, the Deputy Secretary has two key direct reports, the Assistant Secretary for Administration/Chief Financial Officer and the Chief Information Officer, and works closely with every bureau and major function (including the Inspector General and General Counsel) on the efficient and effective operations of the Department. The Deputy Secretary also plays a key role in the budget process, overseeing the Department's high risk programs, implementing the strategic plan, and working closely to manage problems and issues within the Department.

As previously mentioned, I have served in numerous senior management roles and have seen firsthand how important effective management and accounting is to running a large organization. As Chief of Staff at the Department of Commerce, I have eight direct reports and manage the Office of the Secretary staff of over 80 employees. I also assist the Secretary with the Department's day-to-day operations and am involved with all aspects of the Department's management and will therefore have no learning curve in understanding the operations and issues. Likewise, as Vice President at Ford Motor Company, I oversaw a large staff and was part of the senior management team. I worked closely with the current CEO, Alan Mullaly and incoming CEO, Mark Fields, and learned a great deal about managing a large organization.

If confirmed, I will utilize all of my management experience and work closely with Secretary Pritzker and key leaders across the Department to ensure we do an outstanding job of managing the Department.

20. What do you believe to be the top three challenges facing the department/agency, and why?

Three challenges I believe the Department faces are: implementation of the strategic plan, overseeing high risk programs, and doing more with our budget.

1. *Implementation of the Strategic Plan:* Under Secretary Pritzker's leadership, the Department has created a comprehensive strategic plan, focusing on Trade and Investment, Innovation, Data, the Environment, and Operational Excellence. We are now in the process of implementing and executing the plan. Like any large organization, there are constant distractions, and competing demands and challenges. The Department's senior management team needs to remain focused on executing the strategic plan and working to implement its goals and objectives to achieve results. If confirmed, overseeing this process will be one of my primary objectives as Deputy Secretary.

2. *Overseeing High Risk Programs:* The Department has a number of very important, but also operationally challenging programs, such as the NOAA Satellites, the 2020 Census, SelectUSA, and the FirstNet First Responder Network. Each of these programs is very important to our country, but also requires capable and effective management. If confirmed as Deputy Secretary, I would spend a substantial amount of time working on the oversight of these programs and their operation to ensure that they are meeting established milestones and spending money smartly and efficiently.

3. *Doing More with our Budget:* In the current budget environment, the Department's budget is likely to remain relatively constant as we are asked to do more. The Department will need to operate smarter and more efficiently to make the most of our appropriated funds. There are a number of programs which would be good investments if we were able to allocate additional funding, including hiring more Commercial Services Officers, scaling up SelectUSA, increasing the Federal investment in manufacturing programs, adding resources to enhance cybersecurity and fix or replace the Department's old IT infrastructure, and moving to shared services. While individual programs may change incrementally, we will need to push to better prioritize and more efficiently spend our resources in order to focus on high priority needs.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

QGA 401(k) Plan Holdings

- Great West Maxim Life 2035: \$423,512

Ford Motor Company 401(k) Plan Holdings

- Black Rock Life Path 2030: \$9,858
- Black Rock Life Path 2035: \$17,243

Ford Savings and Stock Plan for Salaried Employees

- Fidelity Contra Fund: \$12,758
- Neuberger Berman Genesis Fund: \$11,217
- T Rowe Price International Discovery Fund: \$12,241

Thrift Savings Plan: \$107,253

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Commerce's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Commerce's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

In my positions at Ford Motor Company and Quinn, Gillespie & Associates (QGA), I served as a registered lobbyist. At Ford, I worked on automobile issues impacting the company. At QGA, I represented a variety of clients before Congress and the Executive Branch.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Commerce's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department of Commerce's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain. No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain.

I was issued an appearance ticket in 1990 for unauthorized use of a motor vehicle. The charges were dismissed. The Dewitt, NY Police Department mistakenly believed that two of my friends had stolen golf carts which they had found on the road and driven back to the golf course.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

None to my knowledge.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RESUMÉ OF BRUCE H. ANDREWS

Professional Experience

U.S. Department of Commerce, Washington, D.C.

Chief of Staff, Office of the Secretary, October 2011–Present

- Manage the day-to-day operations of the Office of the Secretary, including supervising seven office directors and ensuring coordination with the Department's bureaus.
- Serve as the most senior advisor and counselor to the Secretary.
- Lead coordination with the White House and other Federal agencies.
- Work closely with bureau heads, bureaus, and administrative offices; and oversee the Department's administrative, programmatic, and policy functions.
- Managed several Secretarial-transitions (of the Secretary and Acting Secretary).

U.S. Senate Committee on Commerce, Science, and Transportation

Washington, D.C.

General Counsel, March 2009–October 2011

- Served as chief counsel of the Committee.
- Was a senior member of the Committee's management team, and served as a senior policy advisor for Chairman Rockefeller.
- Acted as primary parliamentary, jurisdictional, and ethics officer for the Committee.
- Worked on all nominations and confirmations in the Committee's jurisdiction.

Ford Motor Company, Washington, D.C.

Vice President, Government Affairs, March 2007–March 2009

- Oversaw and led all U.S. Federal and state government affairs. Supervised government affairs personnel and a team of outside government affairs and public affairs consultants, and managed a \$10 million annual budget.
- Acted as lead external liaison to Executive Branch, Congress, and state governments.
- Coordinated and led internal policy development process to achieve Ford's business objectives.
- Initiated and supervised Washington communications and public affairs including advertising, communications related to legislation, and political branding.
- Served as Member of the Board of Directors and Executive Committee of the Alliance of Automobile Manufacturers, the primary auto industry trade association.
- Served as a Trustee of the Ford Motor Company Fund, the philanthropic arm of the Ford Motor Company.

Quinn Gillespie & Associates, Washington, D.C.
Partner, January 2000–February 2007

- Provided strategic and tactical counsel to clients on administrative, legislative, political, and regulatory issues; and represented clients before executive and legislative branch officials.
- Advised clients on public relations issues and worked with the media on their behalf.

Arnold & Porter, LLP, Washington, D.C.
Attorney, September 1997–January 2000

- Focused on state and Federal election and lobbying law, government ethics, telecommunications, and legislative and public policy issues.
- Drafted legal briefs, motions, and administrative petitions; researched complex legal and policy issues; and drafted policy papers, talking points, legislation, and amendments.
- Represented pro-bono clients before Congress, the Federal Election Commission, the Social Security Administration, and the District of Columbia Superior Court.
- Co-authored Government Contractors chapter in *Political Activity, Lobbying Laws and Gift Rules Guide* (Chapter 11, Glasser Legal Works, 2nd Issue, 1999); and *Congressional Gift Rules: New Congressional Gift Rules: A Summary* (Arnold & Porter, 1998).

Congressman Tim Holden, Washington, D.C.
Legislative Director, November 1994–July 1997
Senior Legislative Assistant, January 1993–November 1994

- Served as the Congressman's senior legislative and political advisor; initiated and directed Member's legislative agenda; and oversaw the legislative operations, including the training and supervision of legislative staff.

Congressman Gus Yatron, Washington, D.C.
Legislative Assistant, July 1991–December 1992

- Provided legislative support and expertise to the Congressman on a range of policy issues.

Senator Alan Cranston, Washington, D.C.
Staff Assistant, September 1990–July 1991

Education

Georgetown University Law Center, Washington, D.C.
Juris Doctor, Cum Laude, May 1997

Haverford College, Haverford, PA
Bachelor of Arts, Political Science, May 1990

Bar Admissions: District of Columbia, New York

The CHAIRMAN. Thank you, Mr. Andrews. That was—it was actually quite emotional, and I am almost tempted to adjourn the hearing.

[Laughter.]

The CHAIRMAN. But I am not going to.

Mr. ANDREWS. I would be fine with that.

[Laughter.]

The CHAIRMAN. But that was a lovely statement. And the public service thing is so incredibly important, and you know, you don't find it all by yourself. That gets handed to you by parents.

Mr. ANDREWS. Indeed.

The CHAIRMAN. Yes, so that is great.

Mr. Victor Mendez, please?

STATEMENT OF VICTOR M. MENDEZ, NOMINEE TO BE DEPUTY SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION

Mr. MENDEZ. Good afternoon, Chairman Rockefeller, Ranking Member Thune, and members of the Committee. I do appreciate the opportunity to be here today, as you consider my nomination to serve as the next Deputy Secretary of Transportation.

It is an honor and a privilege to be recommended by Secretary Foxx and nominated by President Obama for this very important position. I appreciate the significant role this committee plays in establishing transportation policy, and if confirmed, I pledge to you that I will work every day to support Secretary Foxx, the Committee, and the talented professionals of the Department of Transportation.

Transportation is a critical engine of the Nation's economy. Investments in the national air, highway, rail transport, transit, and pipeline transportation networks over the country's history, and especially the last half century, have been instrumental in developing the world's largest economy and most mobile society, and this system continues to be essential to the long-term prosperity of the United States.

While the Department's mission is to ensure the safe and efficient movement of people and goods, we face daunting challenges ahead of us. Safety will always be the top priority of the Department, and in addition, virtually every element of our transportation system faces daunting capacity constraints and investment needs.

We also face unprecedented challenges in maintaining our existing infrastructure while simultaneously building a true multi-modal transportation system that will serve the various needs of our communities and economy, now and into the future. Further, as several of you have mentioned, the Highway Trust Fund is in danger of becoming insolvent, as we fail to take action.

I am very mindful of the challenges. However, I am confident that, if confirmed, I will be able to apply the skills that I have developed over 30 years in the transportation arena, including 5 years as Administrator of the Federal Highway Administration, over 7 years as Director of the Arizona Department of Transportation, and my hands-on transportation expertise to support Secretary Foxx and to work with you to address these challenges head on.

During the President's first term, I had the privilege to serve as the Administrator of FHWA, and FHWA is the second-largest mode in the Department, with field offices in every state and an annual budget of almost \$40 billion per year.

Early in my tenure as the Administrator, I launched the Every Day Counts innovation initiative that identified three areas for initial focus: shortening project delivery, accelerating technology and innovation deployment, and the Going Greener initiative, which is focused on internal operations within FHWA.

EDC gives states a range of tools to streamline construction projects and make them more cost effective, all while drawing upon new and established technologies and working within current legal requirements. This very successful program has encouraged numerous innovations, such as the slide-in construction bridge, one of my

favorites, and an example of the type of leadership that I will bring to bear as the Deputy Secretary.

Prior to joining the Department, I served as the Director of the Arizona Department of Transportation, and during my tenure as Director at ADOT, we built the regional freeway system in Phoenix 6 years ahead of schedule. We delivered the statewide construction project on time for the past 8 years that I was there, and we continued to provide excellent customer service at Motor Vehicle Division offices throughout the state.

This was accomplished during a time when there was hyper-growth in Arizona, while demand for MVD's services increased dramatically and the highway construction program actually doubled. I also led ADOT in implementing many innovations in the area of funding and financing, technology, infrastructure, research, planning, and internal operations that resulted in improved agency operations and program delivery.

So, Mr. Chairman, and members of the Committee, thank you very much for your consideration and the opportunity to appear before you. I am committed to work with you, if confirmed, to work with the administration, Secretary Foxx, and all the transportation stakeholders to find ways to meet our Nation's transportation needs. And I look forward to your questions.

Thank you.

[The prepared statement and biographical information of Mr. Mendez follow:]

PREPARED STATEMENT OF VICTOR M. MENDEZ, ACTING DEPUTY SECRETARY,
U.S. DEPARTMENT OF TRANSPORTATION

Chairman Rockefeller, Ranking Member Thune, and Members of the Committee, I appreciate the opportunity to be here today as you consider my nomination to serve as the next Deputy Secretary of Transportation.

It is an honor and a privilege to be recommended by Secretary Foxx and nominated by President Obama for this very important position. I appreciate the significant role this Committee plays in establishing transportation policy and, if confirmed, I pledge to you that I will work every day to support Secretary Foxx and the talented professionals of the Department of Transportation.

Transportation is a critical engine of the Nation's economy. Investments in the national air, highway, rail, port, and pipeline transportation networks over the country's history, and especially the last half-century, have been instrumental in developing the world's largest economy and most mobile society and this system continues to be essential to the long term prosperity of the United States.

While the Department's mission is to ensure the safe and efficient movement of people and goods, we face daunting challenges ahead. Safety will always be the top priority of the Department. In addition, virtually every element of our transportation system faces daunting capacity constraints and investment needs. We also face unprecedented challenges in maintaining our existing infrastructure while simultaneously building a true multi-modal transportation system that will serve the varied needs of our communities and economy now and into the future. Further, the Highway Trust Fund is in danger of becoming insolvent if we fail to take action.

I am mindful of these challenges. However, I am confident that, if confirmed I would be able to apply the skills I have developed over 30 years in the transportation arena, including five years as administrator of the Federal Highway Administration (FHWA), over seven years as Director of the Arizona Department of Transportation (ADOT) and my hands-on transportation expertise to support Secretary Foxx and working with you to address these challenges head on.

During the President's first term, I had the privilege of serving as Administrator of the FHWA. The FHWA is the second largest mode in the Department with field offices in every state and an annual budget of almost \$40 billion. Early in my tenure as Administrator, I launched the Every Day Counts (EDC) innovation initiative that identified three areas for initial focus: Shortening Project Delivery, Accelerating

Technology and Innovation Deployment, and the Going Greener initiative, which is focused on how the Agency can improve the environment through improvements in the internal operations. EDC gives states a range of tools to streamline construction projects and make them more cost effective—all while drawing upon new and established technologies and working within current legal requirements. This very successful program has encouraged numerous innovative projects such as the “Slide-in” construction bridge, one of my favorites, and is an example of the type of leadership I would bring to bear as Deputy Secretary.

Prior to joining the Department, I served as the Director of ADOT. During my tenure as Director of ADOT we: 1) built the Regional Freeway System in the Phoenix area six years ahead of schedule, 2) delivered the statewide transportation construction program on time for the past eight years, and 3) continued to provide excellent customer service at all Motor Vehicle Division (MVD) field offices throughout the State. This was accomplished through innovative management strategies and solutions during a time of hyper-growth in Arizona, when demand for MVD services increased dramatically and the highway construction program doubled. I also led ADOT in implementing many innovations in the areas of funding and financing, technology, infrastructure, research, planning and internal operations, that resulted in improved agency operations and program delivery.

Chairman Rockefeller and Members of the Committee, thank you for your consideration and the opportunity to appear before you today. I am committed to working with you, the Administration, Secretary Foxx, and all transportation stakeholders to find ways to meet our Nation’s transportation needs, and I look forward to your questions.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Victor Manuel Mendez.
2. Position to which nominated: Deputy Secretary, U.S. Department of Transportation.
3. Date of Nomination: May 15, 2014.
4. Address (List current place of residence and office addresses):
 Residence: Information not released to the public.
 Office: U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.
5. Date and Place of Birth: August 13, 1957; Ciudad Juarez, Chihuahua, Mexico.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
 None.
7. List all college and graduate degrees. Provide year and school attended.
 Arizona State University
 Tempe, AZ
 Masters in Business Administration, 1994
 University of Texas at El Paso
 El Paso, TX
 Bachelors of Science in Civil Engineering, 1980
8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.
 (Management-level experience denoted in *italics*)

United States Department of Transportation (Washington, D.C.)

Acting Deputy Secretary, U.S. Department of Transportation (01/2014 to present)

Administrator, Federal Highway Administration (07/2009–12/2013)

Arizona Department of Transportation (Phoenix, AZ)

Director, Arizona Department of Transportation (07/2001–02/2009)

Deputy Director, Arizona Department of Transportation (09/1999–07/2001)

Deputy State Engineer, Arizona Department of Transportation (02/1997–09/1999)

Assistant State Engineer, Arizona Department of Transportation (09/1995–02/1997)

Transportation Engineering Supervisor—Program and Project Section, Arizona Department of Transportation (05/1994–09/1995)

Transportation Engineering Supervisor—Special Programs Section, Arizona Department of Transportation (09/1992–05/1994)

Transportation Engineer Supervisor-Preconstruction Engineering, Arizona Department of Transportation (05/1988–09/1992)

Transportation Engineer I, Arizona Department of Transportation (10/1985–05/1988)

U.S. Forest Service

Civil Engineer, U.S. Forest Service, Flagstaff, AZ (10/1984–10/1985)

Civil Engineer—Roadway Design and Facilities Engineering, U.S. Forest Service, Prineville, OR (06/1980–10/1984)

9. Attach a copy of your resume. Please see attachment.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years: None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years: None.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

- American Association of State Highway and Transportation Officials (AASHTO); President (2006–2007)
- Western Association of State Highway and Transportation Officials (WASHTO); President (2006–2007)
- City of Glendale (AZ) Citizens Transportation Oversight Commission; Member and Chair (2002–2006)
- City of Glendale (AZ) Special Events Committee; Member (2006–2008)
- Valley of the Sun YMCA; Board of Directors; Member (2008–2009)

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

Yes, I've held appointive office at the state and Federal levels. Specifically:

In 2002, I was appointed by former Arizona Governor Jane Dee Hull and confirmed by the Arizona State Senate to the position of Director, Arizona Department of Transportation;

In 2003, I was re-appointed by former Arizona Governor Janet Napolitano to the position of Director, Arizona Department of Transportation.

In 2009, I was appointed by President Obama and confirmed by the U.S Senate to the position of Administrator, Federal Highway Administration.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Arizona State Democratic Central Executive Committee	10/10/2006	\$2,000.00
Obama Victory Fund	03/05/2012	\$500.00
	07/05/2012	\$2,000.00
	10/05/2012	\$2,000.00

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements. None.

16. List each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the

position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

I have done my best to identify books, articles, columns, publications or relevant speeches, including a thorough review of personal files and searches of publically available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following below:

Speeches

Speeches delivered in my capacity as DOT Acting Deputy Secretary:

- January 10, 2014—National Association of Counties State Associations Meeting
- January 14, 2014—TRB Dwight Eisenhower Fellowship Program, Washington D.C.
- January 14, 2014—TRB Eisenhower Program Closing Reception, Washington, D.C.
- January 16, 2014—TRB Long-Term Bridge Performance program, Washington, D.C.
- January 22, 2014—Society of Automotive Engineers Government Industry Meeting
- January 24, 2014—Mayors Innovation Project Meeting
- February 4, 2014—Bloomberg BGOV Infrastructure Conference
- February 6, 2014—DOT Civil Rights Virtual Symposium [TAPED Remarks]
- February 7, 2014—Eisenhower School Visit
- February 16, 2014—Transportation Trades Department Executive Committee Meeting
- March 2, 2014—National Association of Counties Transportation Steering Committee Meeting
- March 3, 2014—National Association of Counties Large Urban County Caucus Steering Committee Meeting
- March 5, 2014—OSDBU Women’s History Month Event
- March 6, 2014—Associated General Contractors of America Convention
- March 10, 2014—International Bridge, Tunnel, and Turnpike Association Summit on Legislation, Policy, and Infrastructure Finance
- March 11, 2014—Purdue Road School [TAPED Remarks]
- March 13, 2014—National Congress of American Indians Executive Council Winter Session
- March 19, 2014—Young Professionals in Transportation Meeting
- March 24, 2014—American Association of Port Authorities Spring Conference
- March 25, 2014—National Freight Advisory Committee Meeting
- March 27, 2014—Garrett Morgan Sustainable Transportation Competition
- April 3, 2014—Highway Safety Partners’ Venture Meeting
- April 22, 2014—Great Lakes Regional Small Business Transportation Summit
- April 29, 2014—USMMA Board of Visitors Meeting
- May 6, 2014—National Maritime Strategy Symposium
- May 7, 2014—Construction Industry Ethics & Compliance Initiative Spring Conference
- May 7, 2014—National Bike to School Day Event
- May 8, 2014—U.S. Army War College Visit
- May 8, 2014—Representative Adam Smith’s DC Day Meeting
- May 12, 2014—International Association of Machinists and Aerospace Workers Legislative Conference
- May 13, 2014—Steel Manufacturers Association 2014 Annual Member Conference
- May 17, 2014—Manor Expressway Ribbon Cutting Ceremony
- May 22, 2014—FTA GROW AMERICA Webcast

Speeches delivered in my capacity as FHWA Administrator can be found on the following page of the FHWA website: <http://www.fhwa.dot.gov/briefingroom/speeches/>

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

Date	Topic	Committee	Senate/House
June 2, 2009	Nomination Hearing	Environment and Public Works	Senate
March 17, 2010	Strengthening Intermodal Connections and Improving Freight Mobility	Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies	House
February 15, 2011	Accelerating the Project Delivery Process	Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit	House
March 30, 2011	FHWA FY 2012 Budget Request	Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies	House
March 22, 2012	President's FY 2013 Budget	Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies	House
March 14, 2013	Implementing MAP-21: Progress Report from U.S. DOT Modal Administrators	Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit	House
June 13, 2013	Crumbling Infrastructure: Examining the Challenges of our Outdated and Overburdened Highways and Bridges	Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies	Senate
November 14, 2013	Progress Report: Hurricane Sandy Recovery—One Year Later	Committee on Transportation and Infrastructure	House

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

It's an exciting and challenging time to be engaged in transportation. The solutions for the future will require focus and a willingness to consider new ways of doing business. I have the experience, knowledge and competence to lead and assist during these times, if confirmed.

During my career at FHWA and at the Arizona Department of Transportation, I have been a leader on transportation issues for many years. I know the issues and understand the needs of the various stakeholders, such as local municipalities, metropolitan planning organizations, tribes, elected officials, etc. Over the years, I have developed strong business relationships and partnerships with various levels of government and industry stakeholders.

I believe I am in a position to be highly effective in helping shape transportation policy to meet the Nation's future needs. The nation is on the threshold of redefining its future transportation infrastructure and how it will pay for it and I would be privileged, if confirmed, to be part of that process.

As Administrator of the Federal Highway Administration, I led an organization of approximately 3,000 employees with offices in every state and an annual operating budget of approximately \$425 million. FHWA promotes the development, operation, and management of an intermodal transportation system that is economically efficient, environmentally sound, provides a foundation for the Nation to compete in the global economy, and moves people and goods safely.

Under my leadership FHWA successfully administered an average annual \$41 billion federal-aid transportation program to invest in our Nation's highways and bridges. Additionally, FHWA successfully implemented \$26.6 billion from the American Recovery and Reinvestment Act (ARRA). Through ARRA we invested in more than 12,000 road, highway and bridge projects across the country. These projects put our fellow citizens back to work and made our communities safer, greener, more livable, less congested and economically stronger. During my tenure at FHWA, I

placed significant emphasis on innovation and best practices to achieve our efficiency and project delivery objectives.

Additionally, prior to my job at FHWA, for approximately 8 years I was the Director of the Arizona Department of Transportation. I led an organization of approximately 4,600 employees with an annual operating budget of approximately \$430 million. The 5 year capital budget, consisting primarily of freeways and highways, averaged approximately \$6 billion in state and Federal funds. At one point in time, the Department had approximately \$1.5 billion under contract. ADOT impacts virtually every citizen of Arizona through its responsibility to license drivers, register vehicles, in addition to planning, building and operating the state's transportation infrastructure, as well as addressing general aviation needs throughout the state.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

If confirmed for the position of Deputy Secretary, the chief operating officer of the Department of Transportation, it will be incumbent upon me to ensure that the Department is delivering the best value for the available taxpayer resources. Through the appropriate systems and controls, the Department must ensure that all financial transactions meet and exceed established protocols to ensure that there is no fraud, waste or abuse. In addition, as a manager, my philosophy has always been to use audits as management tools for two primary purposes: (1) to continuously improve the existing practices and processes; and (2) to fix any deficiencies that the auditors may identify. It will also be my responsibility to ensure that employees are properly trained to perform their responsibilities.

To this role, I bring significant hands on experience managing large complex organizations with annual operating budgets in excess of \$400 million and overseeing the expenditure of capital budgets that totaled well into the billions of dollars in taxpayer funds. Moreover, I have a proven track record of successfully leading large organizations and working within bureaucracies to deliver tangible benefits to the taxpayer.

20. What do you believe to be the top three challenges facing the department/agency, and why?

Safety is our highest priority at USDOT. We will continue to search for solutions that improve safety. Safety touches everyone in the Nation in one way or another. Almost 33,000 people died on the Nation's highways and we need to find strategies to reduce further loss of life. We need to continue to remove unsafe motor coaches that operate and imperil unsuspecting bus customers. We will continue to focus on several new and emerging safety issues, such as the safe transport of energy products and addressing auto industry vehicle defects in a more timely manner. In the passenger rail sector we need to continue to focus on safety culture and positive train control issues. In the aviation sector, NextGen implementation is of high priority. It is also my belief that we will have to rely on technology solutions to improve safety on the Nation's transportation system.

Appropriate Federal funding for the necessary investments in surface and aviation transportation is another challenge. The highway account of the Highway Trust Fund will become insolvent in late August, followed by insolvency of the transit account in early 2015. These infrastructure investments are crucial for the future of the Nation's economy and our citizens. Our transportation system which connects all of us to jobs, education, healthcare, and many other needs must provide for efficient trade and commerce; and allow all of our economic sectors to be competitive in a global economy.

Finally, improving our efficiency is critically important. We must strive to obtain the best value for the taxpayers with the available resources. We will continue to pursue innovative solutions that will cut project delivery time and work on an inter-agency basis to ensure that the Federal Government is delivering infrastructure in the most efficient manner possible.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I am a participant in the Arizona State Retirement System and receive monthly retirement benefits.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain: No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's designated agency ethics official to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's designated agency ethics official to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

As mentioned in item A-17 above, I have testified before several congressional committees since 2009. The nature of this testimony has typically been to either advocate on behalf of the Administration's annual Budget request to Congress or to provide the committees before which I testified with an update on a specific policy issue under the specific committee's jurisdiction. Additionally, in my role as the Director of the Arizona Department of Transportation, I was responsible for identifying beneficial transportation-related policies at the state and Federal levels.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

First, as I stated in item 4 above I do not reside in Arizona anymore. I moved from Arizona approximately 5 years ago. Second, in my previous 5 years as the Administrator of the Federal Highway Administration a conflict of interest situation has never emerged due to my awareness and careful consideration of the national issues that we address. So, I will continue to focus on the national/federal nature of the issues that we address in transportation.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's designated agency ethics official to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain: No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain.

Approximately 38 years ago I was charged with public nuisance—drinking a beer in public. The legal drinking age was 18. I was 18 years of age and pled no contest. From memory, believe I paid a fine of \$30 or \$40. However, I do not recall the exact amount.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

During my tenure as Administrator of the Federal Highway Administration and as Director of the Arizona Department of Transportation, I was named in my official capacity in numerous civil claims. However, I was not directly involved in these legal proceedings and no judgments were made against me personally.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain: No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain.

Over the past 12 years, as Administrator of the Federal Highway Administration and as Director of the Arizona Department of Transportation, I have been listed in my official capacity as one of the management officials in a few cases and claims, including EEO complaints. However, I was not directly involved in these matters and none resulted in any findings of wrongdoing against me personally.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

None to my knowledge.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RESUMÉ OF VICTOR M. MENDEZ

Executive profile

Victor Mendez is a high performing executive with a proven track record of successfully leading large transportation agencies. He has strong leadership and communication skills. Victor has worked with elected officials from all levels of government and has the distinct pleasure of having worked directly for 4 dynamic leaders who have held Secretarial positions in the Executive Branch of the Federal Government.

Victor currently serves as the Acting Deputy Secretary at the U.S. Department of Transportation, while holding the position as the Administrator of the Federal Highway Administration (FHWA). Victor was nominated by President Obama and confirmed by the U.S. Senate in July 2009 to be the FHWA Administrator. Previously, he was a member of former Arizona Governor Janet Napolitano's Cabinet as the Director of the Arizona Department of Transportation (ADOT). He was ADOT Director from 2001 through early 2009 and has been involved in national transportation policy issues for many years. In 2008, he was selected as Leader of the Year in Public Policy in Transportation by the *Arizona Capitol Times*. During 2006 through 2007, he served as President of the American Association of State Highway and Transportation Officials (AASHTO) and the Western Association of State Highway and Transportation Officials (WASHTO). Throughout 2008, he served on the Council of State Governments (CSG) Transportation Advisory Group. In past years, he served on several city commissions and committees as a citizen of the City of Glendale, Arizona.

Throughout his career Victor has held various executive management positions leading large transportation agencies with thousands of employees. He has focused these leadership opportunities to promote: (1) effective and efficient government, (2) safety, (3) environmental protection and enhancement, (4) innovation, research and technology, (5) partnership with transportation interest groups, and (6) smart transportation investment that supports job creation. He understands that fulfilling government statutory and regulatory responsibilities involves resolving conflicts among competing objectives and interests, such as preserving neighborhoods, protecting our quality of life, and keeping the air clean while providing transportation infrastructure and services that grow the economy and create jobs.

Victor earned a Masters of Business Administration degree from Arizona State University and a Bachelors of Science in Civil Engineering degree from the University of Texas at El Paso. He is a registered professional engineer in the State of Arizona.

Career profile

- In December 2013, President Obama appointed Victor to serve as the Acting Deputy Secretary of the U.S. Department of Transportation.

- In 2009, President Obama nominated and the U.S. Senate confirmed Victor as the Administrator of the Federal Highway Administration.
- In 2003, former Arizona Governor (and current U.S. Department Homeland Security Secretary) Janet Napolitano appointed Victor as Director of the Arizona Department of Transportation.
- In 2001, former Arizona Governor Jane Dee Hull appointed Victor as the Department's Acting Director, and he was subsequently confirmed as Director by the State Senate in 2002.
- In 1999, former ADOT Director (and past U.S. Department of Transportation Secretary) Mary E. Peters appointed Victor as the department's Deputy Director.
- In 1997, Victor was selected as the Deputy State Engineer to lead the implementation of the Phoenix area's multi-billion dollar freeway system.

Leadership and executive management experience

Federal experience

As the acting Deputy Secretary, Victor is the Department of Transportation's chief operating officer. Victor has responsibility for the day-to-day operations of 10 modal administrations and more than 55,000 DOT employees nationwide and overseas. Mendez is focused on advancing the Secretary's key priorities and ensuring that the transportation system remains the safest in the world and contributes to the economic well-being of the Nation.

As Administrator of the Federal Highway Administration, Victor leads an organization of approximately 3,000 employees with offices in every state and an annual operating budget of approximately \$425 million. FHWA promotes the development, operation, and management of an intermodal transportation system that is economically efficient, environmentally sound, provides a foundation for the Nation to compete in the global economy, and moves people and goods safely.

Under Victor's leadership FHWA successfully administered an average annual \$41 billion Federal aid transportation program to invest in our Nation's highways and bridges. Additionally, FHWA successfully implemented \$26.6 billion from the American Recovery and Reinvestment Act (ARRA). Through ARRA we invested in more than 12,000 road, highway and bridge projects across the country. These projects put our fellow citizens back to work and made our communities safer, greener, more livable, less congested and economically stronger.

In 2009, Victor launched a nationwide innovation initiative called Every Day Counts (EDC) to reduce project delivery times and to implement market ready technologies that will improve highway safety and mobility. EDC has been embraced and implemented by all state departments of transportation. Several strategies from EDC were actually included in the new surface transportation bill (MAP-21) that was signed by President Obama in 2012.

In 2012, FHWA was recognized as one of the best Federal agencies to work, ranking #9 out of 292 sub-cabinet agencies and improving from last year's ranking of #12 in the "Best Places to Work" survey, conducted by the nonpartisan think tank Partnership for Public Service. Since 2009, FHWA's overall ranking has improved to #9 from #27.

State experience

As Director of the Arizona Department of Transportation, Victor led an organization of approximately 4,600 employees with an annual operating budget of approximately \$430 million. The 5 year capital budget, consisting primarily of freeways and highways, averaged approximately \$6 billion in state and Federal funds. At one point in time, the Department had approximately \$1.5 billion under contract. ADOT impacts virtually every citizen of Arizona through its responsibility to license drivers, register vehicles, as well as to plan, build and operate the state's transportation infrastructure, and to address general aviation needs throughout the state.

Victor has a proven track record as a successful director of a state transportation agency. Through his leadership ADOT successfully; (1) built the Regional Freeway System in the Phoenix area six years ahead of schedule, (2) delivered the statewide transportation construction program on time for eight consecutive years, and (3) continued to provide excellent customer service at all Motor Vehicle Division (MVD) field offices throughout the state. This was successfully accomplished through innovative management strategies and solutions during a time of hyper-growth in Arizona, when demand for MVD services increased dramatically and the highway construction program doubled.

During Victor's tenure as ADOT Director, the Department implemented many innovations in the areas of funding and financing, technology, infrastructure, re-

search, planning and internal operations. These innovations resulted in improved agency operations and program delivery.

Victor built an organization that was sensitive and responsive to the citizens of Arizona while ensuring compliance with statutory and regulatory requirements and being mindful of its fiduciary responsibilities to the taxpayers. He enhanced the agency's ability to communicate with the public and stakeholders through direct contact, partnerships, improved media communications and public involvement.

International experience

Victor has also been actively engaged in international transportation issues. During my tenure at the Arizona Department of Transportation, he co-chaired the Transportation, Infrastructure and Ports Committee of the Arizona Mexico Commission. Additionally, he co-chaired the Border Crossings and Logistics Worktable of the Border Governors Conference. In 2007, he participated and presented at the World Road Congress in Paris, France as a member of the AASHTO delegation. He is fluent in conversational Spanish. *Comprehensive "Work History" is attached*

Victor M. Mendez—Work History through January 2009

From (Month/Year): 01/2003 to (Month/Year): 01/2009

Employer Name: Arizona Department of Transportation

Position Title: *Director*

City: Phoenix state: AZ country: Zip Code: 85007

Supervisor's Name: Former Arizona Governor Janet Napolitano

From (Month/Year): 07/2001 to (Month/Year): 01/2003

Employer Name: Arizona Department of Transportation

Position Title: *Director*

City: Phoenix state: AZ country: Zip Code: 85007

Supervisor's Name: Former Arizona Governor Jane Dee Hull

From (Month/Year): 09/1999 to (Month/Year): 07/2001

Employer Name: Arizona Department of Transportation

Position Title: *Deputy Director*

City: Phoenix state: AZ country: Zip Code: 85007

Supervisor's Name: Former ADOT Director Mary Peters

From (Month/Year): 02/1997 to (Month/Year): 09/1999

Employer Name: Arizona Department of Transportation

Position Title: *Deputy State Engineer—Valley Transportation Group*

City: Phoenix state: AZ country: Zip Code: 85007

Supervisor: Tom Schmitt

From (Month/Year): 09/1995 to (Month/Year): 02/1997

Employer Name: Arizona Department of Transportation

Position Title: *Assistant State Engineer—Statewide Project Management*

City: Phoenix state: AZ country: Zip Code: 85007

Supervisor: Wayne Collins

From (Month/Year): 05/1994 to (Month/Year): 09/1995

Employer Name: Arizona Department of Transportation

Position Title: *Transportation Engineering Supervisor, Program and Project Section*

City: Phoenix state: AZ country: Zip Code: 85007

Supervisor: Dean Lindsey

From (Month/Year): 09/1992 to (Month/Year): 05/1994

Employer Name: Arizona Department of Transportation

Position title: *Transportation Engineering Supervisor, Special Programs Section*

City: Phoenix state: AZ country: Zip Code: 85007

Supervisor: Bob Mickelson

From (Month/Year): 05/1988 To (Month/Year): 09/1992

Employer Name: Arizona Department of Transportation

Position Title: *Transportation Engineering Supervisor, Preconstruction Engineering*

City: Phoenix state: AZ country: Zip Code: 85007

Supervisor: Bob Mickelson

From (Month/Year): 10/1985 to (Month/Year): 05/1988

Employer Name: Arizona Department of Transportation

Position Title: *Transportation Engineer I*

City: Phoenix state: AZ country: Zip Code: 85007

Supervisor: Jamal Sarsam

From (Month/Year): 10/1984 to (Month/Year): 10/1985
 Employer Name: U.S. Forest Service
 Position Title: *Civil Engineer*
 City: Flagstaff state: AZ country: Zip Code: 86001
 Supervisor's Name: Bob Macdonald

From (Month/Year): 06/1980 to (Month/Year): 10/1984
 Employer Name: U.S. Forest Service
 Position Title: *Civil Engineer, Roadway Design and Facilities Engineering*
 City: Prineville state: OR country: Zip Code: 97754
 Supervisor's Name: Jim Saurbier

The CHAIRMAN. Thank you very much, Mr. Mendez.
 Mr. Rogoff?

**STATEMENT OF PETER M. ROGOFF, UNDER SECRETARY FOR
 POLICY-DESIGNATE, U.S. DEPARTMENT OF TRANSPORTATION**

Mr. ROGOFF. Well, thank you, Chairman Rockefeller, Ranking Member Thune, and members of the Committee.

It is an honor for me to appear before you today as President Obama's nominee for Under Secretary of Transportation for Policy. Having served on the staff of a Senate Committee for 22 years, I know that the confirmation process is one of the most important constitutional responsibilities of the Senate. So I come to this hearing with great humility and a respect for the process.

I would like also to introduce my family, Ms. Dina Morris, my wife; my daughter, Lucy Rogoff; our great friend and the greatest nanny on the planet, Marlene Dowling-Leech. And my teenage son is unfortunately charged with teaching a class to his peers in high school but he could not be here today but is with us in spirit.

As you pointed out, Mr. Chairman, I did considerable work with a number of Senators on the Appropriations Committee. My first Chairman was actually Senator John Stennis of Mississippi. But shortly after he left the Committee and left the Senate, I was given the opportunity to move to the Transportation Subcommittee. I then served 19 years on the staff of the Transportation Subcommittee, including 14 years as its Democratic Staff Director.

I am deeply proud of my contributions during that time, assisting the Senate in advancing improvements and new initiatives to make our transportation system across all modes safer and more efficient.

My work included serving as a principal staff adviser for numerous policy initiatives, including the .08 drunk driving law, new maritime screening efforts to ban substandard ships and polluters from U.S. ports, new inspection regimes to ensure the safety of cross-border truck movements, new training and recruitment mechanisms for air traffic controllers, new drug and alcohol testing requirements for transportation industry employees, new Federal assistance measures for accident victims, and the development of new aviation user fees to finance security requirements in the wake of 9/11.

Many of those initiatives were careful acts of coordination between the Appropriations Committee and the Commerce Committee. So I have had a great deal of work with this committee as well.

In April 2009, the President nominated me to serve as his Federal Transit Administrator, and the Senate confirmed me to that

position of May of that year. And then, this past January, the President directed me to serve as the Under Secretary of Transportation for Policy on an acting basis. My nomination to serve in that position is now before you.

As Administrator of the FTA, I presided over the significant modernization of an \$11 billion agency with more than 500 employees and 200 contractors across the Nation, as well as hundreds of grantees that ranged from our largest and most complex transit systems to small vanpools providing critical medical transportation in sparse, rural communities and on tribal lands.

While Administrator, I developed and transmitted new safety legislation to Congress, which is now part of MAP-21, granting FTA new authority for the first time in its 50-year history to establish and enforce minimum transit safety standards on all federally funded rail transit systems.

I am particularly proud of my effort to streamline the FTA's processes, including the New Starts program. We substantially transformed the approach away from a "Washington knows best" attitude, to one where the FTA works to help State and local leaders deploy their own vision for improved mobility in their community.

We also made substantial improvements in the FTA's triennial audit and review process, moving away from a "one size fits all" enforcement exercise to one focused on each transit agency's unique characteristics, while ensuring continued Federal compliance.

Currently, as Acting Under Secretary of Policy, I have had the pleasure of assisting Secretary Foxx and our modal administrators in developing, finalizing, and formally transmitting to Congress a comprehensive multi-modal surface transportation reauthorization act, or the GROW AMERICA Act. It is a \$302 billion, 4-year proposal, all built around the imperative presented by the fact that our Nation will see 100 million citizens in growth by the year 2050. That is 100 million additional citizens who will put dramatically increased demands on our surface transportation system, both in moving people and freight.

The year 2050 may seem very far away to some of us, but as the parents of two teenagers, my wife and I have to reflect on the fact that in the year 2050, our kids will be roughly the ages that we are now. And they will either be working in an economy that continues to grow and supports a rising quality of life, or they will be struggling in an economy whose potential has been choked off by punishing congestion and deteriorated infrastructure.

These are the competing visions for the future that all of us transportation policymakers face today, as you, Mr. Chairman, and you, Senator Thune, expressed cogently in your opening statement. So I very much appreciate the opportunity to continue with this committee on these issues going forward.

Thanks very much.

[The prepared statement and biographical information of Mr. Rogoff follow:]

PREPARED STATEMENT OF PETER M. ROGOFF, UNDER SECRETARY FOR POLICY-
DESIGNATE, U.S. DEPARTMENT OF TRANSPORTATION

Chairman Rockefeller, Ranking Member Thune, Members of the Committee, it is an honor for me to appear before you today as President Obama's nominee for Under Secretary of Transportation for Policy.

Having served on the staff of a Senate Committee for 22 years, I know that the confirmation process is one of the most important constitutional responsibilities of the Senate. So I come to this hearing with great humility and respect for the process.

My experience in transportation policy began roughly 25 years ago when, in 1989, Appropriations Committee Chairman Robert C. Byrd gave me the opportunity to move from the staff of the subcommittee on Labor, HHS and Education to the Transportation subcommittee. I then served for 19 years on the staff of the Transportation Subcommittee, including 14 years as the Democratic Staff Director of the Subcommittee.

I am deeply proud of my contributions during that time assisting the Senate in advancing improvements and new initiatives to make our transportation system across all modes safer and more efficient. My work included serving as a principal staff advisor for numerous groundbreaking transportation policy initiatives, including the .08 BAC drunk driving law, new maritime screening efforts to ban substandard ships and polluters from U.S. ports, new inspection regimes to ensure the safety of cross-border truck movements, new training and recruitment mechanisms for air traffic controllers, new drug and alcohol testing requirement for transportation industry employees, new Federal assistance measures for accident victims, and the development of new aviation user fees to finance security requirements and targeted unemployment benefits for aviation workers in the wake of 9/11. I was also heavily involved in efforts to strengthen safety inspections of substandard trucks, cargo vessels, and pipelines. Together, these laws and regulations are credited with saving tens of thousands of lives.

In April 2009, the President nominated me to serve as his Federal Transit Administrator, and the Senate confirmed me to that position in May of that year. This past January, the President directed me to serve as the Undersecretary of Transportation for Policy on an acting basis. My nomination to serve in that position is now before you.

As Administrator of the Federal Transit Administration (FTA), I presided over the significant modernization of an \$11 billion agency with more than 500 employees and 200 contractors here in Washington and ten Regional offices. Throughout my tenure as the agency's Administrator, the FTA never failed to obtain a clean audit opinion while administering billions of dollars in grant funds to literally hundreds of grantees. These grantees ranged from our largest and most complex urban systems to small van pools providing critical medical transportation in sparse rural communities and tribal lands.

While Administrator, I presided over the transition from SAFETEA-LU to a new, two-year surface transportation authorization, MAP-21. The new law reflects many of FTA's and the U.S. Department of Transportation's highest policy priorities to strengthen public transportation. In particular, the Administration developed and transmitted new safety legislation to Congress which is now part of MAP-21, granting FTA new authority for the first time in its 50-year history to establish and enforce minimum transit safety standards on all federally funded rail transit systems.

I am particularly proud of my effort to streamline the FTA's processes, including the New Starts program—the agency's major capital public transportation program for expanding transit systems. We have substantially transformed the approach away from a "Washington knows best" attitude to one where the FTA works to help state and local leaders deploy their own vision for improved mobility in their community. We also made substantial improvements in the FTA's triennial audit and review process—moving away from a "one size fits all" enforcement exercise to one focused on each transit agency's unique characteristics while ensuring continued Federal compliance as they take on new challenges. I also initiated important revisions and clarifications to FTA's policies to better guarantee that all funding recipients comply fully with Federal civil rights laws including the Americans with Disabilities Act.

Currently, as Acting Under Secretary of Transportation for Policy, I have had the pleasure of assisting Secretary Foxx and our modal administrators in developing, finalizing, and formally transmitting to Congress a comprehensive multimodal surface transportation reauthorization act—the GROW AMERICA Act. The GROW AMERICA Act is a \$302 billion, four-year transportation reauthorization proposal built around the policy imperatives presented by the fact that our Nation will see

an additional 100 million citizens by the year 2050—100 million citizens that will put dramatically increased demands on our surface transportation system, both in moving people and freight.

The year 2050 may seem far away to some of us. But as the parents of two teenagers, my wife and I often reflect on the fact that, in the year 2050, our kids will be roughly the ages that we are now. And they will either be working in an economy that continues to grow and supports a rising quality of life, or they will be struggling in an economy whose potential has been choked off by punishing congestion and deteriorated infrastructure.

Those are the competing visions for the future that all of us as transportation policymakers face today, including the Members of this Committee. I would very much appreciate the opportunity to continue to work with this Committee and the rest of Congress as we tackle these challenges together in the years ahead.

Thank you for the opportunity to present my testimony this afternoon. I would be happy to answer any questions you may have.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Peter Matthew Rogoff.
2. Position to which nominated: Under Secretary of Transportation for Policy, U.S. Department of Transportation (USDOT).
3. Date of Nomination: May 15, 2014.
4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, D.C. 20590

5. Date and Place of Birth: March 9, 1960; New York, NY.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Spouse: Ms. Dena Morris, Legislative Director, Office of U.S. Senator Richard Durbin (D-IL); children: Niles H. M. Rogoff, Age 16; Lucille H.M. Rogoff, Age 14.

7. List all college and graduate degrees. Provide year and school attended.

Amherst College
Amherst, MA
Bachelor of Arts, 1983

Georgetown University
Washington, D.C.
Masters in Business Administration, 2001

8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

(Management-level experience denoted in *italics*)

U.S. Department of Transportation
Washington, D.C.

- *Acting Under Secretary of Transportation for Policy (January 2014–Present)*
- *Federal Transit Administrator (May 2009–Present)*

U.S. Senate Committee on Appropriations
Washington, D.C.
Subcommittee on Transportation, Housing and Urban Development, and Related Agencies

- *Democratic Staff Director (January 1995–May 2009)*
- Professional Staff Member (January 1990–December 1994)

Subcommittee on Labor, Health and Human Services, Education, and Related Agencies

- Professional Staff Member (January 1987–December 1989)

National Association of Independent Colleges and Universities (NAICU) Washington, D.C.

- Legislative Associate (est. April 1984–January 1987)

Coalition of Private University Students (COPUS)
Washington, D.C.

- Legislative Director (Est. November 1983–April 1984)
9. Attach a copy of your resume. Attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years: None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years: None.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap. None.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

In 2009, I was appointed by President Barack Obama and confirmed by the U.S. Senate to the position of Administrator of the Federal Transit Administration (FTA).

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

<i>Contributions over the last ten years:</i>		
People for Patty Murray	09/20/2010	\$500.00
Pennsylvania Democratic Party	10/18/2004	\$500.00
Obama for America	07/27/2012	\$2500.00
	10/24/2008	\$1,100.00
	09/15/2008	\$1,000.00
Obama Victory Fund	10/22/2008	\$1,300.00

Services:

- GOTV Volunteer, Presidential Campaign of Barack Obama (2008)
- GOTV Volunteer, Patty Murray for U.S. Senate (2004; 2010)

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

- Community Transportation Association of America's Dr. and Mrs. William and Budd Bell Award (2012)
- Conference of Minority Transportation Officials (COMTO) National Chair's Award (2010)
- Transportation Equity Network's Rosa Parks Award (2010)
- Lester P. Lamm Memorial Award (2008)
- United States Coast Guard Commandant's Distinguished Public Service Award (2003)
- Beta Gamma Sigma Honor Society for Business Education (2001)

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

I have done my best to identify books, articles, columns, publications or relevant speeches, including a thorough review of personal files and searches of publically available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following below:

Publications:

- “Cost is still a factor. Just not the only one.” *St. Paul Pioneer Press*; January 20, 2010.
- Letter to the Editor responding to “Off the San Francisco Rails.” *Wall Street Journal*; September 3, 2011.

Speeches:

Speeches delivered in my capacity as USDOT Acting Under Secretary of Transportation for Policy:

- 04/14/2014—National Shippers Strategic Transportation Council Annual Conference and Transportation Expo; Orlando, FL
- 03/13/2014—Road Gang Annual Conference; Washington, D.C.
- 03/13/2014—Mileage-Based User Free Alliance Conference; Washington, D.C.
- 03/06/2014—East Coast P3 Infrastructure Conference; Charlotte, NC
- 01/24/2014—New York Metropolitan Transportation Authority Sandy Grants; New York, NY
- 01/06/2014—Metro 7000 Series Rail Car Intro; Greenbelt, MD

Speeches delivered in my capacity as FTA Administrator can be found on the following page of the FTA website: <http://www.fta.dot.gov/newsroom/12290.html>

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

Date	Committee	Topic
01/16/2014	U.S. Senate Committee on Banking, Housing, and Urban Affairs	“Progress Report on Public Transportation Under MAP-21”
12/11/2013	U.S. House Transportation and Infrastructure Committee—Highways & Transit Subcommittee	“Examining the Current and Future Demands on FTA’s Capital Investment Grants”
11/14/2013	U.S. House Transportation and Infrastructure Committee	“Progress Report: Hurricane Sandy Recovery—One Year Later”
09/18/2013	U.S. Senate Committee on Banking, Housing, and Urban Affairs—Housing, Transportation, and Community Development Subcommittee	“Recovering from Superstorm Sandy: Assessing the Progress, Continuing Needs, and Rebuilding Strategy”
03/28/2013	U.S. Senate Committee on Banking, Housing, and Urban Affairs—Field Hearing in Sioux Falls, SD	“Improving Transportation Options in Rural States and Tribal Areas Under MAP-21”
03/14/2013	U.S. House Transportation and Infrastructure Committee—Highways & Transit Subcommittee	“Implementing MAP-21: Progress Report from U.S. DOT Modal Administrators”
12/20/2012	U.S. Senate Committee on Banking, Housing, and Urban Affairs—Housing, Transportation, and Community Development Subcommittee	“Recovering from Superstorm Sandy: Rebuilding Our Infrastructure”
05/19/2011	U.S. Senate Committee on Banking, Housing, and Urban Affairs	“Public Transportation: Priorities and Challenges for Reauthorization”
04/21/2010	U.S. House Committee on Oversight and Government Reform	“Audit of the Tri-State Oversight Committee and the Washington Metropolitan Area Transportation Authority”
03/23/2010	U.S. House Committee on Appropriations—Subcommittee on Transportation, Housing and Urban Development, and Related Agencies	“Federal Transit Administration’s FY2011 Budget Request”
12/08/2009	U.S. House Transportation and Infrastructure Committee—Highways & Transit Subcommittee	“Public Transit Safety: Examining the Federal Role” <i>Note: DOT Secretary Ray LaHood with the primary witness for this hearing and was accompanied by FTA Administrator Rogoff</i>
08/04/2009	U.S. Senate Committee on Banking, Housing, and Urban Affairs—Housing, Transportation, and Community Development Subcommittee	“Rail Modernization: Getting Transit Funding Back on Track”

Date	Committee	Topic
07/14/2009	U.S. House Committee on Oversight and Government Reform—Federal Workforce, Postal Service, and the District of Columbia Subcommittee	“Back on Track: WMATA Red Line Metrorail Accident and Continual Funding Challenges”
05/13/2009	U.S. Senate Committee on Banking, Housing, and Urban Affairs	Confirmation hearing as the Administrator-Nominee for the Federal Transit Administration

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

My professional career for the last 24 years has been focused almost exclusively on transportation policy. Of my 22 years serving on the staff of the U.S. Senate Appropriations Committee, I spent 19 serving on the Transportation Subcommittee, including 14 years as the Democratic Staff Director of the Subcommittee. Throughout that period, I developed both budget and policy expertise regarding all modes to transportation and had the opportunity to contribute to numerous landmark legislative accomplishments, including both authorization and appropriations bills.

In serving as the Federal Transit Administrator for the last four and half years, I have gained a full appreciation of how policy direction can best be applied in the administration of Federal programs to maximize efficiency and effectiveness for the benefit of transportation stakeholders and taxpayers.

I desire to serve as the Under Secretary of Transportation for Policy, if confirmed, so that I can apply these experiences to improving the cost effectiveness and performance of Federal transportation programs across all modes.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

The importance of proper management controls and financial accountability cannot be overstated when developing and applying Federal policy for transportation programs. All funds expended at USDOT are derived from taxpayers and system users, and we have the highest obligation to see to it that their funds are spent wisely and without waste.

As Federal Transit Administrator, I headed an agency of more than 500 employees and some 200 contractors with an annual budget of more than \$11 billion. The FTA has literally hundreds of grantees and any one of those grant relationships have the potential for waste or abuse. Even so, the FTA received a clean audit opinion throughout my tenure with zero known Anti Deficiency Act violations. Throughout that time, I have had a productive relationship with the DOT Office of Inspector General, and I have not hesitated to personally refer cases to that office when I have had suspicions or concerns.

20. What do you believe to be the top three challenges facing the department/agency, and why?

Safety has been, and must continue to be, the highest priority for senior officials at the Department of Transportation. Rapid changes in technology represent both a threat to safety and a huge opportunity to strengthen safety across all transportation modes. USDOT will face a considerable challenge in addressing those threats, like distracted driving, while maximizing the benefits new technology can provide, like guaranteeing vehicle separation on highways, railways, and runways.

The most recent census indicates that, as a nation, we will have more than 100 million additional citizens by the year 2050. And many of the areas that will see the most rapid population growth are already struggling to accommodate the population growth they have already experienced over the last decade. Working together with state and localities, the Department of Transportation must start planning for that population growth now so that growing congestion does not hinder the movement of people and freight to the point that it threatens the ability of the economy to grow. At the same time, DOT must work aggressively to ensure that economic changes do not result in communities that are not growing from being cut off from our national transportation network, especially our aviation and rail networks, but also our highway and marine networks.

Most immediately, the USDOT is facing the imminent insolvency of both the highway and transit accounts of the Highway Trust Fund. Working with Congress, the Department must ensure that sufficient revenues are deposited in both accounts to

ensure that our highway and transit construction and maintenance efforts are not reduced to crippling levels by the end of this commg summer.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I continue to have a Mass Mutual retirement account with the National Association of Independent Colleges and Universities. No contributions have been made to the account since I left their employ in 1987.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain: No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's designated agency ethics official to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's designated agency ethics official to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

During my period as FTA Administrator, I advocated for the President's program in advancing annual budget requests and the enactment of comprehensive transit safety legislation that was transmitted by the Administration to Congress in December of 2009.

In my previous role as Staff Director of the U.S. Senate Appropriations Subcommittee on Transportation, Housing and Urban Development, I advocated for the passage of, or modification to, appropriations and authorization legislation consistent with the direction provided by the Subcommittee and Full Committee Chairman.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's designated agency ethics official to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain: No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

During my tenure as Administrator of the Federal Transit Administration, I was named in my official capacity in numerous civil claims. However, I was not directly involved in these legal proceedings and no judgments were

made against me personally.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain: No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain.

During my tenure as Administrator of the Federal Transit Administration, I was named in my official capacity in a few cases and claims, including EEO complaints. I was not directly involved in these matters and none resulted in any findings of wrongdoing against me personally or in my official capacity as the principal of the agency.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

None to my knowledge.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RESUMÉ OF PETER M. ROGOFF

Acting Under Secretary of Transportation for Policy

U.S. Department of Transportation; January 2014 to Present

- On January 25, 2014, President Barack Obama directed Peter M. Rogoff to perform the duties of the Office of Under Secretary of Transportation for Policy.
- In this role, he serves as the principal advisor to the Secretary, while providing leadership in the development of policies for the Department, generating proposals and providing advice regarding legislative and regulatory initiatives across all modes of transportation. His office oversees the Office of Transportation Policy and the Office of Aviation and International Affairs.

Federal Transit Administrator

U.S. Department of Transportation; May 2009 to Present

- Successfully lead an agency of more than 500 staff through a period of historic change and reform, redirecting an annual budget of more than \$10.9 billion to investments that focus on key Obama Administration priorities, including reducing consumption of foreign oil, improving mobility for working families, reducing emissions of Greenhouse Gases, creating thousands of family wage jobs, developing and deploying cutting edge technologies, and streamlining and eliminating bureaucratic processes to put taxpayer funds to work rapidly and effectively.
- Successfully administer a single year 80-percent surge in funding as a result of the Recovery Act, meeting all statutory deadlines while ensuring compliance with all Federal rules.
- Successfully develop and advocate for a historic expansion of FTA's mission to include critical safety responsibilities in the wake of a spate of rail transit accidents across the Nation.
- Reinforce and strengthen the FTA's Civil Rights enforcement functions to ensure full application of Title VI of the Civil Rights Act, Environmental Justice requirements, and the American with Disabilities Act.
- Dramatically increase public transit's participation in the DOT's credit assistance programs to foster public-private partnerships that expedite investment in new transit capacity.
- Revolutionize the FTA's application of the Buy America Act to re-create U.S. manufacturing jobs, reducing the number of Buy America "waivers" by more than 90 percent.

- Use broad-based experience with other Transportation issues to advise the Secretary on policy and budget matters in other DOT Modal Administrations.

Democratic Staff Director; January, 1995 to May, 2009

Professional Staff Member; January 1990 to December 1994

Subcommittee on Transportation, Housing and Urban Development, and Related Agencies

U.S. Senate Committee on Appropriations

- Aably advised Subcommittee and Full Committee Chairman on all areas of Federal transportation policy. Managed and mentored a staff of policy professionals. Liaised regularly with senior DOT, OMB, and other WH officials as well as State Transportation Commissioners, Port Authorities, trade unions, advocacy groups, and transit, railroad, airport, airline, shipping, trucking and pipeline executives.
- Served as principal staff advisor for numerous groundbreaking transportation policy initiatives including the .08 BAC drunk driving law, new aviation user fees to finance security requirements, new maritime screening efforts to ban substandard ships and polluters from U.S. ports, new inspection regimes to ensure the safety of cross-border truck movements, new training and recruitment mechanisms for the air traffic controller workforce, new drug and alcohol testing requirement for transportation industry employees, new Federal assistance measures for accident victims, and targeted unemployment benefits for aviation workers in the wake of the industry upheaval following 9/11.
- Developed extensive expertise in Federal transportation budgeting and infrastructure investment mechanisms. Served as principal staff advisor on several successful bipartisan efforts to sure up the balance of the Highway Trust Fund. Routinely reviewed agency budgets with a focus on eliminating wasteful and unnecessary spending.

Prior Professional Positions

- Professional Staff Member, Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies; January 1987 to December 1989.
- Legislative Associate, National Association of Independent Colleges and Universities; Est. April 1984 to January 1987.
- Legislative Director, Coalition of Private University Students (COPUS); Est. November 1983 to April 1984.

Education

Masters in Business Administration (MBA), with honors, 2001. Georgetown University. Achieved degree while working full time. Inducted into Beta Gamma Sigma Honors Society.

Bachelor of Arts, Amherst College, 1983. Majored in American Studies.

Awards and Citations

Dr. and Mrs. William and Budd Bell Award, 2012. Awarded for “tireless advocacy for seniors and people with disabilities.” Community Transportation Association of America.

National Chair’s Award, 2010. Conference of Minority Transportation Officials (COMTO).

Rosa Parks Award, 2010. Transportation Equity Network, awarded for “overturn(ing) restrictive Bush-era transit funding guidelines to allow livability, equity and sustainability to become criteria in funding major transit projects.”

Lester P. Lamm Memorial Award, 2008. Awarded for outstanding leadership and dedication to U.S. highway transportation programs.

Distinguished Public Service Award, 2003. The highest public service award granted by the Commandant, United States Coast Guard, for outstanding efforts in advancing Coast Guard missions.

Personal

Age 53. Married with two teenage children.

Security Clearance: TS—1990 to present. SCI—2003 to present.

Mr. CHAIRMAN. Thank you very much, sir.
And now, Mr. Marcus Jadotte. And you can reintroduce.
[Laughter.]

**STATEMENT OF MARCUS D. JADOTTE, NOMINEE TO BE
ASSISTANT SECRETARY FOR INDUSTRY AND ANALYSIS,
INTERNATIONAL TRADE ADMINISTRATION,
U.S. DEPARTMENT OF COMMERCE**

Mr. JADOTTE. I will. I am afraid that my son may run out if we did.

Thank you very much, Mr. Chairman, Ranking Member Thune, and members of the Committee. I am honored by and grateful for your consideration to serve as Assistant Secretary of Commerce for Industry and Analysis.

I know that Senator Nelson had to leave, but I want to acknowledge his warm introduction of myself and my family earlier, especially grateful for his friendship over the years and his leadership in our home state.

I also again want to acknowledge Jennifer and our children. We are very proud to be here.

The opportunity to speak with you today on this panel of nominees is truly humbling. I am honored that President Obama and Commerce Secretary Pritzker believe that I can make a contribution to the work the United States Department of Commerce is doing to support American business, economic growth, and jobs.

The Industry and Analysis team is perhaps the best-kept secret in the Federal Government, and I look forward to working with each and every member of that team, if I am confirmed. I strongly believe in the value of public service. If confirmed, I would welcome the opportunity to combine my private sector and public sector experiences to make a meaningful contribution to the Department's work.

As an executive at NASCAR, I managed staff with a broad range of expertise and oversaw complex budgets and high-profile projects. The skills I developed in that role are skills that are applicable to the role of Assistant Secretary for Industry and Analysis.

Additionally, at NASCAR, I was responsible for fostering relationships with key business partners, organizing community outreach, and developing and implementing strategic plans to achieve results, all important experiences that have helped me prepare for a leadership role at the International Trade Administration, should I be confirmed.

If confirmed to this position, I will oversee programs focused on strengthening the U.S. economy and helping more companies export and create jobs. The I&A staff have an array of skills and are specifically focused on helping U.S. manufacturing, services, tourism, and textile companies, and other industries, increase exports. I look forward to working with this experienced staff to help advance its goals and mission.

As I mentioned, I&A is comprised of offices that are focused on various sectors of the economy. During my career, I have worked extensively with two I&A critical sectors—tourism and travel, and automotive. I have a strong understanding of these industries and a history of working collaboratively with industry stakeholders and

would welcome an opportunity to bring that knowledge to the industry team at ITA.

In my roles as Chief of Staff for two members of Congress, and as a special assistant at the Labor Department, I gained valuable insight into the legislative process and the operations of the Federal Government, all of which I believe would be called upon in the role to which I have been nominated.

Last, an effective leader must communicate a vision that colleagues understand and support. A leader must also be accountable for results. This approach is important to the success of any organization, and I will work hard every day to meet this standard, if I have an opportunity to serve in the position.

If confirmed, I will apply the experience that I have gained as an executive and as an administrator to ensure that I&A does an even better job of helping U.S. business contribute to the growth of the economy, improving customer service, and educating American business on the important services available at the Department of Commerce to help them grow at home and abroad.

Thank you for your time and consideration. I look forward to answering any questions you may have.

[The prepared statement and biographical information of Mr. Jadotte follow:]

PREPARED STATEMENT OF MARCUS D. JADOTTE, NOMINEE—ASSISTANT SECRETARY OF COMMERCE FOR INDUSTRY AND ANALYSIS, INTERNATIONAL TRADE ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Chairman Rockefeller, Ranking Member Thune, and members of the Committee, I am honored by and grateful for your consideration to serve as Assistant Secretary of Commerce for Industry and Analysis.

I would especially like to thank Senator Nelson for his leadership, his friendship over the years—and for the warm introduction today.

I also want to acknowledge my wife Jennifer and our children Ashton and Sofia, who are with me here today. Jennifer and I both arrived in our country as children. She arrived from Seoul as a newborn and I arrived from Nassau as a fourth grader. We met as grad students at Florida State University and are both grateful for the opportunity to build our lives and family in this great country.

The opportunity to speak with you today on this panel of nominees is truly humbling. I am honored that President Obama and Commerce Secretary Pritzker believe that I can make a contribution to the work the United States Department of Commerce is doing to support American business, economic growth, and jobs. The Industry and Analysis team is perhaps the best kept secret in the Federal Government and I look forward to working with each and every member of that team, if I am confirmed.

I strongly believe in the value of public service, and if confirmed, I welcome the opportunity to combine my private and public sector experience to make a meaningful contribution to the Commerce Department's work.

As an executive at NASCAR, I managed a diverse staff, and oversaw a complex budget and high-profile projects. The skills I developed to be successful in that role are skills which are applicable to the role of Assistant Secretary for Industry and Analysis.

Additionally, at NASCAR, I was responsible for fostering relationships with key business partners, organizing community outreach—and developing and implementing strategic plans to achieve results—all important experiences that have helped prepare me for a leadership role at the International Trade Administration, should I be confirmed.

If confirmed for this position, I will oversee staff and initiatives that focus on strengthening the U.S. economy and helping more companies export and create jobs. The staff at I&A have an array of skills and are specifically focused on helping U.S. manufacturing, services, tourism, textile, and consumer goods companies—and most other industries increase their exports. I look forward to working with this experienced staff to help advance its goals and mission.

As I mentioned, I&A is comprised of offices focused on various sectors of our economy. These offices review, quantify, and develop strategies to strengthen the global competitiveness of American industries. During my career, I worked extensively with two of I&A's critical sectors: travel and tourism and automotive. I have a strong understanding of these industries and a history of working collaboratively with stakeholders in those fields, and I welcome the opportunity to bring that knowledge to the industry teams at ITA.

In my roles as Chief of Staff for two members of Congress and as a Special Assistant at the Labor Department, I gained valuable insight into the legislative process and the operations of the Federal Government, all of which I believe will be helpful and called upon for the role to which I have been nominated.

Lastly, an effective leader must communicate a vision that colleagues and co-workers can understand and support—to enable the organization to succeed—and hold those responsible accountable for results. I believe that this approach is important to the success of an organization and I will work hard to meet this standard every day if I have the opportunity to serve in this position.

If confirmed, I will apply the experience I have gained as an executive and an administrator to ensure that I&A takes steps necessary to help our businesses contribute to the growth of the U.S. economy; remain focused on improving customer service; and, educating American businesses on all of the important services available to at the Department of Commerce.

Thank you for your time and consideration. I look forward to taking your questions.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Marcus Jadotte.
2. Position to which nominated: Assistant Secretary for Industry and Analysis.
3. Date of Nomination: May 22, 2014.
4. Address (List current place of residence and office addresses):
 Residence: Information not released to the public.
 Office: Ormond Beach, Florida.
5. Date and Place of Birth: October 18, 1971; Nassau, Bahamas.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
 Spouse: Jennifer Park-Jadotte Ph.D.-homemaker; children: Marcus Ashton Park Jadotte—11 years old; Sofia Pearl Park Jadotte—8 years old.
7. List all college and graduate degrees. Provide year and school attended.
 AA, Miami-Dade Community College (1989–1992)
 BS, Florida State University (1992–1994)
8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.
 Jadotte Consulting—Public Affairs and Business Development Consultant (April 2014 to Present)
 NASCAR (March 2005–April 2014)
 Vice President, Public Affairs and Multicultural Development
 Managing Director, Public Affairs
 Senior Manager, Public Affairs
 U.S. House of Representatives, Office of Congresswomen Debbie Wasserman Schultz—Chief of Staff (December 2004–March 2005)
 John Kerry for President—Deputy Campaign Manager (March 2003–December 2005)
 U.S. House of Representatives, Office of Congressman Peter Deutsch—Chief of Staff (January 2001–March 2003)
 Al Gore for President—Florida State Director (July 2000–December 2000)
 United States Department of Labor—Intergovernmental Officer/Special Assistant to the Deputy Secretary (April 1999–July 2000)
 Florida AFL–CIO—Consultant/Communications Director (February 1999–April 1999)

MacKay for Governor—Political Director (July 1998–November 1998)
 Executive Office of the Governor (Tallahassee, FL)—Special Assistant to the
 Governor (February 1997–February 1999)*

*All positions are management-level except where noted.

9. Attach a copy of your resume. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years: None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years.

NASCAR Inc.—Vice President Public Affairs and Multicultural Development
 (March 2005–April 2014)

TEAM Volusia—Economic Board Member (2011 to Present)

Ben Gamla Charter School—Board Member (2007 to Present)

Potomac Waves—Partner (2008 to Present)

Florida Democratic Party—Board Member (2013 to Present)

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Florida Democratic Party—Board Member (February 2013 to Present)

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

Schedule C Appointments during the Clinton Administration:

Special Assistant to the Deputy Secretary

United States Department of Labor, Washington, D.C.

February 2000–July 2000

Intergovernmental Officer

United States Department of Labor, Washington, D.C.

April 1999–January 2000

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Contributions:

Name	Amount	Date
Kosmas for Congress	\$500	12–21–2007
Kosmas for Congress	\$500	06–30–2008
Kendrick Meek for Florida	\$500	02–13–2010
Bill Nelson for U.S. Senate	\$500	08–30–2010
Friends of Harry Reid	\$500	10–04–2010
Kosmas for Congress	\$1,000	10–20–2010
Obama Victory Fund 2012	\$1,000	06–09–2011
Obama for America	\$1,000	06–09–2011
Debbie Wasserman Schultz for Congress	\$500	06–25–2012
Mike Thompson for Congress	\$500	03–29–2013
America's Leadership PAC	\$500	06–17–2013
Friends of Jeanne Shaheen	\$1,000	09–23–2013
Democratic Executive Committee of Florida	\$500	09–25–2013
Lori Edwards for Congress	\$500	06–30–2009
Darrell Thompson for DC City Council	\$500	03–07–2014
Judithanne McLauchlan for FL State Rep	\$500	11–30–2014
Jeff Yarbrow for TN State Senate	\$500	03–01–2010

The above list represents my best effort to recall/research all covered political contributions.

All offices and Services for the past ten years:

John Kerry for President, Deputy Campaign Manager, (March 2003–December 2004)

Acted as an outside consultant with the following groups via Potomac Waves, LLC:

- Florida Democratic Party/OFA Florida (2012)
- DCCC IE (2008)
- DSCC IE (2008)
- Friends United PAC (2012)
- Terry McAuliffe for Governor (2009)

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Merit-based scholarship from Florida State University, 1992–1994

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed: None.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony: None.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I strongly believe in the value of public service. The role that I have been nominated to fill is a humbling opportunity to give back to our great country. If confirmed, I would welcome the opportunity to combine my private and public sector experience to make a meaningful contribution to the Commerce Department's work to help businesses and workers achieve success.

Specifically, as a senior manager with NASCAR, I gained experience managing staff, a budget and high-profile projects, skills which are applicable to the role of Assistant Secretary for Industry and Analysis. At NASCAR, I was responsible for fostering relationships with key business partners, organizing community outreach and developing and implementing strategic plans to achieve results.

In addition, in my roles as chief of staff for Representatives Debbie Wasserman Schultz and Peter Deutsch and as a special assistant at the Department of Labor, I gained valuable insight into the legislative process and the operations of the Federal Government, which I believe have prepared me for a leadership role in the International Trade Administration, if I am confirmed.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

If confirmed as the Assistant Secretary for the Industry and Analysis (I&A) unit, I will oversee staff and initiatives that focused on strengthening the U.S. economy, helping more companies export and creating jobs. The staff in I&A have an array of skills and are specifically focused on helping our manufacturing, services, textile, consumer goods companies, and every other industry increase U.S. exports. Knowing that I would be joining a team with such a diverse set of skills is exciting, but more importantly it is important that benchmarks and metrics are part of the overall strategy.

As an executive at NASCAR, I understood the value of implementing management controls with benchmarks to track the progress of key goals and objectives. If confirmed, I will work closely with the staff and my colleagues within the International Trade Administration to ensure that I&A is properly managed, focused and is accountable to our industry stakeholders.

During my time at NASCAR, I oversaw projects that crossed local, state and government offices, which I believe will be advantageous to the agency-as international trade and export promotion are no longer occurring just at the Federal level. Local and State offices are working hard to get their companies abroad, I&A has the ability to help with these endeavors. In addition, I was the chief of staff to two Members of Congress, which afforded me the unique opportunity of developing and implementing administrative policies and procedures to manage staff in two distinctively different environments. If confirmed, I will use my experiences gained by working with these partners and in the Congressional offices to improve the agency's communication with these groups and further strengthen the partnerships that I&A has already cultivated.

Additionally, I believe an effective leader of an organization must communicate a vision for the organization that co-workers can understand, provide support to enable the organization to succeed, recognize success and hold those responsible accountable for results. This approach is important to the success of an organization and I will work hard to meet this standard every day if I have the opportunity to serve in this position. If confirmed, I will apply the experience I have learned as an administrator to ensure that proper management and accounting controls are employed in all areas that are entrusted to my oversight.

20. What do you believe to be the top three challenges facing the department/agency, and why?

1. Contributing to the growth of the U.S. economy via encouraging increased exports.
2. Remaining focused on ever improving customer service to the public and American business.
3. Unlocking and promoting the value of assets and services available to American business via the Department of Commerce. All three challenges are core to the department's mission and the priorities outlined by Secretary Pritzker.

(1) Contributing to the Growth of the U.S. economy:

With less than 1 percent of companies exporting and over 95 percent of the world's consumers living outside of the United States, we need to get U.S. companies exporting. People from all around the world want to buy U.S. goods—we make high valued products—we have a great brand name. There are small and medium-sized companies, minority and women owned business that should be growing faster, paying higher wages and hiring more workers, this can all happen if we get companies to look beyond our borders.

(2) Remaining Focused on Improving Customer Service to the Public and to America Businesses:

As I mentioned above, there is so much opportunity, but with opportunity there is also risk and companies that are new to exporting have services and people here that are positioned to help. You hear time and time again of companies that encounter problems when attempting to export their goods—sometimes the fix might be simple and sometimes it is a much bigger policy issue. American companies deserve to have assistance from the U.S. Government and I believe that I&A has the right skills to help companies succeed.

(3) Unlocking and promoting services available to American Businesses:

As I have been meeting with Commerce staff and doing my research on what it means to be successful in international trade, I am struck by how this agency and the I&A unit might be the best kept secret. I&A oversees the Advisory Committees, which is the venue for U.S. companies to weigh in on trade policy issues, to raise problems that they are facing and to advise the U.S. Government on upcoming policy decisions. In addition, I&A helps local and State leaders plan their trade missions—as I noted previously, more and more local and State offices are taking their businesses abroad to find customers and business partners; but not all 50 states are using these services.

I believe that my experience in NASCAR in the Public Affairs office will allow me to get the message out on all of the services that I&A, ITA and the Department of Commerce have to offer U.S. companies. If confirmed, I plan to aggressively promote the services, remain focused on improving the services and get more companies exporting.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I received a severance payment from my former employer when I ended my employment with the company. This payment is based upon a pre existing employment arrangement and is not contingent on my decision to accept a nomination or government position if confirmed. I also participate in an employer sponsored 401(k) program at NASCAR; the underlying holdings are all diversified, widely traded funds.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain: No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, the Department of Commerce's designated Agency Ethics Official has worked to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department of Commerce's designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, the Department of Commerce's designated Agency Ethics Official has worked to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department of Commerce's designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

I have supported NASCAR's public policy agenda during my employment with the company. Details are available on the company's LD-2 filings and the quarterly filings of Purple Strategies (NASCAR's public affairs and government affairs consultant).

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, the Department of Commerce's designated Agency Ethics Official has worked to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department of Commerce's designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain: No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

NASCAR was involved in a number of civil cases during my tenure with the company. I have not been named or accused of wrongdoing individually in any of these proceedings.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain: No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain: No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

None to my knowledge.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes

RESUMÉ OF MARCUS D. JADOTTE

Professional Experience

Jadotte Consulting, Daytona Beach, FL
Public Affairs and Business Development Consultant
 April 2014–Present

- Issues and Reputation Management
- Policy Risk Analysis
- Sports Marketing Business Development

NASCAR, Daytona Beach, FL
Vice President of Public Affairs and Multicultural Development
 March 2011–Present

Managing Director of Public Affairs
 September 2006–February 2011

Senior Manager of Public Relations
 March 2005–August 2006

- Managed NASCAR Public Affairs and Diversity Affairs departments. Oversaw all staff and programs.
- Managed a \$7 million annual budget
- Established and maintained effective working relationships with local, state, and federal government officials across NASCAR's 26-state corporate footprint.
- Served as principle spokesperson for all topics related to NASCAR public affairs.
- Led NASCAR's efforts to expand media coverage of the sport in the top 20 media markets.

Obama for America (OFA) Florida, Tampa, FL
Senior Advisor
 June 2012–November 2012

- Served on the Florida leadership team for Obama for America.
- Developed and executed Florida's communication programs.
- Oversaw political, digital, op-vote and scheduling departments in Florida.

United States House of Representatives, Washington, D.C.
Chief of Staff, Office of Congresswoman Debbie Wasserman-Schultz
 December 2004–March 2005

- Served as principle policy and political aide to then, newly elected Congresswoman Wasserman-Schultz of Florida.
- Organized the Congresswoman's office including the development and implementation of administrative policies and procedures, hired staff, and managed Capitol Hill and district offices.
- Developed and coordinated legislative strategies; planned and implemented targeted mailings, maintained relationships with Federal agencies, iHill staff, and representatives of interest groups.

Kerry/Edwards 2004 Presidential Campaign, Washington, D.C.
Deputy Campaign Manager
 March 2003–December 2004

- Oversaw the day-to-day management of Senator John Kerry's bid for the Democratic Nomination, including political operations, fundraising, scheduling and advance, and budget through the Iowa Caucus and New Hampshire Primary.
- Served in senior advisory role through the balance of the pre-convention period and oversaw running-mate Senator John Edwards' campaign team on behalf of Senator Kerry during the general election phase of the campaign.

United States House of Representatives, Washington, D.C.
Chief of Staff Office of Congressman Peter Deutsch
 January 2001–March 2003

- Served as principle policy and political aide to Congressman Deutsch of Florida.

- Re-organized the Congressman's office including the development and implementation of administrative policies and procedures, hired staff, and managed Capitol Hill and district offices.
- Managed all aspects of the Congressman's political operation including re-election and PAC efforts.

Gore/Lieberman 2000 Presidential Campaign, Tallahassee, FL

Florida State Director

July 2000–December 2000

- Developed the campaign's Florida strategy, including regional and county chairs and the steering committees in each of the 67 counties.
- Managed all campaign staff deployed in Florida.
- Developed earned media strategies for each of Florida's media markets.

United States Department of Labor, Washington, D.C.

Special Assistant to the Deputy Secretary

February 2000–July 2000

Intergovernmental Officer

April 1999–January 2000

- Assisted the Deputy Secretary in managing a portfolio of issues and agencies within the Labor Department that included: The Employment and Training Administration, The Office of Congressional Intergovernmental Affairs, Welfare-to-Work, and Rapid Response.
- Carried out a variety of sensitive and highly complex projects involving workforce and policymaking. Participated in intra- and inter-agency committees established to review and recommend administrative initiatives.
- Provided technical advice and assistance to The White House, The Secretary of Labor, and representatives of National, State and local officials regarding the implications of analytical findings.

Other Positions Held

Florida AFL–CIO, Tallahassee, FL

Consultant / Communications Director

February 1999–April 1999

Executive Office of the Governor, Tallahassee, FL

Special Assistant to Governor Lawton Chiles

February 1997–February 1999

1996 Florida Coordinated Campaign, Volusia County, FL

Regional Coordinator and Earned Media Director

July 1996–November 1996

Florida House of Representatives, Tallahassee, FL

Research Assistant III, Committee on Finance and Taxation

January 1995–December 1996

Florida Agency for Health Care Administration, Tallahassee, FL

Assistant to the Chief of Health Policy

March 1994–January 1995

Education

Florida State University, Economics, Bachelor of Science, 1994

Florida State University, 30 graduate level course credits in Economics and Statistical Analysis, 1994–1996

The CHAIRMAN. Thank you very much, Mr. Jadotte. What comes through in your testimony is your sense of humbleness and pride in being in public service. And all of you have done that all of your life.

And now Mr. Adler is here to be renominated. We don't get that choice often enough. So we welcome you, sir.

STATEMENT OF HON. ROBERT S. ADLER, NOMINEE TO BE A COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Mr. ADLER. Thank you so much, and good afternoon, Chairman Rockefeller and Ranking Member Thune and other members of the panel.

I thank you for the opportunity to appear before you regarding my nomination to serve a second term as a Commissioner at the Consumer Product Safety Commission. As I approach my fifth year on the Commission, I am deeply honored to be considered for re-appointment.

As a starting point, I would like to introduce my wonderful wife, Terrie Gale, to whom I have been married for the past 39 years and who daily inspires me. She is teaching criminal law at George Washington University, after serving 18 years as legal counsel to the Police Department in Chapel Hill.

Also, I want to introduce my extraordinary son, Paul, who is completing his Ph.D. in History at Georgetown University, and who is heading off this fall in the History and Literature Program at Harvard University.

And because I consider my staff to be family, I would beg your indulgence—I will stay within the time—I would like to introduce my staff.

First, I would like to introduce Ophelia McCardell, my terrific executive assistant. Ophelia and I have worked on and off together for almost 40 years. Four years ago, I pulled her from her second retirement to work with me, and I am afraid the next time she says she is retiring she is really going to mean it.

And I wanted to introduce my special assistant, Jason Levine, who has been serving as the agency's Chief of Staff since I became Acting Chair last December. Jason's brilliance is matched only by his dedication and commitment to the mission of the CPSC.

And finally, although she left my office to take a new job, I want to thank Jana Fong Swamidoss, my special assistant for the past 4 years, who always given me straight, blunt feedback that, while not necessarily pleasant, constantly steered me in the right direction.

Mr. Chairman, when I appeared before this committee for my first confirmation hearing, I was asked what I thought the biggest challenge before the CPSC was, and I answered that we needed to restore some lost luster to the agency by implementing the many mandates contained in a recently enacted omnibus piece of legislation known as the Consumer Product Safety Improvement Act. Included in the Act were a host of new requirements, which I believe we have acted on with effectiveness and dispatch.

Among the tasks we have addressed are the following: we have enforced stringent limits on lead and phthalates in children's products; we have promulgated the strongest safety standard for cribs in the world; and we have made mandatory a comprehensive voluntary toy standard, ASTM F963.

We have written, and continue to write, a series of standards for durable infant products like play yards and strollers. We have developed new approaches to catching dangerous imported products. And despite occasional glitches, I think we have made tremendous progress in meeting these statutory requirements.

Notwithstanding our considerable progress, we still have work to do to protect American lives from unreasonably dangerous products, and we should not lose sight of the fact that in order to do so, we must work cooperatively with our friends in the business community to figure out ways to meet our safety mission with them as our partners, not our adversaries.

And on this point, I want to pause to note the tremendous progress I have seen in the voluntary standards community over the past 40 years. Groups such as ASTM, ANSI, and UL have dramatically improved their technical skills, their efficiency in drafting standards, their openness and transparency in their outreach to all stakeholders, especially consumers affected by their work. I am pleased to see my agency work so closely with these groups, and I look forward to the partnership deepening in the years to come.

I have similar high hopes for collaborating with my fellow Commissioners, because I am on a Commission. It has been an absolute delight to work with Commissioners Marti Robinson and Ann Marie Buerkle this past year. And actually, one of the reasons I hope to be confirmed is the opportunity to continue working with them.

Similarly, I have worked closely with and have gotten to know Elliot Kaye, current nominee to be the CPSC Chair. If Elliot is confirmed, I believe his experience, dedication, and temperament will make him a truly outstanding chairman. And although I have not yet gotten to know our other nominee, Joe Mohorovic, as well, I hope and believe he will round out a group of talented and gracious Commissioners.

In closing, I would like to mention one critical demographic that I believe has not received enough attention over the past number of years—senior citizens, a group of which I am a proud member. Our data show that the second most vulnerable population after kids is adults over age 65, and I note this is a rapidly growing group, due to the aging of the baby boomers and the greater longevity of our citizens.

In fact, seniors, while comprising only 13 percent of the U.S. population, account for 65 percent of our consumer product-related deaths. And by 2020, they—we—will be 20 percent of the U.S. population. I recently created a Senior Safety Initiative at CPSC, and if confirmed, I will continue my advocacy on behalf of this group's safety needs.

Thank you for your time, and I look forward to your questions.

[The prepared statement and biographical information of Mr. Adler follow:]

PREPARED STATEMENT OF HON. ROBERT S. ADLER, ACTING CHAIRMAN OF THE CONSUMER PRODUCT SAFETY COMMISSION, NOMINEE FOR COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION (REAPPOINTMENT)

Good afternoon, Chairman Rockefeller and Ranking Member Thune. I thank you for the opportunity to appear before you regarding my nomination to serve a second term as a Commissioner at the U.S. Consumer Product Safety Commission. As I approach my fifth year on the Commission, I am deeply honored to be considered for reappointment.

As a starting point, I would like to introduce my wonderful wife, Terrie Gale, to whom I have been married for the past thirty-nine years—and who daily inspires me. Terrie is now teaching criminal law at The George Washington University after

servicing 18 years as legal counsel to the Police Department in Chapel Hill, North Carolina.

I would also like to introduce my extraordinary son, Paul Adler, who is completing his Ph.D. in History at Georgetown University—and who is heading off this Fall to teach in the History and Literature Program at Harvard University.

If I may, I would also like to introduce my staff to you. First, I would like to introduce Ophelia McCardell, my terrific Executive Assistant. Ophelia and I have worked on and off together for almost 40 years. Four years ago, I pulled her from her second retirement to work with me, and I'm afraid the next time she says she's retiring, she's really going to mean it.

And, I would like to introduce my Special Assistant, Jason Levine, who has been serving as the agency's Chief of Staff since I became Acting Chairman last December. Jason's brilliance is matched only by his dedication and commitment to the mission of the CPSC.

Finally, although she recently left my office to take a wonderful new job, I want to thank Jana Fong Swamidoss, my Special Assistant for the past four years, who always gave me straight, blunt feedback that, while not necessarily pleasant, constantly steered me in the right direction.

Mr. Chairman, when I appeared before this Committee for my first confirmation hearing, I was asked what I thought the biggest challenge before the CPSC was, and I answered that we needed to restore some lost luster to the agency by implementing the many mandates contained in a recently-enacted omnibus piece of legislation known as the Consumer Product Safety Improvement Act (CPSIA). Included in the Act were a host of new requirements, which I believe we have acted on with effectiveness and dispatch. Among the tasks that we have addressed are the following.

We have:

- Enforced stringent limits on lead and phthalates in children's products,
- Promulgated the strongest safety standard for cribs in the world,
- Developed implementing rules for the new CPSIA requirement that firms have independent laboratories do third-party testing of children's products before introducing them into the U.S. market,
- Made mandatory a comprehensive voluntary toy standard, ASTM F963,
- Written, and continue to write, a series of standards for durable infant products like play yards and strollers,
- Drafted and enforced new guidelines on civil penalties and set broader limits on consumer product recalls, and
- Developed new approaches to catching dangerous imported products.

And, despite occasional glitches, I believe that we have made tremendous progress in meeting these statutory mandates.

Notwithstanding our considerable progress in implementing the CPSIA, we still have work to do to protect American lives from unreasonably dangerous products. And, we should not lose sight of the fact that, in order to do so, we *must* work cooperatively with our friends in the business community to figure out ways to meet our safety mission with them as our *partners*, not our *adversaries*.

On this point, I pause to note the tremendous progress I have seen in the voluntary standards community over the past forty years. Groups such as ASTM, ANSI, and UL have dramatically improved their technical skills, their efficiency in drafting standards, their openness and transparency, and their outreach to all stakeholders—especially consumers—affected by their work. I'm pleased to see CPSC work so closely with these groups, and I have little doubt that our partnership with them will only grow and deepen in the years to come.

I have similar high hopes for collaborating with my fellow Commissioners, both current and future. It has been an absolute delight to work with Commissioners Marti Robinson and Ann Marie Buerkle this past year, and one of the reasons I hope to be confirmed is the opportunity to continue working with them.

Similarly, I have worked closely with and have gotten to know Elliot Kaye, current nominee to be CPSC Chair, over the past three years. If Elliot is confirmed, I believe his experience, dedication, and temperament will make him a truly outstanding Chairman. And, although I have not yet gotten to know our other nominee, Joe Mohorovic, as well, I hope and believe he will round out a group of talented and gracious Commissioners.

In closing, I would like to mention one critical demographic that I believe has not received enough attention over the past number of years: *senior citizens*—a group of which I am a proud member. Our data show that the second most vulnerable pop-

ulation after kids is adults over age 65. And, I note that this is a rapidly growing group due to the aging of the baby boomers and the greater longevity of our citizens. In fact, seniors, while comprising only 13 percent of the U.S. population, account for 65 percent of our consumer product-related deaths. And, by 2020, they—we—will be 20 percent of the U.S. population. I recently created a Senior Safety Initiative at CPSC and, if confirmed, I will continue my advocacy on behalf of this group's safety needs.

Thank you for your time, and I look forward to your questions.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used):
Robert Sanford Adler
Nickname: Bob
2. Position to which nominated: Commissioner, U.S. Consumer Product Safety Commission.
3. Date of Nomination: May 14, 2014.
4. Address (List current place of residence and office addresses):
Residence: Information not released to the public.
Office: U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.
5. Date and Place of Birth: September 27, 1944; Reno, Nevada (Washoe County).
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
Terrie Jean Gale (wife), Professorial Lecturer in Sociology Sociology Department, George Washington University, 801 22nd St. NW, Phillips 409, Washington, D.C. 20052; Paul Kogan Adler (son) Age 31.
7. List all college and graduate degrees. Provide year and school attended.
J.D., 1969
University of Michigan Law School
A.B., 1966
University of Pennsylvania
8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

2009–present:	Commissioner U.S. Consumer Product Safety Commission <i>Acting Chair, 12/13 to present</i> Vice-Chair, 2010–present
2003–2009:	Luther Hodges, Jr. Scholar in Law & Ethics (2006–2009) Professor of Legal Studies Kenan-Flagler Business School
2002–2003:	<i>Associate Dean</i> MBA Program, Kenan-Flagler Business School
1995–2002:	Professor of Legal Studies Kenan-Flagler Business School
1994–1998:	<i>Associate Dean</i> Undergraduate (BSBA) Program Ken an-Flagler Business School University of North Carolina
1987–1995:	Associate Professor of Legal Studies Kenan-Flagler Business School University of North Carolina (received tenure, 1990)
1985–1987:	Counsel to the Subcommittee on Health and the Environment Committee on Energy and Commerce U.S. House of Representatives Washington, D.C.
1984–1985:	Of Counsel Schmeltzer, Aptaker and Sheppard Washington, D.C.

- 1983–1985: Adjunct Professor
Washington College of Law
American University
Washington, D.C.
- 1982–1984: Attorney-advisor to Commissioner Sam Zagoria
U.S. Consumer Product Safety Commission
Washington, D.C.
- 1973–1982: Attorney-advisor to Commissioner R. David Pittle
U.S. Consumer Product Safety Commission
Washington, D.C.
- 1971–1973: *Deputy Attorney General*
Director, Southwestern Regional Office
Pennsylvania Bureau of Consumer Protection
Pennsylvania Justice Department
Pittsburgh, PA.
- 1969–1971: *Director, Consumer Division*
Neighborhood Legal Services Association
Pittsburgh, PA

I have highlighted above the jobs in which I have had management/supervisory responsibility (as opposed to strictly academic or professional responsibility). Most of the jobs I have held since 1973 have related in some fashion, either by employment or my scholarship, to consumer issues, and specifically to consumer product safety issues.

- 9. Attach a copy of your resume. A copy is attached.
- 10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years.

Member, Obama Transition Team and co-author of Report on U.S. Consumer Product Safety Commission, 2008–2009.

- 11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years.

Name/Location	Position/Nature of Affiliation	Dates
Consumers Union Yonkers, NY	Member, Board of Directors. CU is the publisher of <i>Consumer Reports</i>	1989 to 2009 (resigned, 5/2009)

- 12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Member, Board of Directors of Consumers Union, publisher of *Consumer Reports* magazine, 1989–05/2009. No membership restrictions.

Member, North Carolina Bar, (inactive) 1989–present. No membership restrictions.

Member, District of Columbia Bar (inactive), 1976–present. No membership restrictions.

Member, Pennsylvania Bar (inactive), 1969–present. No membership restrictions.

- 13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt: No.

- 14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Barack Obama, 2012 = \$450.00
 Barack Obama, 2008 = \$825.00
 John Edwards, 2007–2008 = \$595.00

- 15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

“Tar Heel of the Week,” selected by Raleigh News & Observer, December 2009
 Faculty Appreciation Award for Distinguished MBA Teaching, 2005–2009
 Recipient of Dean’s Teaching Bonus, 2005–2006; 2006–2007
 Gerald Barrett Faculty Award (excellence in teaching and service in the UNC Kenan Flagler MBA Program), 2004
 Best Article Award, CPR Institute for Dispute Resolution, for article in *Harvard Negotiation Law Review* [“When David Meets Goliath: Dealing With Power Differentials in Negotiations,” 5 *Harv. Neg. L. Rev.* (Summer 2000) pp. 1–112 (co-authored with Elliot Silverstein)]
 President, The University of North Carolina at Chapel Hill, Academy of Distinguished Teaching Scholars, 2003–2007 (association of faculty who have won university-wide teaching awards)
 Order of the Grail-Valkyries, 1999 (UNC Student and Faculty Honorary Society)
 Order of the Golden Fleece, 1997 (UNC Student and Faculty Honorary Society)
 Tanner Award for Excellence in Undergraduate Teaching (university-wide teaching award), 1996
 O’Herron Scholar, (excellence in teaching and research) 1996
 Elected to Board of Directors, Consumers Union, publishers of *Consumer Reports* (1989–2009) (resigned 5/2009)
 McColl Award for Teaching, Research and Service Excellence, 1994. (UNC Business school award)
 UNC Business School Undergraduate Program Distinguished Teaching Award, 1990
 Federal Executive Board, Outstanding Achievement, 1973
 Reginald Heber Smith Fellow, 1969–1971

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

I have done my best to identify books, articles, columns, publications or relevant speeches, including a thorough review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

(a) *Refereed Articles:*

“Mastering the Art of Negotiating With Liars,” *Sloan Management Review*, Vol. 48, No. 4 (Summer 2007) pp. 69–74.
 “Flawed Thinking: Addressing Decision Biases in Negotiation,” *Ohio State Journal on Dispute Resolution*, Vol. 20, No. 3 (2005) pp. 683–774.
 “When David Meets Goliath: Dealing With Power Differentials in Negotiations,” *Harvard Negotiation Law Review*, (co-authored with Elliot Silverstein) Vol. 5 (Summer 2000) pp. 1–112.
 “Here’s Smoking At You, Kid: Has Tobacco Product Placement in the Movies Really Stopped?” *University of Montana Law Review*, Vol. 60 (2) (Summer 1999) pp. 243–284.
 “Emotions in Negotiation: How to Handle Fear and Anger,” (co-authored with Ben Rosen and Elliot Silverstein) *The Negotiation Journal* Vol. 14 (2) (April 1998) pp. 161–179.
 “The Preemption Pentad: Federal Preemption of Products Liability Claims After *Medtronic v. Lohr*,” (co-authored with Rob Leflar) *University of Tennessee Law Review* Vol. 64 (Spring 1997) pp. 691–748.
 “Encouraging Employers To Abandon Their “No Comment” Policies Regarding Job References: A Reform Proposal,” (co-authored with Ellen Peirce) *Washington & Lee Law Review*, Vol. 50, No. 4 (1996) pp. 1381–1469.
 “Addressing Product Misuse at the Consumer Product Safety Commission: Redesigning People Versus Redesigning Products,” *University of Virginia Journal of Law & Politics* Vol. XI, No. 1 (Winter 1995) pp. 79–127, reprinted in Charles H. Koch, Jr., *Fundamentals of Administrative Practice and Procedure* (3rd ed.).
 “Preemption and Medical Devices: The Courts Run Amok,” (co-authored with Richard Mann) *University of Missouri Law Review* Vol. 59 (Fall 1994) pp. 895–945.

“Good Faith: A New Look At An Old Doctrine,” (co-authored with Richard A. Mann) *Akron Law Review* Vol. 28 (Summer 1994) pp. 31–52.

“The Last Best Argument for Eliminating Reliance From Express Warranties: ‘Real World’ Consumers Don’t Read Warranties,” *U. of So. Carolina Law Review*, Vol. 45 (Spring 1994) pp. 429–475.

“Avoiding Misuse of New Information Technologies,” (co-authored with Paul Bloom and George Milne) *Journal of Marketing*, Vol. 58 (January 1994) pp. 98–110.

“The Legal, Ethical and Social Implications of the ‘Reasonable Woman’ Standard in Sexual Harassment Cases,” (co-authored with Ellen Peirce) *Fordham Law Review*, Vol. 361, No. 4 (March 1993) pp. 773–827, *reprinted in Ethics in the Workplace*, E. Ottensmeyer and G. McCarthy (1996) pp. 211–235.

“Contemporary Ethical Issues in Labor-Management Relations,” *Journal of Business Ethics* (co-authored with William Bigoness), Vol. 11 (1992) pp. 351–360.

“Cooperative Learning Groups in Undergraduate and Graduate Contexts: Different Strokes for Different Folks,” *Journal of Legal Studies Education* (co-authored with Ed Neal), Vol. 9, No. 3, (Fall 1991) pp. 427–435.

“Stalking the Rogue Physician: An Analysis of the Health Care Quality Improvement Act,” *American Business Law Journal*, Vol. 28, No. 4, (1991) pp. 683–741.

“Shaping Up Federal Agencies: A Basic Training Program for Regulators,” *The University of Virginia Journal of Law & Politics*, Vol. VI, No. 2 (co-authored with Stephen Klitzman & Richard Mann) (1990) pp. 343–371.

“From ‘Model Agency’ to Basket Case: Can the Consumer Product Safety Commission Be Redeemed?” *Administrative Law Review*, Vol. 41, (1989) pp. 61–129.

“The 1976 Medical Device Amendments: A Step in the Right Direction Needs Another Step in the Right Direction,” *Food Drug Cosmetic Law Journal*, Vol. 43, No. 3, pages 511–532 (1988). *Revised and updated as* “Legislation Needed to Improve the Medical Devices Law” in *The Medical Device Industry: Science, Technology, and Regulation in a Competitive Environment*, pp. 531–549 (1990).

“Product Recalls: A Remedy in Need of Repair,” *Case Western Law Review*, Vol. 34, No. 4 (co-authored with Teresa M. Schwartz) (1983–84) pp. 401–464.

“Cajolery or Command: Are Education Campaigns an Adequate Substitute for Regulation?” *Yale Journal on Regulation*, Vol. 1, No. 2 (1984) (co-authored with R. David Pittle) pp. 159–193.

“Commentary on Product Liability: An Interaction of Law and Technology,” *Duquesne Law Review*, Vol. 12 (1974) (co-authored with R. David Pittle) pp. 487–495.

(b) *Chapters in Books:*

“Product Safety: The Consumer Product Safety Commission,” in *Changing America: Blueprints for the New Administration* (co-authored with R. David Pittle) pp. 540–553 (1993).

“A Framework for Identifying the Legal and Political Risks of Using New Information Technologies to Support Marketing Programs,” (co-authored with Paul N. Bloom & George Milne), Monograph for Marketing Science Institute, Report No. 92–102, February 1992, *reprinted as* “Identifying the Legal and Ethical Risks and Costs of Using New Information Technologies To Support Marketing Programs,” in *The Marketing Information Revolution*, Harvard Business School Press, 1994, pp. 289–305 (1994).

“Psycholegal Aspects of Organizational Behavior: Assessing and Controlling Risk” in *Handbook of Psychology and Law*, eds. Dorothy K. Kagehiro & William S. Laufer, pp. 523–541 (co-authored with Alan J. Tomkins & Bart Victor) (1992).

“Product Safety: the Consumer Product Safety Commission” in *America’s Transition: Blueprints for the 1990s*, (co-authored with R. David Pittle) 268–86 (1989).

(c) *Editorials and Professional Publications:*

“Vigilance is Best Answer to Safety in Pools,” (co-authored with Congresswoman Debbie Wasserman Schultz) *South Florida Sun Sentinel*, May 11, 2014.

“Safety Regulators Don’t Add Costs. They Decide Who Pays Them,” *New York Times* (on-line), October 16, 2011.

“Moving Forward on Product Safety,” *Politico* (on-line). August 14, 2011.

“Thrust and Parry: The Art of Tough Negotiating,” (co-authored with Ben Rosen and Elliot Silverstein) *Training & Development*, Vol. 50, No. 3 (March 1996) 42–48.

“New Leadership at the Consumer Product Safety Commission: Will It Make A Difference?” *TRIAL*, Vol. 30, No. 11 (November 1994) 63–67.

“The CPSC at 20 Is Still Immature,” *TRIAL*, Vol. 28, No. 11 (November 1992) pp. 30–34.

“New CPSC Act: A Disappointment,” *TRIAL*, Vol. 27, No. 11 (November, 1991) pp. 18–25.

“Manufacturers Blind CPSC to Product Hazards,” *TRIAL*, Vol. 26, No. 10 (October, 1990) pp. 20–24.

“Toy Safety: No Kidding Around,” *TRIAL*, Vol. 25, No. 11, pages 44–47 (1 989).

“Of Ketchup, Ozone, and Airline Delays: A Regulatory Legacy,” *Legal Times* (April 11, 1988) pp. 18–20; *reprinted as* “Rethinking Reagan’s Deregulation Drive,” *Miami Legal Review* (May 2, 1988) pp. 9–10; and *reprinted as* “Reagan’s Deregulation Efforts Have Done More Harm Than Good,” *Manhattan Lawyer*, (April 19–25, 1 988) pp. 30–31.

“Will CPSC Halt U.S. Export of Hazardous Items?” *Legal Times* (April 16, 1984) pp. 113.

“Does CPSC’s Past Bode Ill for Future of Regulatory Negotiations?” *Legal Times* (June 20, 1983) (co-authored with R. David Pittle) pp. 10–11.

(d) *Book Reviews:*

“Innovation, Safety, and Costs: A Delicate Balance,” Review of *Managing the Medical Arms Race: Innovation and Public Policy in the Medical Device Industry*, (University of California Press) in *Health Affairs*, Vol. 12, No. 3 (Fall 1993) pp. 271–273.

Review of *The Product Liability Handbook: Prevention, Risk, Consequence and Forensics of Product Failure*, ed. Sam Brown (Van Nostrand Reinhold 1991), *Products Liability Law Journal*, Volume 3, No. 3 (May 1992) pp. 212–218.

Review of R. Mayer, *The Consumer Movement: Guardians of the Marketplace* (Twayne 1989) and D. Vogel, *Fluctuating Fortunes: The Political Power of Business* (Basic Books 1989), *Journal of Consumer Policy*, Volume 14 (1991) pp. 243–248.

(e) *Other Publications:*

“Time to Strengthen Consumer Protection,” *Christian Science Monitor* (May 8, 1989) (co-authored with R. David Pittle) p. 18.

Lawsuits Without Lawyers, monograph on lawsuits in small claims courts (1973) (co-authored with Carol Knutson, Larry Slesinger, and David Worstell) pp. 1–49.

(f) *Speeches and Presentations:*

“Recent Developments at the Consumer Product Safety Commission,” to Walmart Compliance and Enforcement Officials, video broadcast from Washington, D.C. to Walmart Officials, Bentonville, Arkansas (May 12, 2014).

“Recent Developments at the Consumer Product Safety Commission,” to various consumer groups, in Washington, D.C. (April 10, 2014).

“Non-traditional Careers in Law,” at Career Day, Washington College of Law, American University, (April 1, 2014).

“Pool Safely,” to National Drowning Prevention Alliance, in Orlando, Florida (April 1, 2014).

“Recent Developments at the Consumer Product Safety Commission, to Toy Industry Association, in New York, NY (February 18, 2014).

Recent Developments at the Consumer Product Safety Commission,” to Juvenile Product Manufacturers Association, in Washington, D.C. (February 5, 2014).

“CPSC Challenge to Safety App Manufacturers,” at White House Datapalooza Conference, in Washington, D.C. (January 14, 2014).

“Carbon Monoxide Safety,” to Chicago Firefighters and Members of Media, Chicago, Illinois (December 19, 2013).

“From Professor to Regulator: Trials and Tribulations of a CPSC Commissioner,” DePauw University, Greencastle, IN (November 5, 2013).

“Product Safety Versus Product Liability,” to American Conference Institute Seminar, Chicago, Illinois (June 26, 2013).

“Recent Developments at the Consumer Product Safety Commission,” to International Council of Toy Industries, Washington, D.C. (June 3, 2013).

“Product Liability and its Interaction with Product Safety at the Consumer Product Safety Commission,” Louis Brandeis School of Law, University of Louisville, Louisville, KY (April 15, 2013).

“Recent Developments at the Consumer Product Safety Commission,” to Society of Glass and Ceramic decorated Products,” Louisville, KY (April 14, 2013).

“How Standards Work at the U.S. Consumer Product Safety Commission,” to Workshop on Standards Policy and Practices for Federal Agencies, sponsored by National Institute of Standards and Technology, Washington, D.C. (November 8, 2012).

“Voluntary Standards at the U.S. Consumer Product Safety Commission,” to the ANSI Caucus of the American National Standards Institute, Washington, D.C. (October 3, 2012).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to Midwest Product Safety Workshop of the International Consumer Product Safety and Health Organization (ICPHSO), at the Cook School of Business, St. Louis University, St. Louis, MO. (August 13, 2012).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to the American Apparel and Footwear Association, New York, NY (July 31, 2012).

“In Commemoration of President Kennedy’s Statement of Consumer Rights,” to Consumers, International, Washington, D.C. (June 20, 2012).

“Product Liability and Product Safety Issues at the U.S. Consumer Product Safety Commission,” to the American Legislative Exchange Council (ALEC), Charlotte, NC (May 11, 2012).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to National Association of Manufacturers, Washington, D.C. (March, 2012).

“The New CPSC Database,” to Consumer Advocates Web Conference, Washington, D.C. (January 11, 2012).

“Product Safety and Older Americans,” to Association of Retired Americans, Washington, D.C. (September 7, 2011).

“Polyurethane Foam and Upholstered Furniture Flammability,” to Polyurethane Foam Manufacturers Association, Baltimore, MD (May 19, 2011).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to Consumer Specialty Products Association, Washington, D.C. (May 6, 2011).

“Recent Developments at U.S. Consumer Product Safety Commission,” to Consumer Federation of America (CFA), (March 18, 2011).

“Recent Developments at U.S. Consumer Product Safety Commission,” at Toy Fair, New York, NY (February 15, 2011).

“Meet the U.S. Consumer Product Safety Commission,” to general audience, St. Louis University, St. Louis, MO (December 2, 2010).

“The Hard Work of Being a Product Safety Compliance Official,” to graduating class receiving Certificate in Product Safety, Cook School of Business, St. Louis University, St. Louis, MO. (December 2, 2010).

“The CPSC and Retailers,” to Retail Law Conference, Washington, D.C. (November 9, 2010).

“How the Consumer Product Safety Commission Operates,” to Consumers Union Activist Summit, Washington, D.C. (June 11, 2010).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to the American Apparel and Footwear Association, New York, NY (June 16, 2010).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to the Toy Industry of America, Washington, D.C. (May 2010).

“How the CPSC Works with State and Local Officials,” to State Designees Liaison with CPSC (February 17, 2010).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to the American Apparel and Footwear Association, New York, NY (October 29, 2009).

“Consumer Product Safety Commission: Reflections from the Obama Transition Team” to Conference of International Consumer Product Health and Safety Officials (ICPHSO), Orlando, Florida (February 25, 2009).

“One Million ATV Injuries Later . . . Will the End of the Consent Decree Bring More Consumer Litigation? The Government Perspective” Nationwide Teleconference by Telephone, (December 2 and December 4, 1998).

“A Strategic Plan for ICPHSO,” at conference of International Consumer Product Health and Safety Officials, Orlando, Florida (February 26–27, 1998).

“The Future of Product Safety and Product Liability,” at conference of International Consumer Product Health and Safety Officials, Key West, Florida (February 28, 1997).

“Product Safety versus Product Liability,” at conference of International Consumer of Consumer Product Health and Safety Officials (February 29, 1996).

“Remarks on CPSC Long-Range Plan,” testimony before Chairman and Commissioners of the U.S. Consumer Product Safety Commission, Washington, D.C. (June 18, 1992).

“Regulation, Deregulation, and Reregulation,” presented at American Business Law Association Conference, Toronto, Canada (jointly presented with Richard A. Mann), (August 17, 1990).

“The Role of Federal Safety Standards in Product Liability Litigation,” presented at Conference on “Avoiding Product Liability Suits,” Union College (July 12, 1990).

“Needed: A College for Regulators,” presented at Southeastern Regional Business Law Association Conference (Fall, 1988).

“Federal Deregulation and State Reregulation,” presented to the American Bar Association Committees on Consumer Product Regulation and State Administrative Law of the Administrative Law Section and the Section of Urban, State and Local Government Law (August 11, 1987).

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

August 5, 2009: Testimony before Senate Committee on Commerce, Science, and Transportation regarding my nomination to be a Commissioner at the U.S. Consumer Product Safety Commission

July 7, 2011: Testimony before Subcommittee on Oversight and Investigation of the House Energy & Commerce Committee on “Views of the Independent Agencies on Regulatory Reform”

August 2, 2012: Testimony before the Subcommittee on Commerce, Manufacturing, and Trade of the House Committee on Energy and Commerce on “Oversight of the U.S. Consumer Product Safety Commission”

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have served as a Commissioner at the U.S. Consumer Product Safety Commission for the past four and a half years. During that time, I have been deeply involved in the critical issues that have come before the CPSC, including the promulgation of a number of rules regarding children’s safety: cribs, play yards, bassinets, cradles, bedside sleepers, handheld infant carriers baby walkers, children’s portable bed rails, and baby bath seats. In addition, I have worked to encourage the Commission and our various stakeholders to become aware of and work to address the problems of the elderly who constitute 13 percent of the population, but account for 65 percent of consumer product-related fatalities.

Further, I wish to continue to serve as a Commissioner, if confirmed, because of my long professional and personal commitment to consumer issues and to the CPSC specifically. I can think of few more critical causes than reducing consumer-related injuries, illness, and death.

I believe that my background demonstrates an ongoing commitment to consumer product safety issues and to consumer protection generally. After law school, I worked as the Chief of the Consumer Division of a legal services program in Allegheny County, PA. Thereafter, I served as a Deputy Attorney General in charge of a regional office of the Bureau of Consumer Protection for the Pennsylvania Justice Department.

Subsequent to this consumer protection experience, I have spent the better part of the past 36 years involved in the CPSC in one form or another. I served as an attorney-adviser to two CPSC Commissioners (R. David Pittle, from 1973–1982 and Sam Zagoria from 1982–1984). I subsequently served as Counsel to the Subcommittee on Health and the Environment of the House Energy & Commerce Committee performing oversight of the CPSC. After that, I became a professor at the University of North Carolina where I wrote numerous articles on consumer product safety issues. And, from October 2008–January 2009, I served as a member of the Obama Transition Team on which I co-authored the Transition Team Report on the Consumer Product Safety Commission.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

At the moment, I serve as the Acting Chairman of the CPSC. In that capacity, I have done my best to direct the agency to follow proper management and accounting rules, including meeting on an ongoing basis with administrative and financial staff to be certain that the rules, in fact, are being followed.

Under the governing act of the agency, the Consumer Product Safety Act, the Chair has the primary responsibility for managing the agency. Commissioners, however, share equally in setting agency policies and have a broad right to monitor the implementation of those policies. Given this shared responsibility, I commit myself to monitoring the management and administrative activities of the CPSC in a conscientious manner to the extent that the governing statute of the agency gives me the authority and responsibility to do so.

My management experience began when I ran a regional office of the Pennsylvania Justice Department in Pittsburgh where I had a staff of roughly 7 investigators and administrative personnel. At the Kenan-Flagler Business School, as an Associate Dean for the BSBA Program, I ran the undergraduate business program which included 4 professional staff and roughly 600 undergraduate students. Later, as Associate Dean of the MBA Program, I ran the school's MBA Program, which included roughly 10 professional staff and 600-plus MBA students.

20. What do you believe to be the top three challenges facing the department/agency, and why?

The Commission's first challenge is to continue to implement the mandates contained in the Consumer Product Safety Improvement Act (CPSIA), as amended by P.L. 112–28. The agency is well along the way in doing so, and continues to provide a balanced, effective approach to America's consumers and the agency's various stakeholders.

A second challenge is to raise awareness both within the CPSC and the Product Safety Community generally about the growing need for the agency to focus on the problems of older Americans. Seniors, those over age 65, currently constitute 13 percent of the population, but will make up 20 percent by the year 2030. Moreover, as I have previously noted, even though seniors constitute only 13 percent of the population, they constitute 65 percent of consumer product-related fatalities.

Finally, I would like to help make the CPSC, a very small agency, as effective as it can be in protecting consumers. Being small is not always a disadvantage if the agency can demonstrate a truly nimble and thoughtful approach to product safety. I hope to continue to work to expand the agency's approach to the digital revolution to expand the agency's outreach and effectiveness both with consumers and industry.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

Retirement Accounts: Virtually all of my retirement accounts are in broad based mutual funds with no individual company holdings.

Please see section E of this form for a complete listing of my retirement account information.

Ongoing Business Dealings: I have no other ongoing business dealings. My wife and I own a one-bedroom apartment next to our condominium, which we may rent in the future, but have not done so yet.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain: No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the CPSC's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Commission's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the CPSC's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Commission's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

I have done no advocacy on issues of public policy beyond my regular research and teaching activities as a professor with the exception that I served on the Obama Transition Team from October 2008–January 2009, co-authoring the report on the Consumer Product Safety Commission.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the CPSC's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Commission's designated agency ethics official and that has been provided to this Committee.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain.

When I served as a Deputy Attorney General in the Bureau of Consumer Protection in the Pennsylvania Justice Department, I investigated an individual for fraud in 1972 or 1973. At one point, he wrote a letter to the Bar Association that accused me of trying to intimidate him during a negotiation for a consent decree (which he never signed). As I recall, I disputed this complaint, pointing out that the individual's attorney sat through the entire negotiation and disagreed with his client's characterization of events. The Bar Association dismissed the charge against me. Whether this was considered a formal complaint, I cannot recall. When I last checked with the Bar Association many years ago, I was told that they have no record of any complaint listed against me. I cannot recall the name of the complainant.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

Yes. I filed a lawsuit in 1973 or 1974 in Allegheny County, PA (or in the district court for the western district of Pa.) as the plaintiff in a case under the Fair Credit Reporting Act against a company that had illegally run a credit check on me while I was investigating them for possible consumer fraud violations as part of my job with the Pennsylvania Justice Department. We settled the case before trial, with the company paying me roughly \$3,000. Despite my best efforts, I cannot find my records of the case. I recently spoke to the attorney who handled my case. He has changed law firms several times over the years, and he cannot recall any of the details of the case either.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain: No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain: No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

None to my knowledge.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RESUMÉ OF ROBERT SANFORD ADLER

Education:	J.D., University of Michigan Law School, 1969 A.B., University of Pennsylvania, 1966, <i>cum laude</i>
Honors, Awards, Special Recognition:	Member, Obama Transition Team, 2009 “Tar Heel of the Week,” selected by Raleigh News & Observer, December 2009 Faculty Appreciation Award for Distinguished MBA Teaching, 2005–2006; 2006–2007; 2008–2009 Recipient of Dean’s Teaching Bonus, 2005–2006; 2006–2007 Gerald Barrett Faculty Award (excellence in teaching and service in the Kenan-Flagler MBA Program), 2004 Best Article Award, CPR Institute for Dispute Resolution, for article in <i>Harvard Negotiation Law Review</i> , 2001 President, The University of North Carolina at Chapel Hill Academy of Distinguished Teaching Scholars, 2003–2007 Order of the Grail-Valkyries, 1999 (campus-wide honor society) Order of the Golden Fleece, 1997 (campus-wide honor society) Tanner Award for Excellence in Undergraduate Teaching (university- wide teaching award), 1996 O’Herron Scholar, (excellence in teaching and research), 1996 Elected to Board of Directors, Consumers Union, publishers of <i>Consumer Reports</i> (6 terms; first elected, 1989) McColl Award for Teaching, Research and Service Excellence, 1994 Undergraduate Program Distinguished Teaching Award, 1990 Federal Executive Board, Outstanding Achievement, 1973 Reginald Heber Smith Fellow, 1969–1971
Employment:	
2009–present:	Commissioner, U.S. Consumer Product Safety Commission Vice-Chair, 2010–2014; Acting Chairman, Dec. 2013–present
2003–2009:	Luther Hodges, Jr., Scholar in Law & Ethics Kenan-Flagler Business School
2002–2003:	Associate Dean MBA Program, Kenan-Flagler Business School
1995–2002:	Professor of Legal Studies Kenan-Flagler Business School
1994–1998:	Associate Dean Undergraduate (BSBA) Program Kenan-Flagler Business School University of North Carolina Chapel Hill, North Carolina

1987–1995:	Associate Professor of Legal Studies Kenan-Flagler Business School University of North Carolina Chapel Hill, North Carolina (received tenure, 1990)
1985–1987:	Counsel to the Subcommittee on Health and the Environment Committee on Energy and Commerce U.S. House of Representatives Washington, D.C.
1984–1985:	Of Counsel Schmeltzer, Aptaker and Sheppard Washington, D.C.
1983–1985:	Adjunct Professor Washington College of Law American University Washington, D.C.
1982–1984:	Attorney-advisor to Commissioner Sam Zagoria U.S. Consumer Product Safety Commission Washington, D.C.
1973–1982:	Attorney-advisor to Commissioner R. David Pittle U.S. Consumer Product Safety Commission Washington, D.C.
1971–1973:	Deputy Attorney General Director, Southwestern Regional Office Pennsylvania Bureau of Consumer Protection Pennsylvania Justice Department Pittsburgh, PA.
1969–1971:	Director, Consumer Division Neighborhood Legal Services Association Pittsburgh, PA.

Publications:

(a) *Refereed Articles:*

“Mastering the Art of Negotiating With Liars,” *Sloan Management Review*, Vol. 48, No. 4 (Summer 2007) pp. 69–74.

“Flawed Thinking: Addressing Decision Biases in Negotiation,” *Ohio State Journal on Dispute Resolution*, Vol. 20, No. 3 (2005) pp. 683–774.

“When David Meets Goliath: Dealing With Power Differentials in Negotiations,” *Harvard Negotiation Law Review*, (co-authored with Elliot Silverstein) Vol. 5 (Summer 2000) pp. 1–112.

“Here’s Smoking at You, Kid: Has Tobacco Product Placement in the Movies Really Stopped?” *University of Montana Law Review*, Vol. 60 (2) (Summer 1999) pp. 243–284.

“Emotions in Negotiation: How to Handle Fear and Anger,” (co-authored with Ben Rosen and Elliot Silverstein) *The Negotiation Journal* Vol. 14 (2) (April 1998) pp. 161–179.

“The Preemption Pentad: Federal Preemption of Products Liability Claims After *Medtronic v. Lohr*,” (co-authored with Rob Leflar) *University of Tennessee Law Review* Vol. 64 (Spring 1997) pp. 691–748.

“Encouraging Employers To Abandon Their “No Comment” Policies Regarding Job References; A Reform Proposal,” (co-authored with Ellen Peirce) *Washington & Lee Law Review*, Vol. 50, No.4 (1996) pp. 1381–1469.

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(b) *Professional Publications/Op-Ed Articles:*

"Vigilance is Best Answer to Safety in Pools," (co-authored with Congresswoman Debbie Wasserman Schultz) *South Florida Sun Sentinel*, May 11, 2014.

"Safety Regulators Don't Add Costs. They Decide Who Pays Them," *New York Times* (on-line), October 16, 2011.

"Moving Forward on Product Safety," *Politico* (on-line). August 14, 2011.

"Thrust and Parry: The Art of Tough Negotiating," (co-authored with Ben Rosen and Elliot Silverstein) *Training & Development*, Vol. 50, No. 3 (March 1996) 42–48.

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“Innovation, Safety, and Costs: A Delicate Balance,” Review of *Managing the Medical Arms Race: Innovation and Public Policy in the Medical Device Industry*, (University of California Press) in *Health Affairs*, Vol. 12, No. 3 (Fall 1993) pp. 271–273.

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Lawsuits Without Lawyers, monograph on lawsuits in small claims courts (1973) (co-authored with Carol Knutson, Larry Slesinger, and David Worstell) pp. 1–49.

Speeches:

“Recent Developments at the Consumer Product Safety Commission,” to Walmart Compliance and Enforcement Officials, video broadcast from Washington, D.C. to Walmart Officials, Bentonville, Arkansas (May 12, 2014).

“Recent Developments at the Consumer Product Safety Commission,” to various consumer groups, in Washington, D.C. (April 10, 2014)

“Non-traditional Careers in Law,” at Career Day, Washington College of Law, American University, Washington, D.C. (April 1, 2014).

“Pool Safely,” to National Drowning Prevention Alliance, in Orlando, Florida (April 1, 2014).

“Recent Developments at the Consumer Product Safety Commission,” to Toy Industry Association, in New York, NY (February 18, 2014).

Recent Developments at the Consumer Product Safety Commission,” to Juvenile Product Manufacturers Association, in Washington, D.C. (February 5, 2014).

“CPSC Challenge to Safety App Manufacturers,” at White House Datapalooza Conference, in Washington, D.C. (January 14, 2014).

“Carbon Monoxide Safety,” to Chicago Firefighters and Members of Media, Chicago, Illinois (December 19, 2013).

“From Professor to Regulator: Trials and Tribulations of a CPSC Commissioner,” DePauw University, Greencastle, IN (November 5, 2013).

“Product Safety Versus Product Liability,” to American Conference Institute Seminar, Chicago, Illinois (June 26, 2013).

“Recent Developments at the Consumer Product Safety Commission,” to International Council of Toy Industries, Washington, D.C. (June 3, 2013).

“Product Liability and its Interaction with Product Safety at the Consumer Product Safety Commission,” Louis Brandeis School of Law, University of Louisville, Louisville, KY (April 15, 2013).

“Recent Developments at the Consumer Product Safety Commission,” to Society of Glass and Ceramic decorated Products,” Louisville, KY (April 14, 2013).

“How Standards Work at the U.S. Consumer Product Safety Commission,” to Workshop on Standards Policy and Practices for Federal Agencies, sponsored by National Institute of Standards and Technology, Washington, D.C. (November 8, 2012).

“Voluntary Standards at the U.S. Consumer Product Safety Commission,” to the ANSI Caucus of the American National Standards Institute, Washington, D.C. (October 3, 2012).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to Midwest Product Safety Workshop of the International Consumer Product Safety and Health Organization (ICPHSO), at the Cook School of Business, St. Louis University, St. Louis, MO. (August 13, 2012).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to the American Apparel and Footwear Association, New York, NY (July 31, 2012).

“In Commemoration of President Kennedy’s Statement of Consumer Rights,” to Consumers, International, Washington, D.C. (June 20, 2012).

“Product Liability and Product Safety Issues at the U.S. Consumer Product Safety Commission,” to the American Legislative Exchange Council (ALEC), Charlotte, NC (May 11, 2012).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to National Association of Manufacturers, Washington, D.C. (March, 2012).

“The New CPSC Database,” to Consumer Advocates Web Conference, Washington, D.C. (January 11, 2012).

“Product Safety and Older Americans,” to Association of Retired Americans, Washington, D.C. (September 7, 2011).

“Polyurethane Foam and Upholstered Furniture Flammability,” to Polyurethane Foam Manufacturers Association, Baltimore, MD (May 19, 2011).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to Consumer Specialty Products Association, Washington, D.C. (May 6, 2011).

“Recent Developments at U.S. Consumer Product Safety Commission,” to Consumer Federation of America (CFA), (March 18, 2011).

“Recent Developments at U.S. Consumer Product Safety Commission,” at Toy Fair, New York, NY (February 15, 2011).

“Meet the U.S. Consumer Product Safety Commission,” to general audience, St. Louis University, St. Louis, MO (December 2, 2010).

“The Hard Work of Being a Product Safety Compliance Official,” to graduating class receiving Certificate in Product Safety, Cook School of Business, St. Louis University, St. Louis, MO. (December 2, 2010).

“The CPSC and Retailers,” to Retail Law Conference, Washington, DC (November 9, 2010).

“How the Consumer Product Safety Commission Operates,” to Consumers Union Activist Summit, Washington, D.C. (June 11, 2010).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to the American Apparel and Footwear Association, New York, NY (June 16, 2010).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to the Toy Industry of America, Washington, D.C. (May 2010).

“How the CPSC Works with State and Local Officials,” to State Designees Liaison with CPSC (February 17, 2010).

“Recent Developments at the U.S. Consumer Product Safety Commission,” to the American Apparel and Footwear Association, New York, NY (October 29, 2009).

Presentations:

“Business Ethics and Product Safety,” to International Consumer Product Safety and Health Organization (ICPHSO) (March 2, 2012).

- “Consumer Product Safety Commission: Reflections from the Obama Transition Team” to conference of International Consumer Product Health and Safety Officials, Orlando, Florida (February 25, 2009).
- “How the Consumer Product Safety Commission Works with Underwriters Laboratories,” to Executive Education Class, Yale School of Business (November 12, 2011).
- “Protecting Consumers and Business in a Politicized World,” to UNC Kenan-Flagler DC Alumni Club (November 3, 2011).
- “The Great Debt Ceiling Debate: Lessons for Negotiators,” to faculty and students, Wharton Business School, University of Pennsylvania (November 1, 2011).
- “Saving Our Seniors: An Urgent Product Safety Message,” to Alliance for Retired Americans (September 7, 2011).
- “Update on the Consumer Product Safety Commission,” to the Polyurethane Foam Association Semi-Annual Meeting (May 19, 2011).
- “What the Consumer Product Safety Commission Does and How it Does it,” to Business and Government Relations Class, UNC Kenan-Flagler Business School, March 24, 2011).
- “A Progress Report on the Consumer Product Safety Commission,” to the Consumer Assembly of the Consumer Federation of America (March 18, 2011).
- “How to Negotiate with the Consumer Product Safety Commission,” to International Consumer Product Health and Safety Organization (ICPHSO) (February 24, 2011).
- “Remarks to Graduates” to Certificate in Product Safety Management Program, St. Louis University (December 2, 2010).
- “Regulating Product Safety: Future Challenges,” to university-wide audience at Cook School of Business, St. Louis University (December 2, 2010).
- “Implementing the Consumer Product Safety Improvement Act,” to American Apparel and Footwear Association (June 16, 2010).
- “Consumer Activism and Product Safety,” to Consumers Union Activist Summit (June 11, 2010).
- “CPSC, the Consumer Product Safety Improvement Act and Toy Safety,” to board of directors, Toy Industry of America (May 4, 2010).
- “How CPSC is Implementing the Consumer Product Safety Improvement Act,” to Annual Meeting, Association of Home Appliance Manufacturers (April 26, 2010).
- “Current Developments Regarding Toy Safety,” Keynote Address at International Toy Fair, New York, NY (February 15, 2011).
- “Professor Adler Becomes Commissioner Adler,” given as the Donald F. Clifford, Jr. Distinguished Lecture to Law School, University of North Carolina (February 5, 2010).
- “The Ethics of Wal-Mart,” to UNC Humanities Program (June 15, 2006).
- “A Critical Look at The Corporation,” by Joel Bakan, to Parr Center for Ethics (April 26, 2006).
- “Negotiation Issues and Gender,” to Carolina Women In Business (CWIB) (February 22, 2006).
- “Ethical Issues of States Offering Tax and Other Incentives to Attract Business,” to North Carolina Institute for Constitutional Law (December 8, 2005).
- “Negotiation in the U.S. and Internationally,” to Humphrey Fellows (November 16, 2006) “Enron and Ethics,” to Kenan-Flagler faculty, staff and students (February 20, 2002).
- “Business Ethics for Lawyers, at Annual Legal Learning Festival sponsored by UNC Law School, Friday Center (February 9, 2002).
- “Pedagogical Skills in Business Ethics,” to ITESM Faculty, Monterrey, Mexico (October 27, 2000)
- “Negotiation Skills,” to North Carolina Association of Black Lawyers, Wilmington, N.C. (June 23, 2000)
- “Ethics and Leadership,” to UNC-CH Graduate Student Leadership Course (March 28, 2000).

"Ethics and Leadership," to North Carolina Leadership Forum (February 3, 2000). "Business Ethics for Lawyers," at Annual Learning Festival sponsored by UNC Law School, Friday Center (February 12, 1999).

"One Million ATV Injuries Later . . . Will the End of the Consent Decree Bring More Consumer Litigation? The Government Perspective" Nationwide Teleconference by Telephone, December 2 and December 4, 1998.

"A Strategic Plan for ICPHSO," at conference of International Consumer Product Health and Safety Officials, Orlando, Florida (February 26–27, 1998).

"The Future of Product Safety and Product Liability," at conference of International Consumer Product Health and Safety Officials, Key West, Florida (February 28, 1997).

"Product Safety Versus Product Liability" at conference of International Consumer of Consumer Product Health and Safety Officials (February 29, 1996).

"Business Ethics," at Festifall Conference by UNC Law School (February 2, 1996).

"Medical Devices and Preemption: The Courts Run Amok," at Academy of Legal Studies in Business, Dallas Texas (August 12, 1994) (co-authored with Richard Mann).

"Good Faith: Let's Be Objective About It," presented at Academy of Legal Studies in Business, Boulder, CO. (August 23, 1993) (jointly presented with Richard Mann).

"Forum on the 'Litigation Explosion,'" presented at joint session of Wake Forest Law School and Business School, Winston-Salem, N.C. (September 16, 1992).

"The Legal, Ethical and Social Implications of 'The Reasonable Woman' Standard in Sexual Harassment Cases," presented at Academy of Legal Studies in Business, Charleston, S.C. (August 21, 1992) (jointly presented with Ellen Peirce).

"Remarks on CPSC Long-Range Plan," testimony before Chairman and Commissioners of the U.S. Consumer Product Safety Commission, Washington, D.C. (June 18, 1992).

"Regulation, Deregulation, and Reregulation," presented at American Business Law Association Conference (August 17, 1990), Toronto, Canada (jointly presented with Richard A. Mann).

"The Role of Federal Safety Standards in Product Liability Litigation," presented at Conference on "Avoiding Product Liability Suits," Union College (July 12, 1990).

"Stalking the Rogue Physician: An Analysis of the Health Care Quality Improvement Act of 1986 and its Implementation," presented at American Business Law Association Conference (Summer, 1989).

"Challenges in Teaching Business Ethics to First Year MBA candidates," presented at American Business Law Association Conference (Summer, 1989)

"Needed: A College for Regulators," presented at Southeastern Regional Business Law Association Conference (Fall, 1988)

"Federal Deregulation and State Reregulation," presented to the American Bar Association Committees on Consumer Product Regulation and State Administrative Law of the Administrative Law Section and the Section of Urban, State and Local Government Law (August 11, 1987).

"Medical Malpractice: Current Developments," presented to the Graduate School of Business Administration, Boston University (November, 1987)

"Congressional Perspectives on Pending Medical Device Legislation," presented to the National Electrical Manufacturers Association (September 19, 1987).

Editor or Reviewer

Elected to Editorial Board, *Food and Drug Law Journal*, 1999

Staff Editor, *American Business Law Journal*, 1990–1993

Reviewer, *American Business Law Journal*, 1989–90

Teaching

Undergraduate: Introduction to Business Law, BA 140; Commercial Paper and Sales, BA 141

MBA: Negotiation, BA 253; Ethical Aspects of Management, BA 293; Business-Government Relations, BA 299; Strategy Course, BA 295

Management Education: Taught numerous Executive Education courses with evaluations that generally range above 4.70 out of 5.0; Co-developed and ran Leadership Program for Water Industry

Course Development

Developed Negotiation Course, 1995
 Coordinator, MBA Business Ethics Course, 1991–2000
 Helped design and develop Business Ethics course for MBA and Executive MBA Programs, 1988–90
 Designed and taught Business-Government Relations MBA course, 1990–2004
 Developed regulatory materials for Strategy Course, 1994

Professional Activities

Member of North Carolina Bar, 1989–present
 Member of Washington, D.C. Bar, 1976–present (inactive)
 Member of Pennsylvania Bar, 1969–present (inactive)
 Academy of Legal Studies in Business, 1987–2009
 Member, Business Ethics Section of ALSB, 1989–2009

University and Business School Service

President, Academy of Distinguished Teaching Scholars, 2003–2009
 Chair, Committee on Student Conduct, 2006–2009
 Chair, Faculty Advisory Committee, 2007–2009
 Member, Board of Advisors, Parr Ethics Center, 2006–2009
 Member, Chancellor's Committee on Reaccreditation for SACS, 2004–2006
 Chair, KFBS Faculty Advisory Committee (FAC), 2006
 Member, Faculty Advisory Committee, 2004
 Member, Promotion and Tenure Committee, 2004–2009
 Member, MAC Advisory Committee, 2002–2005
 Chair, Committee to Review Gene Nichols for Reappointment as Dean, UNC Law School, 2003
 Chair, Committee on Student Conduct, 2000–2001
 Member, Committee to Review Risa Palm for reappointment as Dean, College of Arts and Science, 2001
 Member, Facilities Use Review Group, 2000
 Member, Executive Committee of faculty Council, 1999
 Member, UNC Task force on Student Evaluation of Teaching, 1999
 Associate Dean, Undergraduate Program, 1994–1998
 Chair, Kenan-Flagler Committee on Diversity, 1993, 1994, 1995 and 1997
 Chair, UNC Committee on Student Conduct, 1993–94
 Member, Dean Search Committee, 1997
 Member, Tanner Teaching Awards, Committee, 1997
 Member, Chancellor's Task Force on Intellectual Climate at UNC, 1996–1997
 Member, Kenan-Flagler Distance Learning Committee, 1996
 Member, Kenan-Flagler Reorganization Task Force, 1994
 Member and Chair of numerous UNC University Hearings Boards, 1987–present
 Member, Board of Directors of Student Legal Services, 1990–2008
 Coordinator, Diversity Sessions, Orientation Week for Incoming MBA Students, 1989–1993

National and Community Service

Member, Board of Directors, Consumers Union, 1989–2009.
 Member, NC Chief Justice's Commission on Professionalism, 2007–2008
 Board of Directors, International Consumer Product Health and Safety Organization, 1997
 Evaluator, BBA Program, University of Iowa, 1995

Member, Committee of the Institute of Medicine, National Academy of Science to Study FDA Advisory Committees, 1991–93

Member, Committee of the Institute of Medicine, National Academy of Science to Study the Operations of the Nuclear Regulatory Commission, 1994–1995

Chair, Committee to Review the Operations of the North Carolina Wildlife Federation, 1992–93

Personal

Born September 27, 1944

Married, one child

The CHAIRMAN. Thank you, Mr. Adler, very much.

A very, very good group.

Senator Blumenthal, do you want to make a little comment?

**STATEMENT OF HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. A very little comment, just to thank each of you for your willingness to serve, your public service in the past, and I look forward to working with you.

These positions are critically important to the actual nuts and bolts of what your agencies do. We often see the heads of agencies, but the health and safety of our people is dependent on the work that you and your staffs do every day. So thank you for your service, and I look forward to working with you on the very timely issues that I am sure will be presented.

Thank you, Mr. Chairman. Thank you for holding this hearing and to our excellent staff for once again preparing us so well.

Thank you.

The CHAIRMAN. Yes. That is right. It was terrific that you talked about your staff, Mr. Adler, and I don't do that enough. We don't do that. I can't see them. They are behind me.

[Laughter.]

The CHAIRMAN. Anyway, let us get to Mr. Mendez and Mr. Rogoff. You know this is a very high-stakes game we are entering into now. This question, are we going to patch it over for a year on the Highway Trust Fund, or are we going to patch it over for a longer period of time?

I have a couple of questions on that, but the first thing I would like to get from each of you is what actually happens that is concerning as we approach a closedown reality?

Mr. MENDEZ. Let me begin with what I see, and as I mentioned in my opening remarks, I actually used to run a State DOT. So we can have a Federal perspective and maybe a State perspective as well.

I think our bigger concern, of course, is that as we are approaching in the next couple of months, the Highway Trust Fund is going to become insolvent. We have heard many times Secretary Foxx mention that we will be bouncing checks.

What is, in fact, occurring—what occurs that the way we make our payments to the states and the recipients, we would then have to go into a different cash management approach that we are working on internally. Not ready yet to share that with people so we can kind of work our way through the details. But we, in essence, would slow down our payments to the recipients of Federal funds.

That, of course, will have ripple effect on various businesses. As you mentioned in your opening comments, impacts contractors, impacts to the recipients, of course, and State DOTs as well.

Mr. ROGOFF. I think what I would add to that, Mr. Chairman, and this is a source of great concern to us, is when you get into this period of uncertainty, especially if you get into a period of recurring uncertainty, local planners, local elected officials lose their vision, their willingness to tackle the big projects because they don't know that the cash is going to be there at the end.

So you actually potentially see a change in the mix of projects. They take on smaller repaving projects, and the bridge replacement that has been deferred time and time again gets deferred again, to the detriment of the system.

The CHAIRMAN. But the—for example, if the Panama Canal is now widened by 100 percent, and the effect to inland and coastal ports, therefore, is absolutely phenomenally important. So what you are talking about is whether people have—they are faced with a short-term fix, pothole mentality, or a large picture mentality. And that is where you run into the problem, which is very difficult in this Congress, because people want to see progress on infrastructure.

Of course, when I think about infrastructure, I just don't think about cement and steel. I think about the National Institutes of Health and the National Science Foundation and all the rest of it. But for this, we are concentrating on one part.

That, on the one hand, people who are contractors, that is the work that they do. So that you could say, well, the people at the State level may have narrower visions.

But if you have, as Senator Klobuchar experienced, an enormous bridge collapse, and if you have as we have in West Virginia, where 96 percent of the land is not flat, and we are having this oil—I mean, this natural gas boom, and 200,000-pound trucks are just absolutely streaming all day long, every day, across bridges that have maximum weight limits of 75,000 pounds. And natural gas doesn't necessarily locate in highly populated, well-serviced areas. A lot of it is very rural.

And so, this is the conflict. I mean, are we going to—are we going to do a patch, which is, after all, something, right? It is something. Fixing a pothole is something.

I remember when that was my biggest worry about when I was Governor, whether you were a pothole Governor or you weren't made the difference about whether you could get reelected or not, rather than building eight bridges across the Ohio River, which I did. Unfortunately, I had to pay 80 percent of it, and Ohio only had to pay 20 percent of that. You—Mr. Andrews, that may be something you want to fix, even out just a bit.

But that tension about not wanting to raise the revenues, and yet if you don't raise the revenues, you condemn yourself to a minimal future. Please, both of you talk about that.

Mr. MENDEZ. Yes. Mr. Chairman, I think you are absolutely right.

By not being able to plan and look toward the future, you, in fact, limit your options, your ability to actually improve the economy and create jobs. But in addition to that, I think what we need

to be thinking about is that people on the ground, you know, the planners and those of us who have to actually run programs, our ability gets very limited to look beyond, you know, the limited amount of time that potentially you are looking for. So, as my colleague was mentioning, our long-term planning capability gets limited by that.

And so, you are stuck in an area where the industry itself, I know from my experience, where contractors cannot invest in equipment. They will slow down their hiring. They have to be making payroll and making long-term investment decisions in their businesses, and they are limited by that.

The CHAIRMAN. Thank you.

Mr. Rogoff?

Mr. ROGOFF. I would just add Victor was correct to point out that this isn't just about the immediate contractors. This has a trickle-down effect on suppliers throughout the country, down to every sand and gravel pit that we have in the United States.

Importantly, I was concerned, frankly, sir, by your opening statement in which you said we hope we will have some kind of fix by the August recess. We must have a fix by the August recess, at least a short-term one, because the cash management procedures will have to go into effect in August, based on our current projections, and these projections are volatile.

Importantly, I think on the revenue side, it is hard not to notice the remarkable overlap between some of the senior members on this committee and on the Finance Committee. So the fact that we are discussing it here we hope will trickle over to your finance discussions.

I think the time has largely passed where we can patch this thing together through a variety of small and disparate tax measures. In order to just maintain current funding on a multi-year basis, we are going to have to raise real revenue.

The President has a proposal to find \$150 billion in additional revenue to add to the revenues that the Trust Fund will get on a 4-year basis. There are other proposals out there. But clearly, new revenue from some source is in order to get a multi-year bill. A multi-year bill is what we need for the certainty that the system needs.

And here again, if we are going to go the effort to raise real revenue, we feel strongly within the administration that we should get a growth pattern built into that, so we can really actually improve the condition of the infrastructure and not tread water for the long term.

The CHAIRMAN. My time is up.

It is the juxtaposition of we are certainly going to have a short-term patch to get us through the August crisis. But then the question is, are we going to go for a bigger, post election, lame duck solution? And we can do that. We can do that. The election will be over.

Elections are all-consuming right now. So I hope we could do that.

Senator Thune?

Senator THUNE. Well, thank you, Mr. Chairman.

I would like to, Mr. Andrews, just ask you about the NTIA's proposed transition of the IANA functions to the multi-stakeholder community. And I think that is something that your department has testified about before the House of Representatives, and I am wondering if you could discuss specifically what some of the valid concerns are that have been raised regarding the proposed transition, and if confirmed, what role you would have in overseeing that transition?

Mr. ANDREWS. Sure. So, Senator, you raise an issue that we see as very important, and I think starting from the premise of what are we trying to do here. I think we all agree on the importance of protecting a secure—keeping the Internet open and secure as an engine for growth and innovation. I think we also share the same concern about Internet governance in the multi-stakeholder process being very important.

The third concern I think we all share is keeping the Internet—there are a number of authoritarian governments that would like to change the Internet governance model. And so, one of the reasons we have sought—the privatization tool of the IANA function was first proposed actually in 1998, and it has been the policy of the United States Government over the course of time to have a multi-stakeholder run process.

So, if confirmed, I will definitely be involved in this and definitely want to make sure that certain protections are met in order that if we do go through with this transition and as we move it forward, that we keep the open and secure nature of the Internet, that we protect the domain name system. We make sure the stakeholders are protected.

And I think one of the things that is important to note in this, when NTIA made this proposal, groups as diverse as the Chamber of Commerce and the Internet users, the companies like Google, Microsoft, Facebook, all came out in support of this because I think they recognize this is important to be able to protect the multi-stakeholder model, and particularly from the countries that would like to gain greater control or move control of Internet governance to intergovernmental agencies like the U.N. or the ITU.

And so, it is important for we as a country to make sure that the misimpression that is out there that the U.S. controls the Internet is not the case. So we take the concerns of Congress very seriously, and we will continue to keep those in mind as we move this discussion forward.

Senator THUNE. And I think that the main concern is that there is some structure that would lead to an outcome that would not entail the U.N. or the ITU or some government that would want to coopt this thing. And so, it is kind of a—it is very—I guess I would say sort of murky out there in terms of how this might end, and I think that is the concern that has been raised.

And so, I hope you will stay in close contact with us as that process moves forward, and I think there have even been some attempts on the House side to prevent that from moving forward. So you can understand and realize there are some very valid concerns out there.

Let me follow up on with Mr. Mendez and Mr. Rogoff something that the Chairman talked about, and that is the highway bill reau-

thorization. There is some, I think, resistance on both sides to the mechanism that has been proposed by the administration for funding. There are other ideas that are out there. What we end up doing in the near term probably, regrettably, will be a piecemeal, cobbled together some things that will help pay for a short-term extension, but it doesn't solve the long-term problem.

I have asked this question of your boss in the past, about what other types of things that you might support in terms of financing mechanisms to reauthorize the Highway Trust Fund, and so I would pose that question to you as well. You have told us we need to fix it. How willing is the Administration to engage in getting out behind the types of solutions that it would take to get that done?

Mr. ROGOFF. I will start off, sir.

Secretary Foxx, in a number of his public statements, has made very clear that while the Administration stands firmly behind our proposal—and we have identified three potential offsets as part of pro-growth business tax reform to make it happen—that we are open to discussing and hearing and conversing on alternatives that Congress may want to put forward. I believe it was just yesterday that he made clear that nothing is off the table, and that is our position going forward. We stand behind our proposal, but our ears are open.

Senator THUNE. OK. Well, that is exactly what I was hoping to hear. It would be nice to have the Administration weigh in, too. I mean, I understand the idea of working with the Congress. We certainly welcome that.

My experience around here is that in order for big things to happen, you have got to have not only the legislative branch, where you have got 435 House members and 100 Senators who all have different ideas about how to resolve these things, or on the Finance Committee, 21 or 22 of us, that Presidential leadership is really essential to do big things. And so, I know you have got the one proposal out there. We appreciate you are at least leading forward with that.

But like I said, my impression is from some of the discussions that we have had, that there are—there is that there is resistance to that, objections that are not just confined to the Republican side of the aisle. And so, to the degree that the Administration would like to engage further and weigh in behind specific proposals, I think we would certainly welcome and appreciate that kind of leadership.

I have got a question, Mr. Chairman, I can submit for the record, for Mr. Adler.

The CHAIRMAN. Go ahead.

Senator THUNE. Well, I don't want to get other people who want to ask questions, but let me just quickly, if I might? Mr. Adler, we all want to make our products on the market safe, want to ensure that we do that in a way that doesn't impose an undue regulatory burden on businesses that are trying to recover in this economy.

When Congress passed Public Law 112-28, we were especially concerned about the significant costs of third-party testing, and Congress, therefore, directed the agency to look for and to implement ways to reduce those costs and to report back to Congress if it needed additional authorities. And I am concerned the agency's

efforts to date have been minimal in that regard and treated as a lower priority, I think, as was evidenced by the vote last month not to devote additional staff resources to that effort, even when those resources were apparently available.

So I guess my question is understanding that the agency's staff and outside stakeholders have identified opportunities to reduce those testing burdens, but none of those have been implemented, how do you see this playing out? Do you hold the view that the agency shouldn't act to reduce some of those burdens?

Mr. ADLER. Senator, thank you so much for the question, and also thank you for signaling that you were going to ask me the question. It allowed me to think through the answer, and I also want to thank you for the opportunity to sit down with your staff.

And you are quite correct in describing what happened in 112-28. 112-28 didn't just direct us to do burden reduction. That would have been a much simpler mandate. It said burden reduction with respect to third-party testing, consistent with ensuring compliance with existing CPSC rules and regulations. And that is a very challenging task ahead for the Commission.

I honestly believe we have dedicated the necessary resources. It is not an easy matter to come up with ways to reduce third-party testing, which have lots and lots of fixed costs.

We have had a lot of dialogue with our stakeholders, our industry stakeholders, especially small business, and they have expressed consistently the desire that we expand on one particular approach to addressing the burdens, and that is through a process that we call determinations. And the delight of the determination is if you can make a determination that a product or a product component will never flunk any of the CPSC rules and regulations, you can exempt them completely from third-party testing.

We did that back in August 2009, and we had a forum this past April, April 3, in which we had a lot of industry stakeholders present arguments and data in support of our expanding our determinations, and I would love to say that it was an easy scientific judgment.

In point of fact, one of the most exciting suggestions that was made was to address phthalates in consumer products, children's products, by looking to see which were the most rigid products because phthalates are plasticizers. So we took that suggestion, our staff tested it, and unfortunately, the suggestion that was made to us turned out not to exclude phthalates.

So it is a very, very challenging scientific inquiry, but I just want to assure you that I view it as extremely important, that we are working on it as hard as we can. In fact, I put in an amendment during the discussion that you referenced to add as a project addressing whether untreated wood has heavy metals that are banned in ASTM F963.

So let me just assure you that it is a project that I think is very, very important.

Senator THUNE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Thune.

Senator Klobuchar?

Senator KLOBUCHAR. Well, thank you very much, Mr. Chairman.

I was thinking as you talked about potholes that my dad is retired, but he—done a bunch of books, and one of his books was entitled, a collection of his columns, “Eight Miles Without A Pothole Is the Closest Thing to Heaven I’ve Ever Seen.” So there you go.

I wanted to start out with some road questions. Actually, I was just last week on Highway 14 in southern Minnesota. There has been some Federal money that has gone into that, but we literally have seen 125 people die in the last 20 years on this road, and I just wanted to call it to your attention as we seek further funding to expand that to four lanes. We are nearly—I think nearly half done with it, but there is a lot of work to be done there.

Highway 169 in northern Minnesota, the state is working with FHWA to prepare a draft EIS statement with different alternatives, and Mr. Mendez, I am hoping that you are aware of that and that we can get that moving and get through the red tape on that project.

Mr. MENDEZ. Yes, Senator.

We have an update on that. We are working on an environmental assessment, and we do plan—I believe the target is January, February of next year. So—

Senator KLOBUCHAR. OK.

Mr. MENDEZ.—it is moving as fast as we can.

Senator KLOBUCHAR. All right. Thank you very much.

And you and I discussed, Mr. Rogoff, Highway 10 in Anoka, Minnesota, sort of near where Lake Wobegon is, or may be. And unlike Lake Wobegon, this corridor of this highway has major safety congestion and commuter mobility issues.

If I could still do earmarks, I would put money in a number of these projects I have just mentioned. I can’t. So I am asking for your help in trying to focus some resources on these very difficult projects.

I wanted to move on to the Norwegian Airlines issue. In March—either of you can answer this—38 Senators, including myself, signed a letter, it was bipartisan, to the Department of Transportation regarding Norwegian Air International’s pending application for an exemption and foreign air carrier permit. There have been a number of very serious concerns raised about this, with where this airline—what this airline really is, about labor practices, and about really competitiveness for our U.S.-based carriers.

Are you aware of the letter and the concerns raised in it, and to your knowledge, has DOT done a U.S. jobs impact analysis on NAI’s business model?

Mr. MENDEZ. Senator, certainly we are aware of all the issues related to the Norwegian Airline application. Right now, it is currently under review within the U.S. DOT.

It is going through this administrative process, and so we are limited in what we can say publicly. But we certainly are very aware of—it is a very complex issue, as you might imagine, and a lot of interest, but we are on top of that.

Senator KLOBUCHAR. OK. It is just that it looked really bad to me.

Last, Mr. Mendez—this is kind of a rapid round—I worked hard with several of my colleagues, again bipartisan, to ensure the Recreational Trails Program was preserved in MAP-21. And this time

I believe it is in the original bill so we won't have to do it as an amendment, and I hope you understand the importance of this trail program.

Mr. MENDEZ. Yes, we do, and it is still as a set-aside, with the option for states to opt out.

Senator KLOBUCHAR. Exactly. I understand that.

OK. Mr. Andrews, I, first of all, want to make sure you understand the priority of the Patent Office—of PTO, that it has the resources. And given all the great work that the Chairman mentioned that Secretary Pritzker is doing with business, which I have just always believed this office could not only do the tasks that it has, but also that it could become an advocate for business, and I hope you will join us in advocating for resources.

But I also wanted to focus on one issue that I have talked to the Secretary about, and that is export control reform. I just wanted an update on the progress. I know that you are working hard to streamline the process with other agencies, with only a few more lists left to review.

I applaud your diligence. We have been trying to get this done for a while, and do you have any updated timelines on the reforms for the export control list? So those of us that work in this area, and as a member of the President's Export Council, we know that with some cutbacks in spending in defense that this is really important to companies involved in this area to be able to export goods that are not truly a security risk.

Mr. ANDREWS. Yes, and this is a high priority for the Secretary and the Department, and our goal is to have by the end of the year, working with the State Department, have reviewed all of the categories and be through all of the lists.

Senator KLOBUCHAR. Very good.

Mr. Jadotte? Say your name for me again.

Mr. JADOTTE. Jadotte.

Senator KLOBUCHAR. Jadotte. OK, I got it. Jadotte. I have a harder name, so there you go.

I know you are collecting a lot of information, and I just wanted to make you aware I do a lot in the tourism area, that making sure that we keep the resources of the Survey of International Aviation Travelers, as we are looking to bring more and more foreign tourism business in. We have seen a big increase, and it is just huge for our economy. Every foreign tourist spends an average of \$5,000, and we are really excited.

Senator Blunt and I have done a lot of work in this area. I just wanted to make sure you keep up those resources and studies.

Mr. JADOTTE. Absolutely, Senator.

Senator KLOBUCHAR. OK, very good.

And last, Mr. Adler, thank you for bringing up the lead in toys and that work. I think it has been really important, and we have made some headway.

Just two quick questions. One, you talked about industries and the work, that there always has to be some distance, but the really positive work going on with industry standards. And I hope you will consider that with the recreational off highway vehicle group that has been working cooperatively with the agency on some of their standards.

Mr. ADLER. I will, indeed. And we have been working cooperatively with them, and we very much look forward to continuing that.

Senator KLOBUCHAR. Yes, as you know, we have two of the only American manufacturers in Minnesota, with Polaris and Arctic Cat.

Mr. ADLER. I am well aware.

Senator KLOBUCHAR. OK, good.

The last thing, carbon monoxide. This is a bill that I have introduced and has been kicking around for a while that protects against carbon monoxide poisoning by helping states and local governments implement programs to raise awareness of proper CO alarm installation. And I have been slightly frustrated about getting it through the Senate, and I was just wondering if you are committed to work with me on this issue.

Mr. ADLER. We are, indeed—

Senator KLOBUCHAR. We have seen several deaths over the winter, as you know. Many deaths across the country.

Mr. ADLER. Yes, and we are aware that CO remains a very serious problem to the American public. Something on the order of 160 CO deaths every year just from the products under our jurisdiction, mainly portable gas generators and heating systems.

Senator KLOBUCHAR. Thank you very much, Mr. Adler, and thank you to all of you.

And one last thank you to Mr. Rogoff. When that bridge collapsed that you brought up, Mr. Chairman, the next day, Mr. Rogoff was on a plane with me and Senator Coleman and others, flying out there, and that bridge got built within a year.

A huge eight-lane highway fell down in the middle of a summer day, and we said that day that just shouldn't happen in the middle of America, and it did. And it got replaced, thanks to your work and many others.

So, thank you.

Mr. CHAIRMAN. They are probably just scared of you.

[Laughter.]

Senator KLOBUCHAR. I have like 20 more rapid round questions I could do, Mr. Chairman, if you like. I won't do that, though. All right.

Mr. CHAIRMAN. Mr. Andrews, one of the things, obviously, I feel best about coming out of the Commerce Committee is FirstNet, and it is an amazing process because there probably aren't more than 0.25 percent of Americans who have any idea what it is, what it will do, why it is necessary. But we understand it very thoroughly.

And I remember at its inception, when it was first introduced, there was kind of a waggle of groups here and there, and then all of a sudden, everybody joined together. And then we had the huge thing, and the Vice President presided over. I have never seen so many firefighters and police and EMTs and so many colorful uniforms packed in one room.

And then things began, you know, as the excitement got over, then you wondered, well, is NTIA cooperating fully in this? Who wants to be in charge? We are an independent group, FirstNet. The NTIA isn't. And so, is there a potential for any conflict on the course?

I stipulate that only because it is probably a \$15 billion to \$20 billion project, maybe more than \$20 billion to do the entire country. We were able to plan for \$7 billion, and I think we are going to be able to get that \$7 billion through wireless and others.

But that is all built on the perception that as we do it for certain parts of the country, that other parts that are not seeing it happen in their part will get very mad, and their first responders will get very mad, and so it will continue to go up. That is not a certain prospect, but it is the one that we choose, and I think it is one that will work.

If confirmed, which you will be, I just want you to work to give FirstNet the total flexibility that it needs, run by a very efficient man, Sam Ginn, to carry out this mission and design and deploy a nationwide network. It is an easy statement. It is a big task.

Mr. ANDREWS. Absolutely, Senator.

I will commit to you we will work very closely with FirstNet to help make them successful.

The CHAIRMAN. I now apologize to Senator Blumenthal, who has the floor.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

The CHAIRMAN. And you can use all of my next three questions' time.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

I have a few questions of Mr. Rogoff and Mr. Mendez. The Chairman and others here have very aptly and powerfully described the aging infrastructure, the decaying roads, bridges, railroad tracks, and other features of our rail transportation system that we face. The electrical systems alone are outdated and have caused very significant service disruptions on the railroads in the Northeast Corridor, which is the busiest in the Nation, and have stranded commuters and snarled traffic most recently last Friday on Metro-North and Amtrak.

The bridge that caused, on two occasions within the last 2 weeks, that traffic to be snarled and commuters to be stranded is the Norwalk Walk River Bridge, which literally was built in the second term of President Grover Cleveland's administration. It is 118 years old, and its age is not atypical of bridges and other structures in that Northeast Corridor.

I have asked, along with our entire delegation, for disaster relief funds appropriated under Sandy, as a result of Sandy, to be allocated to that bridge, to the State of Connecticut, our Connecticut Department of Transportation. I know, Mr. Rogoff, you are very familiar with it because you served as Administrator of the Federal Transit Administration before becoming the designated Under Secretary of Policy.

The Connecticut Department of Transportation recently submitted a \$603 million request for Sandy funds, including \$349 million in Federal funds, to cover 75 percent of the cost. Will you commit that you will expedite that application so that the state can replace that bridge as soon as possible?

Which is to the benefit not only of Connecticut and the Northeast, but the entire national economy because it is the busiest railroad. It carries freight, as well as passengers, and this funding is vital to replace that bridge.

Mr. ROGOFF. Senator Blumenthal, as you have pointed out, it has been a horrendous year for Metro-North passengers, and we are working diligently with Metro-North, not only to improve its safety, but taking a hard look at these infrastructure issues.

You are very right that the Walk Bridge, which is so critical to literally hundreds of thousands of passengers on a daily basis, it is just actually one of eight such bridges up and down the Northeast Corridor of similar age. The youngest one is 95 years old.

So, yes, you have our commitment to give the application every consideration. FTA is currently evaluating all of the Sandy relief grants as we speak. We are in touch with ConnDOT as well as Metro-North about their priorities.

I think importantly, forgive me for making a pitch for our legislation, but one of the biggest areas of growth in the GROW AMERICA Act is, in fact, in this area of passenger rail investment. Not just for new higher-speed passenger rail across the country, but for the necessary reinvestment in the Northeast Corridor, which is an extremely highly successful and absolutely elemental corridor that we have in the Northeast.

Senator BLUMENTHAL. And I support the \$9.5 billion request made for the passenger rail service program. You have rightly pointed out that the President would rebrand or rename the Highway Trust Fund as the Transportation Trust Fund. I strongly endorse that idea.

I am going to take your response as a yes, that you will expedite consideration.

Mr. ROGOFF. I don't want to—I don't want to put out vague answers here, sir.

We are moving aggressively on all of the applications. I don't know that we can move the Walk Bridge ahead of all the others for consideration, but I am happy to converse with you on maybe we can do tranches at one time. There are competitive issues because this is an open, competitive discretionary grant program.

Senator BLUMENTHAL. Well, I am still going to take that as a yes.

[Laughter.]

Mr. ROGOFF. Take't as thou list, sir.

Senator BLUMENTHAL. Let me ask again, Mr. Mendez—and Mr. Rogoff, you are free to respond as well.

Mr. Rogoff very correctly stated that it has been a horrendous year for Metro-North travelers. The problems that are reflected in the service disruptions, as well as the tragedies that have resulted from lack of safety and reliability, have built over a period of many years. In those years, there were violations of safety regulations and rules bound by the FRA, and yet the penalties were miniscule, in fact, barely a slap on the wrist.

I have proposed increasing the penalties or in some way restructuring them, but also stronger oversight and scrutiny generally by the FRA, Federal Railway Administration, to assure that the rules are more vigorously enforced and that penalties are a significant deterrent to railroads—not just Metro-North, but all of them—in complying with those safety and reliability regulations.

Can we have your commitment that you will support that effort?

Mr. MENDEZ. Absolutely. I think what you mentioned on Metro-North, I believe in the last year and a half, we have had about four very serious incidents, and that is why FRA, under Administrator Szabo, they implemented their deep dive to look and see what is really happening. And that is really the kind of thing that we need to be doing as regulators, going in and taking a look and understanding what is happening, either within one certain operator, if you will, or maybe it is on a national basis if there are national issues.

But certainly, you have our support to continue improving on safety. Safety is our highest priority.

Mr. BLUMENTHAL. My time has expired, but I thank all of you for your willingness to serve, again. And thank you for your answers.

Mr. MENDEZ. Thank you.

Mr. BLUMENTHAL. Mr. Chairman, thank you.

The CHAIRMAN. Thank you, Senator Blumenthal.

We have a vote starting at 4 p.m. I just want to do one final question to you, Mr. Mendez.

It is mandated by MAP-21, but DOT is currently conducting a comprehensive truck size survey, and trucks are very heavy—trucks are very much in my mind in rural places like West Virginia, especially hilly ones where they are dangerous.

Now that study that you are doing is due out later this year, but the National Academy of Sciences has already raised questions as to the methodology. I can't get into that because I can't analyze either one. But what I want to be sure is that you are not working just to get it done by a certain date, but that you are trying to put out a product which listens to everything and learns everything. You are not date mesmerized?

Mr. MENDEZ. Well, sir, I totally agree with you.

Our focus is on getting this right. I know there are deadlines. We will deal with that. What we want to bring to you, and it is a congressional mandate, is to bring to you the most objective, data-driven approach that we can define.

And we are addressing some of the TRB, Transportation Research Board suggestions, but we are going to get it right, and we will deal with time issues as we need to. So that is my commitment to you.

On this one, it is very important to the industry, to a lot of stakeholders out there, and like I said earlier, we are very focused on safety. So we are going to get it right for you, and that is my commitment.

The CHAIRMAN. Yes. So the answer is that you are not star struck by a date. You are star struck by getting it done as fastly and accurately as possible.

Mr. MENDEZ. Absolutely. Yes, sir.

The CHAIRMAN. Great.

Senator Ayotte has come in, and you are now the Chairman of the Commerce Committee. So you can do many things by unanimous consent for New Hampshire, or anybody that you wish.

Senator AYOTTE. At last.

[Laughter.]

Senator AYOTTE. Just kidding. No, this is great.

The CHAIRMAN. And you also have to close the hearing.
 Senator AYOTTE. I can do that, Mr. Chairman. Thank you.
 The CHAIRMAN. And thank you all very, very, very much. Please.

**STATEMENT OF HON. KELLY AYOTTE,
 U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE [presiding]. Well, I want to thank all of you for being here, and we know this will be short questioning because we have a vote in progress.

So I wanted to ask Mr. Andrews about the Permanent Internet Tax Freedom Act which I know Senator Thune touched upon earlier. I have introduced legislation, which he mentioned in the opening statement, that would permanently extend the current ban on Internet access taxes. This Act would prevent State and local governments from imposing new taxes on Internet access and prohibit any multiple or discriminatory taxes on E-commerce. As you know, Senator Thune and Senator Wyden have a similar bill.

And the Internet Tax Freedom Act, or ITFA, which was originally enacted in 1998, was designed to prevent state taxes, a sort of patchwork of taxes, and to ensure that multiple jurisdictions could not tax the same electronic commerce transaction, ensuring that the commerce over the Internet would not be singled out for discriminatory tax increases.

It expires in November, and unless addressed soon, I think many of us share the concerns that customers are going to receive notices of the looming tax that they could receive. This will probably impact millions and millions of people across this country. If they get a tax increase notice, I am sure that will have them prompting to talk to us pretty quickly. And E-commerce is incredibly important.

Wwhat I hear a lot about in New Hampshire is that both consumers and businesses would like certainty on this issue.

So if we are thinking again of rather than a permanent moratorium, which is what I would support, or the fact that some have talked about a really short-term fix, I am worried about what message that will send, and we will be sort of back at Groundhog Day again.

I want to ask you very straightforwardly, our half of the Senate is cosponsoring one or the other pieces of legislation. What is your position on the permanent moratorium, and what do you think about it in terms of the position that you are being considered for?

Mr. ANDREWS. Sure. Well, as a frequent Internet shopping family, I understand the concern that you raise. To my knowledge, we have not taken a position yet, but what I would like to do is go back and get a little better educated on the issue and come back to you with a better answer on that.

Senator AYOTTE. Could you submit that answer for the record—

Mr. ANDREWS. Absolutely.

Senator AYOTTE.—for this hearing? I think it would be really helpful. Like I said, this is a strong bipartisan issue—

Mr. ANDREWS. Sure.

Senator AYOTTE.—and one that we are facing very shortly here, and so I think it will be important in the position that you are going to serve in. So I appreciate that very much.

And I also wanted to follow up on another issue that is very important to me, which is our small fishermen in New Hampshire who have been devastated by the cod quotas and by the catch share regulations coming out of NOAA and Commerce. I am really concerned that our small fishermen are going to cease to exist if we don't come to some more reasonable accommodation of what is also their goal, which is to sustain the fishery because that is how they make their living.

So I wanted to ask you about this issue, and I have asked many, many people in NOAA about this issue. What is your view is in terms of how we can really look at these regulations again, in light of sustaining our small fishermen and women who just want to make a living off the waters? For many of them, of course, it is a family tradition, and we are very proud of them.

Mr. ANDREWS. Right. And I understand the importance of the industry not only economically but, as you point out, historically and the tradition of these families. NOAA is well aware, we are well aware of the impact that the current situation is having and the disaster it has had on New England ground fishermen, and we are very focused.

I know John Bullard, who is our regional administrator, has been tasked by the Secretary personally to work with the communities, work with the States, and work with the fishermen to try to work through this issue and provide relief as much as we can.

Senator AYOTTE. Well, I am appreciative that NOAA has worked with the fishermen in the Northeast to distribute the disaster funds promptly, so I thank you for that.

My overall concern has been from the beginning is just how do we help the fishermen in a disaster sense? How do we put them in a position where they can continue their livelihood of making a living on the waters? This is, as you rightly described, a noble tradition in New England.

I want to just say that upfront that I am appreciative that your agency has acted quickly. I just think there is more work to do.

The other issue I wanted to ask you about because this is what I hear from New Hampshire fishermen, is their concern regarding the funds actually being more focused on a buyout or buyback program. All our fishermen want is to get back out on the water and fish, and not relinquish their boats and livelihoods because of these regulations. One of the big concerns I have about viewing it only in terms of a buyout or buyback program, is that we are going to increase consolidation in the fleet, resulting in some of these small fishermen to get bought up, and then we will just have the large fleets.

Nothing against the large fleets, but I think part of these small business owners who are working hard at something they love to do, it is important to them, and I think that we should stand up for them as well.

So, if you are confirmed, will you work with me, as well as other members of our delegation to ensure that New Hampshire's small boat fleet is not harmed by any buyback or buyout program that might be pursued by NOAA? And that one of the issues you really focus on is that we don't want to eliminate all the small fishermen in the policies that may be promoted by NOAA?

Mr. ANDREWS. And Senator, we are working very hard to tailor the solutions to the local communities and the needs of the communities. And if I am confirmed, I would absolutely look forward to working with you.

I need to learn more about the specifics of the buyback program. I can't make a commitment, not—I don't have the depth of understanding. But I would love to work with you, if confirmed, and work with NOAA on this.

Senator AYOTTE. Well, great, and what would be helpful, too, is I hope that you would talk to some of our fishermen in New Hampshire and hear directly from them so that you can understand their perspective. I think that is really helpful as you are making these decisions. I hope that you would do that.

Thank you. I take that to be yes.

Mr. ANDREWS. I would be happy to talk to you further about hearing more about it. Absolutely.

Senator AYOTTE. I am not a fisherman, but I really want you to talk to my fishermen. Will you do that?

Mr. ANDREWS. I would be happy to talk to your fishermen.

Senator AYOTTE. Thank you. I appreciate it.

The rest of you are off the hook today, but I thank you. I thank you all for being here, and I appreciate your willingness to serve in important positions.

And I would recommend, Mr. Andrews, you talk to our fishermen in the beautiful summer, too, in places like Portsmouth that are quite pretty. So I hope you will come to New Hampshire.

Mr. ANDREWS. I appreciate the invitation.

Senator AYOTTE. Thanks. Nice to see all of you.

And the hearing is adjourned.

[Whereupon, at 4:11 p.m., the hearing was adjourned.]

A P P E N D I X

UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
Washington, DC, June 25, 2014

Hon. ROBERT ADLER,
Acting Chairman,
U.S. Consumer Product Safety Commission,
Bethesda, MD.

Dear Acting Chairman Adler:

Thank you for your responses to my questions for the record (QFR) following the hearing held to consider your reappointment to the Consumer Product Safety Commission (CPSC, or the Commission) on June 11, 2014. I also would like to take this opportunity to thank you for your willingness to serve as Acting Chairman of the CPSC since the expiration of the term of Chairman Inez Tenenbaum on November 30, 2013. You have served with dedication as Acting Chairman for the past six months, and circumstances may well necessitate that you continue to serve in that role for some time.

Given your years of experience on the Commission and the fact that you may need to remain as Acting Chairman for an indefinite time, as well as your ongoing working relationship with Elliot Kaye, the current Executive Director of the CPSC and the President's nominee to be the next Chairman, I believe it is important to solidify the ground work for specific actions the CPSC can take in the near future to ensure the Commission aggressively implements burden reduction opportunities for American businesses.

As you know, Public Law 112–28 (enacted in August 2011) directed the CPSC to solicit public comments on opportunities to reduce the cost of third-party testing within 60 days of enactment. The law further required the CPSC, within one year of enactment, to review such opportunities and report back to Congress on any gaps in its authority to implement them consistent with the CPSC's safety mission. After nearly three years, and notwithstanding the CPSC staffs identification of potential opportunities to reduce third-party testing *in 2012*, the CPSC has neither reduced the burden of third-party testing nor submitted a report to Congress on barriers to doing so.

That is why I was disappointed that you voted on May 6, 2014 against an amendment during consideration of the CPSC's 2014 Mid-Year Review and Proposed Operating Plan Adjustments that would have required senior CPSC staff to develop a plan regarding burden reduction opportunities for third-party testing requirements, which failed 2–1. I was also disappointed that you declined to provide such a plan to this Committee when I formally requested that you do so through the written QFR process.

Particularly, in your response to my request that you “provide a plan to this Committee within 60 days outlining specific actions you plan to take to ensure that the CPSC aggressively implements burden reduction opportunities and a timetable for when those actions will occur,” you unfortunately appear to have misunderstood my request. I did not ask that you provide a plan regarding what steps you would take *upon re confirmation* as a Commissioner. Given your lengthy service on, and current leadership of, the CPSC, I simply asked that you provide a plan “within 60 days” of my formal QFR request, dated June 18, 2014. I believe that, as a re-nominated Commissioner, you have the institutional experience to inform such a plan, even if a new chairman is confirmed. This request is still pending.

You also indicated in your response that you will work with Chairman-nominee Elliot Kaye, who agreed to provide a burden reduction plan to me within 60 days of his confirmation during his nomination hearing on April 8, 2014. I welcome your pledge; however, my request for your plan is independent from my request to Mr. Kaye for his plan—notwithstanding the fact that there may be some need to reconcile your plans in the future, as the CPSC takes concrete action to reduce these

burdens as intended by Congress. Therefore, in your capacity as Acting Chairman, I renew my request to you to provide a plan to the Committee within 60 days from June 18, 2014, outlining specific actions you plan to take to ensure that the CPSC aggressively implements burden reduction opportunities and a timetable for when those actions will occur.

Please be advised that I intend to cooperate with the Chairman to report your nomination out of Committee, but that I expect you to respond fully to my request before your reappointment is considered by the full Senate.

Respectfully,

JOHN THUNE,
Ranking Member.

cc: Chairman John D. Rockefeller IV

U.S. CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, MD, July 17, 2014

Hon. JOHN THUNE,
Ranking Member,
Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

Dear Ranking Member Thune:

Thank you for your letter of June 25, 2014, requesting that I provide a plan to the Senate Committee on Commerce, Science, and Transportation outlining specific actions that I plan to take to ensure that the U.S. Consumer Product Safety Commission (CPSC) implements burden reduction opportunities and a timetable for when those actions will occur.

As an initial matter, please accept my apology for any misunderstanding concerning your original request. Through this response I hope to provide a bit more background on the Commission's many substantive efforts to date regarding burden reduction activities, as well as my personal plan going forward. I hope that this letter addresses your concerns.

PL 112–28 Mandate on Burden Reduction

In your letter, you correctly point out that Public Law 112–28 (enacted August 2011) directed the CPSC to solicit public comments on opportunities to reduce the cost of third-party testing. I would note, however, the full statutory mandate was not just to seek comments on reducing third-party testing costs, but also to do so “consistent with assuring compliance with any applicable consumer product safety rule, ban, standard or regulation.” In other words, PL 112–28 maintained the safety protections of third-party testing for children’s products mandated in 2008 in the Consumer Product Safety Improvement Act (CPSIA). I mention this additional language in PL 112–28 because assuring compliance with the Commission’s safety rules while retaining CPSIA’s third-party testing requirements remains an essential mandate for the agency—and presents a significantly greater challenge than addressing burden reduction alone.

Burden Reduction Actions to Date

Although PL 112–28 directed the Commission to seek comments on burden reduction approaches, the Commission had already taken some significant steps to address third-party testing concerns before passage of this law. For example:

- *Determinations Regarding Lead in Children’s Products:* The Commission, in 2009, determined that ten product categories, including precious gemstones, semiprecious gemstones, natural or cultured pearls, wood, paper, CMYK process printing inks, textiles, natural fibers, manufactured fibers, surgical steel, and various precious metals would never violate our lead rules, thereby obviating the need for third-party testing. (16 CFR § 1500.91).
- *Component Part Testing:* The Commission published a rule permitting finished parts product certifiers to rely on component part testing or voluntary certification by another party to meet the requirements of third-party testing and certification. (16 CFR § 1109).
- *Retesting Not Required for Minor Changes in ASTM Standards:* The Commission determined that manufacturers of children’s products otherwise obligated to re-test their products whenever the voluntary standard on which they are promulgated changes would not have to re-test their products if they have current test results showing compliance with the previous version of the standard,

and the relevant tests in the two versions of the standard are unchanged or functionally equivalent.

- *Use of ASTM F963 Screening Test to Assess Lead Content:* CPSC staff allowed the ASTM screening test for heavy metals as an option for lead testing rather than requiring a specific lead test.
- *Expanded Use of XRF Technology:* CPSC staff significantly increased the number of materials for which XRF technology, a simpler and quicker test than the wet chemistry test, could be used for determining lead content. For example, glass materials, unglazed ceramics and some metals can now be tested with XRF technology. In addition, the agency approved one specific XRF technology for use in determining lead content in paints and surface coatings.
- *Expanded Education Outreach Regarding Third Party Testing:* CPSC staff, in particular the Small Business Ombudsman, conducted a series of seminars and webinars on the implementation of third-party testing requirements, providing significant advice on reduced cost approaches.

In addition, CPSC staff moved quickly to implement specific provisions in PL 112–28, some of which had been sought by CPSC to provide third-party testing relief. For example:

- *Random Sample Test Requirement Changed to Representative Sample:* Prior to passage of PL 112–28, the CPSIA directed the CPSC to require samples selected for periodic testing to be chosen using random sampling techniques. A number of companies found using random sampling techniques to be excessively burdensome. In response, Congress amended section 114(i)(2)(B)(ii) of the Act to permit the testing of representative samples. The Commission, accordingly, modified its rule on third-party testing. (16 CFR § 1107(f)).
- *Small Batch Manufacturers Not Required to Conduct Some Third Party Tests:* PL 112–28 gives the Commission the flexibility to exempt small batch manufacturers from third-party tests for some covered products. Accordingly, the Commission established the Small Batch Manufacturers Registry, which is an online mechanism by which Small Batch Manufacturers can identify themselves to obtain third-party testing relief.¹
- *Third Party Testing for Lead in ATVs, Bicycles, and Books Limited:* PL 112–28 exempted ATVs from meeting the lead requirements imposed by CPSIA. It also exempted the metal component parts of bicycles and ordinary books from the requirement for third-party testing for lead content.
- *Only Accessible Component Parts Required to be Tested for Phthalates:* PL 112–28 limited third-party testing for phthalates to plastic parts accessible to a child through normal or reasonably foreseeable use and abuse. Accordingly, the Commission modified its rule to make this change. (16 CFR § 1199).
- *Functional Purpose Exemption Established:* PL 112–28 established a protocol by which petitioners may request a functional purpose exception for a product, class of product, material, or component part because it is not practicable or not technologically feasible to meet the 100 ppm lead content limit. Accordingly, the Commission modified its rule to make this change. (16 CFR § 1500.90).

I mention the above steps to point out that both the CPSC and the Congress have been active over the years in addressing the burdens of third-party testing, especially on small manufacturers. I also note that most of the above listed actions occurred with minimal scientific investigation. Unfortunately, most further burden reduction actions, to be useful, seem to require significant research at substantial cost. Given the technical challenges regarding the development of additional options, it is not surprising that further burden reduction actions have not yet occurred. But I assure you that the Commission is working diligently on all possible burden reduction solutions that are consistent with the statute.

CPSC’s Investigation of Potential Further Burden Reduction Actions: Technical and Resource Challenges

On November 8, 2011, pursuant to PL 112–28, the Commission published a Request for Comments (RFC) in the Federal Register (76 Fed. Reg. 69596) soliciting input from the public regarding opportunities to reduce the cost of third-party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation. In addition, CPSC staff reviewed the Commission’s rules on third-party testing to see whether any modifications of

¹ See <http://www.cpsc.gov/en/Business—Manufacturing/Srnnal-Business-Resources/Small-Batch-Manufacturers-and-Third-Party-/>.

the rules might provide regulatory relief, met separately with each Commissioner's office, and solicited input from all CPSC staff to make sure that helpful ideas from any source would be considered. The result of this intensive months-long inquiry was a 117-page report titled "Staff Briefing Package on Consideration of Opportunities to Reduce Third Party Testing Costs Consistent with Assuring the Compliance of Children's Products," submitted for Commission review on August 29, 2012.² Having explored numerous possible approaches, the staff noted the substantial technical and resource challenges surrounding most of the proposals they considered worthy of further consideration:

The recommendations require additional consideration and the devotion of Commission resources to implement. Some recommendations, if implemented, likely would affect only a few children's product certifiers, while others potentially would have a broader effect. Some recommendations may, upon further study, be ineffective in reducing manufacturers' third-party costs. Other recommendations may be impracticable. Staff's approach in its review of the ideas was to provide enough information to assist the Commission in the determination of whether to approve the resource allocation necessary to pursue these recommendations further.³

In other words, staff's comprehensive review of possible third-party burden reduction measures produced almost no candidates for immediate implementation. Moreover, most, if not all, of the proposals require further investigation and resource expenditures, some potentially quite expensive—with no guarantee that they would bring significant (or any) burden reduction benefit. I mention resources because CPSC is one of the most resource-constrained of the Federal health and safety agencies. And, I note that however important burden reduction projects are to the CPSC—and they are quite important—their placement in the agency's regulatory priorities must be balanced against our safety mission and available resources. They must compete for staff time and resources with projects carrying congressionally mandated deadlines such as the development of standards for durable infant products under the "Danny Keysar Child Product Safety Notification Act"⁴ and the amendment of the Commission's All-Terrain Vehicle Standard.⁵ They must also compete with critical ongoing safety projects, such as recreational off-highway vehicles (ROVs), upholstered furniture flammability, television/furniture tip-overs, portable generator asphyxiations, and drowning prevention—a number of which involve gruesome fatalities (often to young children) and horrific, life-altering injuries.

CPSC's Ongoing Burden Reduction Activities

Given the technical challenges and the resource constraints associated with burden reduction, I believe the Commission has made good progress on the issue. As a starting point, I note that the Commission, on October 12, 2012, having carefully reviewed the various proposals proffered by staff, voted to approve work by staff, resources permitting, on the following nine projects:

- *International Standards Equivalency to Children's Product Safety Rules*: Draft a Request for Information (RFI) for publication in the Federal Register to determine which, if any, tests in international standards were equivalent to tests in comparable CPSC-administered Children's Product Safety Rules.
- *Determinations Regarding Heavy Metals*: Draft a Request for Information (RFI) for publication in the Federal Register regarding whether there are materials that qualify for a determination, under the Commission's existing determinations process, that do not, and will not, contain higher-than-allowed concentrations of any of the eight heavy metals specified in Section 4.3.5 of ASTM F963-11 (The elements are antimony, arsenic, barium, cadmium, chromium, lead, mercury, and selenium).
- *Determinations Regarding Phthalates*: Draft a Request for Information (RFI) for publication in the Federal Register regarding whether there are materials that qualify for a determination, under the Commission's existing determinations process, that do not, and will not, contain prohibited phthalates, and thus are not subject to third-party testing.

² <https://www.cpsc.gov/PageFiles/129398/reduce3pt.pdf>

³ *Id.*, at 3.

⁴ Section 104 of the Consumer Product Safety Improvement Act. Under this Act, the CPSC must adopt two mandatory rules on durable infant goods every six months.

⁵ Section 42 of Consumer Product Safety Act. See 15 U.S.C. §2089.

- *Fourier Transform Infrared Spectroscopy (FTIR)*: Investigate whether Fourier Transform Infrared Spectroscopy (FTIR) can be effective as a screening technology for determining that a plastic component part contains no phthalates.
- *Determinations Regarding Adhesives in Manufactured Woods*: Draft a Request for Information (RFI) for publication in the Federal Register regarding whether there are any adhesives used in manufactured woods that can be determined not to contain lead in amounts above 100 ppm, and thus are not subject to third-party testing.
- *Determinations Regarding Synthetic Food Additives*: Draft a Request for Information (RFI) for publication in the Federal Register regarding whether the process by which materials are determined not to contain lead in amounts above 100 ppm can be expanded to include synthetic food additives.
- *Guidance Regarding Periodic Testing and Periodic Testing Plans*: Draft guidance in the form of a Frequently Asked Question or similar format to clarify that manufacturers who do not engage in ongoing or continued production of a previously third-party certified product—such as an importer or a manufacturer with short production runs—are not required to conduct periodic testing as defined in 16 CFR §1107. The Commission further directed staff to clarify that those manufacturers who do not engage in periodic testing for the reasons previously stated are not required to create a periodic testing plan.
- *Accreditation of Certain Certification Bodies*: Develop a staff technical report for Commission consideration on the feasibility of CPSC-acceptance of certification bodies to perform third-party testing of children’s products as a basis for issuing Children’s Product Certificates (CPC), and to undertake activities to ensure that continuing production maintains compliance with certification requirements as a basis for increasing the maximum periodic testing interval from one to two years.
- *Staff Findings Regarding Production Volume and Periodic Testing*: Report to the Commission whether, and if so, on what basis, staff would be able to make findings whether including a “low-volume” exemption would be consistent with assuring compliance with all children’s product safety rules, regulations, standards or bans.

In addition to these nine burden reduction projects, the Commission, on May 9, 2014, as part of its mid-year budget review, approved an amendment that I authored that added a further Determinations project:

- *Determinations Regarding Unfinished Wood and Other Natural Materials*: Investigate whether unfinished wood or other natural materials do not, and will not, contain any of the specified heavy metals in levels that exceed allowable limits in ASTM F963.

I note that five of the approved actions involve investigating whether the Commission can make determinations regarding certain products or product components. There is good reason for this. Along with CPSC staff, I have endeavored to meet with and listen to a great number of manufacturers, especially those who run small, even tiny, businesses. Overwhelmingly, they have told us that most proposals that retain third-party testing will not provide significant regulatory relief. Instead, they point to the August 2009 action taken by the Commission in which we determined that certain products did not require third-party testing for lead because they would never contain violative amounts of this heavy metal. This, they claim, is the most desirable path to take. They ask that the Commission expand the determinations list of products exempt from lead testing and that we expand our determinations list to include products found never to violate our phthalates rule or our heavy metal requirements in ASTM F963.

The Commission’s Plan

Set forth below is the Commission’s plan—which I support—for implementing our burden reduction projects. Not all of the projects have due dates because there first must be a reasoned decision based on adequate evidence that they hold sufficient technical promise to be placed in the Commission’s Operating Plan. For the most part, the projects that will lead to Commission determinations have received the greatest attention, but progress even on these has often encountered unexpected technical challenges. For example, during the Commission’s all-day forum on burden reduction on April 3, 2014, several industry stakeholders advocated that the Commission exempt rigid plastics with a Shore Hardness of 90 or greater from third-party testing requirements for phthalates. Unfortunately, Commission staff has dis-

covered that a number of products with this hardness factor contain statutorily prohibited phthalates at concentrations above the allowed limit.

Given existing technical challenges and limited Commission resources, I am comfortable with the Commission's work plan. I note that the vote on May 6, 2014 to which you refer in your letter did not reject the idea of a plan. As set forth below, we have a plan. What I opposed in that vote was a proposal for a plan that I felt would elevate burden reduction projects above a number of higher priority safety projects that either have already been included in our Operating Plan or that await placement depending on available resources. Having said that, let me be clear: where burden reduction projects have shown technical promise, they have been approved with reasonable dispatch. Under either my leadership as Acting Chairman or as a Commissioner, I expect this to continue.

Project	Description	Status
International Standards Equivalency to Children's Product Safety Rules	Draft policy on determination of which, if any, tests in international standards are equivalent to CPSC children's product rules to permit rules harmonization.	Draft policy due 4th Quarter, FY 2014.
Determinations Regarding Heavy Metals	Investigate whether heavy metals specified in ASTM F963 (anti-mony, arsenic, barium, cadmium, chromium, lead mercury, and selenium) in certain products or product components can be determined never to violate applicable CPSC standards.	Comments from public on CPSC Workshop due by July 16, 2014. Staff review of comments to follow. Depending on comments received, and resources allocated, staff could develop a Briefing Package in FY 2015.
Determinations Regarding Phthalates	Investigate whether certain products or product components can be determined never to contain violative levels of prohibited phthalates.	Comments from public due by July 16, 2014. Staff review of comments to follow. Depending on comments received, staff could develop a Briefing Package in FY 2015.
Fourier Transform Infrared Spectroscopy (FTIR)	Investigate whether FTIR can be effective as a screening technology for determining that a plastic component part contains no phthalates.	Staff continues to monitor technology developments and will provide status reports on activities as significant new developments occur.
Determinations Regarding Adhesives in Manufactured Woods	Staff directed to investigate whether any adhesives in manufactured woods can be determined not to contain lead in amounts above 100 ppm.	Staff review pending, as resources permit. The CPSC Workshop on Burden Reduction included lead content as an item.
Determinations Regarding Synthetic Food Additives	Investigate whether the process by which materials are determined not to contain lead in amounts above 100 ppm can be expanded to include synthetic food additives.	Staff review pending, as resources permit. The CPSC Workshop on Burden Reduction included lead content as an item.
Guidance Regarding Periodic Testing and Periodic Testing Plans	Staff directed to draft guidance to clarify that manufacturers who do not engage in ongoing or continued production of a previously certified product are not required to conduct periodic testing as defined in section 1107. Moreover, manufacturers who do not have to do periodic testing need not create a periodic testing plan.	Draft guidance policy developed and submitted for 6(b)(6) clearance. Due to Commission by 4th Quarter, FY 2014.

Project	Description	Status
Accreditation of Certain Certification Bodies	Develop a staff technical report for Commission consideration of feasibility of CPSC-acceptance of certification bodies to perform third-party testing as a basis for issuing Children's Product Certificates, and to undertake activities to ensure that continuing production maintains compliance with certification requirements as a basis for increasing the maximum periodic testing interval from 1 to 2 years.	Staff review pending, as resources permit.
Staff Findings Regarding Production Volume and Periodic Testing	Investigate whether to include a "low-volume" exemption from periodic testing requirements for a maximum of three years consistent with assuring compliance with all applicable children's product safety rules, regulations, standards, or bans.	Staff review pending, as resources permit.
Determinations Regarding Unfinished Wood and Other Natural Materials	Staff directed to investigate whether unfinished wood or other natural materials do not and will not contain any of the specified heavy metals in levels that exceed allowable limits in ASTM F963.	A contract task order has been issued to contractor for cost proposal. Staff report anticipated in FY 2015, depending on the completion of the contract task and resource allocation.

Possible Legislation

You point out in your letter that Congress, in Section 2(a)(3)(C) of PL 112-28, stated that if the Commission determined that it lacked the authority to implement an opportunity for reducing the costs of third-party testing consistent with assuring compliance with the applicable consumer product safety rules, bans standards, and regulations, it should transmit a report to Congress reviewing those opportunities, along with any recommendations for any legislation to permit such implementation. To date, I have seen no legislative opportunities for burden reduction that would continue third-party testing consistent with assuring compliance with the applicable consumer product safety rules, bans standards, and regulations. Recently, however, I learned of one possible approach regarding determinations for phthalates that might require legislative action.

The concept is simple: when the Commission made its determinations regarding lead in 2009, the agency listed those products and product components that its technical staff had concluded would not ever contain prohibited amounts of lead. This was a list of *exceptions* from a general standard because lead, as a naturally occurring element, had to be ruled out as a component of products on an ongoing basis. Phthalates, by contrast, are a man-made material not occurring naturally in the environment and intentionally used in products. So, a possibly preferable approach would be to list those products that might *contain* phthalates or are most likely to be contaminated by phthalates in the production process and exempt all others. This would provide much broader relief than exhaustively listing the thousands of products that will never contain phthalates.

Let me mention a few caveats. As with other burden reduction ideas, significantly more research and resources would be required for the agency to undertake such an action if the idea were to prove useful. In addition, statutory flexibility would be needed to allow CPSC to place a product on the list if it was later determined to contain prohibited phthalates even if it was not on the initial list. Also, as the Commission has not received the final Chronic Hazards Advisory Panel report on phthalates, I do not know how that might affect this concept. All of this said, I do find the proposal worthy of additional thought.

Should I decide, in consultation with the agency's career scientific staff that this suggestion is a good one and that we require Congressional assistance, I shall seek my colleagues' support for making an official request to Congress.

Thank you again for your letter on this important issue. Please forward my appreciation to your staff for their courtesy to me. Should you or your staff have any questions, please do not hesitate to contact me or Jenilee Keefe Singer, Acting Director of Legislative Affairs, by telephone at (301) 504-7488 or by e-mail at jksinger@cpsc.gov.

Sincerely,

ROBERT S. ADLER,
Acting Chairman.

cc: Chairman John D. Rockefeller IV

PREPARED STATEMENT OF REP. HENRY A. WAXMAN, RANKING MEMBER,
COMMITTEE ON ENERGY AND COMMERCE

Thank you for the opportunity to address the Committee as it considers the nomination of Robert S. Adler for a second term as Commissioner of the Consumer Product Safety Commission (CPSC). Bob has been an advocate for consumers throughout his career. His expertise, experience, and dedication will continue to benefit the agency and consumers in a second term.

Bob's history with CPSC goes back to 1973, when the agency opened its doors. He spent nine years as an attorney-advisor to two Commissioners, including for Commissioner David Pittle, one of the original five Commissioners.

I've known Bob since 1985, when he joined my staff on the Health and Environment Subcommittee. He worked on important consumer protection issues like a no-fault compensation program for the rare instances of children injured by a vaccine, and he led congressional oversight into the Consumer Product Safety Commission. I remember him especially for the bipartisan approach he helped forge on consumer issues, including with former House member and Senator Jim Broyhill of North Carolina.

He left the Committee for academia at the University of North Carolina, where he had an important appointment at the business school. His academic career was a distinguished one in the areas of product safety, product and medical liability, government regulation, commercial law, and negotiation.

During his time at UNC, Bob stayed involved in many consumer protection and education activities. He was elected six times—for a term spanning 22 years—to the board of directors of Consumers Union, publisher of *Consumer Reports* magazine.

Bob returned to public service in 2009, when he served on President Obama's Transition Team for the Consumer Product Safety Commission. He was appointed a Commissioner in August 2009. Bob has been serving as the Acting Chairman of the CPSC since December.

Bob has been an exceptional Commissioner at CPSC. He is a strong advocate for consumer protection. He is highly regarded for his fact-based and consensus-oriented approach. All sides have come to know him as someone who listens well, who gives everyone a fair hearing, and who does what is right for our Nation.

Consumers and our country have been well served by Bob. I hope you will give his renomination the favorable and speedy consideration it deserves.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO
BRUCE H. ANDREWS

Question 1. Trade Laws—Many in Arkansas rely on the international trade laws to preserve their jobs from unfairly traded imports. Mississippi County, for example, is home to a number of steel producers—in fact, it is the second largest steel producing county in the United States. These workers are facing a massive surge of dumped and subsidized steel imports from a number of countries and across various product lines. They are using the trade laws to fight back, and they are counting on the Department of Commerce to fully enforce the rules of free and fair trade. These are efficient, low-cost, and environmentally responsible producers who can out-compete anyone in the world if there is a level playing field. They are only asking that our government enforce the rules on the books and ensure a level playing field. Can you assure this Committee that the Commerce Department will vigorously apply and enforce the U.S. trade remedy laws?

Answer. Vigorous enforcement of our countervailing duty and anti-dumping trade remedy laws is a top priority for the Commerce Department. It is a priority I have worked on regularly as Chief of Staff for the Commerce Department and I will continue to make enforcement of our trade laws a priority if I am confirmed as Deputy Secretary of the Department.

Like you, I believe wholeheartedly that U.S. firms and workers can compete successfully in the global marketplace if they are able to compete on a level playing field. Also, I understand the importance of the steel industry to Arkansas and the Nation. The domestic steel industry supports hundreds of thousands of jobs in the U.S. and it is an essential sector of our domestic manufacturing base. The Department has acted in numerous trade remedy cases in the past to provide a remedy to domestic producers harmed by unfair imports. Steel related products account for 118 of the antidumping and countervailing duty orders currently in place, which is approximately 41 percent of all current orders. With regard to pending investigations, I can assure you the Department is aware of the concerns of domestic steel producers in these cases and will carefully conduct on-going investigations to make a determination in each case based on a complete record and the law.

Question 2. How can we assure my constituents of the importance you place on the antidumping and countervailing duty laws and their enforcement?

Answer. Vigorous enforcement of our countervailing duty and antidumping trade remedy laws is a key element of the Department's "Open for Business" Strategic Plan that Secretary Pritzker unveiled last fall. As Chief of Staff, I was very involved in the development of the Department's Strategic Plan under Secretary Pritzker's leadership, including the importance the plan places on the effective enforcement of our Nation's trade laws to enable domestic firms to compete fairly in the global marketplace. If I am confirmed as Deputy Secretary, one of my primary objectives will be to oversee the successful implementation of the Department's Strategic Plan to ensure we are holding our trading partners accountable and protecting domestic firms from unfairly traded imports.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK BEGICH TO
BRUCE H. ANDREWS

Question 1. Denali Commission—Thanks to Commerce for helping get Denali Commission back on its feet after term of Federal co-chair, Joel Neimeyer, expired earlier this year. Joel has been reappointed and is bringing new energy and focus to the commission. However, the Commission need to legal assistance. In the past, the Commission has benefitted from shared legal advice from the Anchorage-based FAA attorney, especially on ethics matters. However that attorney will soon no longer be available so the commission is required to have legal counsel.

We believe the Department of Commerce is best positioned to provide that through the Secretary's office. The commission only has seven commissioners, all appointed by the Secretary, and is in the process of getting reauthorized, so the burden for ethics advice should be relatively minor. Will the department commit to providing Alaska's Denali Commission these ethics legal services?

Answer. The Department greatly values our collaborative working relationship with the Denali Commission, which has played a significant role in addressing the economic development and infrastructure needs of Alaska's rural and distressed communities. The legal team of the Economic Development Administration (EDA) has served as an invaluable sounding board for the Commission's Federal Co-Chair and Counsel on key issues, especially during this past year when the Commission was confronted with a number of management and operational challenges with legal implications.

It is important to note that although the Department has certain discrete, statutory responsibilities with respect to the Commission, it does not provide the Commission with formal legal advice and guidance out of respect for the Commission's status as an independent entity. However, in the spirit of cooperation with a Federal partner, we have in the past through an MOU provided the Commission with legal services on a reimbursable basis when a specific, compelling need arises. No such agreement between the Department and the Commission currently exists. Nevertheless, we will certainly consider any request from the Commission for the Department to provide ethics legal services and evaluate whether such an arrangement would be feasible and cost-effective. As with all matters regarding the Commission, we will keep you fully apprised of the progress and outcome of any discussions with the Commission.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
BRUCE H. ANDREWS

NTIA IANA Functions

Question 1. Mr. Andrews, a number of this Committee's members have called for the Committee to hold a hearing on NTIA's proposed transition of the IANA functions to the multi-stakeholder community. I think this topic is important, and would support such a hearing. Would the Department be willing to testify as it did in the House to discuss specifically some of the valid concerns that exist regarding the proposed transition? If confirmed, what role—if any—do you expect to play in overseeing the proposed transition?

Answer. The Department is committed to a transparent and open process for a successful transition, including active engagement with Congress. We work closely with the Committee and the Department would be responsive to an invitation from the Committee to provide a witness at a hearing who can best respond to questions the Committee may have.

Assistant Secretary Strickling has to date testified on this topic twice, conducted two briefings for the Committee, and provided detailed answers to written questions. In all of those instances, NTIA has laid out a clear framework to ensure a successful transition, including that it will not accept a proposal that replaces the NTIA role with a government-led alternative, as well as agreeing to provide regular updates to Members on this important topic. If confirmed, I will be working closely with NTIA to ensure that the open Internet remains an engine for economic and social opportunity at home and abroad.

FirstNet—Independent Authority

Question 2. Mr. Andrews, the Spectrum Act establishes FirstNet as an “independent authority within NTIA.” What is the Department of Commerce's interpretation of what it means for FirstNet to be an “independent authority” within NTIA?

Answer. The Middle Class Tax Relief and Job Creation Act of 2012 (Act) establishes FirstNet as an independent authority within NTIA, and thus FirstNet is both part of NTIA and independent of it with respect to program-related decisions not expressly assigned to NTIA under the Act. Both the Department of Commerce and NTIA have their own express substantive roles under the Act, and the Act's placement of FirstNet within NTIA will continue to result in a close, but independent, working relationship with NTIA, as well as the Department, to jointly achieve the critical goals of FirstNet's mission.

First Net—Management

Question 3. Building a network is incredibly complicated, and will require empowering FirstNet's experts to do what they do best. What assurances can you give those concerned about the potential for bureaucratic micromanagement by the Department that FirstNet is being given sufficient latitude to operate effectively?

Answer. FirstNet is one of the most unique and high-profile initiatives in the Department's portfolio. The Department is fully committed to leveraging its resources to ensure FirstNet can achieve its vital mission for public safety. The Department has provided assistance to FirstNet to help it navigate the complexities of Federal procurement and hiring requirements and taken steps to streamline these processes for FirstNet whenever possible to enable it to acquire the services and staff it needs to successfully fulfill its challenging task to build a nationwide broadband network for public safety. If confirmed, I will work closely within the Department to ensure that we provide FirstNet the tools it needs to successfully do its job.

NOAA Satellites

Question 4. Mr. Andrews, you note in your response to the Committee Questionnaire that the Department has a number of very important, but also operationally challenging programs, and you listed NOAA satellites as one of these programs. If confirmed, what will you do to ensure that the NOAA satellite programs are meeting established milestones and making efficient use of taxpayer dollars?

Answer. If confirmed, I will work with the NOAA Administrator to provide oversight of the NOAA satellite programs to help ensure they continue to meet their milestones and make efficient use of taxpayer dollars. The NOAA satellite programs are on schedule and within budget, and we remain committed to strengthening and increasing robustness of these programs.

NOAA is the program lead for these programs and works very closely with NASA to implement the necessary requirements for weather forecasting. The NASA—NOAA partnership is strong and provides government oversight to the contractors. DOC provides programmatic and budgetary, as well as management, oversight. Frequent reviews of the satellite programs are conducted by government entities, such

as the Government Accountability Office and the Department of Commerce Inspector General, and independent groups comprised of aerospace experts, which provide guidance and help ensure that these programs remain on track and within budget. We will continue to work with, and welcome, reviews by these groups.

Use of Commercial Satellite Data

Question 5. Given the impending gap in weather satellite coverage by U.S. polar orbiting satellites, POES and JPSS, as well as the coming gap in COSMIC constellation for Radio Occultation (RO) data, do you see any legal barriers or other impediments for the Department of Commerce and NOAA to acquiring commercial satellite data that can be provided in time to fill these gaps and meet all technical standards and specs of NOAA and possibly save taxpayer dollars?

Answer. No, we do not see any legal barriers to the Department of Commerce and NOAA acquiring commercial satellite data to help fill data needs, as long as funding is provided and the data meet the key requirements for cost, data policy, and reliability, and are compliant with the Federal Acquisition Regulations.

NOAA already engages in commercial data buys, such as for Synthetic Aperture Radar (SAR) imagery from commercial sources in Canada and Europe to support ice detection and monitoring for the National Ice Center. Ocean color data was purchased from a hosted U.S. Government sensor called SeaWiFS (Sea-Viewing Wide Field-of-view Sensor) aboard the Orbview II satellite, which was operated by GeoEye Inc. This data was used operationally to monitor harmful algal blooms in U.S. coastal waters. In addition, NOAA purchases the U.S. National Lightning Data Network from Vaisala. National Weather Service offices use this data to support severe weather warnings. Furthermore, NOAA partners with private industry to design, build, and operate its space and ground systems.

Commercial Satellite Data—FY 2015

Question 6. Are you aware of the FY 2015 CJS bill report language that requires Commerce and NOAA within 120 days of enactment to provide a plan to procure commercial satellite data to the Appropriations Committee? Do you see any significant barriers to achieving that deadline?

Answer. Yes, I am aware of the FY 2015 CJS bill report language that requires the Department of Commerce and NOAA within 120 days of enactment to provide a plan to procure commercial satellite data to the Appropriations Committee. We are actively working on such a plan and will engage the Office of Management and Budget to achieve this deadline.

Commercial Space Environmental Data Service Companies

Question 7. Are you aware of the efforts of a number of commercial space environmental data service companies to develop, launch and operate commercial weather satellites for providing weather data as a service—similar to your monthly cell-phone service—to both government and commercial entities worldwide? What would be your plan to take advantage of these commercial services—that will also create U.S. jobs and economic development—in accordance with the requirements of the National Space Policy?

Answer. Yes, I am aware of the efforts of commercial space environmental data service companies to develop, launch, and operate commercial weather satellites. We will seriously analyze these upcoming commercial services to see if they could possibly help fill any data needs.

As the primary customer for these data purchases, the National Weather Service has 16 long-standing criteria for data quality. The National Weather Service purchases instrumentation and data from vendors that can demonstrate that they can meet those criteria. However, there are currently no viable, proven commercial entities which can provide the mission-critical data that is required to ensure that lives and property of the American public are not put at risk from severe weather.

The downstream economic benefits garnered off the foundational data of the United States commercial weather enterprise are very real and quite considerable. There are over 300 private weather companies today that use those data as feed-stock. There is no other weather enterprise that takes that model of a private innovation platform in the data as a public good and produces the private sector value-added economic activity downstream. We need to carefully evaluate the intended and unintended consequences that might come from monetizing the data stream.

Sources of Satellite Data

Question 8. If you knew that there are technically viable, economically attractive and timely solutions available to close and mitigate vital weather satellite data gaps—that would readily meet the rigorous technical standards and specifications

of the U.S. Government through NOAA—would you seek out those solutions whether they came from commercial, academic or public/private partnership sources?

Answer. As stated above, yes, we would seriously analyze any technically viable solutions to help mitigate weather satellite data gaps, provided they would meet the requirements set by the National Weather Service.

Office of Inspector General Recommendations

Question 9. The U.S. Department of Commerce Office of Inspector General (OIG) is tasked with seeking to improve the efficiency and effectiveness of the Department's programs and operations. In your current role, how do you implement recommendations or address any issues identified by the OIG?

Answer. Every day the Department's bureaus work with American businesses, communities, and private citizens to spur innovation, promote trade and investment, foster use of data, and ensure production of critical environmental products and services—and we are committed to do so in the most effective and efficient way possible.

The Department's senior leaders work closely with the Office of Inspector (OIG) to understand the challenges they have identified, and how to address the issues they have raised. For example, the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA) are working on improving our oversight process and internal controls at both the bureau and Department levels.

The Deputy Secretary plays a key role as the Chief Operating Officer of the Department in overseeing the operations of the Department. If confirmed, making sure the Department has the proper controls in place to support effective and efficient operations will be a top priority for me.

Office of the Inspector General—Contracts and Funds

Question 10. Recently, the OIG issued a report (OIG-14-001-A) following a review of 43 time-and-materials and labor-hour contracts, which found that contracting and program officials did not properly award and administer contracts and task orders for work permitted. The OIG also found that potential monetary benefits to the Department, in the form of potential savings from eliminating unsupported costs and from funds put to better use, totaled \$170 million. We are in challenging financial times and we need to ensure taxpayer funds are being used efficiently and judiciously. In your current position within the Office of the Secretary (where the review was located), how do you work to ensure contracts are properly awarded and administered?

Answer. The Department has built acquisition metrics that are used for data centric decision making and oversight. The metrics are calculated daily and reviewed on a monthly basis at our acquisition council chaired by the CFO/ASA, Senior Procurement Executive and attended by the Bureau Procurement Officials (BPsO). The CFO/ASA is working on improving our oversight process and internal controls at both the bureau and Department levels through an acquisition review board for acquisitions over \$75 million. If confirmed, I will work with the CFO/ASA and others when appropriate to ensure the Department's senior management is appropriately responding to management issues raised by the Department's Office of Inspector General.

Question 10a. If confirmed, how would you work address generally unsupported costs and funds put to better use identified by the OIG or by the Department?

Answer. As Chief Operating Officer, I would work with the Department's senior managers to consider OIG reports and findings throughout the year as we build budgets and execute programs. If the OIG identifies unsupported costs and funds put to better use, we will consider those findings at each opportunity.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. KELLY AYOTTE TO
BRUCE H. ANDREWS

Internet Tax Moratorium

Question. Do you support legislation that would make the Internet tax moratorium permanent?

Answer. I appreciate Congressional efforts to support broadband access and adoption in order to improve social and economic development for Americans. This is a goal we share at the Department of Commerce, and one we are working to advance by regularly tracking broadband adoption, making additional spectrum available for wireless broadband, overseeing Recovery Act broadband investments, and promoting policies that maintain the open Internet as an engine for economic growth.

The Administration is studying the legislation in question, and has not taken a formal position at this time.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV
TO VICTOR M. MENDEZ AND PETER M. ROGOFF

Transportation Funding

Question 1. We're in the midst of a terrible problem—the Highway Trust Fund is about to run out of money. States, communities, workers and businesses who are relying on that funding will be out of luck, if we don't act quickly. Having served as DOT Administrators, you know firsthand the impact of the trust fund on communities and states. Can you please explain what it will mean if we let the trust fund run dry?

Answer. The impending Highway Trust Fund cash shortfall will have an impact on construction projects in the U.S. potentially putting hundreds of projects and thousands of jobs at risk. Some states have indicated they plan to slow down or put construction projects on hold due to uncertainty about Federal highway funding. Several other states have publicly announced that they are evaluating the situation and considering various options, but have not yet announced that they are delaying/suspending projects.

States that have already taken action:

- Georgia—has announced they will be suspending monthly lettings of highway construction projects beginning in July.
- Ohio—has decided to delay their Statewide Transportation Improvement Plan (STIP) by one year.
- Rhode Island—has halted advertising of all new, non-emergency highway projects.
- Tennessee—has announced the delay of certain construction projects pending a fix to the HTF shortfall.
- Vermont—has announced that they will delay awarding projects this summer until the HTF shortfall is resolved.

Safety of Crude Oil Trains

Question 2. With major derailments and fiery explosions of trains carrying crude oil in Canada, North Dakota, and most recently in Virginia—many states and cities have raised concerns about what's moving on the rails in their communities. DOT has asked the oil industry to provide additional data on crude. Have you received the data or do you still need additional data?

Answer. In response to Secretary Foxx's Call to Action, the oil industry has provided to DOT limited data regarding the hazardous characteristics of petroleum crude oil originating from the Bakken region of North Dakota. In addition, the Pipeline and Hazardous Materials Safety Administration (PHMSA) also has gathered and continues to gather its own data to independently assess the hazardous characteristics of Bakken crude. The quality and reliability of the data gathered to date vary. However, both the data provided by the oil industry and the data gathered by PHMSA confirm that Bakken crude oil is highly flammable. More data and analyses are needed to better understand the specific hazardous characteristics of Bakken crude oil (including, for example, geographic and seasonal variation in hazardous characteristics) and evaluate additional measures for ensuring that Bakken crude oil can be transported safely by rail.

Question 3. The oil industry has released reports over the last few weeks suggesting that Bakken crude is safe. Do you agree with those assessments? Do you have any concerns about the data that was included in those reports?

Answer. The quality and reliability of the data gathered by PHMSA to date varies. Nonetheless, PHMSA's evaluation of the data available to date confirms that that crude oil from the Bakken region is highly flammable and must be properly classified, packaged, marked and labeled to ensure the safe shipment by rail or any other mode of transportation.

Question 4. DOT has been working with the railroads on voluntary commitments to increase safety standards for the transport of crude oil. Are voluntary agreements sufficient to address the issues raised by crude train derailments?

Answer. DOT is taking a comprehensive approach to enhancing the safe transportation of crude oil by rail. Transportation safety is a shared responsibility. For that reason, DOT's comprehensive approach includes the issuance of emergency orders and safety advisories, rulemaking, voluntary commitments from industry, data gath-

ering and analysis and education and outreach. In DOT's experience, voluntary measures can be an effective and efficient tool to enhancing rail. With respect to raising the safety bar for the shipment of crude oil by train, DOT believes that the rail industry's voluntary commitments are already delivering safety benefits in terms of preventing, mitigating and responding to incidents involving trains shipping crude oil. However, DOT will not rely solely on these voluntary agreements to improve the safe transportation of crude oil by train. Among other efforts, the Department will issue a comprehensive notice of proposed rulemaking this summer to solicit public comment on additional safety measures that should be adopted.

Increased Funding for Freight and Rail

Question 5. It's important to pay our bills, but we need to do a lot more than that to modernize our transportation system. The Administration recently proposed a bill that proposes large funding increases for passenger rail and freight programs. Why has the Administration focused increased resources on rail and freight programs specifically?

Answer. The importance of transportation infrastructure to global economic competitiveness is indisputable. In order for the United States to maintain and improve its economic competitiveness into the future, it must address a number of challenges that directly influence the mobility of people and goods across the country, including:

- Predicted population growth of 100 million additional people over the next 35 years;
- Highway and aviation congestion that continues to rise, where the ability to expand capacity is severely constrained in many areas with the worst congestion;
- Rising energy costs and greenhouse gas emissions; and
- Changing demographics and travel habits that demonstrate that younger generations of American are choosing to drive both less often and for fewer miles than previous generations, while at the same time a large number of Americans are entering their retirement years and also choosing to drive less often (particularly over longer distances).

Rail is uniquely well-suited to meeting these challenges and has demonstrated strong public benefits both in the United States and internationally. To accommodate population growth, rail provides very high capacity within a relatively limited geographic footprint. Rail is among the most energy-efficient ways to travel and ship freight, and also exhibits lower pollution emission rates than other modes. As highway and airport congestion increases, rail can provide a more reliable and efficient travel options for many markets.

In terms of freight rail, intermodal freight shipments exceeded record volumes in 2013, with 12.8 million containers and trailers shipped (AAR, Weekly Rail Traffic Summary). This growth demonstrates the demand for intermodal rail transportation as more shippers decide to take advantage of the mode's inherent economic advantages. Additionally, freight rail systems consist primarily of privately-owned infrastructure and are maintained out of railroad revenues; whereas heavy intercity trucks pay only 80 percent of the costs they impose on Federal highways through wear-and-tear (FHWA, Addendum to the 1997 Federal Highway Cost Allocation Study).

Demand for passenger rail is surging across the United States, as ridership levels have set new records in ten of the past eleven years. In FY 2013, Amtrak carried a record 31.6 million passengers, including 15.4 million passengers on its State-supported routes (another record). Additionally, nearly every region in the United States has demonstrated demand for investments in passenger rail services to relieve congestion, to provide alternative transportation options, and to complement our world class highway and aviation systems.

Question 6. Why is it important that these programs have dedicated trust fund money rather than annual appropriations?

Answer. Congress has for decades funded highway infrastructure and safety, transit, and aviation programs through multi-year authorizations that provide guaranteed funding; this enables States, local governments, private industry, and other stakeholders to plan and make large-scale infrastructure investments on a year-to-year basis. This type of predictable, dedicated funding is critical to providing rail stakeholders with the certainty they have long required to effectively plan and execute projects that will improve transportation infrastructure, allow regions and States to achieve their long-term visions for rail transportation, and to support economic growth across the country.

In the last five years, DOT and its State and private partners have invested over \$70 million in planning studies to establish a pipeline of future rail projects. These studies and independent planning efforts led by the States have resulted in a pipeline of more than \$20 billion worth of projects that are already underway or ready for construction. Predictable and dedicated funding for rail will allow DOT and its stakeholder to make the market-based investments necessary to turn these studies into improved and new services.

Truck Safety Issues (Hours of Service)

Question 7. The Federal Motor Carrier Safety Administration (FMCSA) uses Hours of Service regulations to help prevent fatigue-related accidents in the trucking industry. After years of working on hours of service regulations, some in Congress want to stop enforcement of important provisions. I'm concerned this could have unintended consequences on safety. What are the real world impacts of rolling back these provisions?

Answer. Rolling back the once-a-week limit on use of the 34-hour restart that FMCSA adopted in its December 2011 final rule would allow employers to require their commercial truck drivers to work an average of more than 80 hours per week and remain behind the wheel on our Nation's highways. This would significantly increase the risk of a fatigue-related crash. No other mode of transportation allows employers to demand that safety-sensitive employees work such grueling schedules.

The current 34-hour provision that has been in effect since July 1, 2013, limits truck drivers to an average of 70 hours on duty per week. FMCSA estimates that limitation on the use of the 34-hour restart will save 19 lives per year, prevent hundreds of injuries, and improve driver health. Were the proposed legislation suspending enforcement of the rule enacted, these safety benefits would be lost.

Truck Safety Issues (Truck Size and Weight)

Question 8. As mandated by MAP-21, DOT is currently conducting a comprehensive truck size and weight study to evaluate large trucks and their impacts on safety and infrastructure. That study is due out later this year, but the National Academy of Sciences is conducting a peer review and has already found significant issues with DOT's work. How do you plan to specifically address the criticisms of the study—such as weaknesses in data and methodology—identified by the National Academy of Sciences?

Answer. The NAS Committee's recommendations to DOT focused on ways to accurately demonstrate trend lines given the inherent limitations and uncertainties of the available data. The NAS Peer Review Panel also recommended a consistent organization of the elements within each of five desk scans, a clear linkage between material in each desk scan and its corresponding project plan, and a synthesis of methods and results from prior studies to the results of this Study. We agree with these recommendations and are incorporating these changes in the final desk scans and related documents. The Department will also provide a full accounting of the assumptions and limitations for each study area. Many of the limitations in existing data sets and models will impact the ability of the Study to support national-level conclusions. The Department will identify areas for improving the measuring and collecting of data and for future analysis in areas of critical importance and relevance to the Study topics.

Question 9. Others have raised concerns that DOT is working to meet a deadline rather than make sure the study is accurate. Would additional time help DOT address these concerns and improve the accuracy of the study?

Answer. We are focused on producing a Study that is objective, data-driven, uses appropriate methods and is responsive to the requirements set forth in MAP-21. The Department takes congressional deadlines seriously, but if it takes longer than the Congressional deadline to produce a satisfactory Study, then we will take that additional time. Currently, technical staff is reviewing the initial draft results of the analysis to determine what, if any, additional work needs to be completed to clarify the results before presenting the analysis to the public.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO
VICTOR M. MENDEZ

Question 1. As you know, freight projects are always fighting for attention in our existing grant programs, like TIGER. They are up against very worthy transit, highway, and bike/ped projects. Do you believe a new freight-specific discretionary grant program would help meet the nationwide need for investing in job-creating freight mobility projects?

Answer. Yes. The U.S. transportation system moves more than 52 million tons of goods worth nearly \$46 billion each day, or almost 40 tons of freight per person per year. By 2040, freight tonnage is expected to increase by 62 percent, requiring additional capacity to our highways, railroads, ports, and pipelines and improvements to multi-modal connections that move freight efficiently and safely, and keep our economy growing.

While TIGER has been able to fund a number of a number of meritorious freight projects, we are not able to award every worthwhile project because of insufficient funds. In the GROW AMERICA Act, the Department proposes to create a Multimodal Freight Investment Program that would include an incentive grant program and a discretionary grant program. The discretionary program would award up to \$5 billion in grants over four years to the projects that would have the greatest impact on the safety, efficiency, and state of good repair of the freight transportation system. The incentive grant program would make \$5 billion available over four years by formula to states that have engaged multimodal stakeholders in a comprehensive freight planning process. The multimodal freight investments that these programs would fund are critical to improving the economics competitiveness of American industry.

Question 2. As you know, we are reaching a decision point on the Highway Trust Fund and needing to fill the coming shortfall. As we do that, there will be an opportunity to discuss how transportation programs are funded more broadly. Do you believe that we need a dedicated source of funding for multimodal projects, like those at ports? And if so, how would you envision this dedicated source being capitalized?

Answer. Funding sources that are not tied narrowly to any one mode of transportation allow for funding of multimodal projects without being concerned that funds are being diverted from one mode to another. We have seen the benefits of this approach with the TIGER Discretionary Grant Program, which has been funded with general funds, initially via the Recovery Act and later through the annual appropriations process. TIGER has presented the Department with an opportunity to fund a number of innovative, multimodal freight projects across the Nation. Many of these projects leveraged significant private and other public co-investment. Similarly, looking forward and more broadly, the Department has proposed the multimodal GROW AMERICA Act, which would be paid for in part through a pro-growth business tax reform without adding to the deficit. This \$150 billion in revenue through the general fund would allow investments in a wide range of modes, including ports, rail, highways, and intermodal freight facilities.

Question 3. What sort of funding level do you think would be appropriate to dedicate to multimodal freight funding every year? Obviously GROW AMERICA contains \$10 billion over four years—do you really think that is enough to meet the need? There are probably \$10 billion in important freight projects just in Washington state that are needed to efficiently move agricultural products and containers to and from our ports.

Answer. There are many meritorious and significant freight projects across the country that would benefit from funding assistance. The GROW AMERICA Act includes \$10 billion for multimodal freight funding over 4 years, and would give the Department a chance to make targeted investments in freight projects that would have the biggest impact on the safety, efficiency, and state of good repair of the freight transportation system. While we recognize that \$10 billion is not nearly enough to meet the entire nation's freight investment needs, it is a significant down payment and we hope will serve as a catalyst for additional freight funding in the future. Initial funding of such a freight program would help us to assess the level of need for projects like this and inform the Department and the Congress about what levels of funding would be appropriate in the future.

Question 4. How did the National Freight Advisory Committee (NFAC) draft recommendations play into the GROW AMERICA proposal?

Answer. The National Freight Advisory Committee's (NFAC) recent work has been focused on helping the Department develop the National Freight Strategic Plan. On June 12, 2014, the NFAC submitted 90 recommendations to the Secretary for this effort.

While these recommendations focused specifically on the National Freight Strategic Plan, many of them spoke to underlying themes and issues that the Department attempted to address in the GROW AMERICA Act. For example, nine recommendations focus on the need for consistent, increased, or smarter funding of freight projects. Some of these recommendations correlate with the multimodal freight incentive grant program and national freight infrastructure program in the GROW AMERICA Act. Similarly, many recommendations focus on streamlined and

more efficient environmental permitting, which is also a major area of focus for the Administration and is reflected in the GROW AMERICA Act.

Question 5. Do you know how soon you expect those recommendations to be finalized?

Answer. The NFAC finalized and submitted these 90 recommendations to the Department on June 12, 2014. These recommendations may be viewed on the NFAC's website, <http://www.dot.gov/nfac>.

Question 6. You have obviously worked on freight issues for a long time in your career. Are there things that the NFAC recommended that you think got left out of the GROW AMERICA proposal?

Answer. The NFAC proposed developing additional recommendations for the DOT regarding streamlining efforts for state, local, MPO, and private planning, developing goals related to freight safety, and workforce development in the freight sector. The Department is currently establishing NFAC workgroups on each of these topics and expects additional recommendations by the end of the year.

Additionally, the NFAC is scheduled to meeting on July 15 and 16 to evaluate and discuss elements of a freight program in the next reauthorization bill. We expect to receive additional input from the NFAC on what should be incorporated into a freight program and we would be happy to share those comments when they are completed.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
VICTOR M. MENDEZ

Question 1. Mr. Mendez, the Administration's proposed GROW America bill includes a proposal to give the National Highway Traffic Safety Administration (NHTSA) the authority to regulate navigation apps on smartphones and other electronic devices and products that can be brought into vehicles. How would NHTSA enforce such restrictions in practice?

Answer. It is my understanding that NHTSA does not have any plans to propose regulations to restrict navigation apps on smartphones or other electronic devices and products that can be brought into vehicles.

Question 1a. Does NHTSA have the structure to oversee an innovative, dynamic and rapidly changing industry as navigation apps proliferate and grow in sophistication?

Answer. NHTSA has sufficient structure today to perform its longstanding mission of identifying and analyzing safety risks that potentially could be introduced by new items of automotive equipment, including navigation apps, that may be introduced into the American market. As it always has, NHTSA will respond appropriately if it identifies any unreasonable risks to safety introduced by such automotive equipment.

Question 1b. How do you respond to the concern that restrictions and excessive regulation will stunt innovation in a space where innovation has flourished?

Answer. NHTSA has no plans to propose regulations over navigation apps and our overall efforts will continue to support innovation in the auto industry. Safety will always be our top priority in determining whether or not to establish new regulations and regulations we propose in other areas are designed to maintain and even encourage innovation while making progress on safety.

Question 2. Mr. Mendez, according to news reports, even if NHTSA obtains the authority from Congress, the agency has no immediate plans to issue rules to regulate navigation apps on smartphones and other devices, which begs the question of why such authority is needed in the first place. How do you respond to the concern that this effort to establish authority over navigations apps is just another regulatory power grab by another Federal agency?

Answer. NHTSA is not seeking authority to regulate navigation apps or any other apps on handheld devices. NHTSA's existing authority covers these apps, but, as you indicated in your question, NHTSA doesn't have any plans to issue regulations for apps. The proposed provision in the GROW AMERICA Act addresses a different issue altogether—NHTSA's ability to rely upon industry-consensus process standards, such as ISO standards, when it regulates on-board electronics and software in vehicles.

Question 3. Mr. Mendez, one of the recurring themes we seem to discuss on the Committee for every mode of transportation is fatigue—from hour of service requirements to the impact of sleep apnea. While every mode of transportation is unique, it does seem that some basic issues overlap, including the correlation between tired operators and increased safety risks. Do you know if the DOT has considered tack-

ling the issue of fatigue in a more global manner, especially with respect to research? If so, how? If not, is that something you would commit to considering?

Answer. Fatigue safety risks are a life-threatening concern for the Department. Every year, an estimated one million roadway crashes and near-misses are likely fatigue-related, with thousands of people losing their lives and being injured. Fatigue-related tragedies are played out across every hour of the day throughout our Nation's transportation system. We have worked to tackle fatigue across the Department. The Federal Aviation Administration (FAA) for example, issued new hours of service rules for pilots and the Federal Motor Carrier Safety Administration (FMCSA) issued new rules for commercial truck drivers. While representing the most significant changes in over 70 years, and incorporating many science-based elements, the aviation rules do not yet cover all pilots, and the truck rules are facing challenges. These are important developments that represent real progress, and need to be embraced and applauded. But so much more needs to be done. Reducing fatigue risks in transportation is everyone's ongoing responsibility: companies, the government, individual operators, and travel consumers. And when you are behind the wheel, every moment requires you to be wide-awake and alert.

Question 4. Mr. Mendez, one concern that we often hear about is how each mode can sometimes be stove-piped within DOT, and how communication between the modes can be difficult. Is this something that you have experienced as modal administrators? If so, what steps would you take to prevent this in the future should you be confirmed?

Answer. An appropriate management structure can help avoid stovepiping, although no one model is appropriate in every case. One approach, having a single manager, can assure that one person has overall responsibility for the entire project and can help ensure that the interests and goals of the project are kept in mind at all times. Subproject or functional-unit managers exercise control over the various phases, but the overall manager can see that the phases are coordinated and that the project stays on track and on budget. With the Transportation Investment Generating Economic Recovery (TIGER) discretionary grant program, we established TIGER teams. The advantage of teams for avoiding stovepiping is that they can cut across functional boundaries in any organization, helping to manage the phases of the project delivery cycle in a seamless way and encouraging positive handoffs during the transition to different phases. In other words, project management teams can help shepherd a project through the organizational structures that are already in place while assuring that the project-level commitments made at each stage are kept. The TIGER team approach has been so successful we have mirrored the formula for a number of other Department-wide multimodal efforts.

Question 5. I am concerned about reports regarding the National Roadside Survey of Alcohol and Drugged Driving that revealed motorists complaints of being forced off the road and asked to provide breath, blood and saliva samples. While combating impaired driving is a priority, and while survey data provide important insights to policymakers regarding the scope of this problem, it is important that the methods employed by NHTSA and its contractors respect the civil liberties of our Nation's motorists. Survey participation should be voluntary and not feel coerced as some have claimed. Can you explain how the survey was conducted and what procedures, if any, NHTSA employs to ensure that its testing activities—both those conducted by the agency itself and those conducted through third-party contractors—are constitutional and as unobtrusive as possible?

Answer. In conducting the National Roadside Survey of Alcohol and Drugged Driving, NHTSA took great care to protect the rights of motorists and coordinated closely with State highway safety officials well in advance of setting up a survey site. An experienced non-profit research organization under contract to NHTSA conducted the survey. Trained researchers collected the data from volunteer participants, but only after specifically informing each participant that the survey was voluntary and anonymous, and that the participant was free to discontinue participation at any time. The survey followed a strict protocol that was reviewed and approved by an Institutional Review Board (IRB) for the Protection of Human Subjects. IRB review is designed to ensure that subjects of federally-funded research are treated with dignity, respect, and courtesy, that their participation is voluntary, that there is no coercion, and that volunteers give informed consent to participate.

Even before entering the survey site, motorists were faced with large signs in the roadway alerting them to the "Paid Voluntary Survey" ahead. The survey protocol makes sure that participants were informed in multiple ways of the voluntary and anonymous nature of the survey. The survey has been conducted by NHTSA on a periodic basis for several decades. It is a vital source of data on the presence and

prevalence of alcohol and drug use by drivers on the road, and critical to the Department's efforts to reduce impaired driving.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO
PETER M. ROGOFF

Question 1. As you know, freight projects are always fighting for attention in our existing grant programs, like TIGER. They are up against very worthy transit, highway, and bike/ped projects. Do you believe a new freight-specific discretionary grant program would help meet the nationwide need for investing in job-creating freight mobility projects?

Answer. Yes, I certainly do. Over the next few decades, freight traffic is expected to grow dramatically. In fact, by 2040, freight tonnage is expected to increase by 62 percent, requiring additional capacity to our highways, railroads, ports, and pipelines and improvements to multi-modal connections that move freight efficiently and keep our economy growing.

Despite its importance to the economy, freight investments can be disadvantaged in the current transportation planning process. These projects face competition from non-freight projects for public funds and community support, a lack of coordination among various government entities and private sector stakeholders, and limited availability of public funds to address the key freight chokepoints. In my view, Port connections in particular—be they rail or road connections—have not gotten appropriate attention. This has not only undermined our competitiveness as an importer and exporter but has in many communities undermined the air quality of neighboring residential areas.

In the GROW AMERICA Act, the Department proposes to create a Multimodal Freight Investment Program that would include an incentive grant program and a discretionary grant program. Importantly, this program would give freight stakeholders such as shippers, railroads, and trucking firms a meaningful seat at the table in making project selections. The discretionary program would award not less than \$5 billion in grants over four years to the projects that would have the greatest impact on the safety, efficiency, and state of good repair of the freight transportation system. The incentive grant program would make up to \$5 billion available over four years by formula to states that have engaged multimodal stakeholders in a comprehensive freight planning process. Any funds not required to fulfill formula apportionments would be available for additional discretionary grants. I was pleased to work carefully with Secretary Foxx in developing these proposed programmatic details.

Question 2. As you know, we are reaching a decision point on the Highway Trust Fund and needing to fill the coming shortfall. As we do that, there will be an opportunity to discuss how transportation programs are funded more broadly. Do you believe that we need a dedicated source of funding for multimodal projects, like those at ports? And if so, how would you envision this dedicated source being capitalized?

Answer. I believe that having a robustly funded program truly dedicated to multimodal freight investments is more important than having a dedicated funding source for those investments. The entire national economy is highly dependent on the efficiency and productivity of our freight networks and we mustn't shrink from funding them simply because there is not a dedicated funding source. The TIGER Discretionary Grant Program has presented the Department with an opportunity to fund a number of innovative, multimodal freight projects across the Nation using annual general fund appropriations. Many of these projects leveraged significant private co-investment. The Department has now proposed the multimodal GROW AMERICA Act, which would be paid for in part through a pro-growth business tax reform without adding to the deficit. This \$150 billion in revenue through the general fund would allow investments in a wide range of modes, including ports, rail, highways, and intermodal freight facilities.

Question 3. What sort of funding level do you think would be appropriate to dedicate to multimodal freight funding every year? Obviously GROW AMERICA contains \$10 billion over four years—do you really think that is enough to meet the need? There are probably \$10 billion in important freight projects just in Washington state that are needed to efficiently move agricultural products and containers to and from our ports.

Answer. The GROW AMERICA Act includes \$10 billion for multimodal freight funding over 4 years, and would give the Department a chance to make targeted investments in freight projects that would have the biggest impact on the safety, efficiency, and state of good repair of the freight transportation system. While I recognize that \$10 billion is not nearly enough to meet the entire nation's freight in-

vestment needs, I am hopeful that the cooperative processes that would be strengthened through our new GROW AMERICA program—including the full engagement of freight stakeholders in project selection decisions—will result in states and communities boosting their own investment in critical freight projects utilizing the increased formula resources that the GROW AMERICA Act would provide. The GROW AMERICA Act seeks to build on the excellent freight measures that you included in MAP-21 and will, we hope, initiate an unprecedented level of cooperation and dialogue in the planning, development, and funding of critical freight projects from many different funding sources.

Question 4. How did the National Freight Advisory Committee (NFAC) draft recommendations play into the GROW AMERICA proposal?

Answer. The National Freight Advisory Committee's (NFAC) recent work has been focused on helping the Department develop the National Freight Strategic Plan. On June 12, 2014, the NFAC submitted 90 recommendations to the Secretary for this effort.

While these recommendations focused specifically on the National Freight Strategic Plan, many of them spoke to underlying themes and issues that the Department attempted to address in the GROW AMERICA Act. For example, nine recommendations focus on the need for consistent, increased, or smarter funding of freight projects. Some of these recommendations correlate with the multimodal freight incentive grant program and national freight infrastructure program in the GROW AMERICA Act. Similarly, many recommendations focus on streamlined and more efficient environmental permitting, which is also a major area of focus in the GROW AMERICA Act.

Question 5. Do you know how soon you expect those recommendations to be finalized?

Answer. The NFAC finalized and submitted these 90 recommendations to the Department on June 12, 2014. These recommendations may be viewed on the NFAC's website, <http://www.dot.gov/nfac>.

Question 6. You have obviously worked on freight issues for a long time in your career. Are there things that the NFAC recommended that you think got left out of the GROW AMERICA proposal?

Answer. The NFAC proposed developing additional recommendations for the DOT regarding streamlining efforts for state, local, MPO, and private planning, developing goals related to freight safety, and workforce development in the freight sector. The Department is currently establishing NFAC workgroups on each of these topics and expects additional recommendations by the end of the year.

Additionally, the NFAC is scheduled to meet on July 15 and 16 to evaluate and discuss elements of a freight program in the next reauthorization bill. We expect to receive additional input from the NFAC on what should be incorporated into a freight program and we would be happy to share those comments when they are completed.

Importantly, given your own role as a leader on freight mobility issues in the Senate, we would welcome the opportunity to sit down and hear your views on any critical elements that should be augmented to our proposal as part of the legislative process.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
PETER M. ROGOFF

Question 1. Mr. Rogoff, the Administration's proposed GROW America bill includes a proposal to give the National Highway Traffic Safety Administration (NHTSA) the authority to regulate navigation apps on smartphones and other electronic devices and products that can be brought into vehicles. How would NHTSA enforce such restrictions in practice?

Answer. The GROW AMERICA Act has many important provisions intended to enhance safety across our national transportation network. However, it does not include a provision to restrict electronic devices and products that can be brought into vehicles. As I understand it, the Act seeks to address a different issue, namely NHTSA's authority to rely upon industry consensus process standards in regulating vehicle electronics.

Question 1a. Does NHTSA have the structure to oversee an innovative, dynamic and rapidly changing industry as navigation apps proliferate and grow in sophistication?

Answer. While these technologies are expanding widely and quickly, NHTSA must continue its longstanding efforts to identify and analyze the safety risks associated

with these and other new types of automotive equipment that could be brought to the market. Where unreasonable risks are identified, NHTSA will engage the manufacturers and consumers as it always has to ensure safety.

Question 1b. How do you respond to the concern that restrictions and excessive regulation will stunt innovation in a space where innovation has flourished?

Answer. NHTSA and the rest of DOT have no interest in engaging in excessive regulation or stunting innovation. This area of innovation has been met with strong consumer approval and has provided consumers with many new opportunities. NHTSA will always be focused on maintaining safety, first and foremost, and any regulations in this area will seek to capture the appropriate balance to provide consumers with the products they desire while maintain safety on our highways.

Question 2. Mr. Rogoff, according to news reports, even if NHTSA obtains the authority from Congress, the agency has no immediate plans to issue rules to regulate navigation apps on smartphones and other devices, which begs the question of why such authority is needed in the first place. How do you respond to the concern that this effort to establish authority over navigations apps is just another regulatory power grab by another Federal agency?

Answer. NHTSA and the rest of DOT have no interest in seeking unnecessary authority. As I understand it, NHTSA's existing authority covers these devices. And, in fact, there are no agency plans to issue regulations for apps. The proposed provision in the GROW AMERICA Act seeks to address a different issue—NHTSA's ability to rely upon industry-consensus process standards when it regulates on-board electronics and software in vehicles. I'm sure NHTSA would welcome the opportunity to brief the Committee in greater detail on this issue if that would be helpful.

Question 3. Mr. Rogoff, one of the recurring themes we seem to discuss on the Committee for every mode of transportation is fatigue—from hour of service requirements to the impact of sleep apnea. While every mode of transportation is unique, it does seem that some basic issues overlap, including the correlation between tired operators and increased safety risks. Do you know if the DOT has considered tackling the issue of fatigue in a more global manner, especially with respect to research? If so, how? If not, is that something you would commit to considering?

Answer. You are quite correct that the fatigue issue cut across all parts of the DOT. And the Department should be using the best science available on fatigue when issuing any regulations or safety advisories across the Department. The Department must continue to stay up to date in this area because the stakes are so high. Every year, an estimated one million roadway crashes and near-misses are likely fatigue-related, with thousands of people losing their lives and being injured. These tragedies impact families all across the Nation every day. As such, the DOT has worked to tackle fatigue across the Department. New rules have been issued both by the Federal Aviation Administration (FAA) and the Federal Motor Carrier Safety Administration (FMCSA). These are important areas of progress. DOT will continue to monitor the impact of these rules both on the impacted industries and on safety to ensure that we are capturing the right balance. And we will continue to bring the best science to bear upon these efforts.

Question 4. Mr. Rogoff, one concern that we often hear about is how each mode can sometimes be stove-piped within DOT, and how communication between the modes can be difficult. Is this something that you have experienced as modal administrators? If so, what steps would you take to prevent this in the future should you be confirmed?

Answer. Yes. I certainly experienced the issue of stovepiping within the Department when I served as a modal administrator. I believe one of the critical roles of the Under Secretary position is to eliminate or minimize that tendency wherever and whenever it appears. Regular communication between modes at all levels of the organization can and has helped address this issue. It can also help avoid duplication and help achieve efficiencies to benefit the taxpayer. Your questions regarding fatigue above cites an important example where individual modes should be able to benefit from the work done in other modes when confronting the safety challenge within their own mode. If confirmed to the Under Secretary position, I will work diligently to push each of the modes to share their experience and expertise in the many cross-cutting areas that impact the Department so that the Department can speak with one voice and avoid unnecessary expense.

Question 5. I am concerned about reports regarding the National Roadside Survey of Alcohol and Drugged Driving that revealed motorists complaints of being forced off the road and asked to provide breath, blood and saliva samples. While combating impaired driving is a priority, and while survey data provide important insights to policymakers regarding the scope of this problem, it is important that the methods employed by NHTSA and its contractors respect the civil liberties of our Nation's

motorists. Survey participation should be voluntary and not feel coerced as some have claimed.

Can you explain how the survey was conducted and what procedures, if any, NHTSA employs to ensure that its testing activities—both those conducted by the agency itself and those conducted through third-party contractors—are constitutional and as unobtrusive as possible?

Answer. Whenever the DOT engages the public for information gathering purposes, it is essential that the public be treated with dignity and that privacy rights are fully respected and protected. My understanding is that NHTSA worked closely with State highway safety officials when developing the methodology for the National Roadside Survey of Alcohol and Drugged Driving in order to ensure that the survey be conducted in such a way. The survey was conducted by an experienced non-profit research organization under contract to NHTSA. Trained researchers collected the data from volunteer participants, but only after specifically informing each participant that the survey was voluntary and anonymous, and that the participant was free to discontinue participation at any time. The survey followed a strict protocol that was reviewed and approved by an Institutional Review Board (IRB) for the Protection of Human Subjects. IRB review is designed to ensure that subjects of federally-funded research are treated with dignity, respect, and courtesy, that their participation is voluntary, that there is no coercion, and that volunteers give informed consent to participate.

Even before entering the survey site, motorists were faced with large signs in the roadway alerting them to the “Paid Voluntary Survey” ahead. The survey protocol makes sure that participants were informed in multiple ways of the voluntary and anonymous nature of the survey. The survey has been conducted by NHTSA on a periodic basis for several decades. It is a vital source of data on the presence and prevalence of alcohol and drug use by drivers on the road, and critical to the Department’s efforts to reduce impaired driving.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN THUNE TO
MARCUS D. JADOTTE

Question. Mr. Jadotte, I note that your biography includes several instances of political consulting via your consulting company, Potomac Wave LLC, representing the Florida Democratic Party in 2012, the DCCC in 2008, the Friends United PAC in 2012, and Terry McAuliffe for Governor in 2009. You also served as a senior advisor to Obama for America (OFA) in 2012. In the position to which you have been nominated at the Department of Commerce, there could be opportunities to favor certain businesses—or at least certain sectors—over others.

In light of your past political activity, will you commit to approach efforts to help U.S. business in a scrupulously nonpartisan way?

Answer. I am committed to helping American businesses succeed. If confirmed, I will approach all of my work at the United States Department of Commerce in a nonpartisan fashion.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
HON. ROBERT S. ADLER

Question 1. In January and July 2011, President Obama issued Executive Orders 13563 and 13579 calling on regulatory agencies to “afford the public a meaningful opportunity to comment” during the rule-making process, “use the best, most innovative, and least burdensome tools for achieving regulatory ends” and to “take into account benefits and costs [of regulation], both quantitative and qualitative.” The President also asked independent regulatory agencies to formulate plans for the retrospective review of existing regulations in order to “determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving regulatory objectives.”

Please provide a detailed explanation of what steps the CPSC has taken to comply with these Executive Orders.

Answer. Although as an independent agency, the Consumer Product Safety Commission is not legally obligated to comply with Executive Orders, we always strive within the framework of our governing statutes to follow the spirit of Presidential Executive Orders. With respect to Executive Orders 13563 and 13579, in order for me to respond adequately, I need to briefly review the history of the CPSC’s rule-making. I do so to make the point that we have undertaken both the promulgation

of regulations and their retrospective review in the full spirit of the policies incorporated in the Executive Orders. So, I begin with several observations:

1. Since 1981, the CPSC has been required under amendments to the Consumer Product Safety Act (and the other acts it enforces) to conduct an extensive cost-benefit analysis when we promulgate safety rules. Under these amendments, our cost-benefit approach is as comprehensive, if not more so, as that set forth in any Executive Order issued by the Office of the President.
2. Over the years, the CPSC has promulgated extremely few mandatory safety rules requiring cost-benefit analyses, a grand total of nine in thirty three years—or about one every 3.5 years—opting instead to work with the voluntary standards sector and to negotiate individual Corrective Action Plans for the recall of specific hazardous products.
3. Under the Regulatory Flexibility Act of 1980, the CPSC chose to undertake a retrospective review of every safety rule under its jurisdiction from its beginning, not just those identified as having a “substantial impact on a number of small entities” (and, therefore, requiring a mandatory review).
4. In addition to the retrospective review of agency regulations mandated by the Regulatory Flexibility Act, the CPSC has voluntarily undertaken a comprehensive review of its regulations in recent years in a spirit consistent with Executive Order 13563 and anticipates continuing to do so in the future.

Least Burdensome Tools: With respect to our utilization of the least burdensome tools for achieving our regulatory ends, in 1981, Congress added a broad and comprehensive set of cost-benefit requirements to the Consumer Product Safety Act (and the other acts enforced by the CPSC) for consumer product safety rules promulgated by the CPSC. These provisions, contained in section 9 of the CPSA, easily match, if not surpass, in their stringency and scope the cost-benefit provisions of the various Executive Orders on cost-benefit analysis recommended by the Office of Management and Budget. Among other things, they require the CPSC, prior to promulgating almost every safety rule, to:

- Make findings with respect to the degree and nature of the risk of injury the rule is designed to eliminate or reduce; the approximate number of consumer products, or types or classes thereof, subject to such rule; the need of the public for the consumer products subject to such rule, and the probable effect of such rule on the utility, cost, or availability of such products to meet such need; and any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.
- Prepare a final regulatory analysis of the rule containing the following information: a description of the potential benefits and potential costs of the rule, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs; a description of any alternatives to the final rule which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen; a summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.
- Find that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product; that the promulgation of the rule is in the public interest; in the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under the CPSA would adequately protect the public from the unreasonable risk of injury associated with the product; in the case of a rule which relates to a risk of injury with respect to which persons who would be subject to such rule have adopted and implemented a voluntary consumer product safety standard that compliance with such voluntary consumer product safety standard is not likely to result in the elimination or adequate reduction of such risk of injury; or it is unlikely that there will be substantial compliance with such voluntary consumer product safety standard.
- Find that the benefits expected from the rule bear a reasonable relation to its costs and that rule imposes the least burdensome requirement, which prevents or adequately reduces the risk of injury for which the rule is being promulgated.
- Give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions.

Speaking from personal experience, I note that the analysis and findings contained in section 9 of the CPSA (and similar provisions in other acts the agency enforces) have resulted in rulemaking proceedings that span years of effort and cost the agency millions of dollars. I do not believe that one could reasonably expect any more analysis by a regulatory agency, especially one with such limited resources that is directed to save the lives of young children.

Making The Agency's Regulatory Program More Effective or Less Burdensome in Achieving Regulatory Objectives: Both in response to the extremely detailed, time-consuming requirements in section 9 of the CPSA and because of its success in working with the voluntary standards sector, the CPSC has opted, wherever possible, to look to the promulgation and strengthening of voluntary standards as an alternative to developing mandatory standards. The Commission, of course, has always retained the option to undertake mandatory rulemaking where voluntary standards have proven to be inadequate. As I noted, the burdens of mandatory rulemaking have resulted in the Commission's promulgation of only nine standards in the 33 years since the 1981 amendments. In sharp contrast, the Commission has actively participated in the development or enhancement of hundreds of voluntary standards in that same time period. As I shall mention, the Commission's infrequent promulgation of mandatory rules and reliance on voluntary standards has not gone without criticism in Congress, especially when it comes to protecting the lives and safety of young children.

There are limits on the use of voluntary standards in protecting American consumers, but they have, of necessity, become important tools in CPSC's approach to product safety.

CPSC and the Regulatory Flexibility Act (RFA): Section 610 of the RFA requires agencies to periodically review rules that have a significant impact on a substantial number of small entities. Each agency is required to publish a plan demonstrating its approach to its review. Accordingly, as far back as September 1981, the CPSC published its plan for reviewing existing rules under the RFA, as well as subsequent rules within 10 years of their publication.

The CPSC has gone far beyond the requirements of the RFA in its plan. In fact, the agency not only has solicited and reviewed comments for rules that we have determined would have a significant economic impact on a substantial number of small entities, we have actually conducted a review of every safety rule under our jurisdiction. In addition to soliciting comments from the general public in the *Federal Register*, we have directly contacted affected parties and their trade associations through appropriate trade publications. Moreover, the Commission has made an effort personally to contact those persons who submitted comments during the earlier rulemaking proceedings. Based on the information received in the comments, as well as other information available to the Commission, CPSC staff has then conducted an assessment of the degree of economic impact on small entities and sought to identify appropriate actions required to minimize the impact on those entities consistent with the objective of the statute under which the regulations were issued.

Under section 610(b) of the RFA, the Commission has sought comments on, and reviewed its rules according to, the following factors: (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlapped, duplicated, or conflicted with other Federal rules (and the Commission also considered, to the extent feasible, the extent to which the rule overlapped, duplicated, or conflicted with state and local government rules); and (5) the length of time since the rule had been evaluated or the degree to which technology, economic conditions, or other factors had changed in the area affected by the rule.

Since 1981 and the passage of the RFA, our agency has carefully reviewed its regulations. This effort has continued over the last 30-plus years. On the whole, I believe these reviews have been good both for consumers and the regulated community. Under the RFA (and other provisions of the CPSA requiring rule reviews), the Commission has issued reports involving 17 rules under the CPSA, as well as nine rules promulgated under the Federal Hazardous Substances Act (FHSA), eight rules under the Flammable Fabrics Act (FFA), and four rules under the Poison Prevention Packaging Act (PPPA).

Voluntary Regulatory Review Efforts: In addition to the rule reviews required by the RFA, the Commission also has recently voluntarily undertaken efforts to review its regulations in a manner consistent with the spirit of Executive Order 13563 and similar Executive Orders. Specifically, almost ten years ago, the Commission published a notice in the *Federal Register* announcing a pilot rule review program. In the notice, the agency committed itself to using OMB's Program Assessment Rating Tool (PART) to help provide a consistent approach to rating programs across the Federal Government.

In the notice, the Commission listed four rules for review, and asked for public comment on each regulation. Specifically, the notice asked: (1) whether the regulation is consistent with CPSC program goals, (2) whether the regulation is consistent with other CPSC regulations, (3) whether the regulation is current with respect to technology, economic or market conditions, and other mandatory or voluntary standards, and (4) whether the regulation could be streamlined to minimize regulatory burdens, particularly those affecting small businesses.

Out of this pilot program, the Commission then conducted annual reviews that looked at four to six rules per year in 2005, 2006, and 2007. From this review, the CPSC clarified its rules regarding standards for carpets, rugs and bicycles. In addition, the Commission also recently established projects to examine amendments to the electrical toy and cigarette and multi-purpose lighter rules.

We continue the review process today. In the coming years, staff will be looking at ways to maximize openness and public participation, as well as ways to most effectively target rules that may require revision, repeal, or strengthening to protect the public against the risk of unreasonable danger from consumer products. If reconfirmed, I assure you that I will follow this process closely.

In addition, specifically please:

Question 2. Identify existing CPSC regulations that you believe to be outmoded, ineffective, or excessively burdensome.

Answer. As I have noted above, CPSC staff is currently engaged in a comprehensive review of all existing agency rules pursuant to the mandate in the Regulatory Flexibility Act. I am comfortable with the staff approach, which is a methodical and thorough review of agency rules.

Question 2a. List all of what you believe to be outdated or obsolete reporting requirements for the CPSC.

Answer. Like all other Federal agencies and departments, the CPSC faces a multitude of requirements for filing reports with the Congress and OMB. I believe that most of these reporting requirements provide those who oversee us with the necessary information to maintain accountability over the agency. To the extent that our reports are carefully scrutinized, I believe that they serve a useful purpose.

I support periodic review of required reports to identify outdated, obsolete, or duplicative reporting requirements. I know the Government Performance and Results Modernization Act directed the Office of Management and Budget to provide to Congress a list of Congressionally-mandated reports that agencies believe require Congressional modification. In compiling a list of reports, OMB sought the advice of agencies and departments including the CPSC. CPSC staff identified two reports. Specifically, the CPSC Inspector General recommended the consolidation of two duplicative annual reports regarding Inspector General reviews of improvements and employee complaints concerning the CPSC. This recommendation was also included in S. 2109, the Government Reports Elimination Act of 2014, introduced on March 11, 2014 by Senator Mark Warner, and cosponsored by Senators Claire McCaskill and Kelly Ayotte.

Question 2b. Provide a plan to this Committee within 60 days outlining specific actions you plan to take to ensure that the CPSC aggressively implements burden reduction opportunities and a timetable for when those actions will occur.

Answer. During my time as Acting Chairman I have taken specific actions to attempt to reduce the cost of third-party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation. These actions have included holding an all-day forum, on April 3, 2014, on burden reduction open to all stakeholders. At this forum, we heard numerous thoughtful nominations of ideas from our stakeholders for product determinations. Unfortunately, because of the highly technical nature of many of these suggestions, CPSC scientific staff must carefully test the claims made by the participants. As I mentioned at my re-nomination hearing, one of the most promising suggestions for exempting phthalate testing based on the hardness of plastics has been shown not to be accurate. Following the forum, several stakeholders asked the Commission to reopen the record so they could submit more information to our staff for consideration in making the scientific case for determinations. The record will remain open until July 16, 2014, and I look forward to reviewing the comments and ideas we receive.

In addition, last month, I introduced an amendment to the Commission's 2014 Mid-Year Review and Proposed Operating Plan Adjustments to examine potential ways to reduce third-party testing costs through determinations consistent with assuring compliance with underlying requirements. The amendment was adopted. It provides funds for a study to assist the Commission in determining whether untreated wood or other natural materials are materials that do not, and will not, con-

tain any of the eight specific heavy metals in levels that exceed allowable limits listed in the mandatory Toy Standard, ASTM F-963. Because wood was on the list of determinations for lead first published in August 2009 in the *Federal Register*, and currently found at 16 CFR § 1500.91, that identify those products or product components that will never contain violative amounts of lead, I am hopeful that this study will find similar results for the eight heavy metals listed in ASTM F-963.

In terms of steps I would take upon re-confirmation as a Commissioner, I look forward to working with my colleagues, particularly Chairman-nominee, Elliot Kaye, to continue to seek ways to reduce third-party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation. During his nomination hearing, he agreed to provide such a plan 60 days from his confirmation as Chairman on this topic, and I assure the Committee I will work closely with Mr. Kaye on this plan.

Question 2c. Provide detailed recommendations on how you would propose to increase public participation in CPSC's rulemaking process, and how you would propose to reduce uncertainty in the CPSC's rulemaking process.

Answer. I believe that the CPSC's approach to public participation is among the most comprehensive in the Federal Government. Since the agency was first established, we have stressed the importance of promoting public participation. Here are some examples of the ways that the agency has addressed this important issue:

- *Open Meetings Policy:* Unlike most other agencies, whenever CPSC employees meet with outside parties on matters of substantial interest, we require that the meetings be announced in advance in our public calendar and provide that any member of the public, including the press, who wishes to can attend the meeting. See 16 CFR § 1012, et seq.
- *Freedom of Information Act:* CPSC has one of the most liberal FOIA policies in the Federal Government. As part of that policy, the agency states that even records that may be exempted from disclosure will be made available as a matter of discretion when disclosure is not prohibited by law or is not against the public interest. See 16 CFR § 1015, et seq.
- *Oral Presentations in Regulatory Proceedings:* Unlike most other regulatory agencies, rulemaking under Section 9 of the Consumer Product Safety Act (15 U.S.C. 2058(d)(2)) and Section 4 of the Flammable Fabrics Act (15 U.S.C. 1193(d)) require the agency to provide interested persons an opportunity for the oral presentation of data, views, or arguments in addition to the opportunity to make written submissions. See 16 CFR § 1052.
- *Publicly Available Database:* Pursuant to section 6A of the Consumer Product Safety Improvement Act of 2008, the Commission, in March 2011, established a user-friendly product safety database in which members of the public can report and read about risks of harm associated with consumer products. See 16 CFR § 1102, et seq.
- *Annual Priorities Public Hearing:* Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it administers and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each Fiscal Year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission must conduct a public hearing and provide an opportunity for the submission of comments.
- *Contributions to Costs of Participants in Development of Consumer Product Safety Rules:* In appropriate cases, the Commission will contribute to the costs of those who participate in its rulemaking proceedings, particularly where consumer participants need to acquire technical expertise. See 16 CFR § 1105.

With respect to reducing uncertainty, I believe that the agency maintains an effective, open line of communication to the regulated community, both in communicating its intentions and in listening to feedback from this community. I do not see that our approach to the regulatory process promotes substantial uncertainty. One specific approach that I believe Congress could take to reduce uncertainty in our processes would be to provide greater flexibility for CPSC rulemaking. At the moment, whenever we follow the burdensome procedures in the various acts we enforce, years may pass before we enact a rule, and that, no doubt, leaves many stakeholders in a state of uncertainty.

Question 2d. Provide detailed recommendations on how you would propose to improve coordination with other Federal agencies to eliminate redundant, inconsistent, and overlapping regulations.

Answer. The CPSC on a regular basis enters into Memoranda of Understanding (MOUs) with fellow agencies such as the Environmental Protection Agency, the Food and Drug Administration, the Occupational Safety and Health Administration, and Customs and Border Protection, to coordinate our regulatory approaches to the extent permitted by our respective laws. On the whole, I think these agreements have been quite successful in eliminating redundant, inconsistent, and overlapping regulations.

Question 3. Through passage of H.R. 2715 in August 2011, Congress mandated that the CPSC issue regulations to reduce third-party testing costs consistent with assuring compliance with rules, bans, standards and regulations. The deadline for issuing those Congressionally-mandated regulations was August 2012. H.R. 2715 clearly directs the agency to reduce unnecessary testing burdens that are killing small businesses and have prevented small businesses from entering into the children's product market. This should be an agency priority.

At a recent hearing on the CPSC midyear review of the budget, your colleague Commissioner Buerkle proposed an amendment to develop a plan to reduce third-party testing burdens. Each of these proposed rules would amend well-functioning regulations that have been in place for years and would advance safety. She stated that she was extremely disappointed in the agency's progress to fulfill H.R. 2715's mandate to provide meaningful relief to reduce third-party testing burdens. You have stated time and again that the Commission does not have the resources to reduce testing burdens, and yet the Commission has recently proposed three regulations that are not congressionally mandated.

Why has the Commission failed to responsibly respond to a Congressional mandate that it reduce the third-party testing burden?

Answer. To the best of my knowledge, I have never stated that the Commission does not have the resources to reduce testing burdens. I have also stated that burden reduction is and remains a high priority item for me. Further, I have said that we are a very small agency with limited resources for the many worthy projects, including burden reduction, before us.

As I stated before the Committee during my June 11 re-nomination hearing, Congress, in section 2(a)(3) of P.L. 112-28, did not simply direct CPSC to address third-party testing burden reduction. Instead, the mandate in that law was, within a year, to seek public comment on opportunities "to reduce the cost of third-party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation." We have done that and have dedicated many staff months to assessing the various approaches suggested in the law and in the many comments we received in response to our Requests for Information (RFI) published in the *Federal Register*.

A solid consensus has emerged from the many commenters who have responded to our requests for information. Most see little potential burden reduction in Commission initiatives that retain third-party testing costs. Instead, they seek to have the Commission expand on a list of determinations for lead first published in August 2009 in the *Federal Register* and currently found at 16 CFR §1500.91. This list identifies those products or product components that will never contain violative amounts of lead. Once a determination is made, such products or product components need not be subject to third-party testing. Ideally, based on technical and scientific data, we will be able to expand this list both to include more materials and to also find materials that are used in the manufacture of children's products that will never contain violative amounts of phthalates or the eight heavy metals found in ASTM F-963.

The Commission, on April 3, 2014, held an all-day forum on burden reduction and heard numerous thoughtful nominations from our stakeholders for product determinations. Unfortunately, because of the highly technical nature of many of these suggestions, CPSC scientific staff must carefully test the claims made by the participants. As I mentioned at my re-nomination hearing, one of the most promising suggestions for exempting phthalate testing based on the hardness of plastics has been shown not to be accurate. Nevertheless, the Commission and its staff are proceeding with our work and we hope to provide testing relief as we confirm the scientific validity of the various suggestions.

In addition, last month, I introduced an amendment to the Commission's 2014 Mid-Year Review and Proposed Operating Plan Adjustments to examine potential ways to reduce third-party testing costs through determinations consistent with assuring compliance with underlying requirements. The amendment was adopted. It provides funds for a study to assist the Commission in determining whether untreated wood or other natural materials are materials that do not, and will not, contain any of the eight specific heavy metals in levels that exceed allowable limits listed in the mandatory Toy Standard, ASTM F-963. Because wood was on the list of

determinations for lead first published in August 2009 in the *Federal Register*, and currently found at 16 CFR § 1500.91, that identify those products or product components that will never contain violative amounts of lead, I am hopeful that this study will find similar results for the eight heavy metals listed in ASTM F-963.

Question 4. In 2010 the agency issued an interpretation of *unblockable drain* (in the VGB Pool & Spa Safety Act) which was revoked 17 months later because you decided to change your vote on that matter. The change in interpretation was counter to the advice of the agency technical and legal staff and was done without notifying the public or seeking input from those who had relied on and expended resources complying with the earlier interpretation. I am deeply troubled that this shows disregard for process and does not allow those impacted by a decision to have a chance to weigh in. Pool owners spent their limited, and in many cases public funds, complying with the Federal mandate only to have their efforts negated by the reversal and without explanation or process. Are there other examples that you can give me where one commissioner can effect so drastic a reversal in policy?

Answer. On December 19, 2007, Congress enacted the Virginia Graeme Baker Pool and Spa Safety Act (VGBA or “the Act”). The purpose of the Act was to prevent child drowning and entrapment in swimming pools and spas. Among other things, the Act imposed requirements for secondary anti-entrapment devices on most public pools and spas. On April 2, 2010, I cast a vote interpreting the term “unblockable drain” as permitting public pools and spas with an “unblockable drain cover” to comply with the Act without the necessity of installing a secondary anti-entrapment device. After long and painful consideration—and after many meetings with numerous stakeholders, including trade associations, pool manufacturers, pool installers, drain cover manufacturers, and Safety Vacuum Release System (SVRS) manufacturers—I decided to join my colleagues in withdrawing the previous interpretation and establishing a new interpretation of the term “unblockable drain.” Under this new interpretation, the Commission would not allow a removable unblockable drain cover to render a drain unblockable.

Under the VGBA, an “unblockable drain” is defined as a “drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.” However, in preparation for the vote on April 2, 2010, I could not find additional guidance in the VGBA or its legislative history indicating whether Congress intended that that drains with unblockable drain covers could be considered “unblockable drains.” So, when I attempted to interpret the term, I found myself drawn to the definition that made the most sense to me at the time—a definition that allowed the use of an unblockable drain cover to render a drain unblockable.

After the April 2010 vote, however, I received over 140 letters from citizens and members of Congress, including those who were intimately involved in drafting the statute, who disagreed with my interpretation of the statute. The members of Congress insisted that they did not intend that drains with unblockable drain covers be considered unblockable drains. In addition, I met twice with Representative Debbie Wassermann Schultz, unquestionably one of the members of Congress most involved in writing VGBA, who reiterated this position.

I understand that consumers and industry alike need stability in the marketplace. They look to the decisions of regulators and rely on those decisions when purchasing, using, and manufacturing consumer products. Although I was hesitant at first to reexamine my previous vote, as a policy maker, I believe it is my duty to listen to all points of view, analyze all relevant data, and, if appropriate, reconsider my vote. So I took it upon myself to reexamine both the safety considerations associated with unblockable drain covers and the legislative history of the VGBA.

I spent considerable amount of time comparing the safety of large unblockable drain covers to the safety of smaller, perhaps less sturdy, drain covers with a secondary anti-entrapment device. When I cast my vote in April 2010, I believed that large unblockable drain covers seemed to provide a greater measure of safety than smaller drain covers with secondary anti-entrapment systems. I reached that conclusion based on my understanding that a properly installed unblockable drain cover protects swimmers from a wide variety of entrapment hazards.

In addition, I believed, if required to install a secondary system, the vast majority of public pools would opt for an anti-entrapment device called a Safety Vacuum Release System, or SVRS, and a small drain cover. The reason was simple: an SVRS, at the time, seemed the cheapest secondary anti-entrapment system on the market. I had safety concerns regarding the use of an SVRS. Unfortunately, an SVRS will not engage if a swimmer’s hair becomes entangled in a drain nor will it trigger quickly enough in some instances to prevent a swimmer having his or her organs eviscerated from sitting on a drain. In other words, the usefulness of an SVRS is essentially limited to those instances in which a swimmer’s body fully blocks a

drain. By contrast, an unblockable drain cover carefully and properly installed would prevent any form of entrapment that a drain might cause.

What made the policy call so difficult, however, was the fact that an unblockable drain cover can operate only if it is properly installed and stays on the drain. In other words, if a drain cover is removed and there is no secondary system like an SVRS then swimmers would be at risk of entrapment in the drain below. Unfortunately, we did not have any significant data regarding the likelihood of drain covers coming off or staying on. But, as critics of my previous vote stated, all drain covers come off from time to time for seasonal maintenance—a point I freely concede.

Based on the communications I received and the discussions I had with many stakeholders, I became persuaded that my interpretation was not what many Members intended when they wrote the law. Given the close call between the safety implications and/or benefits of the two interpretations and my belief that my previous interpretation was contrary to Congressional intent, I cast my vote to reinterpret the term “unblockable drain.”

I am aware that some pool owners purchased and installed unblockable drain covers in reliance on the Commission’s previous interpretation. It is my understanding, however, that the number who did so was quite limited because compliant unblockable drain covers turned out to be as expensive—or more expensive—as the SVRS systems. I should add, that in order to give these individuals sufficient time to come into compliance with our new interpretation, I recommended, and the Commission agreed, to stay enforcement of our new interpretation until the start of the pool season the following year.

Question 4a. Are you concerned by the precedent you have set that allows for one commissioner moving from minority to majority to change the outcome of a statutory interpretation months or even years after the issue has been decided, and do it without public notice and comment?

Answer. Although interpretive rules, under the Administrative Procedure Act, do not require notice-and-comment procedures, I believe that my many open meetings over the course of months leading up to the vote provided most stakeholders with ample notice that I was re-considering my vote. The prospect of a Commissioner changing his or her mind during the course of service on the Commission is a real one. For example, at about the same time I changed my vote on unblockable drain covers, Chairman Tenenbaum changed her vote on whether vacation rental homes with pools could fall within VGBA’s jurisdiction. Obviously, such changes should be approached with great care and thought. I regret any disruption my changed vote caused in the market and repeat my apology to anyone adversely affected.

Question 5. Did you speak with one or more members of Congress on the issue of unblockable drains, as defined by the VGB Pool & Spa Safety Act, before you decided to reverse your decision? If so, please describe such conversations.

Answer. As stated in my answer above, I received many letters from members of Congress urging me to re-consider my vote on unblockable drain covers. In addition, as described above, I met twice with Congresswoman Debbie Wasserman Schultz, one of the primary authors of the Virginia Graeme Baker Pool and Spa Safety Act. Congresswoman Wasserman Schultz provided me with an extensive narrative about events leading up to passage of the VGBA. As one of the original co-sponsors of the law and a member from Florida with deep concerns about drownings in her district, she had a clear understanding about the legislative intent behind the law.

Question 6. There is a perception by many that CPSC has become too political in its approach to product issues. How will you ensure that the CPSC appropriately considers science-based information in the Commission’s decision-making process?

Answer. One of best features about the CPSC is its outstanding staff of technical experts, including engineers, epidemiologists, chemists, physicists, communications experts and attorneys. This enables the agency to maintain a scientific and data-based approach to addressing product safety issues. I do not believe product safety should ever be based on partisan politics. In fact, most of the decisions at the agency—roughly 85 percent—are unanimous votes in accordance with staff recommendations. Of course, reasonable minds can disagree regarding policy options for regulation. Different policy makers can look at the same injury and fatality data and reach opposite conclusions about whether those data demonstrate that an unreasonable risk of injury exists. That is a normal aspect of how collegial bodies with Commissioners having different policy perspectives operate.

Question 7. Mr. Adler, as I noted at the hearing, we all want to ensure the safety of products in the marketplace. Still, the Consumer Product Safety Act is a carefully crafted statute that balances public safety and the rights of individuals engaged in lawful commerce. In the Buckyballs case, when the company did not agree to a voluntary recall, the agency sued to mandate a recall. Yet, rather than going to court

to seek an injunction against the sale of the product during the litigation, as the law allows, the agency contacted retailers and asked them to remove the product from shelves, thereby nearly guaranteeing the bankruptcy of the company. If the CPSC was concerned about the dangers of the product during the litigation, why did the agency not follow the law and go to court to seek a court approved injunction?

Answer. The law allows the Commission a variety of regulatory options that we weigh whenever we discover serious hazards in the marketplace. As alleged by CPSC staff, Buckyballs present an extremely serious hazard when someone, often a young child, ingests two or more magnets. The magnets attract each other through the walls of the intestines resulting in progressive tissue injury, beginning with local inflammation and ulceration, progressing to tissue death, then perforation or fistula formation. Such conditions can lead to infection, sepsis, and death. At the time of filing an administrative complaint, CPSC staff had learned of more than two dozen high-power magnet ingestion incidents, with at least one dozen involving Buckyballs. Surgery was required in many of the incidents and ingestion of high-power magnets is alleged to have resulted in at least one death.

What made these incidents so compelling, aside from the destructiveness of the ingestions, is the fact that the magnets, by themselves, look benign and the harm from ingesting them does not occur immediately or obviously. In fact, as alleged in the Commission's complaint, doctors examining patients with ingested magnets could find it difficult to give an immediate or accurate diagnosis because the symptoms mimic other less serious digestive disorders, which could lead to the erroneous belief that no treatment was necessary or a delay in a surgical intervention that could exacerbate life-threatening internal injuries.

All of these high-risk elements led staff to consider a variety of options, including going to various retailers to ask them voluntarily to remove these dangerous products. Section 15 (c) and (d) of the Consumer Product Safety Act [15 U.S.C. §2064(c) and (d)] authorize the Commission to seek remedial action not only from manufacturers, but also from distributors and retailers. Accordingly, in weighing options, CPSC Compliance staff concluded that one effective and expeditious step would be to work with the retailer community in addressing the hazard. I note that, in addition, to working with retailers, staff also took the rare step of filing an administrative complaint against the respondents, signaling their strong concerns about the hazard.

Question 8. In the Buckyballs case, CPSC then sought to extend the "responsible corporate officer" doctrine to establish personal liability for the costs of the recall on Craig Zucker, one of the principals of the bankrupt company that sold Buckyballs. Did the Commission vote to amend its complaint to seek personal liability in this case? If not, why not?

Answer. On July 25, 2012, as authorized by the Commission, CPSC staff filed an Administrative Complaint against Maxfield and Oberton seeking a recall of the magnet products sold by the company. Subsequently, staff filed an amended complaint seeking to add Craig Zucker, individually and as an officer of Maxfield and Oberton, after he dissolved Maxfield and Oberton Holdings as an additional respondent. The Administrative Law Judge preliminarily granted CPSC staff's request to add Mr. Zucker individually as a respondent. Because the Commission negotiated a Consent Agreement with Mr. Zucker that supersedes the judge's ruling, the Commission did not rule on this issue. My own view is that, in an appropriate case, the Commission has the authority to include individuals as respondents, but I have made no determination whether this was such a case.

Question 8a. With regard to the Buckyballs case, if the decision to name the former president of the company as an individual respondent in an administrative complaint was done without the approval of the commissioners, why did Commission staff claim in a pleading that the Commission approved the decision?

Answer. The staff decision to name Mr. Zucker as an individual respondent was done with the broad authority granted to staff to file an administrative case pursuant to section 15 of the Consumer Product Safety Act. Because the Administrative Procedure Act (APA) requires that members of the Commission hear appeals from decisions by administrative law judges once we have authorized the filing of a case, we take great precautions to avoid involvement in administrative trial strategy because of our need to avoid even the appearance of bias that might affect our ability to serve as an appellate body. I believe that staff's decision to name Mr. Zucker as an individual respondent was well within the authority granted them to pursue the case. Whether the Commission, as a matter of policy, should be involved in such a decision is something that I am currently contemplating.

Question 8b. Do you believe the CPSC's Rules of Practice for Adjudications require a vote of the Commission to amend a complaint previously authorized by the Commission to add a new party or to add a different legal theory of liability?

Answer. In this case, no. In other cases, depending on what the new legal theory of liability or who the new party is, my answer might differ. The Rules of Practice are designed to empower the Presiding Officer with broad discretion in hearing cases. In this case, I note the Presiding Officer did issue a preliminary ruling permitting the addition of Mr. Zucker as a respondent.

Question 8c. Were you involved in the decision to amend CPSC's complaint against Maxfield and Oberton to name Craig Zucker in his individual capacity?

Answer. As I have noted, the decision to amend the complaint was made by CPSC staff pursuant to authority granted them by the Commission to file an administrative case in accordance with section 15 of the CPSA.

Question 8d. Should commission staff, without the approval of the Commission, proceed with such a significant move as naming an individual as a respondent?

Answer. The decision to name Mr. Zucker was made by CPSC staff pursuant to the broad authority granted by the Commission to file the administrative case. I believe that staff's decision to name Mr. Zucker as an individual respondent was well within the authority granted them to pursue the case. Whether the Commission, as a matter of policy, should be involved in such decisions is something that I am currently contemplating.

Question 9. Do you believe that companies, and individuals managing those companies, have a legal right to challenge a CPSC determination that a product recall is warranted based on legitimate, but different, interpretations of applicable statutes as applied to specific facts?

Answer. Yes.

Question 10. There have been suggestions that the CPSC pursued Mr. Zucker personally in response to his aggressive response in fighting the CPSC. Did that happen?

Answer. No. As someone who has worked in two branches of government, I know we are constantly subject to criticism, sometimes in very harsh terms. I believe that one of the greatest freedoms that American citizens have is the right to criticize their government. As far as I can tell, CPSC staff also believes that and does not take such criticism personally.

Question 11. When, and under what circumstances do you believe it is appropriate to pierce the corporate veil and hold a principal of a company personally liable for a product recall? Wouldn't you agree that this step is ordinarily only used when there is criminal conduct alleged? Yet the commission took this extraordinary step in the Buckeyballs case by adding Mr. Zucker individually, why?

Answer. This is not an area of law that I have researched thoroughly. According to various authorities, the law varies from state to state and from jurisdiction to jurisdiction. Because I continue to research the issue, I cannot provide a definitive answer regarding when such an action is warranted. I note that adding an individual like Mr. Zucker in an administrative case is rare.

Question 12. Section 6(b) of the Consumer Product Safety Act requires the CPSC to "take reasonable steps to assure" that any disclosure of information relating to a consumer product safety incident is accurate and fair. You have not been shy about expressing your opinion about section 6(b). Congress, however, has had several opportunities—including passage of the Consumer Product Safety Improvement Act—to amend the statute, but chose to preserve the regulatory authority and protections of section 6b.

Under your leadership, the Commission recently proposed an interpretative rule that would, among other things, significantly narrow the information subject to section 6(b) protections, exempt information that is "publicly available," permits commission staff to *not* notify firms when it releases information "substantially the same as" information previously disclosed and especially troubling, eliminates protections from disclosure of information subject to attorney-client privilege.

What is your definition of "publicly available" because, based on the proposed rule, information posted on a blog would be "publicly available?" How will the Commission substantiate its reliability and factual accuracy before inclusion in communications or investigations of the CPSC? If information about an investigation, whether or not it is accurate, somehow is posted on the Internet, will that information then be exempt from section 6(b)?

Answer. As a starting point, I note that the proposed revisions to section 6(b) of the CPSA are still under review, so I am keeping an open mind regarding the com-

ments filed in response to the Commission's *Federal Register* Notice of Proposed Rulemaking.

It is no secret that I have a general dislike for some of the provisions of 6(b), especially when they impose substantial costs in time and money on the Commission's Freedom of Information Act staff. I see no useful purpose in compelling the Commission to follow these cumbersome procedures—which apply only to CPSC and no other health and safety agency—when we are acting as a repository of information in similar fashion to a public library. Further, in some instances, safety information delayed is consumer safety denied. However, it is my duty to uphold all of CPSC's statutes as written and, if re-confirmed, I pledge to continue do so.

With respect to the language regarding “publicly available” information in the NPR, in my judgment, this is clarifying what has generally been the practice of the Commission over the years more than anything new. As noted in the Commission's Notice of Proposed Rulemaking, 79 Fed. Reg. 10712, 10714 (February 26, 2014), neither the statute nor the CPSC's legislative history suggest that information that is readily available to the public is, or should be, subject to section 6(b). I believe that the NPR gives a good description regarding what “publicly available” information is, namely, information that has been disseminated in a manner intended to reach the public in general, such as news reports; articles in academic and scientific journals; press releases distributed through news of wire services; or information that is available on the Internet.

I cannot speak generally regarding information posted on the Internet about a company under investigation because the statute treats such information in different ways depending on its status. Information submitted to the Commission pursuant to section 15(b) reports that might trigger an investigation must be treated as confidential by the agency unless the Commission has reasonable cause to believe a product is in violation of a safety rule or other provision of the law, or the product is the subject of a legal proceeding or the manufacturer has consented to its release. Nothing in the proposed modification to the agency's 6(b) rule will change that.

Question 13. What problem is the Commission looking to fix with the proposed rule on information disclosures under section 6(b)? What kind of data was used by the Commission in determining that a change was needed?

Answer. The proposed rule is intended to update the Commission's 6(b) rule, which has not been revised since its promulgation in 1983—a time when the Internet did not exist. The proposed rule is intended to modernize and streamline the Commission's processing of information disclosure under section 6(b). Among the pieces of information that the Commission relied on in proposing the changes were its assessments of the ongoing 6(b) costs and time delays in processing FOIA requests, which total in the hundreds of thousands of dollars and in days, sometimes months, in releasing information to the public.

Question 14. Congress recognizes the importance of ensuring the accuracy and fairness of information disclosed by the Commission. What responsibility does the Commission have to prevent release of unreasonable and unsubstantiated information that could cause harm to businesses or brands as well as ill-serve the public we seek to protect?

Answer. The Commission has the same responsibility that any Federal health and safety agency has to ensure accuracy and fairness of information that it discloses. It is a critical responsibility that the CPSC takes very serious. Why the extra restrictions in 6(b) that extend to no other health and safety agency need to apply to a resource-limited agency like CPSC remains unclear to me. However, it is my duty to uphold all of CPSC's statutes as written and, if re-confirmed, I pledge to continue do so.

Question 15. Mr. Adler, will you commit to me that, if reconfirmed, you will follow not only the letter of the law when it comes to disclosure laws applicable to the Commission, but also the spirit of these rules, which are designed to prevent inaccurate, misleading and incomplete information that could hurt both consumers and manufacturers?

Answer. Yes.

Question 16. The CPSC has, in recent years, been increasingly looking to retailers and manufacturers to undertake voluntary product safety recalls and other corrective actions, as well as holding them accountable for failure to report and other penalty investigations. However, there has been more than a 20 percent decline in voluntary recalls between 2010 and 2013, and it appears this decline will continue through the current year. What do you think of this recent trend, and do you think it is something that should be publicly explored by the Commission? If reconfirmed, will you in fact explore this issue?

Answer. I read no particular message in the decline in voluntary recalls because it could be the result of any number of factors, including safer products in the marketplace, more targeted CPSC actions against repeat offenders, CPSC's increased work with Customs and Border Protection at our Nation's ports, or a more diffuse marketplace because of the Internet. If re-confirmed, I will look into the issue, and work on this issue with my fellow Commissioners, particularly the Chairman, who is the individual responsible for the administrative and management direction of the agency.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROY BLUNT TO
HON. ROBERT S. ADLER

Harmonization of Standards

Question 1. The public identified the need to comply with different standards all addressing the same type of hazard as a problem and Congress asked the agency to address this as a potential burden reduction opportunity in PL 112-28. The agency has done little to investigate whether compliance with a standard in another jurisdiction would provide an equivalent level of safety or try to harmonize safety standards with those in other jurisdictions. Does the agency need new authorities to accomplish this effort? If not, why has more not been done to address this problem?

Answer. Although no other international standard is identical to a CPSC-administered children's product safety rule, there are many tests within certain other international standards that are the same, or more stringent than, their equivalent test within the CPSC-administered children's product safety rule. For example, the toy abuse tests in the European standard EN71, part 1,1 and the International Standard ISO 8124-12 are the same, or more stringent than, their corresponding tests in ASTM F963-11.3.

Although CPSC could explore harmonization more, this would not change the statutory requirement for third-party testing of children's products. What we have been told by members of the regulated community is that they would prefer the agency focus its attention on ways to reduce burdens that would release them from testing entirely. As I stated before the Committee during my June 11 re-nomination hearing, Congress, in section 2(a)(3) of P.L. 112-28, did not simply direct CPSC to address third-party testing burden reduction. Instead, the mandate in that law was, within a year, to seek public comment on opportunities "to reduce the cost of third-party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation." We have done that and have dedicated many staff months to assessing the various approaches suggested in the law and in the many comments we received in response to our Requests for Information (RFI) published in the *Federal Register*.

A solid consensus has emerged from the many commenters that have responded to our requests for information. Most see little burden reduction potential in Commission initiatives that retain third-party testing costs. Instead, they seek to have the Commission expand on a list of determinations for lead first published in August 2009 in the *Federal Register* and currently found at 16 CFR §1500.91. This list identifies those products or product components that will never contain violative amounts of lead. Once such a determination is made, such products or product components need not be subject to third-party testing. Ideally, based on technical and scientific data, we will be able to expand this list both to include more materials and to find materials that are used in the manufacture of children's products that will never contain violative amounts of phthalates or the eight heavy metals found in ASTM F-963. Once such a determination is made, such products or product components need not be subject to third-party testing.

The Commission, on April 3, 2014, held an all-day forum on burden reduction and heard numerous thoughtful nominations from our stakeholders for product determinations. Unfortunately, because of the highly technical nature of many of these suggestions, CPSC scientific staff must carefully test the claims made by the participants. As I mentioned at my re-nomination hearing one of the most promising suggestions for exempting phthalate testing based on the hardness of plastics has been shown not to be accurate. Nevertheless, the Commission and its staff are proceeding with our work and we hope to provide testing relief as we confirm the scientific validity of the various suggestions.

In addition, last month, I introduced an amendment to the Commission's 2014 Mid-Year Review and Proposed Operating Plan Adjustments to examine potential ways to reduce third-party testing costs through determinations consistent with assuring compliance with underlying requirements. The amendment was adopted. It

provides funds for a study to assist the Commission in determining whether untreated wood or other natural materials are materials that do not, and will not, contain any of the eight specific heavy metals in levels that exceed allowable limits listed in the Toy Standard, ASTM F-963. Because wood was on the list of determinations for lead first published in August 2009 in the *Federal Register*, and currently found at 16 CFR § 1500.91, that identify those products or product components that will never contain violative amounts of lead, I am hopeful that this study will find similar results where the eight heavy metals listed in ASTM F-963 are concerned.

Partisanship at CPSC

Question 2. I hope you will agree that the Commission should hold its safety mission above partisan politics. Many are concerned that partisanship at the Commission has increased, as demonstrated by the many party-line votes the Commission has taken since 2008, when the Consumer Product Safety Improvement Act was passed. While the Commissioners have been able to find consensus on routine business items before the Commission, on more substantive matters such as rulemakings and establishing budget and enforcement priorities, a partisan division is all too often evident. Why do you think the atmosphere at CPSC has become so partisan?

Answer. I do not consider consumer product safety to be a partisan issue. I believe people serve as CPSC Commissioners with the same goal—to fulfill the mission of the CPSC and reduce the risk of injury or death to consumers from hazardous consumer products. Sometimes we may disagree on the path we should take to achieve this goal, but that does not make the Commission a partisan body.

I have always worked to establish a good relationship—both personal and professional—with my fellow Commissioners, particularly with the current Commissioners. I greatly value these relationships. I believe we have worked tirelessly and respectfully to achieve common ground. If re-confirmed, I would continue these efforts.

Question 2a. Mr. Adler, if you're reconfirmed to the CPSC, you will become the most senior Commissioner, and will continue to occupy a role with significant influence on the culture of the Commission. Will you commit to me today to work to bring about a culture change at the agency, for instance, by working with the minority Commissioners to achieve consensus—including working with Commissioner Buerkle and Mr. Mohorovic, if he is also confirmed?

Answer. Yes. If re-confirmed, I assure you that I will continue to work with all of my fellow Commissioners to achieve consensus.

Independence of CPSC General Counsel

Question 3. As you know, the position of General Counsel at the CPSC had been a non-political career position designed to ensure a mechanism of checks and balances. Though this has not always been the case, it seems to me that the General Counsel's office should provide independent and credible opinions to the Commissioners and be free from political influences. After all, each Commissioner is not short of staff to provide political counsel. What is your opinion? Do you think that the General Counsel's office should provide independent and objective views of matters considered by the Commission?

Answer. I believe a General Counsel, regardless of his or her employment status, should provide independent, objective advice. Federal employees, career and non-career, are bound by a code of ethics, requiring them to be loyal to the law and ethical principles, and attorneys are further bound by their own code of ethics. Further, the position of General Counsel is one that is filled by a member of the Senior Executive Service. Based on my years of working at and monitoring the Commission, I have no reason to believe that a non-career General Counsel would act any differently than a career General Counsel in terms of the advice he or she gives to the Commission.

Working with Stakeholders

Question 4. The Commission issued several proposed rules that could fundamentally change the process for how the Commission works with regulated entities. For the most controversial proposals, many comments have urged the CPSC to work with stakeholders to help the agency in meeting its policy objectives. The first of the most controversial proposals was a potential change to the 1110 Rule on certificates of compliance, and the CPSC wisely took a step back and announced its intent to hold a meeting with stakeholders to rethink the proposal. Did the CPSC learn that it is more effective to engage with the broad range of stakeholders before issuing a proposed rule, perhaps in the form of holding a public meeting with stakeholders, an Advance Notice of Proposed Rulemaking (ANPR) or both?

Answer. I believe that stakeholder input plays an integral role in the rulemaking process. With respect to the 1110 Rule on Certificates of Compliance, I carefully reviewed the issues raised by commenters during the comment period, as well as requests from stakeholders. Many commenters had very detailed, practical implementation concerns that deserved further exploration that I had not seen during the Commission's briefing and subsequent public meeting. This is why I voted to reopen the comment period and conduct a public workshop with stakeholders to gain a better understanding of how to more effectively enhance the 1110 Rule.

Question 4a. Would you support greater use of stakeholder working groups and requests for information as the CPSC examines ways to improve the effectiveness of its programs?

Answer. Yes. I always welcome the input of stakeholders. If re-confirmed, I promise to carefully consider the views of all interested parties.

Public Outreach

Question 5. The digital age provides new opportunities for more direct contact to consumers for distributing important information and education. How important are public/private partnerships in the strategies for outreach to consumers and please explain how the agency can engage and utilize the private sector in furthering its mission, one that is shared by manufacturers.

Answer. Very important. The CPSC is a small agency with a very large safety mandate. In order to inform and educate the public, the CPSC often relies on our non-governmental partners in the private sector and the not-for-profit sector to help us amplify our outreach. Whether through the use of social media, media interviews, or in-store messaging, CPSC has a rich history of collaborating with associations and companies on campaigns such as safe sleep for babies, drowning prevention, poison prevention, and window blind safety, to name only a few. A number of companies and organizations have effectively used social media platforms to inform their customers and constituents of product hazards. Because of the significant positive results for consumers that often come from these relationships, it is my hope that CPSC will continue to explore opportunities to work with industry and other groups on information and education campaigns.

Question 5a. How would you handle situations when consumers are being injured by using products incorrectly or contrary to label instructions?

Answer. At the outset, let me say that every accident involves three factors: the product, the consumer, and the surrounding environment. Depending on the circumstances, it is often hard to pin down precisely what role each factor plays in an accident. That is why the Commission employs an extensive epidemiological and human factors staff to assist us in our approach to protecting consumers. I find it hard to generalize about the cause of some injuries by pointing to consumers' ignoring label instructions if the labels warn of hazards that consumers should not expect to exist. For example, the Commission entered into a civil penalty agreement with a manufacturer of infant flotation seats that failed without warning, plunging young children into water over their heads. The manufacturer had a warning label that parents should not leave children unattended in pools with the flotation device. That, however, did not address the fact that the seats were defective and failed without warning, placing infants in life-threatening situations.

That said, the Commission has a group of talented technical experts who often provide advice and guidance to outside groups regarding the efficacy of their warning labels. I believe that the market is a better informed, safer arena because of CPSC staff's technical input, and, if re-confirmed, I will continue to support their efforts.

Question 5b. What role would the CPSC play in such situations?

Answer. CPSC's response would be dependent upon the product, the hazard, the pattern of injury, and whether the risk is foreseeable.

Question 5c. Do you believe that warnings are an effective tool in communicating hazards to the public?

Answer. I think the best way to answer this question would be to put it into the larger context of how CPSC staff works to address and mitigate hazards. CPSC staff follows the standard "safety hierarchy" method when trying to reduce the risk of injury: (1) eliminate the hazard, (2) guard against the hazard, and (3) warn of the hazard.

In certain situations, a warning can be an effective tool. We have seen this in the case of button cell batteries and strollers. But, warnings are sometimes less effective in reducing risk than either eliminating or guarding against the hazard. There are lots of details that can make a warning effective: large font, bright colors, simple language, multiple languages, prominent placement, or conspicuous graphics. But,

warnings cannot be relied upon in all situations to reduce unreasonable risks of death and injuries. In some cases, a warning may not adequately express the severity of the risk of harm presented to the consumer. In other cases, a warning may not be effective because the product presents a poor medium for written information. For example, the product may be too small. Also, warnings are not very effective on products where the consumer at risk cannot understand the warning, for example, with infants—which explains why Congress enacted the Poison Prevention Packaging Act authorizing the agency to issue rules that require child-resistant closures on dangerous household chemicals.

Question 5d. Do you believe there are certain hazards that cannot, under any circumstance, be warned or educated against?

Answer. Yes. Some hazards are so hidden or occur so unexpectedly that warnings could not avoid serious injuries or fatalities.

Question 5e. Procedurally, how do you believe those hazards, which cannot be warned or educated against, should be determined by the agency?

Answer. As stated above, CPSC staff follows the standard “safety hierarchy” method when trying to reduce the risk of injury: (1) eliminate the hazard, (2) guard against the hazard, and (3) warn of the hazard.

In determining the effectiveness of product and/or public warnings, CPSC staff analyzes the use and utility of the product, the hazard, the pattern of injury, changes in reported injuries following design or labeling adjustments, and whether the risk is foreseeable.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEAN HELLER TO
HON. ROBERT S. ADLER

Question 1. The CPSC’s voluntary recall system—especially the agency’s “fast-track” recall system—provides a quick and effective means of getting potentially dangerous products off the market and out of consumers’ hands. However, the agency has come under growing criticism for a slowdown in the pace that recalls are being negotiated, as such delays could ultimately harm consumers. In the past four years, the agency has had three directors of compliance and I understand the position is now empty again. This raises concerns about the effect of such turnover on management of the agency. Please provide the Committee with information detailing how long it generally takes the Commission to negotiate fast track recalls, and whether that time has increased over the past several years?

Answer. I strongly support the agency’s Fast Track Program and, as Acting Chairman, have taken steps to ensure that it continues to be effective. I have requested that CPSC staff undertake a review of the program that I have dubbed “Fast Track 2.0.” Among other things, I have asked for a review of the types of hazards that should be included in the program and which should not. I have also asked for a review of the types of information that companies should provide when they seek Fast Track status and a review of how these recalls generally should proceed.

Under the guidelines for Fast Track, a product recall must begin within twenty days of a report to the Commission. In practice, according to staff, it currently takes roughly 60 days from the moment that a firm notifies the Commission of a problem until its Corrective Action Plan is agreed upon. The discrepancy in time frames, according to staff, is that firms often report a *potential* issue prior to presenting all of the required information to begin an official “fast track” recall. This first contact with the Commission is included in that 60-day figure. Further, according to staff, “fast track” recall negotiations do not begin in earnest until the firm presents the Commission with:

- a full report as defined by 16 C.F.R. § 1115.13(d) (which includes 15 detailed items of information, including when and where a product was manufactured, how many items need to be recalled, the nature of defect, and other important pieces of information),
- a fully developed action plan for recall, including types of media to be used, and
- a fully drafted press release explaining the nature and details of recall.

Over the past three fiscal years, the average time from the moment that a firm notifies the Commission of a potential problem until the completion of that firm’s Corrective Action Plan has ranged between 55 and 60 days. Encouragingly, the time it takes for negotiating and issuing press releases (a significant portion of the time that it takes to conduct voluntary recalls) has shown a steady decrease in Fiscal 2014, including an almost 10 percent decrease to just over 20 days.

All of this said, I continue to believe that Fast Track is a worthy program that needs to be improved.

Question 2. Can you assure the Committee that you will work to make sure the fast track system continues to be as effective as it has been in the past?

Answer. Yes.

Question 3. Are you aware of the letter dated May 30, 2014, that former CPSC Chairman Ann Brown sent to Representatives Fred Upton and Henry Waxman expressing concerns with the proposed voluntary recall rule?

Answer. Yes.

Question 3a. Are you aware of the comments to the docket submitted by Senators Casey and Toomey and a separate letter by Senator King expressing similar concerns with the proposed rule?

Answer. Yes.

Question 3b. Do you agree with former Chairman Brown and the Senators that the proposed Voluntary Recall Rule could threaten the history of collaboration that the CPSC has with its stakeholders?

Answer. I have read former Chairman Brown's letter, and the Senators' letter. I have also reviewed many of the stakeholder comments we have received about our proposed rule. I continue to review those comments and to pay special attention to those that raise concerns about the impact of the proposed rule on the Fast Track program. Needless to say, I greatly respect and admire Ms. Brown, and I agree with her that Fast Track is an excellent program.

The CPSC has always and should always continue to work collaboratively with its stakeholders on behalf of the American public. I see nothing in the proposed rule that would threaten that relationship. That said, the Voluntary Recall Notice Rule is only a proposed rule, and, in light of its controversial nature, I am carefully reviewing the comments from all stakeholders. I retain an open mind as to what the final version of the rule might look like.

Question 4. Regarding the CPSC's recently proposed rule that would expand staff's role on voluntary standards setting bodies, are you concerned that an individual at the CPSC—whether that person is a Commissioner or a staff member who is not the voting member—could influence the standards development process?

Answer. The rule to which you refer grew out of a report from May 2012 by the U.S. Government Accounting Office (GAO), "Consumer Product Safety Commission: A More Active Role in Voluntary Standards Development Should be Considered." (See <http://www.gao.gov/assets/600/590990.pdf>.)

The GAO Report recommended that the Commission review its policy for staff participation in voluntary standards development activities and determine the feasibility of the agency's staff assuming a more active role in developing voluntary standards. Specifically, the GAO Report recommended that CPSC staff be allowed—not required—in appropriate cases to vote on balloted provisions of voluntary standards. The Report also suggested that staff be allowed to hold leadership positions at various levels of standards development organizations, including task groups, subcommittees, or committees. GAO concluded that changing the CPSC's regulations to allow staff to participate more actively in voluntary standards activities could result in stronger voluntary standards without compromising the CPSC's or the voluntary standards groups' independence.

As a result of this GAO Report, Commission staff proposed conforming amendments to 16 CFR 1031, the Commission's regulation on participation in voluntary standards activities. These amendments followed GAO's recommendations to allow staff, on an optional basis, to vote on voluntary standards or take a leadership role on voluntary standards group committees.

The proposed rule noted that such activity might result in a more effective voluntary standards process and accelerate standards development and implementation. Further, such participation could gain CPSC staff greater access to and familiarity with the latest technologies, and would provide an opportunity for staff to help establish standards to advance CPSC's safety goals. In addition, "full" Federal Government participation in standards development increases the likelihood that the standards can meet both public and private sector needs. 141 Cong. Rec. H14334 (daily ed. December 12, 1995) (Statement of Rep. Morella). A single standard that satisfies both industry and the CPSC would benefit both by simplifying applicable requirements—only a single set of standards would apply.

Finally, optional staff participation in voluntary standards development groups by voting and taking leadership roles would be consistent with the guidance reflected in OMB Circular A-119 Revised, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" (February 10, 1998). Among other things, OMB Circular A-119 encourages agency

representatives serving as members of voluntary consensus standards bodies to “participate actively and on an equal basis with other members,” and to “vote . . . at each stage of the standards development process unless prohibited from doing so by law of their agencies.”

The role voluntary standards play in the safety of American consumers and the ability of the CPSC to do its job cannot be overemphasized. I have long believed that we must work in concert with voluntary standards organizations to help those organizations create the best standards they can. This is why I am so delighted by the progress I have seen in the voluntary standards community over the past forty years. Groups such as ASTM, ANSI, and UL have dramatically improved their technical skills, their efficiency in drafting standards, their openness and transparency, and their outreach to all stakeholders—especially consumers—affected by their work. I am pleased to see CPSC work so closely with these groups, and I have little doubt that our partnership with them will only grow and deepen in the years to come in the interest of better standards for consumers and product manufacturers alike. That said, it is only a proposed rule and I am still reviewing all comments from all stakeholders and retain an open mind as to what the final version of the rule might look like.

Question 5. Given your understanding of the voluntary standards process, how can staff’s role help benefit or potentially hurt the process?

Answer. Because of the disclaimers required of Commission staff in the proposed rule, I see no indication that the proposed rule’s approach to staff involvement would suggest the Commission will play other than a constructive role. The law is fairly clear regarding CPSC’s approach to voluntary standards. If the Commission, in the course developing a mandatory standard, determines that an existing voluntary standard adequately addresses a risk of injury and is substantially complied with, the Commission must stop its work and defer to the voluntary standard. Nothing in this proposed rule changes that.

I appreciate your concern and will be sure to pay particular attention to this issue when the final rule is presented to the Commission. I continue to review all the comments from all stakeholders of the proposed rule and retain an open mind as to what the final version of the rule might look like.

Question 6. Many are concerned that partisanship at the Commission has increased, as demonstrated by the many party-line votes the Commission has taken since 2008, when the Consumer Product Safety Improvement Act was enacted. While the Commissioners have been able to find consensus on routine business items before the Commission, on more substantive matters such as rulemakings and establishing budget and enforcement priorities, a partisan division is all too often evident. Why do you think the atmosphere at CPSC has become so partisan?

Answer. I do not consider consumer product safety to be a partisan issue. I believe people serve as CPSC Commissioners with the same goal—to fulfill the mission of the CPSC and reduce the risk of injury or death to consumers from hazardous consumer products. Sometimes we may disagree on the path we should take to achieve this goal, but that does make the Commission a partisan body.

I have always worked to establish a good relationship—both personal and professional—with my fellow Commissioners, particularly with the current Commissioners. I greatly value these relationships. I believe we have worked tirelessly and respectfully to achieve common ground. If re-confirmed, I would continue these efforts.

Question 7. Mr. Adler, if you’re reconfirmed to the CPSC, you will become the most senior Commissioner, and will continue to occupy a role with significant influence on the culture of the Commission. Will you commit to work to bring about a culture change at the agency, for instance, by working with the minority Commissioners to achieve consensus—including working with Commissioner Buerkle and Mr. Mohorovic, should he be confirmed?

Answer. Yes. If re-confirmed, I assure you that I will continue to work with all of my fellow Commissioners to achieve consensus.

Question 8. As you know, the position of General Counsel at the CPSC had been a non-political career position designed to ensure a mechanism of checks and balances. Though this has not always been the case, it seems to me that the General Counsel’s office should provide independent and credible opinions to the Commissioners and be free from political influences. After all, each Commissioner is not short of staff to provide political counsel. Please explain whether or not you believe that the General Counsel’s office should provide independent and objective views of matters considered by the Commission?

Answer. I believe a General Counsel, regardless of his or her employment status, should provide independent, objective advice. Federal employees, career and non-ca-

reer, are bound by a code of ethics, requiring them to be loyal to the law and ethical principles, and attorneys are further bound by their own code of ethics. Further, the position of General Counsel is one that is filled by a member of the Senior Executive Service. Based on my years of working at and monitoring the Commission, I have no reason to believe that a non-career General Counsel would act any differently than a career General Counsel in terms of the advice he or she gives to the Commission.

Question 9. In 2008, by approving the Consumer Product Safety Improvement Act, Congress mandated under Section 108 that the CPSC establish a Chronic Hazard Advisory Panel (CHAP) to review specific phthalates used in children's toys and childcare articles. I am concerned that Section 108 of the CPSIA is not being carried out in a transparent manner. During the CHAP's review process, the Commission decided to conduct a peer review of the CHAP's draft report on phthalates and phthalate alternatives completely behind closed doors. There have been no public meetings or conference calls over the past two years, which is rare for a process under the guidance of the CPSC. Because the report is over 24 months late and the process has not been transparent to the public—with no public meetings since February 2012—I want to know what the Commission will do to ensure a full and transparent implementation of this Congressional mandate. Will you implement an open and transparent process that allows for public input on the Panel's report prior to the start of the CPSC's rulemaking process?

Answer. Not later than 180 days after the Commission's receipt of the final CHAP report, as mandated by the statute, "the Commission shall, pursuant to section 553 of title 5, United States Code, promulgate a final rule [related to the findings of the CHAP]." This includes an open and transparent process that allows for public input during the course of promulgating the mandated rule. The rulemaking process under section 553 of the APA will give stakeholders and the public generally the opportunity to submit information and comments, all of which will be publicly available.

In addition, as former Chairman Inez Tenenbaum previously announced, upon receipt of the final CHAP report, the Commission intends to publicly release the following additional documents:

- CHAP draft Final Report;
- Peer reviewers' Report which includes comments on the draft final report submitted to the CHAP, and charge questions submitted to the peer reviewers;
- Identities and affiliations of the peer reviewers;
- Any other data acquired by the CHAP that has not been previously cleared for public release by the CHAP.

Also, currently on the CPSC's CHAP web page is every meeting, phone call, piece of correspondence, and all data submitted by the public since the CHAP was convened, with certain exceptions. For copyrighted material, such as journal articles, CPSC staff generally post the transmittal letter and the journal citation only. If the article is open access, CPSC staff has included a link to the article. For government reports available online, the staff has posted the transmittal letter, citation, and Web link. All of this information is publicly available at: <http://www.cpsc.gov/about/cpsia/chapmain.html>.

Question 10. With regard to the Chronic Hazard Advisory Panel, how should the CPSC ensure that all alternatives are subjected to the same level of scrutiny as the chemicals in question, in order to clearly justify which chemical is safer, before issuing a final decision?

Answer. It is difficult to answer this question without having received the CHAP report at this time. However, I am committed to following both the letter and the spirit of the direction given to the Commission in Section 108 of the CPSIA. I look forward to receiving the report and having the Commission commence the rulemaking contemplated in the law.

Question 11. With regard to the Chronic Hazard Advisory Panel, how will you ensure that thoroughly tested chemicals in the market place today will not be penalized when compared against a less tested alternative?

Answer. It is difficult to answer this question without having received the CHAP report at this time. However, I am committed to following both the letter and the spirit of the direction given to the Commission in Section 108 of the CPSIA. I look forward to receiving the report and having the Commission commence the rulemaking contemplated in the law.

Question 12. Please provide the Committee with the full list of scientific studies that were evaluated by the Chronic Hazard Advisory Panel and then made available

to the peer reviewers. Please also submit to the Committee a timeline for the release of the report and the issuance of a draft rule.

Answer. Because of the statutory mandate that the CHAP operate as an independent panel, and in the interest of scientific integrity, the submission to the Commission of the final CHAP report is not in the control of the Commission, nor does the Commission have knowledge of the scientific studies that the CHAP may have chosen to evaluate. All studies submitted by the public for consideration by the CHAP have been conveyed to the CHAP.

Not later than 180 days after the Commission's receipt of the final CHAP report, as mandated by the statute, "the Commission shall, pursuant to section 553 of title 5, United States Code, promulgate a final rule [related to the findings of the CHAP]." This rulemaking procedure, as contemplated by the Administrative Procedure Act (APA), includes an open and transparent process that allows for public input during the course of promulgating the mandated rule. The rulemaking process under section 553 of the APA will give stakeholders and the public generally the opportunity to submit information and comments, all of which will be publicly available.

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Also, currently on the CPSC's CHAP web page is every meeting, phone call, piece of correspondence, and all data submitted by the public since the CHAP was convened, with certain exceptions. For copyrighted material, such as journal articles, CPSC staff generally post the transmittal letter and the journal citation only. If the article is open access, CPSC staff has included a link to the article. For government reports available online, the staff has posted the transmittal letter, citation, and Web link. All of this information is publicly available at: <http://www.cpsc.gov/about/cpsia/chapmain.html>.

Question 13. Given that the CHAP report meets a number of the requirements for a "highly influential" assessment, and that the Commission must comply with the standards established by the Office of Management and Budget's Final Information Quality Bulletin (OMB Bulletin) for Peer Review, can you assure the Committee that the CHAP report peer review will be completed in full conformance with the Bulletin?

Answer. It is my understanding that OMB was consulted with respect to its Peer Review Bulletin. Further, CPSC understands the scientific importance of the CHAP report and will comply with the requirements regarding the report and the ensuing rulemaking set forth in section 108 of the CPSIA.

Question 14. With regard to the Chronic Hazards Advisory Panel, Chairman Tenenbaum assured Congress that the CPSC was fully committed to an open and transparent process. The OMB Guidelines, on page 40, outline public participation in line with a transparent process by stating: "the agency shall make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review (or during the peer review process) and sponsor a public meeting where oral presentations on scientific issues can be made to the peer reviewers by interested members of the public." When will the draft assessment be made available for public comment, and when will the public meeting take place to allow for oral presentations on scientific issues?

Answer. Not later than 180 days after the Commission's receipt of the final CHAP report, as mandated by the statute, "the Commission shall, pursuant to section 553 of title 5, United States Code, promulgate a final rule [related to the findings of the CHAP]." This rulemaking procedure, as contemplated by the Administrative Procedure Act (APA), includes an open and transparent process that allows for public input during the course of promulgating the mandated rule. The rulemaking process under section 553 of the APA will give stakeholders and the public generally the opportunity to submit information and comments, all of which will be publicly available.

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Question 15. The CPSC issued several proposed rules that could fundamentally change the process for how the Commission works with regulated entities. For the most controversial proposals, many comments have urged the CPSC to work with stakeholders to help the agency in meeting its policy objectives. The first of the most controversial proposals was a potential change to the 1110 Rule on certificates of compliance, and the CPSC wisely took a step back and announced its intent to hold a meeting with stakeholders to rethink the proposal. Did the CPSC learn that it is more effective to engage with the broad range of stakeholders before issuing a proposed rule, perhaps in the form of holding a public meeting with stakeholders, an Advance Notice of Proposed Rulemaking (ANPR) or both?

Answer. I believe that stakeholder input plays an integral role in the rulemaking process. With respect to the 1110 Rule on Certificates of Compliance, I carefully reviewed the issues raised by commenters during the comment period, as well as requests from stakeholders. Many commenters had very detailed, practical implementation concerns that deserved further exploration that I had not seen during the Commission's briefing and subsequent public meeting. This is why I voted to reopen the comment period and conduct a public workshop with stakeholders to gain a better understanding of how to more effectively enhance the 1110 Rule.

Question 16. Do you believe that warnings are an effective tool in communicating hazards to the public?

Answer. I think the best way to answer this question would be to put it into the larger context of how CPSC staff works to address and mitigate hazards. CPSC staff follows the standard "safety hierarchy" method when trying to reduce the risk of injury: (1) eliminate the hazard, (2) guard against the hazard, and (3) warn of the hazard.

In certain situations, a warning can be an effective tool. We have seen this in the case of button cell batteries and strollers. But, warnings are sometimes less effective in reducing risk than either eliminating or guarding against the hazard. There are lots of details that can make a warning effective: large font, bright colors, simple language, multiple languages, prominent placement, or conspicuous graphics. But, warnings cannot be relied upon in all situations to reduce unreasonable risks of death and injuries. In some cases, a warning may not adequately express the severity of the risk of harm presented to the consumer. In other cases, a warning may not be effective because the product presents a poor medium for written information. For example, the product may be too small. Also, warnings are not very effective on products where the consumer at risk cannot understand the warning, for example with infants—which explains why Congress enacted the Poison Prevention Packaging Act authorizing the agency to issue rules that require child-resistant closures on dangerous household chemicals.

Question 17. Do you believe there are certain hazards that cannot, under any circumstance, be warned or educated against?

Answer. Yes. Some hazards are so hidden or occur so unexpectedly that warnings cannot prevent serious injuries or fatalities.

Question 18. Procedurally, how do you believe those hazards, which cannot be warned or educated against, should be determined by the agency?

Answer. As stated above, CPSC staff follows the standard "safety hierarchy" method when trying to reduce the risk of injury: (1) eliminate the hazard, (2) guard against the hazard, and (3) warn of the hazard.

In determining the effectiveness of product and/or public warnings, CPSC staff analyzes the use and utility of the product, the hazard, the pattern of injury, changes in reported injuries following design or labeling adjustments, and whether the risk is foreseeable.

Question 19. Section 104 of the Consumer Product Safety Improvement Act mandated that the CPSC adopt two mandatory rules on durable infant goods rules every 6 months. Given the nature and diversity of durable infant products, do you feel as though this mandate by Congress is too much? If so, how do you propose working with staff to ensure that industry leaders have the resources and time necessary to thoroughly vet their concerns through the ASTM process?

Answer. Section 104 of the CPSIA, is also known as the “Danny Keysar Child Product Safety Notification Act.” The Act was named after Danny because he was entrapped and died in a twice-recalled portable crib. I have gotten to know Danny’s parents, Linda Ginzel and Boaz Keysar, very well and their efforts to keep other infants from suffering the same tragedy that happened to Danny make them true American heroes in my book.

It is true that Section 104 mandates a significant amount of work to the Commission in the area of durable infant and toddler products. However, I believe the work has allowed the Commission to promulgate some of the most stringent safety standards in the world for our most vulnerable and involuntary risk takers—small children. And while the statutorily mandated time frames are short, I believe that the Commission has successfully worked with ASTM and the durable infant products industry to make sure that all voices can be appropriately heard when promulgating these standards. Given the proper resources, I believe the “104 model” of rule-making could serve as a template for all Commission rulemakings.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RON JOHNSON TO
HON. ROBERT S. ADLER

Question 1. Mr. Adler, if you are re-nominated, when you are considering a mandatory standard, are you willing to take into account not only consumer safety but also: A consumer’s right to afford products, access products, and assume a reasonable amount of risk?

Answer. Yes. Our statutes and regulations require that the Commission focus its efforts on unreasonable risks of serious injuries or death associated with consumer products when undertaking mandatory rulemaking, not all risks. We are required by our statutes and regulations to factor the effect on a product’s cost, availability and utility that would result from a mandatory rulemaking.

Question 1a. A company’s ability to survive and the number of jobs that will be lost if your standard is put in place?

Answer. Yes.

Question 2. A number of questions have been raised about the CPSC’s proposed rulemaking to revise the voluntary recall rule. There is concern that the revised rule, if finalized, may actually delay recalls and make the process more adversarial and legalistic. Such a result would be unfortunate and not in consumers’ best interests, and so I wanted to make you aware of my concerns about what has been proposed. Recalls are most effectively and efficiently done when they are voluntary. Do you agree that changing the rules in a way that is likely to make negotiations more adversarial and legalistic could result in significant delays, which are ultimately not in the best interest of consumers?

Answer. I am in full agreement that effective recalls are in the best interest of consumers. It is for this reason that I voted to publish a Notice of Proposed Rulemaking for a proposed Voluntary Recall Notice Rule last year. The intent of the proposed rule, as I read it, is to improve the quality of recalls to protect consumers.

While I recognize that some have suggested that the changes proposed in the rule may, in some instances, slow the process of voluntary recall negotiations, I do not at this point have any evidence to that effect. Nothing proposed in our rule will require firms to take any actions beyond those they currently do. They will still have to provide the same information, propose the same recall plans and the same methods of publicizing them—and no more. For example, the current Voluntary Recall rule requires that recalling firms sign their Corrective Action Plans. See 115.20(a)(1)(ix). The proposed rule contemplates only that recalling firms actually uphold the agreement they have voluntarily entered into. That said, it is only a proposed rule and I am still reviewing all comments from all stakeholders and retain an open mind as to what the final version of the rule might look like.

Question 3. The Commission’s proposed rulemaking has been justified by advocates on grounds that legally binding corrective action plans (CAPs) will ensure parties adhere to the terms of the plan. Others have described this proposal as “a rule in search of a problem,” arguing that parties usually adhere to the terms of their

agreements. Please provide a detailed accounting of instances where parties have violated the agreed-upon terms of a CAP.

Answer. Although it is true that the overwhelming majority of firms that conduct voluntary recalls in cooperation with the CPSC do so in good faith and live up to the terms of their Corrective Action Plans, from time to time some firms fail to do so. In that respect, one may liken it to firms insisting on entering into binding contracts even with companies they trust and have done business with for years. Notwithstanding the small number of non-cooperators, prudence still dictates that one take protective measures—especially where the lives and limbs of American consumers are involved. In the product safety context, even a small number of non-cooperators may still leave consumers exposed to millions of individual hazardous product units.

The changes in the proposed rule are designed to help address the small number of recalcitrant firms that “slow walk” their agreed upon activities, whether they be with respect to setting up a consumer recall hotline, undertaking education efforts, or fulfilling a repair remedy. Unfortunately, the Commission staff does not maintain a database of “slow walkers.” Moreover, due to the restrictions of confidentiality associated with enforcement activities as well as the information disclosure restrictions of 15 U.S.C. § 2055(b), I would be unable to name these firms even if CPSC staff maintained such a list.

I believe that the proposed rule will change very little, if anything, for the vast majority of firms that engage in voluntary recalls with the Commission. Most firms take their responsibilities very seriously and should generally be unaffected by the rule change.

Finally, it is important to note that this is a proposed rule. In view of the controversial nature of the proposal, I am carefully reviewing all comments from our stakeholders with particular care, and I retain an open mind as to what the final version of the rule might look like.

Question 4. If a party were to violate the terms of a corrective action plan, what resources are currently available to the Commission to affect a recall?

Answer. Under existing CPSC rules, voluntary recall plans cannot be legally binding. See 16 CFR § 1115.20(a) (“A corrective action plan is a document signed by a subject firm. . . which has no legally binding effect.”) Accordingly, the options available to the Commission where a firm fails to live up the terms of a Corrective Action Plan are somewhat limited. Aside from criticism and cajolery, the primary legal alternative for the CPSC would be to file a lawsuit, either in Federal district court for injunctive relief or with an administrative law judge seeking to have a product declared a substantial product hazard. These are resource-intensive, time-consuming actions that do not speed safety for consumers.

Perhaps the most significant remedy available to the Commission would arise if the non-cooperating firm were to engage in the sale, resale, or attempted sale of a product subject to a voluntary recall. In such a case, section 19 of the CPSA, 15 U.S.C. § 2068(a)(2)(B), would permit the agency to seek civil penalties for these acts. However, any other violative activity by a firm, including its failing to repair a product for consumers or fulfilling its commitment to remove a product from the stream of commerce is not a term of an agreement that the Commission can currently enforce as part of a voluntary recall action plan.

Question 5. Serious concerns have been raised about the legal basis for the Voluntary Recall Rule, with two important substantive changes being a requirement that *voluntary* recalls be made legally binding and empowering staff to require compliance program elements within a corrective action plan. What legal authority has Congress given the CPSC to make *voluntary* recalls legally binding? I am not aware of any.

Answer. If a firm chooses to enter into a binding Corrective Action Plan with the Commission, the decision to do so is a voluntary act. This is no different from any other contract that millions of parties voluntarily enter into. Section 27(g) of the CPSA, 15 U.S.C. § 2076(g), specifically authorizes the Commission “to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized by this Act.”

That said, I again note that this is a proposed rule. I am carefully reviewing all comments from all stakeholders and retain an open mind as to what the final version of the rule might look like.

Question 6. What legal authority has Congress given the CPSC to impose and regulate internal compliance programs in *voluntary* recall agreements?

Answer. If a firm chooses to enter into a binding agreement with the Commission, the decision to do so is a voluntary act.

Question 7. I understand that a recent revision to the monthly report that companies undertaking voluntary recalls file with the CPSC added without notice or explanation a new requirement for such companies to monitor resale or auction sites. As Acting Chairman, were you aware of the new requirements as they were being developed?

Answer. Since becoming Acting Chairman on December 1, 2013, I have received regular briefings from our Compliance staff. Shortly before a public announcement regarding the new form, I learned of the desire by CPSC staff to update our online “CPSC Monthly Progress Report for Recalls” to include the existence of, and importance of, electronic media and retailers.

Question 8. What authority does the commission have to require companies to monitor sites where products they no longer own or control are being resold?

Answer. As I understand it, when a firm enters into a voluntary agreement to conduct a recall in cooperation with the CPSC, the agency has always requested that firms work with the third-party sellers of their product to ensure that the recall is effective. This could include both “brick and mortar” retailers as well as online sellers of products. Regardless of whether an individual Corrective Action Plan includes an agreement for a recalling firm to monitor sites where their product is sold, the CPSC has always encouraged recalling firms to do so. The updated “CPSC Monthly Progress Report for Recalls” simply provides an easier way for firms to document what they have found, if they have found anything.

Question 9. Will companies be required to monitor third-party websites where products they no longer own or control are being resold even if such activity is not included in a corrective action plan?

Answer. As I understand it, the Commission has always encouraged firms to monitor the sales of their products wherever they are sold.

Question 10. Isn't the commission responsible for ensuring that resale and auctions sites are not selling the affected product?

Answer. Once a voluntary recall has been conducted with a firm, CPSC staff will monitor the marketplace for the sale, or resale, of any recalled product—acts that constitute a violation of the Consumer Product Safety Act. When we find such sales, or resales, we work to address the issue. Currently CPSC is monitoring more than 400 previous recalls. With jurisdiction over as many as 15,000 different product categories, in the interest of consumer safety, the Commission has also looked to its partners in the consumer product community, particularly industry, to assist in monitoring the sale, or resale, of products they have voluntarily recalled.

Question 11. How practically are thousands of companies, particularly smaller businesses, to undertake monitoring of third-party websites where products such companies no longer own or control are being resold and what are such companies supposed to do if they find a product that has been recalled is being resold?

Answer. Given the Commission's extremely limited resources, we certainly understand the challenges facing small businesses in monitoring the marketplace. Businesses often do so for reasons of competitiveness, patent protection, and brand loyalty. I hope that a company discovering the sale of its recalled products would notify both those engaged in such illegal and dangerous behavior and the staff of the Consumer Product Safety Commission.

Question 12. Will companies engaged in voluntary recall be liable for the actions of third-party websites?

Answer. It is difficult to answer categorically questions that may be very fact specific and involve issues of contract agreements, legal interpretation, and enforcement discretion, but, generally speaking, recalling firms are not likely to be held liable for the actions of third-party websites over whom they have no legal or other relationship. That said, in the interest of consumer safety, the Commission has always looked to its partners in the consumer product community to assist in monitoring the sale, or resale, of products they have voluntarily recalled.

Question 13. Is it your view that a recalling company is legally responsible for the actions of third parties?

Answer. It is difficult to answer categorically questions that may be very fact specific and involve issues of contract agreements, legal interpretation, and enforcement discretion, but, generally speaking, recalling firms are not likely to be held legally responsible for the actions of third parties over whom they have no legal or other relationship. That said, in the interest of consumer safety, the Commission has always looked to its partners in the consumer product community to assist in monitoring the sale, or resale, of products they have voluntarily recalled.

Question 14. Is it the intent of the CPSC to require companies engaged in a voluntary recall to monitor third-party websites?

Answer. It is my understanding that the CPSC, in the interest of consumer safety, has always encouraged recalling firms to monitor the potential sales, or resale, of products they have voluntarily recalled, regardless of where the sale, or resale, may occur. In 2014, a large percentage of consumer sales of all products, including many non-consumer products, take place online. The Commission has always looked to its partners in the consumer product community to assist in monitoring the sale, or resale, of products they have voluntarily recalled, and is likely to continue to do so.

Question 15. Why was this new requirement for companies undertaking voluntary recalls to monitor resale or auction sites not part of your proposed voluntary corrective action rule?

Answer. The Commission's request, in the interest of consumer safety, for recalling firms to monitor the sale, or resale, of its products wherever that sale, or resale, may take place is not new and is not a requirement for all firms. When a firm enters into a voluntary agreement to conduct a recall in cooperation with the CPSC, the agency has always requested that firms work with all third-party sellers of their product to ensure that the recall is effective. This could include both "brick and mortar" retailers as well as online sellers of products. Regardless of whether an individual Corrective Action Plan includes an agreement for a recalling firm to monitor sites where their product is sold, the CPSC has always encouraged recalling firms to do so. The updated "CPSC Monthly Progress Report for Recalls" simply provides an easier way for firms to document what they have found, if they have found anything.

That said, I again note that this is a proposed rule. I am carefully reviewing all comments from all stakeholders and retain an open mind as to what the final version of the rule might look like.

Question 16. The CPSC recently proposed a rule that would expand staff's role on voluntary standards setting bodies. Among the proposed changes, CPSC staff could participate as voting members of a voluntary standard development group. As a commissioner, how do you view the agency's role in the voluntary standards setting process?

Answer. The rule to which you refer grew out of a report from May 2012 by the U.S. Government Accounting Office (GAO), "Consumer Product Safety Commission: A More Active Role in Voluntary Standards Development Should be Considered." (See <http://www.gao.gov/assets/600/590990.pdf>.)

The GAO Report recommended that the Commission review its policy for staff participation in voluntary standards development activities and determine the feasibility of the agency's staff assuming a more active role in developing voluntary standards. Specifically, the GAO Report recommended that CPSC staff be allowed—not required—in appropriate cases to vote on balloted provisions of voluntary standards. The Report also suggested that staff be allowed to hold leadership positions at various levels of standards development organizations, including task groups, subcommittees, or committees. GAO concluded that changing the CPSC's regulations to allow staff to participate more actively in voluntary standards activities could result in stronger voluntary standards without compromising the CPSC's or the voluntary standards groups' independence.

As a result of this GAO Report, Commission staff proposed conforming amendments to 16 CFR 1031, the Commission's regulation on participation in voluntary standards activities. These amendments followed GAO's recommendations to allow staff, on an optional basis, to vote on voluntary standard's or take a leadership role on voluntary standards group committees.

The proposed rule noted that such activity might result in a more effective voluntary standards process and accelerate standards development and implementation. Further, such participation could gain CPSC staff greater access to and familiarity with the latest technologies, and would provide an opportunity for staff to help establish standards to advance CPSC's safety goals. In addition, "full" Federal Government participation in standards development increases the likelihood that the standards can meet both public and private sector needs. 141 Cong. Rec. H14334 (daily ed. December 12, 1995) (Statement of Rep. Morella). A single standard that satisfies both industry and the CPSC would benefit both by simplifying applicable requirements—only a single set of standards would apply.

Finally, optional staff participation in voluntary standards development groups by voting and taking leadership roles would be consistent with the guidance reflected in OMB Circular A-119 Revised, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" (February 10, 1998). Among other things, OMB Circular A-119 encourages agency representatives serving as members of voluntary consensus standards bodies to "participate actively and on an equal basis with other members," and to "vote . . .

at each stage of the standards development process unless prohibited from doing so by law of their agencies.”

The role voluntary standards play in the safety of American consumers, and the ability of the CPSC to do its job cannot be overemphasized. I have long believed that we must work in concert with the voluntary standards organizations to help those organizations create the best standards they can. This is why I am so delighted by the progress I have seen in the voluntary standards community over the past forty years. Groups such as ASTM, ANSI, and UL have dramatically improved their technical skills, their efficiency in drafting standards, their openness and transparency, and their outreach to all stakeholders. I’m pleased to see CPSC work so closely with these groups, and I have little doubt that our partnership with them will only grow and deepen in the years to come in the interest of better standards for consumers and product manufacturers alike. That said, it is only a proposed rule and I am still reviewing all comments from all stakeholders and retain an open mind as to what the final version of the rule might look like.

Question 17. The statute is very clear in stressing the importance of relying on industry-developed voluntary standards. How do we ensure that the Commission would not turn the standards development process into a de facto mandatory rule-making by demanding standards that might not be fully supported by the industry?

Answer. I see no indication that the proposed rule would turn the voluntary standards development process into de facto mandatory rulemaking. I believe that CPSC involvement, especially by highly skilled and knowledgeable technical staff, often helps improve the quality of voluntary standards. Additionally, CPSC staff participation in the standards process does not automatically mean that the standards body will adopt CPSC staff’s view or that the Commission will adopt the resulting voluntary standard. I appreciate your concern and will be sure to pay particular attention to this issue when the final rule is presented to the Commission. I continue to review all the comments from all stakeholders of the proposed rule and retain an open mind as to what the final version of the rule might look like.

Question 18. If CPSC staff takes a leadership role, or even simply votes in support of a voluntary standards, isn’t that an endorsement standard?

Answer. Because of the disclaimers required of Commission staff in the proposed rule, including that CPSC staff participation in the standards process does not automatically mean that the Commission will adopt the resulting voluntary standard, I see no indication that the proposed rule’s approach to staff involvement would suggest the Commission has officially endorsed a particular standard. The law is fairly clear regarding CPSC’s approach to voluntary standards. If the Commission, in the course developing a mandatory standard determines that an existing voluntary standard adequately addresses a risk of injury and is substantially complied with, the Commission must stop its work and defer to the voluntary standard. Nothing in this proposed rule changes that.

I appreciate your concern and will be sure to pay particular attention to this issue when the final rule is presented to the Commission. I continue to review all the comments from all stakeholders of the proposed rule and retain an open mind as to what the final version of the rule might look like.

Question 19. The Consumer Product Safety Commission sits at the intersection of science and consumer protection. It has come to the Committee’s attention that there is an important distinction between scientific reviews conducted in other countries, such as the E.U., versus the scientific standards that we apply in the United States. As you know, U.S. agencies apply the “reasonable risk” assessment that the CPSC must apply based on the legal standards, criteria and guidelines under the Federal Hazardous Advisory Act (FHSA) for conducting risk assessments and determining what factors to consider in those evaluations.

Specifically, the FHSA identifies safety factors, and mandates their application, in order to meet the ‘banned hazardous substance’ criteria. This is done by calculating the “acceptable daily intake” from the No Observed Adverse Effect Level (NOAEL) and the Low Observed Adverse Effect Level (LOAEL) to determine acceptable risk for developmental/reproductive toxicants. The U.S. standard provides a higher degree of safety than the current European regulatory system, which is skewed to implement a precautionary approach towards regulation that focuses primarily on a potential hazard and does not apply the same degree of risk assessment criteria in considering the actual use of the chemical.

How will you ensure that the CPSC strictly follows U.S. safety standards as defined by the FHSA and is not influenced by standards, such as the precautionary approach, outside the jurisdiction of the CPSC and the U.S. regulatory system?

Answer. My duty is to uphold and enforce the laws and regulations that apply to the CPSC, and if re-confirmed, I look forward to doing so.

Question 20. Would you support greater use of stakeholder working groups and requests for information as the CPSC examines ways to improve the effectiveness of its programs?

Answer. Yes, with a caveat. One must keep in mind that stakeholder groups can easily fall within the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, §§ 1–16, which brings an array of procedural requirements and high costs for agencies. Many years ago, Congress abolished the three advisory committees administered by the CPSC because of the enormous costs they imposed on our resource-strapped agency.

That said, I have always been a strong advocate for the involvement of all CPSC stakeholders from large manufacturers and retailers to small businesses and inventors, to consumer advocates and individual members of the public. Since becoming a Commissioner, I have had an open door policy to all stakeholders and have sought to honor every request to meet with me. Further, I have always believed in reading every comment that is submitted to the agency on an issue that will come before me as a Commissioner. If re-confirmed, I look forward to finding more ways to improve the effectiveness of our feedback mechanisms with all of our stakeholder groups.

Question 21. The digital age provides new opportunities for more direct contact to consumers for distributing important information and education. How important are public/private partnerships in the strategies for outreach to consumers?

Answer. Very important. The CPSC is a small agency with a very large safety mandate. In order to inform and educate the public, the CPSC often relies on our non-governmental partners in the private sector and the not-for-profit sector to help us amplify our outreach. Whether through the use of social media, media interviews, or in-store messaging, CPSC has a rich history of collaborating with associations and companies on campaigns such as safe sleep for babies, drowning prevention, poison prevention, and window blind safety, to name only a few. A number of companies and organizations have effectively used social media platforms to inform their customers and constituents of product hazards. Because of the significant positive results for consumers that often come from these relationships, it is my hope that CPSC will continue to explore opportunities to work with industry and other groups on information and education campaigns.

Question 22. How can the CPSC engage and utilize the private sector in furthering its mission?

Answer. It is my hope that CPSC can continue to explore opportunities to conduct social media dialogues such as Twitter chats, participate in webinars, speak and exhibit at industry conferences, produce videos, and use the Neighborhood Safety Network to build on our progress in collaborating with the private sector to save lives, prevent injuries, and advance the cause of product safety.

In addition, almost every voluntary standards committee in which the Commission participates is made up, in part, of members from the private sector. The role voluntary standards play in the safety of American consumers, and the ability of the CPSC to do its job cannot be emphasized enough. I have long believed that we must work in concert with the voluntary standards organizations to help those organizations create the best standards they can. This is why I am so delighted by the tremendous progress I have seen in the voluntary standards community over the past forty years. Groups such as ASTM, ANSI, and UL have dramatically improved their technical skills, their efficiency in drafting standards, their openness and transparency, and their outreach to all stakeholders—especially consumers—affected by their work. I'm pleased to see CPSC work so closely with these groups, and I have little doubt that our partnership with them will only grow and deepen in the years to come in the interest of better standards for consumers and product manufacturers alike.

Question 23. How would you handle situations when consumers are being injured by using products incorrectly or contrary to label instructions, and what role would the CPSC play in such situations?

Answer. At the outset, let me say that every accident involves three factors: the product, the consumer, and the surrounding environment. Depending on the circumstances, it is often hard to pin down precisely what role each factor plays in an accident. That is why the Commission employs an extensive epidemiological and human factors staff to assist us in our approach to protecting consumers. I find it hard to generalize about the cause of some injuries by pointing to consumers' ignoring label instructions if the labels warn of hazards that consumers should not expect to exist. For example, the Commission entered into a civil penalty agreement with a manufacturer of infant flotation seats that failed without warning, plunging young children into water over their heads. The manufacturer had a warning label that

parents should not leave children unattended in pools with the flotation device. That, however, did not address the fact that the seats were defective and failed without warning, placing infants in life-threatening situations.

That said, the Commission has a group of talented technical experts who often provide advice and guidance to outside groups regarding the efficacy of their warning labels. I believe that the market is a better informed, safer arena because of CPSC staff's technical input, and, if reconfirmed, I will continue to support their efforts.

