

**OVERSIGHT OF THE
CONSUMER PRODUCT SAFETY COMMISSION**

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION,
PRODUCT SAFETY, INSURANCE,
AND DATA SECURITY

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

—————
JUNE 17, 2015
—————

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



U.S. GOVERNMENT PUBLISHING OFFICE

98-757 PDF

WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

JOHN THUNE, South Dakota, *Chairman*

ROGER F. WICKER, Mississippi	BILL NELSON, Florida, <i>Ranking</i>
ROY BLUNT, Missouri	MARIA CANTWELL, Washington
MARCO RUBIO, Florida	CLAIRE McCASKILL, Missouri
KELLY AYOTTE, New Hampshire	AMY KLOBUCHAR, Minnesota
TED CRUZ, Texas	RICHARD BLUMENTHAL, Connecticut
DEB FISCHER, Nebraska	BRIAN SCHATZ, Hawaii
JERRY MORAN, Kansas	EDWARD MARKEY, Massachusetts
DAN SULLIVAN, Alaska	CORY BOOKER, New Jersey
RON JOHNSON, Wisconsin	TOM UDALL, New Mexico
DEAN HELLER, Nevada	JOE MANCHIN III, West Virginia
CORY GARDNER, Colorado	GARY PETERS, Michigan
STEVE DAINES, Montana	

DAVID SCHWIETERT, *Staff Director*

NICK ROSSI, *Deputy Staff Director*

REBECCA SEIDEL, *General Counsel*

JASON VAN BEEK, *Deputy General Counsel*

KIM LIPSKY, *Democratic Staff Director*

CHRIS DAY, *Democratic Deputy Staff Director*

CLINT ODOM, *Democratic General Counsel and Policy Director*

SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT SAFETY,
INSURANCE, AND DATA SECURITY

JERRY MORAN, Kansas, <i>Chairman</i>	RICHARD BLUMENTHAL, Connecticut, <i>Ranking</i>
ROY BLUNT, Missouri	CLAIRE McCASKILL, Missouri
TED CRUZ, Texas	AMY KLOBUCHAR, Minnesota
DEB FISCHER, Nebraska	EDWARD MARKEY, Massachusetts
DEAN HELLER, Nevada	CORY BOOKER, New Jersey
CORY GARDNER, Colorado	TOM UDALL, New Mexico
STEVE DAINES, Montana	

CONTENTS

	Page
Hearing held on June 17, 2015	1
Statement of Senator Moran	1
Statement of Senator Blumenthal	3
Article dated April 30, 2015 from <i>WSB-TV/Channel 2 Action News—Atlanta</i> , entitled “CPSC no longer stands by safety of artificial turf” by Rachel Stockman	48
Statement of Senator Daines	32
Statement of Senator Heller	34
Statement of Senator Booker	37
Statement of Senator Udall	39
Statement of Senator Markey	41
Statement of Senator Klobuchar	43
Statement of Senator Nelson	45

WITNESSES

Hon. Elliot F. Kaye, Chairman, U.S. Consumer Product Safety Commission	4
Prepared statement	6
Hon. Robert S. Adler, Commissioner, U.S. Consumer Product Safety Commission	8
Prepared statement	9
Hon. Ann Marie Buerkle, Commissioner, U.S. Consumer Product Safety Commission	11
Prepared statement	12
Hon. Joseph P. Mohorovic, Commissioner, U.S. Consumer Product Safety Commission	15
Prepared statement	16
Hon. Marietta S. Robinson, Commissioner, U.S. Consumer Product Safety Commission	19
Prepared statement	20

APPENDIX

Letter dated June 19, 2015 to Chairman Jerry Moran and Hon. Richard Blumenthal from Stuart Gosswein, Sr. Director, Federal Government Affairs, Specialty Equipment Market Association (SEMA)	55
Letter dated July 27, 2015 to Hon. Bill Nelson from John Addington, Portable Generator Manufacturers’ Association (PGMA)	56
Response to written questions submitted to Hon. Elliot F. Kaye by:	
Hon. John Thune	58
Hon. Jerry Moran	67
Hon. Deb Fischer	72
Hon. Amy Klobuchar	73
Hon. Joe Manchin	75
Response to written questions submitted to Hon. Robert S. Adler by:	
Hon. Amy Klobuchar	75
Hon. Joe Manchin	76
Response to written questions submitted to Hon. Ann Marie Buerkle by:	
Hon. Jerry Moran	77
Hon. Deb Fischer	77
Hon. Amy Klobuchar	78
Hon. Joe Manchin	78

IV

	Page
Response to written questions submitted to Hon. Joseph P. Mohorovic by:	
Hon. Amy Klobuchar	79
Hon. Tom Udall	79
Hon. Joe Manchin	80
Response to written questions submitted to Hon. Marietta S. Robinson by:	
Hon. Amy Klobuchar	80
Hon. Joe Manchin	81
Hon. Tom Udall	82

OVERSIGHT OF THE CONSUMER PRODUCT SAFETY COMMISSION

WEDNESDAY, JUNE 17, 2015

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT
SAFETY, INSURANCE, AND DATA SECURITY,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:02 a.m. in room SR-253, Russell Senate Office Building, Hon. Jerry Moran, Chairman of the Subcommittee, presiding.

Present: Senators Moran [presiding], Heller, Daines, Blumenthal, Booker, Udall, Markey, Klobuchar, and Nelson.

OPENING STATEMENT OF HON. JERRY MORAN, U.S. SENATOR FROM KANSAS

Senator MORAN. I call our Subcommittee hearing to order, and welcome our witnesses and our guests and my colleagues here on the panel.

This is one of what I think will be a series of hearings over a period of time in which we examine consumer protection and other issues within the Subcommittee's jurisdiction, and I am particularly pleased to welcome all the members of the Consumer Product Safety Commission, including Chairman Elliot Kaye, Commissioner Bob Adler, Commissioner Buerkle, Commissioner Mohorovic, and Commissioner Robinson.

I just visited with them moments ago and they all seem to be smiling, and I am going to work on developing a reputation in which they are fearful of being here instead of so happy.

Actually, I look forward to developing a good, close working relationship with you as we pursue the goal of making certain to the degree that we can consumers are safer with the products they buy in the United States.

I think Senator Blumenthal would agree that protecting Americans from harmful produce is a top priority for our subcommittee. This is a significant part of our jurisdiction, and we will take this task seriously.

This hearing will examine the Commission's 2016 performance budget request, its current rulemaking agenda, and issues identified in recent reports by the CPSC Inspector General.

This agency is a small but in many ways very powerful agency with influence felt across our economy. It touches in one way or another over 15,000 product categories and is trusted with prioritizing

zing and addressing the most significant threats to consumer safety.

I want to hear from the Commission about their critical issues and priorities, and hopefully discuss issues of user fee authority and cybersecurity as they relate to the agency's budget in Fiscal Year 2016.

I also serve as a member of the Appropriations Subcommittee on FSGG, including your agency, and part of what I learn today will be useful as we develop budget and appropriation issues in regard to CPSC.

I have heard in my new role as this subcommittee chair a wide range of conversations with importers, with manufacturers, with retailers, consumer advocacy groups, all the stakeholders who care about consumer safety and many issues on your rulemaking agenda.

I am pleased to hear that in many instances there has been productive dialogue between stakeholders and the agency and real progress demonstrated in improving consumer safety. In fact, the majority of work undertaken by the Commission is accomplished through consensus of the five Commissioners.

Some of the agency's work, however, is more controversial, particularly where proposed Commission activity is not, in everyone's opinion, supported by sound data, stakeholder engagement, or would create additional burdens without corresponding safety benefits.

On May 20, 2015, the full Senate Commerce Committee passed S. 1040, the ROV In-Depth Examination Act of 2015, known as "RIDE." This was bipartisan legislation introduced by many of my colleagues on the Commerce Committee. This bill would postpone the Commission's proposed rulemaking on recreational off-highway vehicles until further study on the rule's safety effects is completed by the National Academy of Sciences.

I have supported this legislation but I commend the agency for what I understand has been meaningful and positive conversations with interested parties toward a workable solution since the Committee's passage of that bill a month ago.

With regard to other open agenda items before the CPSC, I would appreciate an update on the status of revisions to the voluntary recall and 6(b) rules, as well as additional insight from the agency on how it is administering the increased penalties authorized by Congress under the Consumer Product Safety Improvement Act.

Furthermore, I am interested in exploring the agency's approach to rulemaking on phthalates. I believe in order for this subcommittee to properly oversee the agency, a good place to start is to examine whether the agency is using current data and sound scientific methodology to complete its mission.

Unfortunately, work in this area has stalled, and in part because the Commission was prepared in my view to complete its rulemaking based on outdated datasets.

I am happy to hear the Commission's staff is now evaluating the correct data, which reflects current exposure levels to plasticizers, and the Commission has agreed to allow the public an additional opportunity to provide comments on its new results.

I would note that on Monday of this week I received a formal response from Chairman Kaye, which I very much appreciate, concerning issues raised on this matter. I appreciate your response and look forward to discussing the contents of your letter today.

We share a common goal of protecting consumers and doing what we can to prevent tragic injuries and fatalities from consumer products. The Consumer Product Safety Commission led by the five Commissioners before us this morning has a challenging but essential task of protecting the American public against unreasonable risks of injuries from consumer products, and I thank you all for your service.

I would turn to the Ranking Member.

**STATEMENT OF HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thanks, Mr. Chairman, and thank you for having this hearing on an issue of paramount importance. In fact, I would venture to say nothing is more important than consumer protection and the work that you do. Consumer protection should be, has been, and will be a bipartisan issue. I think it brings us together on a bipartisan basis because of its effect on families.

The Consumer Product Safety Commission is a small agency with an even smaller budget charged with work that matters in the daily lives of countless American families.

It is responsible for ensuring the safety of over 15,000 kinds of product categories. It oversees products that touch all of our lives, and new products that I hope we may be able to explore, new products like laundry detergents in pods that can be swallowed by children, liquid nicotine, which would have been unthinkable just a few years ago, other kinds of products that involve window coverings that have new impacts on children's lives, and artificial turf, the ability for turf fields to become hot, endangering lives, sources of friction, even cancer, things that should concern us deeply.

This is the first time this year the World Cup is being played on artificial turf. When the tournament kicked off two weekends ago, the playing surface was reportedly 120 degrees despite the 75 degree weather. That may not be a problem for the athletes in that context, but for young teenagers playing on artificial turf on high school fields around the country, it might well be.

According to the most recent report released just yesterday, there are now 153 cancer cases involving athletes who have played for a number of years on synthetic turf, 124 of these are soccer players, and 85 of them are soccer goalies.

I will be speaking about that issue more in the course of this hearing but only to illustrate that the challenges are changing, they are evolving, they require new funding in my view and new expertise on the part of the agency.

These challenges are of absolutely critical importance to the health and safety of our nation, and millions of mostly imported toys and children's products had to be pulled from store shelves because they contained lead paint and potentially ingestible magnets.

Despite new challenges, there are the old ones as well. Lead paint. Who would have thought that now years after lead paint

was first found to be a problem for children, we would still be talking about it as a potential danger to our children.

I believe strongly that we need a stronger system of surveillance at our borders. I hope we will talk about that a bit. I know it is a concern of all of you. The CPSC staff now works onsite at ports, along side Customs and Border Patrol to test and make sure products that do not meet U.S. standards will not make it to the shelves of American consumers in the first place.

This pilot program is currently operating at fewer than five percent of United States' ports, but even then with this limited pilot program, the program has already generated enormous public health and safety benefits in the first half of 2013, six million violate or potentially hazardous consumer products were stopped from entering commerce, almost 40 times the number of units identified by the CPSC in 2007, before this measure was enacted.

I look forward to hearing more about the success of this program and others. Through the work of this subcommittee, I am very hopeful that we can make progress together on making consumers healthier and safer throughout the United States.

Thanks, Mr. Chairman.

Senator MORAN. Thank you, Senator Blumenthal. You are my favorite Ranking Member, despite you telling some other Chairman he was your favorite Chairman.

[Laughter.]

Senator BLUMENTHAL. Do I have a right to remain silent?

Senator MORAN. I may invoke that clause later.

We welcome the Commission. Mr. Chairman, please begin your testimony.

**STATEMENT OF HON. ELLIOT F. KAYE, CHAIRMAN,
U.S. CONSUMER PRODUCT SAFETY COMMISSION**

Mr. KAYE. Good morning, Chairman Moran, Ranking Member Blumenthal, and the members of the Subcommittee. Thank you for the invitation to come speak about the work of the United States Consumer Product Safety Commission and our proposed budget for Fiscal Year 2016.

I am pleased to be joined today by my friends and colleagues from the Commission, Commissioners Adler, Buerkle, Mohorovic, and Robinson, and we would like to believe we are close, but this is probably about as close as we have all ever been.

I am honored to work with my fellow Commissioners and the CPSC staff. CPSC's vital health and safety mission touches all of us in some way each and every day, from the parent of a baby who gently moves his or her child throughout the day from crib to baby bouncer to stroller and back again to crib, or the self-employed millennial who on a warm spring day relies on a room fan to stay cool and an extension cord to power a computer, to the baby boomer who purchased adult bed rails to help care for an aging parent who needed to move in, the products in CPSC's jurisdiction are inseparable from our lives.

We believe we provide an excellent return on investment for the American people. We run a lean operation, especially considering the thousands of different consumer products that are in our juris-

diction, and we cover them all with a budget in the millions, not the billions.

We are very appreciative of the continued bipartisan support for the Commission and our work. We saw this support in the overwhelming, nearly unanimous vote to pass the Consumer Product Safety Improvement Act of 2008, and as well in the near unanimous passage of an update to that Act in 2011.

Your support has allowed our dedicated staff to drive standards development to make children's products safer, to increase our enforcement effectiveness, and to better educate consumers about product-related hazards.

Our staff has also been hard at work trying to reduce the costs associated with third party testing while assuring compliance with the law. Congress' inclusion of \$1 million as part of our funding for this current Fiscal Year has certainly enhanced those efforts.

I have emphasized prioritizing those actions most likely to provide the greatest amount of relief, especially to small businesses. We are set to consider at least three different regulatory changes to provide relief this fiscal year with more in the works, and while that work proceeds, our continuing efforts to carry out and enforce CPSIA-driven enhancements to consumer product safety are reflected in our proposed budget.

Unfortunately, not all of those priorities and requirements are achievable at our current levels. For that reason, we're pleased to see the President include in his budget two important consumer product safety initiatives. Both, if funded, will advance consumer safety and provide real value to those in industry making or importing safe products.

First, we are seeking a permanent funding mechanism to allow the agency to comply with the congressional charge in Section 222 of the CPSIA. Section 222 called on the Commission to work with Customs and Border Protection and develop a risk assessment methodology to identify the consumer products likely to violate any of the Acts we enforce out of all the consumer products imported into the U.S.

To meet our mandate, in 2011, we created a small-scale pilot that has been a success. However, the pilot alone does not fulfill the direction of Congress, and without full implementation, we will not be able to integrate CPSC into the much larger U.S. Government-wide effort to create a single window for import and export filing of all products.

If CPSC can be fully integrated into the single window, we can transform Congress' vision of a national-scope, risk-based, data-driven screening at the ports into a reality, a reality that would mean faster entry for importers of compliant products, especially for trusted traders, and safer products in the hands of American consumers.

Our proposed budget also seeks to address critical emerging health and safety questions associated with the rapidly growing use of nanomaterials in consumer products.

In light of the questions raised in the scientific community about the effect inhalation of nanoparticles has on the lungs, especially those of children, we are seeking funding to significantly advance the state of that science.

Finally, I would like to discuss an additional priority of mine, one that is not reflected in dollars, but to me at least, makes a lot of sense. How we at the CPSC do what we do is often just as important as what we do. Since day one in this position, I have worked daily to try to establish a certain culture among the five of us at the Commission level.

The Commission and more importantly the American public are far better served by an agency where we operate at the Commission level in a culture of civility, collaboration, and constructive dialogue.

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

[The prepared statement of Mr. Kaye follows:]

PREPARED STATEMENT OF HON. ELLIOT F. KAYE, CHAIRMAN,
U.S. CONSUMER PRODUCT SAFETY COMMISSION

Good morning Chairman Moran, Ranking Member Blumenthal and the members of the Subcommittee. Thank you for the invitation to come speak about the work of the United States Consumer Product Safety Commission today. I am pleased to be joined by my friends and colleagues from the Commission: Commissioners Adler, Buerkle, Mohorovic, and Robinson. In addition to a deeply dedicated and hard-working career staff in the Federal Government, we have a special group of talented, passionate and committed Commissioners, and I am honored to work with them at an agency that's mission is to save lives.

CPSC's vital health and safety mission touches us all in some way, each and every day. From the parent of the baby who gently moves his or her child throughout the day from crib, to baby bouncer to stroller and back again to the crib; or the self-employed millennial who, on a warm spring day, relies on a room fan to stay cool and an extension cord to power a computer; to the baby boomer who purchased adult bed rails to help care for an aging parent who needed to move in, the products in CPSC's jurisdiction are inseparable from our lives.

We believe we provide an excellent return on investment for the American people. We run a lean operation, especially considering the thousands of different product categories in our jurisdiction. And we cover them all with a budget in the millions, not the billions.

We are very appreciative of the continued bipartisan support for the Commission and our work. We saw this support in the overwhelming, nearly unanimous vote to pass the Consumer Product Safety Improvement Act of 2008 (CPSIA) and the near unanimous passage of an update to CPSIA in 2011.

Your support has allowed our dedicated staff to drive standards development to make children's products safer, to increase our enforcement effectiveness and to better educate consumers about product-related hazards, especially drowning prevention, poison prevention, safe to sleep and TV/furniture tip-over prevention.

Our staff has also been hard at work trying to reduce costs associated with third-party testing while assuring compliance with all applicable rules, regulations, standards and bans. Congress' inclusion of \$1 million as part of our funding for this current Fiscal Year has enhanced those efforts. Based on that funding, the Commission unanimously approved an amendment I offered to our operating plan to allocate that money toward a robust set of projects aimed at providing more carve-outs of materials that would not have to be third-party tested because they will not, nor would they ever likely, contain violative levels of lead, other heavy metals or phthalates.

We chose this approach in response to overwhelming feedback we received as a result of our sustained engagement with the stakeholders. I have emphasized prioritizing those actions most likely to provide the greatest amount of relief, especially to small businesses.

This is why, when I became Chairman, I detailed to my office one of our leading toxicologists at the agency to drive this work. The Commission is set to consider at least three different regulatory changes to provide relief this year with more in the works.

While the burden reduction/assure compliance work proceeds, our continuing efforts to carry out and enforce CPSIA-driven enhancements to consumer product

safety are reflected in our proposed budget. Unfortunately, not all of those priorities and requirements are achievable at our current appropriation levels. For that reason, we were pleased to see the President include in his budget two important consumer product safety initiatives. Both initiatives, if funded, will advance consumer safety and provide real value to those in industry making or importing safe products.

First, we are seeking a permanent funding mechanism to allow the agency to comply with the Congressional charge in Section 222 of the CPSIA. Section 222 called on the Commission to work with Customs and Border Protection and develop a Risk Assessment Methodology to identify the consumer products likely to violate any of the acts we enforce out of all consumer products imported into the United States. To provide some context, last year we estimate there were \$741 billion worth of consumer products imported into the US.

To meet our mandate, in 2011, we created a small-scale pilot that has been a success. However, the pilot alone does not fulfill the direction of Congress and without full implementation, we will not be able to integrate CPSC into the much larger U.S. Government-wide effort to create a “Single Window” for import and export filing of all products. If CPSC can be fully integrated into the Single Window, we can transform Congress’ vision of a national-scope, risk-based, data-driven screening at the ports into a reality—a reality that would mean faster entry for importers of compliant products, especially for trusted traders, and safer products in the hands of American consumers.

Our proposed budget also seeks to address critical emerging health and safety questions associated with the rapidly growing use of nanomaterials in consumer products. These materials offer many benefits. However, while the Federal Government has invested billions of dollars into driving research into the expansion of the use of nanomaterials, there has been a significant lag in assessing possible health effects of human exposure to nanomaterials in consumer products, especially to vulnerable populations such as our children. In light of the questions raised in the scientific community about the effect inhalation of certain nanoparticles might have on human lungs—concerns that center on identified similarities to asbestos exposure—we are proposing to significantly advance the state of the science as it relates to human exposure from nanomaterials in consumer products. In the absence of CPSC driving this work as it relates to consumer products, it will not be done by any other Federal agency. All involved—companies already using the nanomaterials in the products they make, and parents whose children are already using those products—deserve to know sooner rather than later the answers to the health questions posed.

Our nanotechnology request is modeled on collaboration, including with industry. As Chairman, I have sought to enhance significantly our working relationship with our stakeholder community. One example of our success in this area was the recent decision of the Recreational Off-Highway Vehicle (“ROV”) industry to reopen its voluntary standard for ROVs to provide the appropriate forum for a productive dialogue with the agency staff to improve substantially the ROV standard. We remain open to working with all willing collaborators to address safety issues in a mutually-acceptable manner.

Finally, I would like to discuss an additional priority of mine, one that is not reflected in dollars but, to me at least, makes a lot of sense. How we at the CPSC do what we do is often just as important as what we do. Since day one in this position, I have worked daily to try to establish a certain culture among the five of us at the Commission level. The Commission, and more importantly the American public, are far better served by an agency where we operate at the Commission level in a culture of civility, collaboration and constructive dialogue. Of course, for this to happen, it requires a commitment by all five of us. I am pleased to say that I believe any observer of our public meetings would agree such a positive and productive culture exists at the CPSC. There is no doubt we have policy differences, but we discuss them with respect and stay focused on merit-based policymaking.

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

Senator MORAN. Chairman, thank you very much. Commissioner Adler? Welcome.

**STATEMENT OF HON. ROBERT S. ADLER, COMMISSIONER,
U.S. CONSUMER PRODUCT SAFETY COMMISSION**

Mr. ADLER. Good morning, Chairman Moran, Ranking Member Blumenthal, and the members of the Subcommittee. Thank you so much for the opportunity to appear along with my fellow Commissioners today. I am pleased to be here to testify about an agency that I have been associated with in some fashion since its establishment over 40 years ago.

At the outset, I would point out as both Senator Blumenthal and Senator Moran noted, we are far and away the smallest Federal health and safety agency with a current funding level of \$123 million and a staff of roughly 560 FTEs.

I want to put our budget in perspective. I note that for Fiscal Year 2016, we have asked for an appropriation of \$129 million, which is an increase of roughly \$6 million. By way of comparison, our sister agency, FDA, has asked for roughly \$4.9 billion in Fiscal Year 2016, with an increase sought of \$148 million. To put it more succinctly, FDA has asked for an increase that is larger than our entire budget.

Notwithstanding this modest budget, our jurisdictional scope as noted is extremely wide, encompassing roughly 15,000 categories of consumer products that are found in homes, stores, schools, and recreational settings. Given this broad jurisdiction, the agency has adopted a thoughtful data-based approach using its highly skilled technical staff to figure out which products present the greatest risks, and we address them using our regulatory and educational tools in a way designed to minimize market disruption while always making consumer safety our top priority.

We do not operate alone when it comes to product safety. We have always sought to make our various stakeholders partners in our quest to reduce or eliminate unreasonable risk. Included in this group are our friends in the business and consumer communities, as well as the various standards development bodies that work closely with the agency.

While I would note that much remains to be done, I would point out that an enormous amount has been accomplished. For example, there has been an estimated 30 percent decline in the rate of deaths and injuries associated with consumer products over the last 40 years.

I particularly note the dramatic drop in deaths and injuries to children. We have seen an 83 percent drop in childhood poisoning. We have seen a 73 percent drop in crib deaths. We have seen an 86 percent reduction in baby walker injuries and an almost complete elimination of childhood suffocations in refrigerators.

I would also like to mention the tremendous strides the Commission has taken to implement the Consumer Product Safety Act, which as Chairman Kaye noted, was passed almost unanimously by both houses of Congress and signed by President Bush in 2008.

Among the many actions taken by the agency, 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. We have made mandatory a comprehensive voluntary toy standard, ASTM F963, and we have written and continued to write

a series of standards for durable infant products like play yards and strollers.

As you may know, the Commission has recently experienced a significant turnover among its members. In fact, you are looking at the last Commissioner standing from 2009. I certainly miss my former colleagues, but I am pleased to welcome as new colleagues Chairman Kaye, Commissioners Robinson, Buerkle, and Mohorovic. They have brought new perspectives and insights that constantly freshen and sharpen my thinking on issues, and they have done so in a way that has brought a new era of civility to the agency.

We certainly disagree vigorously on occasion, but we also listen to and trust one another in ways that I have not seen at this agency for many years.

Finally, Mr. Chairman, I would like to reiterate my concern about a set of issues surrounding a critical demographic that I do not think has received enough attention over the past number of years, senior citizens, a group of which I am a proud member.

CPSC data show the second most vulnerable population after kids is adults over 65, and we are a rapidly growing group due to the aging of the baby boomers and the greater longevity of our citizens.

Here is an interesting statistic. There are more of us in the over 65 age group in the United States than there are citizens in Canada, but what is particularly troubling to me is that seniors, while comprising only 13 percent of the U.S. population, account for 65 percent of consumer product related deaths. By 2030, they, we, will be 20 percent of the U.S. population.

Given my concerns in that brief period when I was acting chairman of the agency, I worked with our staff to create a senior safety initiative at CPSC. This initiative focuses on identifying the products that harm seniors disproportionately and seeking ways to provide extra warnings and protections for older Americans.

As I continue to look for useful approaches to help seniors with product hazards, I hope this committee will take note of this issue and support the Commission's efforts in this regard.

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

[The prepared statement of Mr. Adler follows:]

PREPARED STATEMENT OF HON. ROBERT S. ADLER, COMMISSIONER,
U.S. CONSUMER PRODUCT SAFETY COMMISSION

Good morning Chairman Moran, Ranking Member Blumenthal, and the members of the Subcommittee. Thank you for the opportunity to appear along with my fellow CPSC Commissioners today. I am pleased to be here to testify about an agency that I have been associated with in some fashion since its establishment over forty years ago.

At the outset, I would point out that we are far and away the smallest of the Federal health and safety agencies, with a current funding level of \$123 million and a staff of roughly 560 FTEs. To put our budget in perspective, I note that for FY 2016, we have asked for an appropriation of \$129 million—an increase of roughly \$6 million. By way of comparison, our sister agency, FDA, has asked for roughly \$4.9 billion in FY 2016, an increase of \$148 million. Or to put it more succinctly, FDA has asked for an *increase* that is larger than CPSC's entire budget.

Notwithstanding CPSC's modest budget, our jurisdictional scope is extremely wide, encompassing roughly 15,000 categories of consumer products found in homes, stores, schools and recreational settings. Given this broad jurisdiction, the agency has adopted a thoughtful, data-based approach using its highly-skilled technical

staff to figure out which products present the greatest risk. And, we address them using our regulatory and educational tools in a way designed to minimize market disruption while always making consumer safety our top priority.

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

So, while I would note that much remains to be done, I would also point out that an enormous amount has been accomplished. For example, there has been an estimated 30 percent decline in the rate of deaths and injuries associated with consumer products over the last 40 years. And, I particularly note the dramatic drop in death and injuries to *children*. We have seen:

- An 83 percent drop in childhood poisoning,
- A 73 percent drop in crib deaths,
- An 86 percent reduction in baby walker injuries, and
- An almost complete elimination of childhood suffocations in refrigerators.

Additionally, on a broader front, we have seen improvements such as 92 percent reduction in fatal electrocutions and a 52 percent reduction in residential fire deaths in the past 40 years. By our calculation, this drop in deaths and injuries has resulted in over \$16 billion in reduced societal costs—producing benefits that dramatically outweigh the pennies per citizen cost of operating the CPSC.

I would also like to mention the tremendous strides the agency has taken to implement the Consumer Product Safety Improvement Act (CPSIA) approved by the House on July 30, 2008 by a vote of 424–1 and signed by President Bush on August 14, 2008. Among the actions taken by the agency in enforcing this law:

- 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, which we hope to expand.

As you may know, the Commission has recently experienced a significant turnover among its members. Although I miss my former colleagues, I am pleased to welcome as new colleagues, Chairman Elliot Kaye, and Commissioners Robinson, Buerkle and Mohorovic. Simply put, they are a joy to work with. They have brought new perspectives and insights that have freshened and sharpened my thinking on issues. And, they have done so in a way that has brought a new era of civility to the agency. We certainly disagree—vigorously—on some issues, but we also listen to and trust one another in ways that I have not seen for many years at the agency.

Mr. Chairman, I realize that there are a number of issues that concern you and the other members of the Subcommittee, and I join my colleagues in looking to answer any questions you may have regarding the agency’s activities in the past years. Before doing so, I would like to reiterate my concern about a set of issues surrounding a 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. CPSC data show that the second most vulnerable population after kids is adults over 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, there are more of us in the over-65 age group than there are citizens in Canada. What is particularly troubling to me, however, is that 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.

So, given my concerns, while I was Acting Chairman of the agency, I worked with our staff to create a Senior Safety Initiative at CPSC. This initiative focuses on identifying the products that harm seniors disproportionately and seeking ways to provide extra warnings and protections for older Americans. And, I continue to look for useful approaches to help seniors with product hazards, and I hope that this

committee will take note of this issue and support the Commission's efforts in this regard.

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

Senator MORAN. Thank you very much. Commissioner Buerkle?

**STATEMENT OF HON. ANN MARIE BUERKLE, COMMISSIONER,
U.S. CONSUMER PRODUCT SAFETY COMMISSION**

Ms. BUERKLE. Thank you and good morning, Chairman Moran, Ranking Member Blumenthal, and distinguished members of this committee. Thank you for holding today's hearing on the Consumer Product Safety Commission.

I had the honor of serving in the House of Representatives, and I am very glad to be back on Capitol Hill in my capacity as a commissioner at CPSC.

My full statement exceeds 5 minutes, so I will only touch upon a few highlights. Number one, it is crucial to our mission that CPSC build strong, productive relationships with all stakeholders, especially the regulated community. Inspiring cooperation rather than hostility will yield quicker introduction of safer designs, as well as timely removal of defective products, all of which ultimately benefit the consumer.

That is one reason why I am deeply troubled by the recent pronouncements that the Commission will seek higher civil penalties, make changes to an important program known as the Retailer Reporting Program, as well as the ill considered proposals that would undercut our successful voluntary recall program and 6(b) rules, and last, the constant threat of mandatory standards. Without question, these initiatives undermine any engagement in collaborative efforts.

One of the most important CPSC activities, as has already been mentioned, is import surveillance. While CPSC has improved import surveillance significantly over the last decade, I have concerns about our current direction.

In my judgment, it makes no sense to seek funding for a RAM expansion before we decide what that expansion should include, nor can I go along with the so-called "user fee" that would impose additional costs on imports and our economy without providing any benefit to the user. Such a fee is unfair and of doubtful constitutionality.

I also find it mystifying that we would evaluate the e-filing certificates through a pilot program using virtually the same approach that was criticized when the rule was first promulgated more than a year ago.

One of my highest priorities at the Commission has been to reduce testing burdens faced by manufacturers. I was a member of Congress when we passed Public Law 112-28, which relieved testing burdens directly in several ways, and directed the Commission to find other ways. When I joined the Commission, I was surprised to see how little progress had been made.

At my constant urging, CPSC is taking the matter more seriously. I am grateful to Chairman Thune for his personal attention to this matter and to this entire committee and the Congress for dedicating \$1 million to the effort in CPSC's Fiscal Year 2015 appropriations.

Another significant activity at the Commission is the rulemaking prescribed by CPSIA in Section 108, which relates to the use of phthalates in certain toys and child care articles.

Unfortunately, the Commission did not allow public comment on the science of the CHAP report before formulating and promulgating the proposed regulation. Citing the time table set forth in Section 108, the Commission majority decided it must move ahead despite the known defects of the CHAP report.

Particularly glaring was the CHAP's decision to rely on the exposure data from 2005/2006 and earlier when more recent data was readily available. The CHAP's fundamental mistake of using old data is only one of my concerns that I have with this rulemaking.

I also question banning chemicals based on a cumulative risk assessment to which they contribute little or no risk. I object to banning chemicals in toys when the exposure from toys are dwarfed by exposures in food, cosmetics, and other sources from outside of our jurisdiction, and I oppose banning chemicals that have been in use for many years and whose risks have been studied for a very long time when we know very little about the alternatives that will instead be used.

Another priority before the Commission is window coverings. The reality is this, there are approximately one billion window covering products already in the United States of America. To address this hazard, we need a comprehensive educational campaign. A serious commitment to such a program would do more to save lives than a mandatory standard, which must be limited to newly manufactured products.

As a Federal agency, we are stewards of the American taxpayers' dollars, and we must ensure that the regulations we promulgate are reasonable, balanced, and address a significant safety issue.

The cost of regulation and compliance has been estimated at about \$2 trillion annually in our country, and studies indicate that those costs fall disproportionately on small businesses. While regulation is a necessary function of government, the solutions we seek should be balanced and address a serious problem.

Consumers should be protected from an unreasonable risk while the regulated community is protected from arbitrary government.

The common goal among all of us, Congress, CPSC, industry, and consumers is safety. We are all people. We all have kids and families for whom we want safe products. I have six children and 16 grandchildren, one of whom arrived earlier this week. I do not want dangerous products hurting them or anyone else. However, the United States Government cannot and should not try to create a zero risk society.

I thank you for this time today and I look forward to answering your questions.

[The prepared statement of Ms. Buerkle follows:]

PREPARED STATEMENT OF HON. ANN MARIE BUERKLE, COMMISSIONER,
U.S. CONSUMER PRODUCT SAFETY COMMISSION

Chairman Moran, Ranking Member Blumenthal, and distinguished Members of the Committee: thank you for holding today's hearing on the Consumer Product Safety Commission. I had the honor of serving in the House of Representatives, and I am glad to be back on Capitol Hill in my capacity as a Commissioner at CPSC.

I hope that today's hearing will strengthen our partnership to keep consumers safe from unreasonable risks of injury.

I have been a Commissioner at the agency since July of 2013. Throughout that time, what has continued to impress me is the dedication of CPSC's staff. The mission of safety is taken very seriously. I am also thankful for the tone set by our Chairman and joined by my colleagues. We often differ significantly on matters of policy, but those differences are discussed in a mutually respectful manner.

The regulated community has also impressed me, not only with their eagerness to understand and comply with our regulations, but also with their entrepreneurial drive to innovate and advance safety. It is crucial to our mission that CPSC builds strong, productive relationships with all stakeholders, especially the regulated community. Inspiring cooperation rather than hostility will yield quicker introduction of safer designs as well as more timely removal of defective products, all of which ultimately benefit the consumer. That is one reason why I am deeply troubled by recent pronouncements that the Commission will seek higher civil penalties, changes to an important program known as retailer reporting, and the ill-considered proposals that would undercut our successful voluntary recall program and 6(b) rules. Without question, these initiatives undermine any engagement and collaborative efforts.

Consumer safety is our top priority, but safety can be achieved in a balanced, reasonable way that does not unnecessarily burden the regulated community, deprive consumers of products they prefer, or insert government into the market where it does not belong.

One of the most important CPSC activities is import surveillance. Stopping unsafe products at the ports is a critical strategy—it prevents harm to consumers. Recalls are nowhere near as effective, and they impose much larger costs on everyone involved.

CPSC's import surveillance has improved significantly over the last decade. CPSC has developed a Risk Assessment Methodology (RAM), fulfilling the requirement of Section 222 of the Consumer Product Safety Improvement Act (CPSIA), and is using it to target shipments that pose greater risks. CPSC now has employees who are located fulltime at the busiest ports of entry, and it has field investigators located throughout the Nation who can reach many other ports. CPSC also has developed a strong partnership with Customs and Border Protection (CBP). Just last month, the Commission unanimously agreed to spend \$3 million (available as a result of hiring shortfalls) this Fiscal Year to enhance our in-house control over the existing RAM system.

The President's budget request for FY 2016 seeks authority for CPSC to impose a so-called "user fee" on imported consumer products so it can finance an expansion of the RAM system as well as boost the number of staff working on import surveillance. While import surveillance is an extremely important part of our mission, I do not agree with the current approach. Import safety is a complex issue and its components should be examined individually as well as work together collectively.

First, before any amount of funding is requested, let alone appropriated, the "requirements analysis" that the agency is planning to conduct should be completed. This study is to identify what capabilities an expanded RAM system should have. Until there is a consensus on what is required to expand the RAM, and a timetable to do so, any request for additional funding is premature.

Second, even when we know what is required for an expanded RAM, I do not believe that a user fee is the appropriate way to pay for it. A fee that is not matched by any benefit is unfair and of doubtful constitutionality. In any case, we should think long and hard before imposing even greater costs on American businesses, especially smaller ones.

Another piece of this complex issue is the proposed regulation requiring electronic filing of information documenting compliance with our mandatory standards. That proposal, which the Commission launched in 2013 prior to my arrival, was developed with minimal stakeholder engagement, and drew strenuous opposition. At my urging, CPSC has taken steps to engage the trade community and develop a pilot of an electronic filing program before proceeding with a final rule. While I am pleased to see the efforts at engagement, it was my hope that stakeholder feedback on the proposed rule would guide the development of the pilot. Instead, the pilot currently being discussed retains many features of the proposed rule that met with such opposition in the first place.

I see no reason to be wed to the original proposal. CPSC is an independent agency, so we are not bound by Executive Order 13659 nor is there any statutory requirement for CPSC to move to electronic filing. In my judgment, it would be better to proceed incrementally with a series of smaller pilots rather than a kitchen sink,

try-everything-at-once approach. Let's see if we can operate smoothly in simple cases before adding more complex scenarios.

Moving to electronic filing, streamlining the import process, and enhancing our targeting abilities are all worthy goals, but there are many additional steps that must be taken before we move ahead with a major expansion of our import surveillance system. I want to see us do it right rather than in haste.

One of my highest priorities at the Commission has been to reduce testing burdens faced by manufacturers. I was a Member of Congress when we passed Public Law 112-28, which relieved testing burdens directly in several ways and directed the Commission to find other ways. When I joined the Commission, I was surprised to see how little progress had been made. At my constant urgings, CPSC is taking the matter more seriously. I am grateful to Chairman Thune for his personal attention to this matter and to the entire Congress for dedicating \$1 million to the effort in CPSC's Fiscal Year 2015 appropriation. In April of this year, I sent a memorandum to the leaders of this subcommittee and others describing CPSC's efforts in some detail. Since that time, the Commission has voted to fund another promising research project identified by our Small-Business Ombudsman and the Commission is anticipating a small burden reduction package to come before us this summer. Nevertheless, nearly four years after passage of Public Law No. 112-28, stakeholders have received virtually no relief in response to its mandate. Meanwhile, the promulgation of additional mandatory standards, pursuant to CPSIA section 104, has added to these third-party testing burdens. In addition, the agency has failed to act on the separate statutory mandate to report to Congress on opportunities for burden reduction that require new legal authority. The CPSC staff recommended a substantial opportunity of this sort to the Commission over two years ago, and others have been identified more recently. We should be more engaged with Congress on this issue and many others.

Another significant activity at the Commission is the rulemaking prescribed by CPSIA section 108, which relates to the use of phthalates in certain toys and childcare articles. Congress directed CPSC to begin this process by forming a Chronic Hazard Advisory Panel (CHAP) to develop a scientific report on phthalates and potential substitutes. The CHAP's report was transmitted to the Commission in July 2014. Unfortunately, the Commission did not allow public comment on the science of the CHAP report before formulating and promulgating its proposed regulation. Citing the timetable set forth in section 108, the Commission majority decided it must move ahead despite the known defects in the CHAP's report. Particularly glaring was the CHAP's decision to rely on exposure data from 2005-2006 and earlier when more recent data was readily available. We should always respect Congressional deadlines as much as we possibly can. However, Congress also said that the CHAP should consider "likely exposures" and the "most recent, best available" scientific data. Can anyone imagine us proposing a new standard for ATVs or toys based solely on injury data that is 8 or 9 years old?

I am pleased that the Chairman directed staff to analyze more recent data and strongly believe that analysis, as well as staff's interpretation of how it will impact the final rule, should be available for public comment. It must be emphasized, however, that this approach does not cure the original problem—the decision to forego public comment on the science of the CHAP report before formulating the proposed rule. The CHAP's fundamental mistake of using old data is only one of many concerns that I have with this rulemaking. I question banning chemicals based on a cumulative risk assessment to which they contribute little or no risk. I am troubled by the idea of banning the use of chemicals in toys when the exposures from toys are dwarfed by the exposures in food, cosmetics and other sources outside our jurisdiction. And I am greatly concerned that we have proposed to ban chemicals that have been in use for many years, and whose risks have been studied for a long time, when we know very little about the alternatives that would be needed.

Another priority issue before the Commission is window coverings. I supported the decision to proceed with an Advance Notice of Proposed Rulemaking because I believe CPSC needs to gather more information about these products before we determine how to proceed. I am anxious to understand how the vulnerable populations of individuals with disabilities and senior citizens could be adversely affected by any changes to the functionality and operability of corded window coverings.

The reality is this: There are approximately one billion window covering products already in U.S. households. To address that hazard, we need a comprehensive educational campaign, which reaches parents, child caretakers, and healthcare professionals; increases awareness of the potential hazard of corded window coverings; and informs of safer alternatives that are already available. A serious commitment to such a program would do more to save lives than a mandatory standard, which must be limited to newly manufactured products.

No matter the issue, we must always ask ourselves: what is the problem we are trying to fix and most importantly, is our proposed solution the least burdensome way to solve the problem? As a Federal agency we are stewards of the American taxpayers' dollars and we must ensure the regulations we promulgate are reasonable, balanced, and address a significant safety issue.

Based on Federal Government data, past reports, and contemporary studies, the costs of regulation have been estimated at about \$2 trillion annually. The costs of regulation and compliance are staggering and unfortunately, all studies indicate that the compliance costs fall disproportionately on small businesses.

Regulation is a necessary function of government, but I believe that CPSIA has forced too much regulation without regard to risk, let alone cost benefit. As a result we are unnecessarily burdening businesses, especially small businesses, and are further stifling an already stagnant economy. The solutions we seek should be balanced and address a serious problem. Consumers should be protected from unreasonable risks while the regulated community is protected from an arbitrary government.

The common goal among us all—Congress, CPSC, industry, and consumers—is safety; we are all people who have families for whom we want safe products. I have six children and sixteen grandchildren. I do not want dangerous products hurting them or anyone; however, the U.S. Government cannot and should not try to create a zero-risk society.

Thank you for this time today and I look forward to answering any questions that you may have.

Senator MORAN. Thank you very much. Commissioner Mohorovic?

**STATEMENT OF HON. JOSEPH P. MOHOROVIC,
COMMISSIONER, U.S. CONSUMER PRODUCT SAFETY
COMMISSION**

Mr. MOHOROVIC. Thank you, Mr. Chairman, Ranking Member Blumenthal. I would like to touch on just one area of CPSC developing policy but it is the area that I believe the CPSC has the opportunity to achieve the greatest safety risk on investment of the taxpayer dollar, and that is the enhancement of our techniques at our ports to identify and interdict harmful products.

A quick look at the statistics will reveal the enormity of the challenge as well as the need to direct our compliance efforts at our ports. We have a quarter of a million importers that are bringing in \$700 billion in consumer goods under our jurisdiction on an annual basis, and they are coming in through 14 million individual shipments to 330 ports.

We also know that in 80 percent of our recalls they involve imported goods. The goal is and needs to continue to be identifying harmful products at our ports of entry, but to do so in such a way that will not needlessly inhibit legitimate trade. That is going to be the tricky part and the part we need to focus on.

I would like to identify three areas of policy with regard to our imports. First, you have before you a proposal from CPSC, what has been a very successful targeting program we call our RAM, our risk assessment methodology. We are asking for \$200 million over the course of 6 years and we are asking the trade to pay for it in the form of user fees.

I have been in leadership positions overseeing governance programs of this size and of this scale, and while I may have some concerns about the user fees as a payment mechanism and how we propose to spend all that money, I am committed to the fact that the time is now to nationalize our RAM program.

The second area I would like to address is rulemaking. We have an 1110 rule which is an overhaul of our Certificates of Compli-

ance, and in this area, we are proposing to mandate that certificates be filed with the CPSC in an electronic registry in advance of importation. We have a pilot project underway to test that concept.

Be sure that this would have an enormous burden on the trade. We are asking for this data because we think this data provided in advance will better inform our targeting to identify unsafe products, and that is an argument that appeals to me greatly, but this is the area where we have to be very careful not to stifle legitimate trade in the United States.

Before we ask for this mountains of data, I think it is important for the CPSC to more concretely prove how that data will better inform targeting beyond the data that is already available to us today.

The third area I would like to touch upon is the Trusted Trader concept. As we are enhancing our abilities at the Border to identify unsafe products, I believe we should be partnering with importers who want to subject their processes to strict scrutiny by the CPSC in hopes that the CPSC can qualify them as low risk trusted traders.

Membership should have its benefits. If they can consistently prove an ability to bring in compliant products, they should have benefits in the form of lower administrative burdens, lower surveillance rates, as well as quicker and more predictable time to market.

In conclusion, I believe our situation at our ports provides us an excellent opportunity to better protect the American consumer, but it also comes with a very significant risk of needlessly inhibiting legitimate trade.

With a nationalized RAM targeting program, I believe we can better and more likely identify the non-compliant goods and keep them out of the American stream of commerce, and with the robust Trusted Trader program, I think we can better likely identify the compliant product and get that to market faster so that the American consumer can enjoy them more cheaply, more quickly, and most importantly, more safely.

Thank you very much.

[The prepared statement of Mr. Mohorovic follows:]

PREPARED STATEMENT OF HON. JOSEPH P. MOHOROVIC, COMMISSIONER,
U.S. CONSUMER PRODUCT SAFETY COMMISSION

Chairman Thune, Ranking Member Nelson, Chairman Moran, Ranking Member Blumenthal, and distinguished members of the Subcommittee, I sincerely appreciate the opportunity to speak with you today. As many of you are aware, I am the only MBA—and the only non-lawyer—on the Commission, so I bring a bit of a different perspective. Having managed a global business line for one of the world's leading consumer product testing firms, the notion of Return on Investment is second nature for me. In the past, I used it to maximize profit. In the new role in which I have the honor of serving, the "profit" I'm looking for is the shared gain of fewer Americans suffering injuries and deaths from consumer products, so I'm thinking more in terms of *Safety* Return on Investment—SROI.

I would like to focus on the area where CPSC can realize the highest SROI, and that is at our ports and borders. CPSC's jurisdiction is huge—over 15,000 product categories—and imports are a very large portion of that—about half. More than 235,000 importers bring in about 14 million shipments annually worth over \$700 billion. In some categories—like toys—more than 90 percent of products we regulate are imported.

Some of those products are bound to be violative or unsafe. In fact, 80 percent of our recalls involve imported goods. Stopping products at the ports is more effective than recalling them, which is expensive and has limited effectiveness. To do that, however, requires vigorous inspection efforts. For any agency our size, vigorous inspection requires sophisticated targeting and prioritization. Every false positive—every shipment stopped that ultimately proves compliant—is not only an unnecessary interruption in commerce, but also a wasted opportunity to find and reject non-compliant products.

I am delighted that so many members of your staffs have been able to see firsthand the enormous challenge our small agency faces at the ports, and I would like to talk about three keys to meeting that challenge in the 21st century economy: How we target, how we surveil, and how we maximize our scarce resources.

RAM Scale-Up & User Fees

One key to enhancing our protection is to do more of one thing we are already doing well. As directed by the CPSIA, the Commission has developed a pilot Risk Assessment Methodology (or RAM), allowing us to focus more of our import inspections on products more likely to be violative. Our Fiscal Year 2016 Budget Request includes a request for authorization for a user fee to help fund the \$180 million we plan to spend in the next six years to expand to a full-scale RAM.

I have some reservations about the user fee mechanism. I also have some open questions about the details of our spending plans—particularly about the IT component and missed opportunities for economies of scale I would expect from an operational build-up of this size. However, I wholeheartedly support the notion of nationalizing our pilot targeting program. We have a successful proof of concept, and, at full-scale, RAM will enable us to better-target high-risk products and importers. More importantly, RAM will allow us to prioritize more significant threats to consumer safety over paperwork violations that, while unacceptable, are less likely to injure anyone.

Certificates of Compliance Rule (1110)

Along with the RAM scale-up, we are also overhauling how we bring information in through our proposed changes to our Certificates of Compliance rule, the so-called 1110 Rule. In those revisions, we propose to require electronic filing of certificates prior to importation. Currently, importers of products that require certificates generally only have to make them available upon demand. I am concerned about the details of our proposal, its size, and the extent to which this strategy contributes to better targeting.

Our proposed Rule requires significantly more information in a certificate than what was required by Congress in the CPSIA. And by requiring certificates for exempt products, the sheer volume of the certificates we envision collecting is enormous. But we don't even have a good handle on what this total scope is. I hope you ask that question directly of us today.

In 2013, we wrote that we expected to see over 7.5 million certificates a year filed through an electronic registry—I suspect that is an astonishing underestimate. Not only is the volume of work staggering—and maybe an undercount—but it is inconsistent with President Obama's Executive Order on creating a single import window. Maintaining a separate, CPSC-specific process is, if not two full windows, at least a window and a mail slot, and it undercuts the efficiency goals of the Executive Order.

But the most important concern about our certificate proposal is: how is this in the public interest? How, exactly, are all these pieces of information contributing to better targeting and, as a result, fewer unsafe products? Moreover, we have not done enough to explain *why* we need all of the information the proposed rule identifies. The notion seems to have been that we should get all the information we can and *then* figure out what to do with it. While I understand the impulse to leave no stone unturned, I believe we need to make every effort to ensure that we get what we need while not demanding any more than that.

One effort we can and should make is to subject this proposed rule to some form of cost-benefit analysis. When the agency issued its current rule, it did so through a direct-final rule that was promulgated without cost-benefit analysis or notice-and-comment. This decision was a pragmatic one: In addition to the certificate rule, the CPSIA required dozens of other rules and other agency actions across a wide swath of its jurisdiction, and there was simply too much to do to give every part of it the consideration it would otherwise have deserved.

Now, nearly seven years later, we do not have the same time pressure. We have done almost all of the work the CPSIA required, and, as a result, we have both the

time to get this sweeping rule right and a better understanding of how it fits in our regulatory puzzle.

We are not required to perform any cost-benefit analysis of the certificate rule, let alone the robust examination reflected in Section 7 of the Consumer Product Safety Act.¹ The fact that there is no law telling us we *must* look at the costs and benefits of this proposed rule, however, does not mean we should not choose to do so. One of our basic obligations as Federal officers is to ensure that we are not wasting taxpayers' money. When we write a check on the people's behalf, we need to make sure they get something of similar value in return.

In the case of the certificate rule, my strong suspicion is that even a rudimentary cost-benefit analysis will show that the costs we would impose on the economy in collecting tens of millions of certificates and perhaps billions of data points would dwarf the safety benefits consumers would see from that information. Done properly, our analysis could help us understand which data elements help us target unsafe products and which do not, allowing us to make a conscious choice about exactly how much burden we will impose for exactly how much benefit we will receive in return.

Trusted Trader

Even if they are better-defined, user fees and certificate pre-filing will impose considerable burdens on importers. We should look for ways to offset those. One such offset I have advocated for is to make the import process simpler and faster for the demonstrated good actors in our regulated community through a Trusted Trader program.

Our partner agencies—including CBP and TSA, and soon FDA—have created programs through which their regulated entities subject themselves to greater advance scrutiny in exchange for reduced regulatory supervision. The agencies, in turn, benefit from more insight and the opportunity to redirect scarce inspection resources, and they cannot sign up volunteers fast enough. CPSC should emulate that model with a robust, sophisticated Trusted Trader program.

As I mentioned earlier, RAM is a valuable tool and one we need to maximize. However, its focus is on finding the needles in our import haystack. Trusted Trader shrinks the stack. It allows us to spare the agency *and* importers the waste of inspecting goods we could have already determined to be low-risk.

To reach the level of confidence necessary for that determination, CPSC program administrators should not only put the *applicant* under a microscope, but pull back the curtains on its *suppliers*, as well. To interest companies in this poking and prodding, we should offer significant benefits, primarily in fewer inspections, lower administrative burdens and faster, more predictable, time-to-market.

My priority is strengthening our safety efforts. While Trusted Traders would enjoy real benefits, those would come only after CPSC has developed empirical evidence of the competency of their supply chains. The bar should be reachable, but high. Of course, if we learned of a Trusted Trader falling short of its responsibilities, the response would be strong and swift.

President Reagan espoused the principle that we should “trust, but verify.” In an evolved CPSC import surveillance system, we would verify, then trust—and continue to verify. By doing so, we reduce the enormity of the out-sized challenge and make the mission a more achievable one.

Conclusion

The ports are a natural bottleneck in the stream of commerce. That creates both a great opportunity for protecting consumers and a high risk of stifling legitimate trade. With a robust RAM program, we can more readily identify likely violative products and keep them out of the stream of American commerce. With a robust Trusted Trader program, we can more readily identify likely *compliant* products and rapidly get them to market so that consumers can enjoy them more cheaply, more quickly, and more safely.

Senator MORAN. Thank you very much. Commissioner Robinson?

¹That analysis is required for any mandatory consumer product safety standard we wish to implement, but the certificate rule is not such a standard.

**STATEMENT OF HON. MARIETTA S. ROBINSON,
COMMISSIONER, U.S. CONSUMER PRODUCT SAFETY
COMMISSION**

Ms. ROBINSON. Thank you, Chairman Moran, Ranking Member Blumenthal, members of the Subcommittee.

I have had the privilege of serving as a CPSC Commissioner for almost 2 years now and I am absolutely delighted to have this hearing and to be able to testify before you today.

I must start by saying what an honor it is to work with the incredible group of professionals that we have at the CPSC. I am constantly amazed at how much we do with such a limited budget and so few people. Our professionals are extraordinarily committed to our mission as am I.

There are two areas in my more expansive written testimony that I wish to highlight in my few minutes. First is how critical it is that the CPSC modernize how we gather, analyze, and share our data. We are the only statistical source of product related injury data in the world.

It took me only a few short weeks in this job to realize that virtually all product related safety decisions being made by incredibly diverse entities both in this country and beyond with respect to the products under our jurisdiction are based on CPSC data. We are it.

Presently, our data consists of our statistical data that is generated through our national electronic injury surveillance system or NEISS, which has been in place for over 30 years. We basically take information from 100 emergency rooms and from that our epidemiologists extrapolate to formulate a national estimate annually of over 14 million product related injuries.

We have our non-statistical data which are news media reports, consumer complaints to the CPSC hotline, and to our website, SaferProducts.gov, and a limited number of death certificates, trade information, and the Medical Examiners and Coroners Alerts Project.

At the CPSC, our data on consumer product related injuries, incidents and deaths are the starting point for identifying trends that tell us a product is unsafe and are critical throughout our rule-making process, particularly when we perform our requisite cost/benefit analyses.

Outside of the CPSC, our data are used by other Government agencies, CDC, FDA, NHTSA, industry, manufacturers, retailers, trade associations, consumer groups, researchers and academics, and the media.

For most of my time on the Commission, my staff and I have been very focused on improving our data sources, improving the formatting of the data to make it more accessible, and improving access to that data by all segments of our society.

In this era of big data, we need to find ways to improve the CPSC data and how we use it. I am delighted that the Fiscal Year 2016 budget includes funding for some of the important data sources and programs, and I am pleased that we will be holding our first ever data hearing on June 24.

I very much look forward to hearing from a diverse panel, including government, industry, and consumer advocates about the uses

they have found for our data and how we may modernize and enhance our data practices.

The second area I would like to address briefly is our rare mandatory rulemaking on ROVs. One of the most heart breaking and frustrating things about this job is watching week after week the number of people of all ages who are killed or seriously injured as a result of ROV incidents, primarily from rollovers.

While some of the dangers of the ROVs are apparent, others are very much hidden from consumers, and it is those hidden hazards with which I am most concerned. We cannot afford to delay addressing this.

Between January 1, 2003 and April 5, 2013, ROV accidents caused at least 335 deaths and at least 506 injuries, some very severe, including amputations, head and spinal injuries, and they just keep happening.

A short ride on an ROV as I took in our lab recently made me understand the passion. They are really fun, but really made me understand the dangerous propensities even with a driver who was very much trying to make sure he did not mess up a Commissioner.

I highly recommend such a visit to our lab to any of you who are involved in this issue.

CPSC has tried for many, many years to get the ROV industry to incorporate simple affordable fixes to address the major hazards of ROVs in a voluntary standard but to no avail. Since the CPSC proposed a mandatory rule, things have finally changed.

Recently, industry and the CPSC have been working closely to discuss ways to make the ROVs safer, and on June 2 the CPSC was delighted to learn from industry that they had finally voted to reopen the voluntary standard.

Respectfully, the RIDE Act causes me great concern. I am sorry to see it came out of this committee. I believe it will cause unnecessary delays, that there is unnecessary expenditure of taxpayer money by asking the CPSC to pay the National Academy of Sciences to conduct tests that we have either already done or will be doing as part of the rulemaking process.

Of most concern is I believe it will remove the incentive for industry to seriously address the unreasonable risks that are posed by the ROVs.

Thank you again Chairman Moran, Ranking Member Blumenthal, and members of this committee. I look forward to your questions.

[The prepared statement of Ms. Robinson follows:]

PREPARED STATEMENT OF HON. MARIETTA S. ROBINSON, COMMISSIONER,
U.S. CONSUMER PRODUCT SAFETY COMMISSION

I want to thank Chairman Moran, Ranking Member Blumenthal and Members of the Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security for providing the U.S. Consumer Product Safety Commission (CPSC) with this opportunity to appear at a public hearing and submit testimony. I have had the privilege of serving as Commissioner at the U.S. Consumer Product Safety Commission since July 2013.

I am delighted to have the opportunity to submit this testimony concerning "Overseeing the Consumer Product Safety Commission" and to give you a brief update on some of my priorities which are very much aligned with our FY16 budget request to Congress.

It is an honor to work with Chairman Kaye, my fellow Commissioners and with the amazing group of professionals who comprise the CPSC staff. Our small staff includes scientists, engineers, lawyers, compliance and communications professionals, field investigators, economists, epidemiologists, and import surveillance, operations and administrative staff. I am constantly amazed at how much we do with such a limited budget and staff. Our professionals are extraordinarily talented and have abundant career opportunities elsewhere. However, they stay at the CPSC because they know they are making a difference and believe in our mission of protecting the public and, particularly, our children, from unreasonably dangerous products. I very much share this mission.

I recently sat on a plane next to a woman from India who, when she learned where I work, told me she was very familiar with the CPSC and she had tears in her eyes as she said how lucky the children and parents in the U.S. are to be protected by our agency. I wholeheartedly agree with her!

Priorities

It is important to me that my priorities and the CPSC priorities are aligned. It is also important to me that my fellow Commissioners and I work together to do our parts in implementing the CPSC's agenda.

There are five key areas in which the CPSC must continue to engage and which must be funded at the appropriate levels. In order for the CPSC to carry out its critical public health and safety mission, it must be able to:

- Gather and analyze the most appropriate data on consumer product-related injuries and deaths;
- Inform and educate all populations across our diverse country concerning the real and often hidden hazards of certain products or situations;
- Effectively and efficiently monitor our ports for violative consumer products;
- Research and monitor the potential hazards to consumers of new emerging technologies being used in various consumer products; and
- Review current rules and regulations to ensure they are not overly burdensome on industry or inappropriate as a result of technological or other industry advances.

I would like to further explain these five areas and, in so doing, highlight the work my personal staff and I are doing to further support the CPSC's FY16 budget and public health mission.

(1) Gather and Analyze the Data

Within days of being sworn in as a Commissioner, I started meeting with various groups that had issues before the agency, including consumer groups, trade associations, standards development organizations, and representatives from small and large companies. Multiple times each week, I would hear arguments either for or against additional consumer safety rules, standards or initiatives. Inevitably, the data cited in support of the arguments were generated by the CPSC.

Additionally, I learned that most of our work here at the CPSC begins with an analysis of our data on consumer product-related incidents, injuries, and deaths and these data continue to be used throughout the rulemaking process. I quickly realized how vital our data are to virtually all product-safety decisions in this country and around the world. As a result, I am committed to ensuring that the CPSC gathers the best and most appropriate data possible and am constantly searching for new ideas to improve these data. My staff and I have been actively learning about the newest developments relating to data innovation. We have been attending events such as Health Datapalooza, Fedscoop summits, and similar conferences. We have also been talking with many of our counterparts at other government entities to learn how they have modernized the collection and utilization of their data to better serve the public.

I am pleased to note that my fellow Commissioners and our senior management also believe that data must be a high priority for the CPSC. To that end, we will be holding our first-ever public hearing on Data Sources and Consumer-Product Incident Information next week, on June 24, 2015, right after our annual Priorities Hearing. We have already received many enthusiastic responses to our announcement of the hearing, and we hope to hear from a diverse panel of representatives who will help us build on and improve our current data practices and capabilities.

As many of you know, the CPSC collects consumer product-related incident data in a number of ways. The CPSC's statistically representative data are collected through the National Electronic Injury Surveillance System (NEISS). The NEISS was created over 30 years ago by CPSC epidemiologists. It is comprised of approxi-

mately 100 hospital emergency departments specifically selected to allow statistical extrapolation of consumer product-related injuries to the national level and assess injuries over time. The NEISS collects approximately 400,000 product-related injury reports annually from participating hospitals that represent a national estimate of over 14 million product-related injuries treated in hospital emergency departments.

The CPSC's non-statistical data are collected in several different ways. The sources of our non-statistical data have for many years included news media reports, consumer complaints to the CPSC Hotline, a limited number of death certificates, trade information, and the Medical Examiners and Coroners Alert Project.

In May 2011, the CPSC launched our searchable database, available at www.SaferProducts.gov. This database allows anyone to submit a report of harm or risk of harm related to the use of consumer products or substances within CPSC's jurisdiction. To date, there are approximately 23,300 publicly available reports on www.SaferProducts.gov, primarily received from consumers. CPSC staff begins their analysis of this data immediately upon receipt to identify potential emerging hazards.

As I noted earlier, I have been very focused on trying to identify ways in which we may improve our data sources as well as the public's use of it. To that end, I am pleased that the FY16 budget includes:¹

- \$2.2 million for the NEISS;
- \$2.7 million for our Consumer Product Risk Management System (CPRMS), the CPSC's internal system that includes: www.SaferProducts.gov, the publicly searchable incident reporting portal; the business portal; an internal application for CPSC staff to analyze and triage incident reports; and a case management system for CPSC to respond to incidents; and
- \$900,000 for our CPSC hotline.

These funds are absolutely essential to ensure that the CPSC may do the hard work required to protect consumers from hazardous and dangerous products. At its core, the CPSC is a data-driven agency. For those who seek to reduce burdens of unnecessary regulation, providing the critical, supporting data is a necessary first step towards that end.

(2) *Inform and Educate all Populations of Hazards*

The CPSC FY16 budget states that one of the most cost-effective methods of reducing incidents, injuries and deaths related to consumer products is by effectively, efficiently and quickly “[c]ommunicating safety responsibilities to industry and educating the public on the best safety practices and recalled products.”² The CPSC has committed \$8 million to “raise public awareness through timely and targeted information about consumer product safety issues”³ including notifying consumers about recalls as well as ongoing hidden hazards. I fully support this commitment of CPSC's precious resources to this critical priority.

Our ability to collect and share the best data is central to our efforts to inform and educate the public about consumer product-related hazards. We recently completed a project formatting our recall data to make them more usable. We have already seen young innovative developers use these enhancements to create apps that can help keep the public informed of product recalls. I am pleased that the Commission voted unanimously to support my amendment to our Midyear to elevate the priority of a similar project that will make consumer reports on saferproducts.gov more accessible and useful.

a. Improving Recall Effectiveness

Because I believe one of the greatest ways of ensuring safety is to remove hazardous products from the marketplace, I am personally committed to figuring out ways to improve overall recall effectiveness of consumer products as a way to support the CPSC's larger goal of “Raising Awareness.”⁴

Many of you have read the *Kids In Danger Report: A Decade of Data: An In-depth Look at 2014 and a Ten-Year Retrospective on Children's Product Recalls*.⁵ I found the report both very encouraging and somewhat discouraging. It was encouraging to see that stronger standards and oversight by regulatory agencies such as the CPSC have had a measurable effect on product safety and there have been significant decreases in the past decade in incidents, injuries and deaths related to con-

¹ CPSC FY16 Budget Submitted to Congress, p.15.

² *Id.* at 9.

³ CPSC FY16 Budget Submitted to Congress, p. 21.

⁴ *Id.*

⁵ http://www.kidsindanger.org/docs/research/2015_KID_Recall_Report.pdf.

sumer products. However, it was very discouraging to read that “the majority of recalled children’s products continue to remain in consumer hands (79.79 percent).”⁶ And that “[o]nly 14 percent of all 2013 recalled children’s products were destroyed or fixed.”⁷

The *Kids In Danger Report* concludes that companies need to devote their social media to publicizing recalls as effectively as they do marketing products. Currently, “less than a quarter of companies with a Facebook presence use it to share recall information.”⁸ Companies using Facebook, Twitter, Instagram, or other social networking platforms to market toys should also use those social media tools when they have a product recall. Doing so is good for both consumers and business. One recent study showed that companies using certain types of social media in connection with their recall announcements experienced lower stock price reductions than those companies not using social media.⁹ Perhaps research such as this will encourage companies to be more creative in using social media to get dangerous products off the market. I have spoken to and intend to continue to speak to industry about this issue as much as possible. Consumers deserve the same respect for their safety as companies give to their purchasing dollars.

b. Hidden Hazard: TV and Furniture Tip Overs

Another one of my priorities is increasing awareness of the dangers associated with the hidden hazards of TV and furniture tip overs. There were 430 tragic and preventable deaths between 2000 and 2013 involving young children trapped or crushed after a dresser, TV, bookcase, table, appliance, or other large item fell on them.¹⁰ Our statistics show that a child dies every two weeks from a piece of furniture, a TV, or a piece of furniture and a TV falling onto him or her and every 24 minutes, a child is taken to an Emergency Department due to a tip-over incident.¹¹

I am delighted that Commissioner Mohorovic is also committed to this issue. Together, we can leverage our positions as Commissioners to bring more awareness to this issue. We met with major retailers of both furniture and electronics at the International Consumer Product Health and Safety Organization Annual Conference in February to brainstorm ideas beyond just education, and we will be following up on these to try to make some real progress in this area.

Just earlier this month, CPSC launched its “*Anchor It!*” campaign to reach all consumers and educate them on the serious dangers of TV and furniture tip overs. This national campaign encourages everyone to anchor TVs and furniture appropriately to avoid these completely preventable serious injuries and deaths. The campaign includes a public service announcement, a comprehensive website: www.anchorit.gov, and partnerships with safety advocates and other stakeholders. Going forward in FY16, education and outreach on TV and furniture tip overs will continue to be one of the areas the CPSC’s Communications department works on as part of the \$8 million allocated to them.

(3) Monitor our Ports

During calendar year 2013 alone, more than 235,000 importers brought approximately \$723 billion of consumer products under the CPSC’s jurisdiction into the country.¹² That averages nearly \$2 billion per day in imports of consumer products under the CPSC’s jurisdiction.¹³ Since 2008, four out of five product recalls in the United States have involved an imported product.¹⁴

As you know, the Consumer Product Safety Improvement Act of 2008 (CPSIA) was enacted, in part, because of a wave of noncompliant imported children’s prod-

⁶*Id.* at 2.

⁷*Id.*

⁸http://www.kidsindanger.org/docs/research/2015_KID_Recall_Report.pdf, pps. 14–16 and 31.

⁹*The Role of Social Media in the Capital Market: Evidence from Consumer Product Recalls*, JOURNAL OF ACCOUNTING RESEARCH, Lian Fen Lee, Amy Hutton and Susan Shu, Accepted manuscript online: 3 FEB 2015 01:03AM EST, DOI: 10.1111/1475-679X.12075, p. 33. (“First, we find that corporate social media, in general, attenuates the negative price reaction to product recall announcements. This finding is consistent with social media increasing the effectiveness of the recall process itself including limiting harm, as well mitigating the repercussions of the recall for the firm’s brand equity and reputation.”).

¹⁰*Product Instability or Tip Over Injuries Associated with Televisions, Furniture and Appliances: 2014*, CPSC August 2014, p. 2.

¹¹<http://www.cpsc.gov/en/Safety-Education/Safety-Education-Centers/Tipover-Information-Center/>

¹²CPSC FY16 Budget Request to Congress, p. 9.

¹³*Id.*

¹⁴*Id.*

ucts.¹⁵ As part of the CPSIA, the CPSC was required to develop a risk assessment methodology (RAM) and work with U.S. Customs and Border Protection (CBP) to address the influx of noncompliant children's products and to date, on a pilot basis, our Office of Import Surveillance has done so.¹⁶

The CPSC's FY16 budget prioritizes scaling up the pilot import surveillance program nationwide. The FY16 budget further requests Congress to authorize a product safety user fee in FY16 with collections beginning in FY17 in order to fund the expansion of the surveillance program to meet the requirements of the SAFE Port Act of 2006 and Section 222 of the CPSIA.

I have made it one of my priorities to understand the CPSC's critical import issues since I began as a Commissioner. To that end, I visited our port in Los Angeles and Long Beach and discussed these issues with CPSC's import surveillance staff at headquarters and in the field. I also toured the National Commercial Targeting and Analysis Center, and earlier this Fiscal Year, I met with CBP and Consulate staffs in Guangzhou and Hong Kong to discuss many of the complicated safety and import issues that result from a large percentage of this country's manufactured goods coming from abroad. In addition, I have been discussing the expansion of the RAM program, the requested user fees, the comments to our proposed rule on Certificates of Compliance designed to comply with the spirit of Presidential Executive Order 13659 requiring electronic "single window entry," and the development of our pilot program on e-filing with our stakeholders and sister agencies. All of these issues are interconnected, necessary, and critically important to a comprehensive and well-grounded consumer product safety import surveillance program.

I am also pleased to note the CPSC's efforts in working with our stakeholders to better understand their concerns regarding e-filing. Chairman Kaye has taken the extraordinary step of holding two closed meetings with the Advisory Committee on Commercial Operations ("COAC") and the Commission has also held an open meeting to discuss the e-filing pilot. Our staff has taken our stakeholders' comments seriously and I look forward to the upcoming announcement of our e-filing pilot program.

It is for these reasons that I fully support our proposal for imports in CPSC's FY16 budget.

(4) Research New Emerging Hazards

CPSC is responsible for researching new and emerging hazards. The earlier the CPSC identifies trends in incidents or injuries from unreasonably dangerous products, the more quickly we may move to eliminate those dangers.

The CPSC Directorate of Epidemiology dedicates much of its time to analyzing the data that I described earlier to identify these types of trends. However, this "early trend identification and analysis" has limitations when we are dealing with a chronic hazard.

Another approach to identifying new and emerging hazards is to focus on key materials or products in which advances in technology and new technical discoveries have created opportunities for industry to make products with these new materials or new product prototypes. The CPSC's continuing work on nanotechnology is just that.

Nanotechnology "enables scientists to produce a wide array of materials in the size range of 1 to 100 nanometers (nm), with unique physical and chemical properties that can be incorporated into products to improve performance in areas such as greater strength, flexibility, stain resistance, or cleaning ability."¹⁷

The National Science Foundation estimates that over \$3 trillion will be spent around the world on incorporating nanotechnology into finished consumer products by the year 2020.¹⁸ Nanotechnology will become increasingly prevalent in all consumer products over time, yet not much is known about the safety of these new and innovative materials when they are included in consumer products. There are potentially dangerous implications for using these nanomaterials in consumer products.

The CPSC has followed the lead of other Federal Government agencies as well as the National Nanotechnology Initiative (NNI) in conducting specific research on nanotechnology and the commercialization of products containing nanomaterials. The CPSC has been a part of the NNI since 2003 and during the past 12 years, the CPSC has committed an average of just under \$1 million per year to studying the question of human exposure to nanotechnology in consumer products. However, due to the complexities of nanotechnology and the rapidly evolving technology of de-

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ CPSC FY16 Budget Request to Congress, p. 12.

¹⁸ *Id.*

veloping nanomaterials, the CPSC does not yet have the appropriate testing methods for characterizing and quantifying nanomaterials; the capability to identify, characterize and readily quantify consumer exposures to nanomaterials in consumer products; the capability to assess the potential health risks of exposure to nanomaterials in consumer products, or the ability to obtain reliable data on identifying new products containing nanomaterials or information on consumer use and interaction with these products once they are introduced into the marketplace.

For these reasons, I support the major investment of an additional \$5 million for the creation of the Center for Consumer Product Applications and Safety Implications of Nanotechnology (CPASION) in the CPSC FY16 budget. This allocation is necessary to adequately fund research on nanomaterials and the development of technology to test, quantify and analyze nanomaterials and our exposures to those same nanomaterials in consumer products and most importantly to determine what, if any, hazards result from such exposures.

(5) Rule Review

Sometimes, government overlooks outdated regulation when it is clear that new information, data, or technology provides a better solution to a historical problem. The CPSC should regularly revisit its regulations, especially when it is clear that certain rules are potentially unduly burdensome to various stakeholders. Presidential Executive Orders 13563 *Improving Regulation and Regulatory Review*, 13579 *Regulation and Independent Regulatory Agencies*, and 13610 *Identifying and Reducing Regulatory Burdens* state the same principles.

I proposed an amendment to the FY15 operational plan that was accepted and that directs staff to review the more than 40-year-old fireworks rule in light of current fireworks technology and provide the Commission with a briefing package on options to possibly revise this rule. After visiting fireworks manufacturing, production and testing facilities in Liuyang, China several months ago, and understanding the burdens on manufacturing and testing to the current CPSC standard, I was convinced this standard needed to be reviewed. I look forward to receiving a recommendation from our technical staff on this issue in FY15 and to the notice of proposed rulemaking included in the CPSC FY16 budget. I also voted in favor of Chairman Kaye's mid-year amendment instructing staff to draft a CPSC Retrospective Review Plan for the Commission's consideration. I look forward to reviewing their proposal.

Another issue with which I have become intimately familiar is the desire of many of the CPSC's key stakeholders, as well as all five Commissioners, to reduce certain third party testing burdens for children's products while assuring compliance with all applicable rules, bans, regulations, and standards. It is my understanding that many of you on this Subcommittee are deeply concerned with CPSIA's potentially burdensome third party testing requirements for children's products as well. I recently partnered with Commissioner Buerkle to elevate the priority of a burden reduction-related project as part of our mid-year funding cycle, and was pleased that the Commission voted unanimously in favor of this change. I am also pleased that we voted as a Commission to release three upcoming burden reduction rule proposals as "direct to final" rules, which should expedite the implementation of our burden reduction efforts.

In FY15, Congress provided the CPSC with \$1 million to conduct work targeted at meaningful reduction of third party testing costs of children's products consistent with assuring compliance with all applicable rules, regulations, bans, and standards. I have spent much time on this issue since I arrived at the CPSC. I have had detailed discussions with staff and many stakeholders, visited toy manufacturers and testing facilities both in the U.S. and China, attended the CPSC Workshop on this issue, and reviewed stakeholder comments. I know that all five Commissioners are deeply committed to this issue and I am hopeful that we are going to see real, concrete change soon. I expect to receive a recommendation from staff by the end of the FY15 and hopefully, as is directed in the FY16 budget, receive a recommendation for a final rule next year.

Ensuring the Safety of Recreational Off-Highway Vehicles

One area that has been receiving a great deal of attention both at the CPSC and in Congress is our proposed mandatory rule to make recreational off-highway vehicles ("ROVs") safer.

On October 29, 2014, the CPSC voted to publish a notice of proposed rulemaking ("NPR") proposing a mandatory standard for ROVs. I was proud to vote in favor of this important first step in addressing the unreasonable risk of injury and death posed by ROVs. Many ROVs, as currently designed, are unreasonably dangerous. Among the hazards associated with these dangerous ROVs are their high propensity

to roll over, and the fact that they exhibit unpredictable handling, which contributes to rollover risk. CPSC's data show that in the vast majority of ROV incidents involving injury and death, the ROV rolled over.

For many years before the NPR, CPSC engineers and representatives of the Recreational Off-Highway Vehicle Association ("ROHVA") and its members had ongoing communications concerning a proper safety and testing standard for ROVs. ROHVA developed a voluntary standard in 2011 and, again, in 2014 through an American National Standards Institute ("ANSI") process known as the canvass process, which it led and dominated. As part of that process, the CPSC engineers informed ROHVA repeatedly that, based on CPSC testing and accident data, they did not believe either of the ROHVA/ANSI voluntary standards went far enough in making ROVs safer for consumers, particularly with respect to vehicle stability, handling, and occupant protection. Further, based on CPSC's experience with the Yamaha Rhino repair program, CPSC engineers informed ROHVA that the changes that would be required to meet the safety requirements advocated by the CPSC are relatively easy and inexpensive to make.

When the CPSC concerns were not addressed in the draft that became the 2014 ROHVA/ANSI standard, CPSC staff proposed a mandatory standard that included the safety measures they had repeatedly and unsuccessfully asked ROHVA to incorporate in the voluntary standard. CPSC's proposals in this NPR included a thorough analysis of the draft 2014 voluntary standard, which was identical in all key respects to what became the final voluntary standard. CPSC engineers are confident that compliance with the proposed mandatory standard would make ROVs much safer than compliance with the ROHVA/ANSI voluntary standard would. Their position is based on CPSC's thorough accident and testing data.

Since CPSC published its NPR, CPSC has dedicated significant staff time and resources meeting with industry representatives. CPSC staff has been listening with an open mind to industry's comments on the proposed rule. Industry finally appears to be willing to rethink the inadequate 2014 voluntary standard. On June 2, 2015, ROHVA informed CPSC's staffs that its board has decided to reopen the voluntary standard. ROHVA also expressed its hope that CPSC would be engaged in the voluntary standard process, as it has been throughout. This is very encouraging news, and is exactly what CPSC has been urging industry to do. Only industry has the power to revise the voluntary standard. Some of my fellow Commissioners and I have repeatedly urged industry to improve the voluntary standards so that a mandatory standard will not be needed. We are pleased to see that they have taken a first step in that direction.

The pace of industry's progress on improving the safety of their products has increased exponentially since the CPSC published its NPR. It is clear that the threat of a mandatory standard was the catalyst for these positive developments. CPSC and industry have been working closely together to address these safety concerns over the last several months. The unreasonable risk to life and limb posed by ROVs compels CPSC to continue working towards completing a mandatory standard, but, as we have stated repeatedly throughout this process, we would like nothing more than to see industry develop a robust voluntary standard that would obviate the need for such a mandatory standard.

Unfortunately, all this progress may be put to an end if the pending ROV In-Depth Examination Act ("RIDE Act") becomes law. The RIDE Act is a misguided piece of legislation. The RIDE Act would delay, if not derail, improvements in ROV safety, and thus result in unnecessary deaths and injuries. The RIDE Act would essentially halt CPSC's current rulemaking, thus removing the very incentive that has finally spurred industry action to curb the risks posed by ROVs. Second, requiring CPSC to contract with the National Academy of Sciences ("NAS") to study CPSC's proposed standard would be a waste of taxpayer money. CPSC would have to pay NAS hundreds of thousands of dollars to carry out tests that CPSC is already undertaking as part of the development of the final rule. Third, diverting scarce CPSC resources to a contract with NAS would prevent CPSC from fully engaging in the newly reopened voluntary standard process. Finally, the NAS study would require an examination of the impact of the proposed rule on ROVs for military use. Nothing in our proposed rule affects military vehicles, nor is it within our purview.

The comment period on the proposed rule is still open. CPSC is actively testing and analyzing the current proposal as part of the development of the final rule. CPSC and industry are actively and productively engaged in discussions on the best way to make ROVs safer. Industry has also heeded CPSC's call and reopened the voluntary standards. It would be tragic if the RIDE Act derailed these lifesaving developments.

Conclusion

Finally, this is my first job in government and I continue to learn many new things every day. This is one of the most rewarding positions I have held in my career. As I said before, I am grateful for this opportunity to be a Commissioner at the CPSC and to testify before you here today about these extremely important and mission-critical issues.

Nevertheless, there are some discouraging things about this job, most prominently the length of time it takes to get a mandatory standard passed when industry refuses to pass an appropriate voluntary standard that adequately reduces the risks of death or injury. While I understand the process takes time, it is frustrating that consumers continue to be unnecessarily at risk and harmed.

I have learned much about Sections 7 and 9 of the Consumer Product Safety Act (CPSA) that are unique to the CPSC. These provisions require the CPSC to not only do a cost/benefit analysis of the regulatory choice we have made—a requirement of all regulatory agencies under Section 553 of the Administrative Procedure Act which I very much support—but also of each and every regulatory choice we rejected. This is extremely burdensome and time consuming and results in needless delay in passing safety standards that are truly needed to properly protect the public.

When Congress relieves the CPSC of the unique requirements of Sections 7 and 9, the rulemaking process moves forward more effectively and efficiently—as it did when a bipartisan Congress tasked the CPSC with passing drywall safety rules, and with mandatory rulemaking under CPSIA on durable infant products. Since the passage of CPSIA seven years ago, the CPSC has issued 14 final rules on durable nursery products. Compare that with a total number of 10 rules completed since 1981 when Congress amended Sections 7 and 9 of the CPSA. History shows us that when Congress wants effective, efficient, and timely rulemaking, Congress directs CPSC to use APA Section 553 rulemaking. The APA Section 553 process is the most appropriate process to use for critical consumer product safety rules. I am hopeful that Congress will provide the CPSC with many more opportunities to address unreasonable consumer product hazards by conducting rulemaking under APA Section 553 in the future.

I want to end on a positive note and say that that I am proud of having been a part of the CPSC's work since 2013. One example of government working at its best was our rulemaking on small rare earth magnets sets.

In 2012, pediatric gastroenterologists came to the CPSC when they found a precipitous increase in young children being severely injured from swallowing these tiny magnets with eight times the magnetic force as is allowed in children's products. When more than one was swallowed, the child's intestines would clamp together from the magnetic force causing blood flow to be cut off and, because the parents often did not know the child had swallowed magnets and the first symptom was vomiting, the diagnosis was frequently delayed until permanent intestinal damage had been done. The CPSC worked with various industry members including retailers and others to educate people on the hazard, do recalls and, ultimately, prepare the mandatory standard that requires magnets sold in magnet sets to either be the much-weaker strength allowed in children's products or be large enough that a child cannot swallow them. The CPSC worked with interested parties and stakeholders to get this right. I am proud that I was able to be a part of this process.

Thank you again Chairman Moran, Ranking Member Blumenthal, and the Members of the Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security, for this opportunity to submit this statement for the record.

Senator MORAN. Commissioner, thank you. Thank you all for your testimony. Commissioner Mohorovic indicated in his testimony—I think this is what you were saying, 80 percent of the recalls are associated with imported products.

Chairman Kaye, tell me how that statistic fits into the way the Commission operates, where its focus is, and how it establishes priorities to address that statistic, if that statistic is true, and then tell me how the RAM pilot program is designed to address that issue.

Mr. KAYE. Thank you, Mr. Chairman. That is an accurate figure, Commissioner Mohorovic is absolutely right. I think that data is from around 2008 through the present.

We do try to focus our efforts, and this is why we made the proposal that we have, to try to build out our import work because we feel it is far more efficient and far more effective to be interdicting these products at the ports before they get into our markets.

It is just not as efficient as a government agency at that point once they have been disbursed to try to capture them once they have hit store shelves and pull them off, and we also know that when they are in consumers' hands, it becomes that much more challenging.

We feel like, and this is why we made the proposal we did, and I think this is why Congress included Section 222 in the CPSIA, that it is a far more effective system for our efforts to be located at the ports, and I thought Commissioner Mohorovic in particular did an excellent job in focusing his testimony on the value of this system.

The way we imagine the full blown system working is that we would have better targeting data. We would be able to cover many more entries that come in. Right now, we are only looking at about 200 of the harmonized tariff codes that apply in a product area, and we would expand that to tens of thousands of harmonized tariff codes on products within our jurisdiction.

We would have a far greater reach to be able to detect those non-compliant and dangerous products that are coming in, and importantly, get them before they get to the ports and certainly before they pass through the ports and get into consumers' hands.

Senator MORAN. Chairman, tell me about the relationship between this full build out of RAM and the 1110 rule on e-filings and how they fit together. Is one a necessary ingredient of the other?

Mr. KAYE. Correct. I think the most important contextual piece to all this is the President's Executive Order from a year ago February which requires by December of 2016 that 47 Government agencies, of which CPSC is one, with presence and authorities at the ports, create a single window for entry and exports, so for an entry—we are focused on entry, obviously not export—for an entry entity, instead of having to work agency by agency to deal with those agencies and to understand the issues, everything would go into a single portal, and importantly, on the back end what would happen is that would get transmitted electronically to all the other agencies that have jurisdiction over those products, and then there would be an important messaging communication capability.

What you have right now, when a product is stopped at the ports, usually it is only Customs and Border Protection that the entity has visibility with, but it may have been the FDA, it may have been us, it may have been EPA, another agency that may have put the hold on that product for very legitimate reasons, but the company does not know that.

There is no visibility of that. They do not know why it was held, they do not know who held it, and they do not know importantly when it is going to get released. We appreciate the fact that first of all it is frustrating for them not to know that, but there are real dollars associated with any delays involved in that process.

The single window envisions having a two way messaging so there would be instant communications with the importers so they

understand who is holding it, why they are holding it, and importantly when it will be released.

That single window is the larger concept in which all this fits. Our 1110 rule or so-called 1110 rule would require electronic filing as the CPSIA allowed so that we would be able to participate in the single window, and I think that is a critical component.

It does not make sense to have a 46 plus 1 system, especially when you consider the vast jurisdiction of CPSC's areas.

Senator MORAN. In this particular area, you seem to be concerned about the cost to the importer, to the business. Commissioner Buerkle in particular pointed out the associated costs, the regulatory environment, the increased expense of doing business with this program.

How do you expect to address those concerns, the ones raised by Commissioner Buerkle? Is there a cost/benefit analysis? I know you are not required to do the benefit side. You are required to do the cost side. I assume you are interested in the consequences of this pilot program and the e-filings and what it would mean to the cost of doing business in the United States.

Mr. KAYE. We are. I think all of those questions are viewed in the process that we are undertaking. We have actually moved in an incredibly slow and methodical way, and we have had, really I would imagine from my perspective in almost 5 years at the agency, almost an unprecedented amount of consultation with the trade.

We set up a working advisory committee group with the trade to make sure we were getting that kind of feedback. We have had a number of meetings, both closed, to consider some of the proprietary information, as well as open meetings. We are now moving to another step with Customs and Border Protection where that dialogue will continue.

At each stage, we are trying to take into consideration what is the right balance to strike to make sure we are focusing on those folks that we should be focusing on, and those who are following the rules are moving their stuff through more quickly as the system would envision.

I think it is important to point out that is why we asked for a user fee, because a user fee, unlike general appropriations, gives us the flexibility to make sure, hopefully downward, that we are adjusting that fee based on real life circumstances as opposed to just taking a set sum of money and trying to make that solve the problem.

Senator MORAN. Commissioner Buerkle, any response to either my questions or what the Chairman indicated?

Ms. BUERKLE. Thank you. Any of my comments that I am going to make really should not be construed as being opposed to import surveillance and increasing our presence at the ports. I think that is all very good. My concern is that number one it is an extremely complex issue, as pointed out by my colleagues. We are looking at it like this and we should be looking at it as the components are separate.

If we talk about the existing RAM, in our mid-year ops plan, we had some excess money, we made an allocation of \$3 million so we could purchase the software of the current RAM system and then we can have more control over the parameters and the rulemaking

for that system. I think that will allow us right now to enhance the current RAM program.

We also are in the process of getting a requirements analysis done to expand the RAM. That is going to cost the agency about \$1 million.

Why are we talking about and asking for more money or even discussing a user fee until we know what the needs are and what the costs will be of that expanded RAM?

That is the next piece of it. Then the 1110 rule, and I want to agree with the Chairman, there has been unprecedented engagement on that issue, but my concern is when the rule came out, there was a tremendous amount of opposition to that proposed rule, and we have had all of this engagement, but now close to 2 years later, we are going to put out a rule, we are going to conduct a pilot, and basically we are using the exact same elements and components of that proposed rule.

Again, we had those engagements but we have not implemented the concerns, and my hope is that the agency would take on this pilot and they can have several small pilots, but pilots that are small enough, manageable enough that we do not bring trade to its knees, and that we get an understanding of simple, and as we begin to develop it, we can get to the more complicated scenarios, but the pilot would be incremental rather than one size fits all, move ahead full speed.

Senator MORAN. Thank you very much. I know a number of questions will follow on this topic, perhaps from Senator Blumenthal.

Senator BLUMENTHAL. Yes, I do have a number of questions, but I am hoping also we will have a second round where we can explore some of the other issues as well.

There is no question in my mind and I hear no dissent on the issue here that import surveillance is of tremendous benefit to consumers, but also frankly to American businesses that play by the rules and do not put lead paint in their products, do not produce defective tires, as the Chinese have done, stopping defective or dangerous products at our Borders is a benefit to American business as well as consumers.

I support the expansion, and I hear differences in our panel only as to how quickly it is done, and what the methodology should be.

Chairman Kaye, let me ask you to respond to the point made by Commissioner Buerkle. What would be the cost? Do you have a cost estimate for a full scale national program?

Mr. KAYE. So, there are three different components, Senator, and we had made an estimate based probably at this point on outdated information, but the best we had at the time back in 2011 when we reported to the Congress on the status of the pilot, and there is an IT component, a personnel component, and then there is also a lab capacity component, to make sure that at every stage we can handle the increased volume.

We need more folks at the ports if we get this funding mechanism. We certainly need an enhanced IT system to be able to build out, and then we need the capacity to be able to handle all the samples that come from pulling these potentially violative products and to test them in a timely fashion.

My recollection is the IT component was probably about \$60 million. I think what we are looking at overall is about \$36 million per year of an import program. It is currently funded at \$17 million a year, so we are talking about increasing it by \$19 million.

I do think it is important to address the point of the timing of it. If Congress, and we hope Congress does, but if Congress were to approve a user fee authority, it does not go into effect immediately. It would still take years of notice and comment rulemaking and working with the trade and trying to refine the proposal, and frankly, working with this committee and working with Congress to make sure we got that number right.

I do not think we can move much more slowly at this point, and I think there is a real risk as I mentioned when 2016 hits that if we are not part of that single window, that is going to slow things down.

Senator BLUMENTHAL. Just one Senator's opinion, I hope you will move more quickly. I have no question, none, about the constitutionality of this system. It is of obvious benefit. A user fee is well precedented in our experience as a means of paying for this kind of program. I think it will help save lives. I hope you will move as quickly and expeditiously as possible.

As important as import surveillance is, because it keeps dangerous products off the shelves, before they reach the homes of consumers, I am also concerned about more robust mechanisms to recall products once they have entered the market.

There is a report, you may have seen it, Kids in Danger, a non-profit organization dedicated to protecting children by improving product safety, issued a report in February showing what strikes me as truly dismal recall effectiveness statistics.

This is a really urgent and important problem. According to the report, the vast majority of consumers who own a recalled product never find out about it, about the recall. Nearly 80 percent of all recalled children's products are still in the hands of those children as opposed to the manufacturer, the retailer or distributor, and of those recalled products that had reached consumers, only four percent are returned, destroyed, or fixed. Only four percent of all those dangerous products are returned, recalled, or fixed.

The question I have for you, Chairman Kaye, is what additional enforcement tools do you think are necessary to make sure that manufacturers do their part to ensure that consumers promptly remove potentially hazardous products from their homes.

And specifically in 2013, as you know, the CPSC issued a Notice of Proposed Rulemaking which would make a manufacturer's corrective action plan legally binding. What is the status of that rulemaking?

Mr. KAYE. Senator, thank you for raising the issue of recall effectiveness. It is one of those topics where I feel it cannot get enough attention because of the frustration that we face and really all Federal agencies with recall-related authorities have faced for decades.

I note, for instance, NHTSA recently had a forum on recall effectiveness, and if folks are having a hard time or not paying attention to taking their automobiles in when there is a recall, then I think that gives you a sense of the problem.

We have certainly looked at this a number of times in a number of different ways, and we are very grateful for the Kids in Danger report for putting it in relief how stark the numbers can be. I have had discussions with our compliance staff about trying to figure out what more we can do once a recall is announced to make sure we are really following up on certain recalls, those of the highest priority, to try to get consumers' attention to take more action.

All recalls are not alike. There are some recalls that I think it is good to issue them, but in terms of really devoting the resources, there are other recalls that have much more of a life saving aspect to them, and I would like to see our staff, and this is a discussion we have had, I would like to see them really dedicate more resources to discerning better between the two different types of recalls and focusing more post-recall announcement effort on those recalls that really need the work.

Senator BLUMENTHAL. What about the rulemaking on the corrective action plan?

Mr. KAYE. This was a proposal that came up a couple of years ago when there was a different configuration of the Commission, and the staff has proposed a template basically for how voluntary recalls should be processed.

When it got to the Commission level, there were a series of amendments that certainly made the rule more controversial.

When I took over this position about a year ago, I made it very clear then and I have said it on a number of occasions, that with such limited resources, I wanted to make sure the agency was focusing on those rules that were addressing persistent long term hazards, ROVs, window coverings, those types of issues where lives were being lost on a regular basis because of those products, and if we were able to turn our attention to items like the voluntary recall notice rule, it would be great if we could.

There is certainly value to it, having more of a systemized process. I know some of the other Commissioners, Commissioner Robinson in particular, feels very strongly about it. My hope is that we can figure out as a commission a way working together as a group to come up with a compromise that we feel like will further consumer safety and accelerate the process.

Senator BLUMENTHAL. Thank you. My time has expired. I want to come back to this issue. I think you have answered it well, particularly in light of Commissioner Robinson's very important testimony about gathering and analyzing data and the need for more transparency and facts when we view and evaluate the effectiveness of a recall.

Thanks, Mr. Chairman.

Senator MORAN. Thank you. Senator Daines?

**STATEMENT OF HON. STEVE DAINES,
U.S. SENATOR FROM MONTANA**

Senator DAINES. Thank you, Mr. Chairman. I want to talk about this issue of voluntary standards, and particularly as it relates to recreational off highway vehicles.

Last month this committee passed the Recreational Off Highway Vehicle bill, which I co-sponsored, postponing the Commission's controversial ROV rulemaking. Mr. Russ Ehnes is a gentleman

from Montana. He is executive director of the National Off Highway Vehicle Conservation Council located in Great Falls.

He says at best when describing the benefit and safety aspects of ROVs for farmers, for ranchers, for sportsmen, and I quote, he says "There is no doubt that we are seeing increasing numbers of vehicles as riders transition from ATVs and 4x4s to ROVs. More and more Montanans are realizing the benefits of the latest ROVs. They are very comfortable. They are inexpensive to operate and maintain. They are practical. They provide access to places that Montanans want to go, and most of all, they are safe when used responsibly.

The manufacturers themselves will tell you these vehicles were not designed to be operated on streets and on highways. They are not safe when used at high speeds on asphalt surfaces.

The CPSC statutory authority requires it to rely on voluntary standards rather than issue mandatory standards whenever compliance with a voluntary standard would eliminate or adequately reduce the risk of injury identified and there is likely there will be substantial compliance with the voluntary standard.

I was struck by the term Commissioner Buerkle used around trying to "inspire" cooperation. Contrasting that perhaps with inspiring conflict. As somebody who spent 28 years in the private sector in businesses prior to coming to Congress, I would hope the former versus the latter would be the culture we try to continue to incentivize.

For the Chairman, why did the CPSC rush to issue the Notice of Proposed Rulemaking on ROVs when further testing was necessary and the industry was already developing new voluntary standards?

Mr. KAYE. Thank you, Senator. I am really glad you raised this issue because I think, especially considering where we are in the current status of the discussions between staff and the ROV industry, it is a great example potentially of how this process should work with all parties playing their parts.

I would respectfully disagree that we rushed, considering that the ANPR, the Advanced Notice of Proposed Rulemaking, preceded the Notice of Proposed Rulemaking by about 5 years, so a lot of work, a lot of study, a lot of testing had already gone into it over those years to try to refine a proposal that the staff felt like would maintain the utility and functionality of ROVs but would also address some of the unnecessary features that were leading to an unreasonable risk of injury and death, which we still continue to see—75 or so deaths per year associated with those products.

The Commission definitely did not move quickly, and at the time the Commission proposed the NPR, what industry has told us was they had just updated their standard, our staff had evaluated that, had participated actually in the process of getting to the point of when that standard was finalized, had continually weighed in and expressed its concerns about where there were perceived shortcomings.

When the industry told us they were done updating their standard, I felt it was time for the Commission to move ahead on the Notice of Proposed Rulemaking.

Senator DAINES. Was there any particular data that really compelled you to take action now?

Mr. KAYE. Yes, I think the yearly death totals and the fact that children continue to be harmed, maimed, injured severely by these products.

Senator DAINES. Of course, on these products, there is always a choice. I guess as somebody who grew up in Montana—there is inherent risks certainly, and we want to reduce the injuries, but if you are not in an ROV, there are other choices that can be more hazardous as well, the bottom line on this.

I grew up around horses. That is an alternative. There is a lot of risk in taking a horse up in the back country as well.

I want to ask Commissioner Buerkle and perhaps Mr. Mohorovic, do you agree with that assessment, and what specific steps should the CPSC have taken and cooperatively worked with stakeholders to ensure the actual safety of ROVs? Commissioner Buerkle?

Ms. BUERKLE. Thank you, Senator. I can only speak to the period of time I have been at CPSC, which is almost two years. When I arrived there, the ANPR was in place, as the Chairman mentioned, but then the NPR, we had to vote on the NPR, we received the package as we always do for the rule, and I must respectfully disagree with the Chairman because it was my admonitions and my concerns because we had bipartisan letters from the Senate saying do not go forward with a mandatory standard, try to find a solution with a voluntary standard, that is a better way to go.

To the Chairman's credit, we did have a technical meeting in September, and that was really the first time there was real engagement with our technical staff and the industry's technical staff, and that was very fruitful, and what it revealed was there was a willingness on both sides to work to a voluntary standard and reach reasonable agreement.

That was even more of an impetus to delay, to stop the rule-making and to get back to the voluntary standard, and that has been my position right along, and now we are at a point where I personally think that the rule should be withdrawn.

We are at a place where industry and our staff are working together to get to a place and an agreement with a voluntary standard. That is a goal we should inspire, we should really aspire to, because that is the best outcome. That is a win-win for everybody.

Senator DAINES. I am out of time. Mr. Chairman, thank you.

Senator MORAN. Thank you. Senator Heller?

**STATEMENT OF HON. DEAN HELLER,
U.S. SENATOR FROM NEVADA**

Senator HELLER. Thank you, Mr. Chairman. I want to continue on what my friend from Montana was questioning about, on these ROVs, but I want to thank you and the Ranking Member for today's hearing. I appreciate it. I think these oversight hearings are critical in ensuring product safety and consumer safety.

I, too, would like to discuss the Commission's proposal that would impose a mandatory safety standard focused on the lateral stability and the vehicle handling and other related issues for recreational off highway vehicles.

As the Committee is well aware of, I have had long concerns over this rulemaking, and I have strong concerns that these proposed standards will actually make the vehicles much less safe and much more dangerous. That is where we are today. Your ideas, your direction, is going to make vehicles less safe and more dangerous.

We have a commission that is treating these ROVs like road vehicles and not the vehicles that were intended for, and that is for rugged terrain. I was pleased to know that Commissioner Robinson finally sat in one. Long overdue probably for someone who has to make these rules. Unfortunately, it was done in a test case in a facility that I am sure had them on asphalt, did not have them on rugged terrain, but on some testing facility that is supposed to guarantee to show they are not safe, and that is unfortunate that is where we are.

Last year, a bipartisan group of Senators including myself, Manchin, Klobuchar, McCaskill, Blunt, Ayotte, Fischer, and Wicker all sent letters, and you mentioned that, urging the Commission to abandon its proposed mandatory standards in favor of a voluntary consensus standard. Unfortunately, things have not progressed as we had hoped as Senators and that is why Manchin and I introduce the SAFE Act—the RIDE Act.

Our bill, which passed this committee on May 20 by a strong bipartisan vote, would help seek to answer technical questions surrounding this particular mandate. It would put the brakes on the CPSC's proposal until the National Academy of Sciences completes a technical study on the proposed requirements.

I think we can all agree it is important we get to the engineering and technical issues right, ensuring that any mandate, voluntary or mandatory, actually contribute to an overall increase in safety, making these vehicles safer, which I believe is everyone's goal.

Mr. Chairman, do you believe the industry's goals are to make these vehicles safer?

Mr. KAYE. I believe, Senator, that the industry certainly does not want to have the consumers of their products experience an unreasonable risk of injury. I just think they might have a different risk tolerance or definition of what "unreasonable" would be than we might.

Senator HELLER. What is the difference between your risk tolerance and theirs?

Mr. KAYE. I think from my perspective, and this is just me speaking, I am not speaking for any of the commissioners or the Commission itself, my sense of it is that because our statutory obligations require us to consider foreseeable misuse, meaning if somebody chooses not to wear a seatbelt, which many people we know choose not to do, or somebody chooses not to wear a helmet, as many people choose not to do, statutorily, we are still obligated to consider those factors as part of what is unreasonable or not.

Whereas, I think industry, understandably, I get it from their perspective, they view anybody who chooses not to wear a helmet or not to wear a seatbelt as assuming risk and having to deal with the consequences of that, and that might not be the first group of consumers that they are trying to take care of.

Senator HELLER. Do you believe every driver or passenger of an ROV should wear a seatbelt or helmet?

Mr. KAYE. I do.

Senator HELLER. Under any circumstances regardless of what terrain they may be on?

Mr. KAYE. Well, you are talking to somebody who has two young boys who is trying to reinforce a message especially when you are in a moving vehicle of that nature or on some type of bike or playing a sport, where you should take care of your head, and head injuries and brain injuries has been a particularly important area for me, so certainly I am going to say a helmet, absolutely.

Senator HELLER. Right.

Mr. KAYE. In terms of a seatbelt, if you are going five miles an hour and you are jumping on and off the vehicle, I can understand from the utility perspective where that might not make as much sense.

Senator HELLER. Do you own an ROV?

Mr. KAYE. I do not, but I do not think I would be allowed to where I live.

Senator HELLER. Have you driven or rode on an ROV?

Mr. KAYE. I have sat on them but not while they were moving.

Senator HELLER. That does concern me. You said in a hearing recently that an adequate voluntary standard is the preferred solution. Do you still feel that way?

Mr. KAYE. Absolutely.

Senator HELLER. You had a recent meeting with the off road industry. I understand there were productive discussions. Is that accurate?

Mr. KAYE. Yes, I believe that is accurate.

Senator HELLER. Do you think you are nearing an agreement on voluntary standards?

Mr. KAYE. That is the report I have been getting and I have to admit I have been surprised by that because you are talking about years of an industry and agency staff that have not had a lot of trust, but in the last six or so months, I would say something significant has happened, and we are in a much different place, so I really hope that is where we get.

Senator HELLER. Would you anticipate extending rulemaking at this point or at a minimum extending the public comment section on this issue?

Mr. KAYE. We have already extended the public comment section by a long period of time. I think at this point it is closed, that we received a significant number of comments.

I am concerned about if we keep extending the comment period and folks keep submitting comments, that is going to take CPSC staff off the productive dialogue that is going on. I am hesitant to get in the middle of that and do anything that is going to change the dynamics because I really do think this is in a unique place and we all have our fingers crossed that this is going to result in a win-win.

Senator HELLER. Thank you. Mr. Chairman, my time has run out.

Senator MORAN. Thank you. Senator Booker?

**STATEMENT OF HON. CORY BOOKER,
U.S. SENATOR FROM NEW JERSEY**

Senator BOOKER. I have ridden one.

Senator HELLER. So have I, by the way.

Senator BOOKER. Somebody should have stopped me because I was kind of reckless on the one I rode.

Senator HELLER. Were you wearing a seatbelt?

Senator BOOKER. I did not use my seatbelt, and I cannot confirm or deny what I did on that ROV.

From the ground, I would like to go to the sky. It seems stunning to me that we have this slant that goes sort of away, that the system is so skewed against when it comes to drones and UAS technology, it is slanted against universities and reputable U.S. businesses, when it comes to using drone technology. Other countries shooting out way ahead of us, saving money, doing things quicker in time, saving lives.

Here in the United States we have a regulatory regime that to me is outrageous and restrictive when it comes to drone technology, but when it comes to the other side of that, when it comes to recreational users, there are virtually no limits really put on users, although now they cannot fly around the White House. I just think something is wrong with that.

Often what gives the commercial efforts a bad name is all the problems we are having with recreational users.

Do you agree that these products could use the expertise of CPSC to ensure the safety of the use of these devices, and is it time now, is this an area where we should have voluntary standards for our drone technology? Anybody can take that if they would like.

Mr. KAYE. I will jump in because I am sure I will get no objection from—

Senator BOOKER. Have you ever used a drone yourself. No, I am joking.

[Laughter.]

Mr. KAYE. Certainly not while riding an ROV. I do not want to get in the way of our sister agency, the FAA, but my sense of it is they have primary jurisdiction. I think that is something we will have to explore more fully. On the larger picture of voluntary standards, absolutely. We always encourage, as early as possible, voluntary standards to try to get ahead of these issues, and I will just quickly talk about a couple of other emerging technologies, 3D printers, wearable technologies, and also remote control devices like remote-controlled home appliances, all those are areas that we are trying to work with industry partners similar to drones to try to get ahead of the issues and provide a playing field and ground rules that everybody can live by and take advantage of those technologies.

Senator BOOKER. That is encouraging. I will just add you gave me a perfect transition when you said “playing field.” Senator Heller and I both used to wear football helmets, we stopped last week. No. I mean when we played football in college. Obviously, concussions is a big, big problem.

I am wondering if you could sort of update me on where your thoughts are, how big a priority is this for you. It is actually a very, very serious reality going on for athletes. I know back in my days

playing, I am a guy that got knocked unconscious, you just get yourself right back out there. Obviously, the helmets themselves, especially some that are being advertised now as stopping concussions, it is just not the case. I am curious where you all are.

Mr. KAYE. Thank you, and I have a feeling Senator Udall is going to ask about this topic as well, so I might have more time than I think.

I cannot do justice to this topic in just five or ten minutes, there is no doubt about that. There is no issue that I have spent more time on as a single issue since I have been at the Commission than brain injuries in youth sports, bar none.

My take on it is we absolutely want kids playing sports, let's just make that very clear and put that out there. Everyone agrees, I think, we want kids to play sports. They offer tremendous benefits, whether you are playing an individual sport or a team sport.

The issue is how do you play those sports, how do they engage in those sports in a way that do not impact their brains long term. As frustrating as it might be for an athlete and as career-devastating as it could be to deal with an ankle, a knee, a shoulder, an elbow, what have you, you cannot function in your life if you have a degenerative brain condition, especially one that continues over time and erodes your executive function and takes away all of your abilities to make decisions.

Sadly, that is what we have seen. I believe the answer to this while we wait to see if a product, and I say "if," if a product is the solution, is culture change. I will liken it to this bottle. When many of us grew up, we did not recycle these because that did not exist. Now, if I try to throw this bottle out, I would not, but if I tried to throw this bottle in the garbage, my 10-year-old son would call the police on me, and that is the kind of culture change I think we need in youth sports.

We need kids that when their coach tells them in an uninformed way go out and do this, tackle this way, they say I cannot do that, I have to take care of my brain. We have been working very closely with the five professional sports leagues to try to get them to drive the message much more strongly and in a coordinated fashion to the youth levels and to parents to make sure kids are taking care of their brains.

There is a limit to what you can expect from a product. I think DeSean Jackson, before he was cut by the Eagles a few years ago, he took a hit against the Falcons going over the middle and he got hit in the shoulder. His head was not engaged whatsoever, so there was nothing for a helmet to do, and he ended up with a concussion.

There is only so much you can ask of a helmet, and if you consider that a helmet is like an egg with your brain, if you take an egg and you wrap it in bubble wrap as much as you want, you could probably drop that egg and not crack it, but the yolk is still going to bounce around in the inside, and it is the same thing with the helmet.

You can wrap your head in whatever you want to wrap it in and bang your head against the wall and not get a skull fracture or brain bleeding, but you are likely to have your brain banging around in the inside, and we do not know enough. There is so little science to understand what those injury mechanisms are, what is

the dose-response for the acute concussion issue and the long-term CTE issue from a chronic nature to understand that.

We are trying to drive culture change to minimize the hits to the head as what we see as the best solution at this point.

Senator BOOKER. Thank you, Mr. Chairman.

Senator MORAN. Senator Udall?

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Mr. Chairman. Thank you, Senator Booker, for your questions on that. I think it is tremendously important and knowing you two guys were knocking heads, that explains a lot of things.

[Laughter.]

Senator UDALL. Chairman Kaye, thank you for that very good explanation there. I know you have a passion for this. There is absolutely no doubt that parents want their kids to play sports, sports are a healthy activity, and I think it clearly outweighs the risk.

As a result of that, you know I have worked on this issue for a while, and in the 113th Congress, this committee approved my Youth Sports Concussion Act, which deals with product safety standards and misleading advertising claims.

Since 2010, I have been urging this entity here, the CPSC, to ensure football helmets meet a safety standard that addresses concussion risk and reflect the state-of-the-art in helmet technology.

I can just say I am alarmed by the lack of progress by NOCSAE, and I think you all know what NOCSAE is, in updating its voluntary industry helmet standards.

To make a couple of points here on NOCSAE, NOCSAE does not meet the requirement of the American National Standards Institute for Standard Developers. This is a code of good practice. It helps ensure balance of the interests. There is no youth specific football helmet standard. There is no NOCSAE requirement that all helmets be reconditioned on a regular basis.

Chairman Kaye, I have a yes or no question for you, are you satisfied with how NOCSAE develops and maintains the current voluntary industry standards for football helmets?

Mr. KAYE. No.

Senator UDALL. Tell me why.

Mr. KAYE. You touched on a lot of it, Senator. They obviously do not even follow the ANSI process, so there are certain aspects to their process that we do not have a window to because they are not as transparent.

When the issue broke, and thank you for your leadership because you have really been the biggest champion in the U.S. Congress in both the Senate and the House on this issue.

When this issue broke, as you well know, in October 2010, at that point we really had no access at all to the NOCSAE process, and we had to negotiate with them to allow us to participate just as observers, because we cannot participate, the Commission staff cannot participate unless it is an open meeting, they had to open up, and they only opened up just a portion of their meetings so we could be there, and then they closed the rest of it.

There is a lack of transparency. From having worked with the NOCSAE staff and gotten to know them, I do not think it is their staff that is the issue there. I think there is a larger organizational issue that is going on and a lot of pressures that are brought to bear on them.

I do think there is a lot more they can do to be more open, more transparent, and move more quickly. The last thing I will add is from my perspective, again, I am not speaking for my colleagues here or the Commission, there is a better process even than the ANSI process, and that is the ASTM process. That is the process when I see an industry is approaching ASTM and working through the ASTM process, that is the area I feel has the best process in place to ensure the best outcome, the most open and transparent, involves the most consensus building, and really gives me the most confidence that everybody has been heard and the right solution has been reached.

Senator UDALL. Yes. Thank you very much. There are these youth products that are being put out. A good example, and I think my staff is going to show you some posters here, we have a DonJoy head protector, and we also have this Full 90 high performance head guard.

The representations that these folks make on these products are pretty astounding. Unequal head bands, which you are going to see up here, they say unequal head bands predict a significantly lower risk of concussions. The full performance head gear says it reduces impact forces by 50 percent.

These are the kinds of claims that really I think do not hold any water. The DonJoy head band, the advertising for this says it prevents the young person from being injured. You can see it shows him with a head protector, and the kid without one, he is getting hurt. You are really encouraging more impact.

My question, and I know I am running over time, I see a role for the CPSC. Given the real risk of brain injury, could the CPSC require product warning labels for soccer head bands in order to assist parents, coaches, and players in evaluating the safety of these products?

Mr. KAYE. We certainly have the authority under the Consumer Product Safety Act to impose labeling requirements, and since your staff raised this with us in the last couple of days, we are going to look into that.

Unfortunately, that is not a quick process because of our regulatory requirements. When I saw the slides, thanks to Kevin Cummins of your staff, I did immediately share those with the Federal Trade Commission because I do think issues like this do need to be addressed, and they have the ability, it is within their jurisdiction for potential false advertisement, they have the ability to act quickly to try to get these products removed or to get this type of potentially misleading information off the market.

I have to say as a parent again of two young children, I am deeply concerned by marketing concerns that might mislead parents into thinking they have a level of protection that they do not, and I think what it probably does is gives folks a false sense of security, and kids are more likely to do something more dangerous than they would without having something on their heads at all.

I am really glad you raised this, and I look forward to working with you on this going forward.

Senator UDALL. Thank you. I am sorry I have already run over my time. I wanted some of your other commissioners to be able to comment. Mr. Chairman, thank you. If we have a second round, I may stay here so they can also comment on this. Appreciate your courtesies. Thank you.

Senator MORAN. I am reluctant to announce a second round in the hopes that some of you leave.

[Laughter.]

Senator UDALL. Mr. Chairman, do not do that to us.

Senator MORAN. Senator Markey?

**STATEMENT OF HON. EDWARD MARKEY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Thank you, Mr. Chairman, very much. When Congress last reauthorized the Consumer Product Safety Commission in 2008, my language to create a public consumer product safety database was included. It was true then and remains true today parents should not have to play toy box roulette, wondering if the toys they buy for their children for birthdays and holidays might kill them, make them sick, or injure them because they contain dangerous levels of toxins, like lead, asbestos, or contain choking hazards.

Chairman Kaye, how many consumers have reported potentially defective products to the *SaferProducts.gov* database?

Mr. KAYE. Thank you, Senator, for raising the database. Of course, thank you for the incredible work you did to create the database. I would say it is one of the biggest success stories of what is otherwise also a very large success story as an Act.

In the time since the database went live in 2011, I believe it was spring of 2011, we have had 70,000 plus reports of harm that have been sent into the database.

Not all those reports go up live immediately because there is a process in place to make sure all the critical elements have been included, and about 25,000 or 26,000 of those have gone through that, they had all the required elements, and those have made it to the public side, and the remaining 45,000 or so, we still use those.

Senator MARKEY. How many consumers have gone to the website to find out if there are dangerous products that could affect their families?

Mr. KAYE. I would have to get back to you, but it is a gigantic number.

Senator MARKEY. What is a gigantic number?

Mr. KAYE. I do not want to guess. I remember seeing the number recently.

Senator MARKEY. Is it in the millions?

Mr. KAYE. Yes, absolutely it is in the millions.

Senator MARKEY. Millions of Americans have gone to the website?

Mr. KAYE. I believe, but please do not hold me to that, I want to make sure we give you the right numbers.

Senator MARKEY. That is helpful. Thank you. Could you tell us how the information reported by consumers have been helpful to the CPSC in providing an early warning system?

Mr. KAYE. It is a critical source of data, one of our critical sources of data that we use that we feed to an integrated team of experts that review this data in relatively real time as it comes in, and are able to adjust both our enforcement priorities as well as our hazard identification and reduction priorities, based on the data that we collect.

It would be a detriment to that if we did not have the availability of the public database information that is submitted.

Senator MARKEY. There are many in the industry who are afraid that there would be filing of fraudulent complaints about their competitor's products or inaccurate consumer complaints that would damage corporate profits unfairly. It would kill jobs, undermine investment in new products.

What have you found as you examined the database and its impact on investment and new jobs?

Mr. KAYE. I have not seen any of those concerns bear out.

Senator MARKEY. Thank you. In 2000, asbestos was found to have been inadvertently added to children's crayons. The CPSC recommended reformulation of the crayons to eliminate the asbestos, and American companies voluntarily agreed to do that.

Unfortunately, we sometimes see recurrences in problems like this. For example, earlier this year, reports surfaced of dangerously high levels of formaldehyde in laminate flooring products imported from China. The same problem was reported in 2013 and 2014.

Now with formaldehyde, CPSC has published guidance that explains to consumers what formaldehyde is, where it may be found, how exposure affects a person's health, and informing consumers what safe, normal levels of formaldehyde are.

There is not any guidance for asbestos. How could CPSC go about establishing an asbestos regulation if it found more children's toys contained it?

Mr. KAYE. Under our authorities, we would have to not only have evidence of the basic toxicity associated with it. I think in the case of asbestos, that is pretty clear. We would have to also have established paths of exposure.

It is not good enough, and this is not a public policy comment on my part, this is just the way the law is written, it is not good enough that a crayon, for instance, might be entirely filled with asbestos. If there is no path of exposure for a child, we would not be permitted to regulate under the Federal Hazardous Substances Act.

We would need to undertake a product by product and exposure path by exposure path regime to see what was actually coming out.

Senator MARKEY. Quickly, do you need more funding, more authority to deal with nanotechnologies as they are increasingly inserting themselves into consumer products across the country and potentially endangering children in our society?

Mr. KAYE. Absolutely. It was part of our budget request. We are seeking significant funds to address a lag in the scientific area of looking at exposure for consumer products. It has been identified

as a potential health hazard similar to asbestos where it might get embedded in the lungs.

Nanotechnology is phenomenal. We want it to expand, but we also want to protect children.

Senator MARKEY. I agree with you. I think it is the new frontier for doing good but it is also the new frontier for potentially endangering Americans, especially children, and we have to do a lot more about it.

Thank you, Mr. Chairman.

Senator MORAN. You are welcome. Senator Klobuchar?

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

Senator KLOBUCHAR. Thank you, Mr. Chairman. Thank you, Commissioners. I think you know I have done a lot of work in this area and we have had some success together with lead in toys as well as the safe pools, going way back. I really appreciate your work.

One of the newest things I am looking at are these laundry pods. I was just so surprised at how many cases we have had coming out of Minnesota, 350 cases of accidental poisonings in one state in 2014. Even though there is starting to be more education, which I think is going to be key here, we are still seeing young toddlers—we had a toddler who was in intensive care for a week. She was in an apartment building.

People say, oh, why not put these up on the top shelf. Well, it is not always that easy sometimes if people are in apartment buildings or kids can open up things.

The key, and I know the industry is working hard on trying to make it so it does not taste good, trying to come up with better ways to seal the containers they are in, and I wondered, Mr. Kaye—of course, Senator Nelson has worked a lot on this, this is his pod, which I am going to throw to him right now.

[Laughter.]

Senator KLOBUCHAR. Senator Nelson and Senator Durbin have worked on this extensively. Do you want to give me an update on what is happening and what the CPSC is doing?

Mr. KAYE. I do. Thank you, Senator, and as you mentioned, you have been an incredible supporter of the agency and so many of the key initiatives we have undertaken originated with you and your efforts.

This issue emerged a couple of years ago. At that point under the prior chairman, Chairman Tenenbaum, strongly urged the industry to come together and create a voluntary standards process, which it did do. CPSC has a robust participation in that. We provide a lot of the data and a lot of the technical support to try to move industry forward.

There was a period of time where unfortunately it was lagging and I thought some of the areas that the industry was proposing really were not going to get to the heart of it. We always prefer to get as close to the hazard as possible.

You mentioned some of the packaging ideas and warnings and labels, which are all well and good, but we really wanted more work done on the hazard itself.

If Senator Nelson could just hold that pod up one more time, please, that film that is on the outside of that from our perspective is too permeable. It is too easily punctured. One of the critical breakthroughs in this was the willingness of industry to adopt a much firmer film, to make sure that as children are exposed to these products, whether it is saliva or pinching or squeezing, that the film does not burst sooner than it should.

We understand it needs to function when it is put into a laundry machine, and it is exposed to water, but it was a critical breakthrough, and I think we are now at a point where we have had developed in the last few weeks a voluntary standard that is soon going to go to ballot, that we believe actually will be effective.

Senator KLOBUCHAR. Thank you very much. The other question I have, as you know, I worked hard on a bill with Senator Crapo that we passed on formaldehyde, and it has continued to be an issue right now, the Wood Products Act, the Standards Act.

I know again Ranking Member Nelson has also requested the CPSC independently investigate the presence of formaldehyde in wood products from China.

What is happening with those efforts with formaldehyde? It has been a long time in waiting where Senator Crapo and I passed our bill.

Mr. KAYE. We have not gotten involved in the implementation by EPA of its reg.

Senator KLOBUCHAR. I know that. I did not mean to imply you guys were behind.

Mr. KAYE. Thank you, I appreciate that. As soon as the news story broke, we immediately had convened a group the next morning to obtain samples and to develop test methods to make sure we were looking at this issue in real life exposure scenarios.

We went out and bought a significant number of materials that would range from the periods of concern over the last 2 years up until the present day, and from different sources and different manufacturers, to try to make sure we had a full picture.

We developed test methods and then contracted that out because it is faster to do it that way to labs that have that experience. They have engaged in that testing, not all the results are back, but a number of them are back.

In the meantime, our health sciences staff, our toxicologists, have had weekly consultation with our sister agencies, EPA, ATSDR, CDC, to make sure we are gathering all the Federal resources necessary, and what we are going to do is take that test data and run it through the exposure scenarios against the known harmful levels of formaldehyde, and try to reach some preliminary risk analysis conclusions from both an acute and chronic standpoint.

We are going to need more help from our Federal partners. They know that. They have more expertise on the chronic side. Things are moving along. I promise you that you will know when we know.

Senator KLOBUCHAR. OK. Very good. Carbon monoxide. I am out of time. I introduced a bill, the Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Act. We are just continuing to see more and more of these cases across the country. I hope you will continue to work on this issue with me and do whatever we can.

I think we will probably do a letter or question for the record on that.

I know some of my colleagues have raised the issue of ROVs, and I understand the comments on the rule are due this Friday. As I stated in our last markup, I strongly urge both industry and the agency to come together on strong voluntary standards that will protect people and also work for consumers.

I know the meetings from the industry's standpoint, given that I have two of the manufacturers in Minnesota, the biggest domestic manufacturers, seem to be going well, and I hope the issue can be resolved.

Thank you very much.

Mr. KAYE. Thank you.

Senator MORAN. Senator, thank you. I will now call on the Ranking Member of the Full Committee, Senator Nelson.

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

Senator NELSON. Thank you, Mr. Chairman. Thank you very much. I will just hold this pod up again. It feels so nice. You can imagine for an infant, put it on their little tender skin, it feels so nice and it smells so nice. As a matter of fact, this one does not smell like grapes, but I have smelled those that have grapes.

Is it any wonder for an infant that it ends up in their mouth. Because it is so easy to break this seal, that liquid gets in. Of course, we have had a number of children poisoned like that.

I came in in the middle of Senator Klobuchar's questioning. Do you all clearly have jurisdiction to go after this?

Mr. KAYE. Yes, sir.

Senator NELSON. Unfortunately, you do not have jurisdiction to go after this?

Mr. KAYE. No, sir.

Senator NELSON. This is liquid nicotine. Of course, the same thing happens. Senator Klobuchar, this is Juicy Juice. I have seen them other than this, they have all kinds of pictures of fruit on it. It is very attractive. They have all kinds of—the names are very appealing. Therefore, the labels that go on them have all kinds of pretty pictures.

What you do with this apparently for people who want to get nicotine by inhaling it in less concentrated form than a cigarette, they put it in these little devices that are electronic cigarettes. I do not know why they would want to do that, but they do. It brings this committee to be concerned when these things are not childproof and when children can open them up.

The problem is you all do not have the jurisdiction, the FDA does. We have the jurisdiction in part on the FDA in this committee and share that with the health committee. We are pushing that.

Another one that you do have jurisdiction on is the carbon monoxide poisoning that we are finding on these generators, and unfortunately, it is hurricane season, and people have generators. If they are the old generators and they do not have the automatic cutoff when they have some detection of the carbon monoxide—would you bring us up to date on what is happening there?

Mr. KAYE. Absolutely. I want to thank you for your recent letter on this issue that was addressed to me as well as the voluntary standards bodies associated with this effort.

Senator NELSON. It is not just recent. I have been at this for about 5 years.

Mr. KAYE. I should say your most recent, how about that. It is moving on two tracks. There is the voluntary standards capacity, and I apologize, this might get a little bit detailed. There are two different voluntary standards bodies, as you noted in your letter. There is UL and then there is PGMA, the Portable Generators Manufacturers Association. That is not a helpful aspect that there are two different bodies to deal with.

The bottom line has been UL has been a much more receptive avenue to try to have a performance standard that would significantly reduce the amount of emissions of carbon monoxide, which is really where our staff has been going.

The theory that they have developed, and I think this is a sound theory, is the more time consumers have to recognize symptoms and to depart the premises, the more likely they are to survive.

They had done a Proof of Concept with the University of Alabama a couple of years ago on taking a certain generator and changing its configuration, an electronic fuel injected generator, adding a catalyst to it in a way that would allow it to both take care of EPA related emissions, which are important, as well as carbon monoxide.

It showed a drastic increase in the amount of time that somebody would have to escape in the normal hazard scenarios where somebody either runs it in their basement, inside their house, they run it in a garage.

What the staff has been trying to do is to turn that into performance requirements as part of the Notice of Proposed Rulemaking. I anticipate that coming up early next Fiscal Year. The staff certainly knows how I feel about it. They know this is an area as you mentioned and that you have mentioned for a long time, that these are preventable deaths and we need to do something about it.

Back to quickly the voluntary standards body, ultimately we do need movement, and that would be the faster mechanism to have UL in particular adopt part of these technologies in the next version of its standards, but it has been slow going. There have been productive conversations, but it has been slow going.

I am hopeful that your letter will help light a fire.

Senator NELSON. I want to thank all of you. You are much more professional as the CPSC than was the case about 10 years ago. The way I got into this was through the Chinese drywall, which after those hurricanes of 2004 and 2005, and there was such a need for building materials, this contaminated drywall is being supplied. People could not live in their homes. The bank would not help them on their mortgages. The insurance company says it is not covered. They are stuck in their homes and they cannot breathe and their children are getting sick.

The CPSC to begin with was just pitiful. Its research department was a cardboard table with stuff put out on it. You all have professionalized it a lot more, so I want you to know my personal appreciation.

Mr. KAYE. Thank you.

Senator NELSON. Thank you.

Senator MORAN. Thank you, Senator Nelson, for joining us. Senator Blumenthal?

Senator BLUMENTHAL. Thank you. Just a few quick questions. First of all, on laundry detergent pods, Senators Durbin, Ranking Member Nelson and I introduced the Detergent Packs Act of 2015, which would require the CPSC to set standards to make detergent pods less attractive to children.

I am heartened to hear that you may be moving toward a voluntary set of standards. Is that what I heard earlier?

Mr. KAYE. Yes, Senator, that is correct.

Senator BLUMENTHAL. What would those standards do?

Mr. KAYE. It would have basically three components, so it would have strengthened packaging. It would strengthen the film, as I mentioned when Senator Nelson kindly held up the pod, it would strengthen the film around that, which is a critical component, and it would also increase the warnings and labels associated with them.

Senator BLUMENTHAL. Would it affect at all the coloring or the smell that all too often makes these very attractive?

Mr. KAYE. We have been having those discussions individually with a lot of the companies to try to have them dial back the marketing and the way they are doing that. I think some of them are more receptive than others.

I do not think the current version would do that because I just do not think from a technical perspective they are able to tackle that, but they have already committed, and I have made it very clear to them, that I expect them to continue at this.

This may be the first version of the standard that they are ready to put out, but that might not be good enough.

Senator BLUMENTHAL. These first standards may be followed by others. I am still troubled when we talk about voluntary standards regarding enforceability. If those voluntary standards are violated, your enforcement mechanisms are severely limited; correct?

Mr. KAYE. Yes, there is a slight exception to that under Section 15(j) of the Consumer Product Safety Act, which is if there is a voluntary standard that is effective and it is substantially complied with—

Senator BLUMENTHAL. The problem with these voluntary standards is that they are like children who lack teeth. They are fine as long as companies follow them, but there is no real deterrent, no real hook, no real hammer that your agency can use to protect the public if an outlier or the industry as a whole decides hey, I do not really care about making these detergent pods unattractive to children, and those voluntary standards are just not to my liking.

Mr. KAYE. So, we do have that on occasion. We have to pursue that under a defect theory. It is just a lot harder of a case to make, as you can appreciate from your background as an AG for five terms, to go case by case is far less efficient and effective than to have an industry wide standard.

Senator BLUMENTHAL. Exactly. I want to come back to artificial turf because as much as we pursue the consumer danger de jour, liquid nicotine, detergent pods, artificial turf has been around for

a long time. In fact, in 2008, well before you were in your present position—by the way, just as a parenthetical I thank all of you for your very rigorous and dedicated service on the subject of consumer safety.

As much as we may seem to be critical, it is the system really that is lacking, and I know you are doing your best within the system.

Back when I was attorney general, I called on the CPSC to remove and revise a 2008 report on its website that “Synthetic turf fields OK to install, OK to play on.” An article that really deceptively misled many into thinking artificial turf had been proven safe, deceptive information or misinformation that was the CPSC’s responsibility.

In a 2015 article—I am going to ask that all these articles be entered into the record, Mr. Chairman.

Senator MORAN. Without objection.

[The information referred to follows:]

WSB-TV/Channel 2 Action News—Atlanta

CPSC NO LONGER STANDS BY SAFETY OF ARTIFICIAL TURF

Updated: 7:21 a.m. Thursday, April 30, 2015/Posted: 11:29 p.m. Wednesday, April 29, 2015



By Rachel Stockman

ATLANTA— The Consumer Product Safety Commission is no longer standing by the safety of crumb rubber used in artificial turf and playgrounds.

In 2008, the agency posted an article called: “CPSC Staff Finds Synthetic Turf Fields OK to Install, OK to Play On.” However, the agency appears to be re-evaluating its position.

“Chairman Elliot Kaye has deep concerns with the (2008) press release and it is not the agency’s current position,” Scott Wolfson, the Communications Director for the Consumer Product Safety Commission, told Channel 2’s Rachel Stockman. “What was done in 2008 was not good enough to make a claim either way as to the safety of those fields.”

The Federal agency is not investigating further because they don’t have the resources at the present time, Wolfson said.

“You’ve got your kids out here playing sports, you want them to be safe and healthy but if there is stuff that’s not healthy. You don’t want your kids around that,” said parent Marticia Woodward. “Money shouldn’t be an issue when it comes to safety—not just for our kids (but) for anybody.”

Jeff Ruch, an attorney for the nonprofit organization Public Employees for Environmental Responsibility, has been pushing the Federal agency to further investigate the safety of tire crumbturf.

“The (turf) industry has been very active in lobbying the commission but the commission has not appeared to have taken any action to protect children,” Ruch said.

Ruch’s organization acquired public records which he says show the turf lobbyists’ influence on Federal officials.

“They are supposed to protecting the consumer not the industry and if they are letting the industry tell the commission what is in these products, what level there is for children, they aren’t getting the straight story,” Ruch said.

“There is no visible sign we have been influenced one way or the other,” Wolfson said.

The Artificial Turf Council, located in the Atlanta area, sent Stockman a statement saying:

“The Synthetic Turf Council met with CPSC in 2008. As a result of its independent study, the CPSC issued a news release on July 30, 2008 saying that ‘young children are not at risk from exposure to lead in these [synthetic turf] fields.’

“Since 2008, the STC provided the CPSC with the 50 independent, science-based studies and reports that have been published in the last 20 years. All have validated that there is no elevated human health or environmental risk from synthetic turf with crumb rubber infill.

“PEER, serving its own interests and biased agenda, chooses to ignore these persuasive studies, all of which are easily obtained from the Synthetic Turf Council website, www.syntheticurf.org.”

(http://www.wsbtv.com/news/news/local/cpsc-says-they-no-longer-think-crumb-rubber-artifi/nk6Ch/#_federated=1)

Senator BLUMENTHAL. I am very pleased that you have acknowledged that CPSC report does not represent the agency’s current position. I am still troubled that the spokesperson in that article says your agency “Is not investigating further because they do not have the resources.”

I mentioned earlier 153 reported cases of cancer linked to play on synthetic turf. Given the number of children exposed, do you not think that health and safety requires the CPSC should be prioritizing this issue?

Mr. KAYE. I actually agree with you, and this is why I detailed to my office when I became Chairman, a toxicologist from our career staff because I do care very deeply about the lack of certainty that parents face with regard to chemical exposure, and you hit on one of the critical areas.

One of the things that I have tried to do, recognizing that we do have limited resources and other agencies have overlapping jurisdictions and significantly more resources, is to try to reinvigorate cross agency collaboration on the critical chemical areas of concern.

I have spent time with the leadership of EPA, CDC, ATSDR, of the National Toxicology Program in the National Institutes of Health Sciences, and I am due to see soon the Acting Commissioner of the FDA. My pitch to all of them has been the public is owed a lot more, we can do a lot more working together. Putting aside TSCA reform and the understandable issues associated with that, we have current authorities and resources that, pulled together, can go a long way to trying to address some of this uncertainty, and crumb rubber and artificial turf was at the top of that list.

There is more to come on this, and I promise you as long as I am in this position, it will continue to be a critical area.

Senator BLUMENTHAL. I very much appreciate that commitment. My time has expired for the second time this morning. I want to thank our magnificently tolerant Chairman of this subcommittee, my favorite Chairman.

[Laughter.]

Senator BLUMENTHAL. Of any Subcommittee in the United States Senate. I very seriously want to thank members of the CPSC who are with us today for your public service. Thank you very much, Mr. Chairman.

Senator MORAN. I finally got what I thought I was seeking from you until you said that the remainder of what you were saying was serious, suggesting the earlier part of your conversation was not.

Senator BLUMENTHAL. It is all serious.

Senator MORAN. Senator Udall?

Senator UDALL. Chairman Moran, I also thank you and thank you for your patience. You have some pretty persistent questioners here. We appreciate your patience on that.

I would like to follow up on my earlier questions on youth sports equipment, safety standards, and product labeling. Could I ask each commissioner if they support Chairman Kaye's focus on improving brain safety in youth sports? Mr. Adler, why not start with you?

Mr. ADLER. Yes.

Senator UDALL. Would you want to elaborate?

Mr. ADLER. I will elaborate in the following sense. I was Acting Chair when Chairman Kaye was the Executive Director of the agency. One of the things I was most impressed by was how he had taken it upon himself both while he was the Executive Director and while he was the Chief of Staff to former Chairman Tenenbaum to get involved in this issue. It is a passion of his. It is inspirational to me.

I think the work he has done has been absolutely terrific, so I fully support what he has been doing. I thank you also for all the work you have done.

Senator UDALL. Thank you. Ms. Buerkle?

Ms. BUERKLE. Thank you, Senator. Yes, I do support those efforts. To the Chairman's credit, this has been a passion of his and he is strongly committed to it. He mentioned changing culture earlier in his previous comments, and I think in this instance, education and changing culture through education will be extremely helpful in raising awareness about these issues. Thank you.

Senator UDALL. Thank you. Mr. Mohorovic?

Mr. MOHOROVIC. Thank you, Senator Udall. First, if you do not mind, I would like to applaud your leadership with regard to chemical safety in the United States. We also have under our mission the need to provide a uniform set of standards, to be able to minimize conflicting state, local, and municipal regulations and standards on consumer products.

We recognize our abilities and where our shortcomings are and we very much appreciate your efforts. I do support those that you mentioned and those of Chairman Kaye. He has exercised tremendous leadership in this area.

As a former football coach for the Sandia Matadors for four years and a member of the Apple Board of Directors, I appreciate the fact that the Chairman has taken a real holistic view of this while I think he appropriately identifies that a product solution would be the best. It is a matter of culture and a cultural change, and that goes down to coaching and education.

For those ways, I appreciate and support his leadership.

Senator UDALL. Thank you very much. Commissioner Robinson?

Ms. ROBINSON. Thank you, Senator. We first discussed this before my Senate confirmation hearing. I applaud your efforts along these lines. I very much support the Chairman in these efforts.

Having represented a former offensive lineman at the University of Michigan football team many years ago, I am very, very aware of the injuries that we unreasonably inflict on our children as they are playing sports, and I very much support these efforts.

Senator UDALL. Thank you. Thank you, Chairman Moran, really appreciate your courtesy.

Senator MORAN. Thank you, Senator Udall. I am told Senator Nelson has no follow-up questions. Now that almost everyone is gone, I can do my second round.

Let me start with a conversation that Senator Blumenthal had with the Chairman about recalls. My question would be phrased like this, what is an example of a recall that worked well and what is the example of a recall that worked poorly, and what are the factors that determine the difference?

Mr. KAYE. I do not want to get into company specific issues, but I can talk about the factors probably. The recalls that work best, not surprisingly, are where you have the fewest amount of products and you have a mechanism where there were direct sales to consumers, especially in recent years, where you will have an e-mail trail, or some ability to reach consumers directly.

We actually call those “recall alerts,” because there is a certain percentage, about 90 percent of the consumers, that we know from the company, they have the ability to reach automatically in a direct fashion. We do not need to issue—we do usually just for the record, but we do not need to issue a news release to get the public’s attention. Companies can reach directly to the consumers, and those are the most effective recalls.

Senator MORAN. How common is that circumstance?

Mr. KAYE. It just is not that common in part because consumers, of course, are not required to submit their e-mail or there is no mechanism that has come from a manufacturer through a retailer to a consumer, so there is not that ability for the manufacturer to reach them in that direct way.

We would like to see them take on more efforts, particularly in social media, and the last bit is from our perspective, companies have very sophisticated marketing teams and personnel. They spend a lot of money trying to figure out, especially for children’s products, how to capture the attention of very busy parents to get them to buy their product.

All we are asking them to do is take that same creativity, that same energy, that same team and pull the resources and focus that on trying to get that same parent’s attention when there is a recall.

We do not see that same level of commitment, and I think that would go a long way.

Senator MORAN. Thank you. Let me turn to a topic that I raised with Commissioner Adler, than acting chairman, more than a year ago. Fourth of July is around the corner. Fireworks is a product that you are responsible for. It is an important aspect of what you do.

When was the last time the CSPC updated its mandatory fireworks standards?

Mr. KAYE. It has been a number of years, and we actually have in the works, thanks to Commissioner Robinson as part of our current Fiscal Year operating plan, an amendment to do a complete review on it. I am hopeful we will see an improvement.

I do want to quickly add that this is one of those areas, and Congress was clearly thinking about it in the most recent Appropriations Act, asking us to provide examples where the voluntary standards have exceeded from a safety perspective the mandatory standards, but because the mandatory standards are in place and the testing requirement is to the mandatory standard, companies are not testing to the higher quality standard or the higher safety level, they are testing to a lower one.

Fireworks is a good example of that. We will be submitting today a report in response to that request by Congress. I think that is the type of authority that it would be good for us to have to be able to more quickly adopt a voluntary standard that has surpassed from a safety perspective our mandatory standard.

Senator MORAN. The issue I raised with Commissioner Adler, I think it was back in January of last year, dealt with the audible standard. My understanding is there is no more clarity today for a person in the business of fireworks to know how to comply with the standard than there was when I raised this topic a year and a half ago.

The audible standard by its nature, and I think this is a fact, is subjective. You hear things differently. The test, as I understand it, is based upon someone listening to a device being exploded.

What is it that prevents us from moving toward a more objective science based standard on the topic of audible?

Mr. KAYE. Unfortunately, I think it has been the science that has prevented that from happening. I know the staff in the last few years has spent a lot of time trying to find an enhanced method for that particular part of the testing protocol, and to measure, for instance, force, and to see if there is some correlation between force and the propensity for consumer fireworks for what would be an injury that we would find to be unreasonable.

I do hope, as I mentioned earlier, with this rule review underway, that staff will have identified working with industry and really looking at the voluntary standards that exist—I think there might be two out there—see and spend more time on those provisions that relate to this in those standards to see if that is a better model or if there is some way of taking that model and enhancing it.

I think there is work underway on this. My staff will be in touch with yours as we have something to report.

Senator MORAN. That would be useful. My understanding, my impression from the response I received previously was that effort was put on hold, with nothing really happening toward trying to change the ear test as the methodology.

Mr. KAYE. When Acting Chairman Adler was in to see you, he spoke accurately about the state at the time, and what happened in the interim, as I mentioned, was Commissioner Robinson's efforts as part of our operating plan to have a holistic rule review of the fireworks standard, including this issue, and that is where this more recent update comes in.

Senator MORAN. What kind of time-frame do you think you are on in this regard?

Mr. KAYE. The staff is due to provide us with a briefing package, giving us the options and telling us where they are from a technical standpoint by the end of the Fiscal Year. Again, we will certainly share that with you when that comes up.

Senator MORAN. Let me go to Senator Nelson.

Senator NELSON. I just want to point out again on this liquid nicotine, it is absolutely ridiculous that you, the CPSC, are prevented from requiring the childproofing of a container like this that poisons children and has killed several of them when they ingested it. That is ridiculous.

There is an exemption for any tobacco product, and therefore, what we have done, Mr. Chairman, with both Senator Ayotte and Senator Grassley co-sponsoring the bill, and trying to get it passed, and we are actually trying to pre-conference with the House, something that is so common sense to get it done.

If for some reason it does not happen, and I wish you all would keep pushing your general counsel since you have the statutory responsibility of making things safe, like childproofing containers, even though you are exempted from anything being a tobacco product.

I hope I do not have to come back to you about that, if we can pass this legislation. Thank you.

Senator MORAN. Senator Nelson, thank you. Let me just follow up on our earlier conversation about fireworks, and then conclude this hearing.

First of all, I would appreciate the information that you indicate will be forthcoming, and we would be very interested in receiving that. Thank you for that.

Are you continuing to enforce the rule related to audible testing and seeking penalties for its violation? If that is the case, how can a manufacturer or importer meet those specifications without really knowing what the standard is? Is that a good use of Commission resources?

Mr. KAYE. I think this might end up being a fuller conversation that we might have to have in a different setting, just because it does involve specific compliance actions.

I can say we still stand behind the entire fireworks regulation. You made the point that July 4 is coming up. It is the deadliest month every year and the worse month every year around July 4 associated with fireworks' injuries.

There are many aspects of this standard, even above and beyond this particular provision, that we think make a difference and saves lives and prevents injuries.

We still stand behind it. We still have active cases. As you also mentioned, it is not a new standard. The fact there is now this issue is something again that we may have to discuss in a different forum on a particular compliance case, but industry has for a long time been aware of the issues associated with this, and we continue to work with them, we continue to work with the trade association to try to have a better dialogue.

I feel like we have certainly heard each other, and hopefully the work that is being done at the technical level that I am assuming has included industry or will include industry as we do notice and comment, will get to a place where everybody can feel better about it.

Senator MORAN. Mr. Chairman and Commissioners, thank you very much for your time today. Thank you for your testimony and the conversation that I hope my committee found valuable. I did. I hope you will take into account the messages that Members of Congress deliver in these settings.

I have been in these hearings before in which all the Commissioners were present, and it did not seem quite as civil as you are seem to each other today. That was refreshing.

The hearing record will remain open for 2 weeks. During this time, Senators are asked to submit any questions for the record. Upon receipt, the witnesses are requested to submit their written responses to the Committee as soon as possible.

With that, I adjourn the Subcommittee hearing.

[Whereupon, at 11:59 a.m., the hearing was adjourned.]

A P P E N D I X

SPECIALTY EQUIPMENT MARKET ASSOCIATION (SEMA)
Washington, DC, June 19, 2015

Hon. JERRY MORAN,
Chairman,
Committee on Commerce, Subcommittee
on Consumer Protection, Product
Safety, Insurance, and Data Security,
United States Senate,
Washington, DC.

Hon. RICHARD BLUMENTHAL,
Ranking Member,
Committee on Commerce, Subcommittee
on Consumer Protection, Product
Safety, Insurance, and Data Security,
United States Senate,
Washington, DC.

RE: JUNE 17, 2015 HEARING, "OVERSIGHT OF THE CONSUMER PRODUCT SAFETY
COMMISSION"

Dear Chairman Moran and Ranking Member Blumenthal:

On behalf of the Specialty Equipment Market Association (SEMA), I thank the Subcommittee for conducting an oversight hearing of the Consumer Product Safety Commission (CPSC). SEMA is concerned about the CPSC's pending rulemaking that would establish a mandatory safety standard for recreational off-highway vehicles (ROVs). SEMA supports S. 1040, the "ROV In-Depth Examination Act," to prohibit adoption of the rule pending a closer examination of its potential impact. We respectfully request that you include this letter in the record of the Subcommittee's June 17, 2015 hearing.

SEMA represents the \$33 billion specialty automotive aftermarket industry. Our trade association is made up of about 6,800 mostly small businesses nationwide that design, manufacture, distribute and retail specialty parts and accessories for motor vehicles. The industry employs over 1 million Americans and produces performance, functional, restoration and styling enhancement parts for use on passenger cars, trucks and collector vehicles along with ROVs and other off-highway vehicles (OHVs). ROVs and related equipment represent an important segment of products manufactured by SEMA members.

ROVs are a popular form of recreational transportation on backcountry roads and trails. They can attain speeds greater than 30 miles-per-hour and are configured differently than all-terrain vehicles (ATVs). ROVs generally accommodate a side-by-side driver and passenger in a compartment equipped with roll bars. They also include automotive-type controls for steering, throttle and braking.

ROVs are currently subject to a nationally-recognized industry standard developed by the American National Standards Institute (ANSI) and the Recreational Off-Highway Vehicle Association (ROHVA), which has been effective at protecting OHV riders. The ANSI-approved standard (ANSI/ROHVA 1-2014) is based on 2014 data and is the result of many years of cooperative efforts by industry and the CPSC to develop a voluntary approach to regulating these vehicles.

Despite the industry standard's success, the CPSC announced in November 2014 that it would pursue a rulemaking to establish a mandatory ROV safety standard. The Commission cited safety as its reason for promulgating the standard. However, it is not clear that a CPSC standard would reduce accidents beyond the reductions achieved under the ANSI standard. In fact, with respect to the dynamic lateral stability and vehicle handling requirements, the CPSC acknowledges that it does not "have sufficient data to estimate the injury rates of models that already meet the requirements and models that do not meet the requirements. Thus, we cannot estimate the potential effectiveness of the dynamic lateral stability and vehicle handling requirements in preventing injuries" (79 Fed. Reg. 69004 (2014)).

SEMA questions whether the CPSC has sufficient basis for abandoning the current industry standard since the law directs the Commission to pursue a voluntary consumer product safety standard whenever possible. 15 U.S.C. §2056 directs the CPSC to "rely upon voluntary consumer product safety standards rather than promulgate a consumer product safety standard prescribing requirements described in

subsection (a) of this section whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards.” Given the unambiguous wording of the law and the lack of evidence that a rulemaking would result in increased safety, CPSC’s basis for abandoning the current industry standard is without merit.

SEMA joined with ROHVA and a number of other organizations and companies in voicing concerns about the proposed ROV mandate at the CPSC’s public meeting (January 7, 2015). Many attendees at the hearing, including SEMA, noted that the CPSC’s proposed rule is based on test data from 2010 and largely reflects the outdated 2011 version of the ANSVROHV A rule. As a result, the Commission’s proposed rule would have the unintended effect of imposing design restrictions and stifling future safety innovations. The proposal also includes restrictive lateral stability and vehicle handling requirements that could potentially limit vehicle use.

Conversely, the industry standard recognizes that there are a wide variety of uses and terrains for which ROVs are constructed, from utility to recreation. ANSVROHVA standards, which reflect collaboration with the CPSC, are also much easier to update than a Federal standard, which requires a lengthy rulemaking process.

The CPSC has not yet indicated if it will withdraw its mandatory rule and adopt the industry standard. Given this circumstance, SEMA supports S. 1040, the “ROV In-Depth Examination Act,” and thanks the Committee for advancing this important piece of legislation. The bill would ensure that the CPSC’s rulemaking, if pursued, is based on sound science and examines whether it would actually undermine ROV capabilities and intended uses.

Thank you for your consideration. Please feel free to contact me if you have any questions.

Sincerely,

STUART GOSSWEIN,
Sr. Director, Federal Government Affairs.

PORTABLE GENERATOR MANUFACTURERS’ ASSOCIATION (PGMA)
Cleveland, OH, July 27, 2015

Hon. BILL NELSON,
Ranking Member,
Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

Via E-Mail

SUBJECT: *Reply to Your Letter Dated June 15, 2015*

Dear Senator Nelson:

Thank you for your letter dated June 15, 2015.

The Portable Generator Manufacturers’ Association (PGMA) shares your concern regarding the safe use of portable generators.

Portable generators are safe when used properly and offer many benefits to society. The benefits range from saving lives and helping families and communities quickly regain normalcy during the aftermath of severe weather to enhancing recreational activities such as camping or tailgating.

In September 2012, CPSC released a report detailing the development a prototype low CO emission portable generator in conjunction with the University of Alabama. Analysis of this prototype demonstrated substantial issues regarding reliability and performance. As part of this project, a second prototype portable generator was developed that would attempt to sense when the portable generator was operating in an enclosed space and respond by automatically shutting off the engine. The CPSC report stated that the second prototype with the shutoff feature suffered from reliability issues. *It is our understanding that CPSC subsequently chose not to pursue the automatic shutoff technology further.* Instead, CPSC has been pursuing a strategy of reducing CO emissions in portable generators.

Nevertheless, PGMA members continue to work collaboratively with other stakeholders to identify viable solutions that address portable generator CO issues through the UL CO Task Group. This Task Group consists of over 30 representatives including CPSC staff, health and safety professionals, medical professionals, and industry. While PGMA has actively participated in the Task Group, we have reservations about the current direction of the Group. We request that since PGMA

successfully led consensus of the only ANSI recognized portable generator safety standard (G300), that PGMA lead and direct the Task Group.

Regarding the use of low CO emission technology in portable generators, in a press release (#12-278) on September 14, 2012, the CPSC stated:

“The CPSC continues to urge consumers to never run their portable generators in their attached garages, in or even near their houses, including avoiding placement near windows or vents. Generators should only be used outside, far away from homes. CPSC cautions that even if portable gasoline powered generators were to incorporate this technology, they would still need to be used outside, far from the home. The technology does not make them safe for indoor use.”

According to CPSC data, for cases where the location of the portable generator was known, 96 percent of carbon monoxide deaths associated with portable generators occurred as a result of using a portable generator inside a home or garage. *We believe that two critical components for addressing this overwhelming statistic are the increased use of carbon monoxide detectors in homes as well as expanded public information and education campaigns that inform the public to never use portable generators indoors.*

Additionally, regarding the use of carbon monoxide detectors, CPSC stated the following in their September 14, 2012 press release:

“Another important line of defense against CO poisoning is having CO alarms on each level of the home and outside sleeping areas. Based on available alarm data, 93 percent of CO-related deaths involving generators take place in homes with no CO alarms. Much like smoke alarms designed to alert consumers about smoke or fires, CO alarms are designed to alert consumers to dangerous CO levels and give them time to get out of the house before becoming incapacitated.”

States and local communities throughout the United States have recognized the role carbon monoxide detectors play in protecting consumers from the multiple sources of CO present in everyday life—furnaces, space heaters, and charcoal grills to name a few. As of January 2015, 29 states have enacted laws regarding the use of carbon monoxide detectors.

We believe strongly in the effectiveness of public information and education campaigns. PGMA developed *Safety First*, safety awareness information that can be downloaded from the PGMA Website. In mid-2014 PGMA began a media relations campaign to promote the safe use of portable generators. Through the use of targeted news releases, PGMA was able to garner more than 2600 media placements, building awareness of the preventative measures relating to carbon monoxide safety.

In 2015, PGMA has expanded its media relations program with a significant marketing campaign to broaden the reach of efforts in the areas where the use of portable generators is high. PGMA is continuing the media relations efforts and this new safety awareness campaign will include a website, social media, PSAs, fact sheets, and partnerships with utility companies to better educate consumers on the safe use of portable generators. As the program develops we would be happy to share this information with you.

In addition, we were pleased to learn of a recent proposal from CPSC Commissioner Joseph Mohorovic for a CPSC branded carbon monoxide information and education campaign focused on preventing CO deaths associated with portable generators. Although the proposal was not accepted by the Commission, it is our hope that CPSC will reconsider the need for this campaign in the future.

In other efforts related to portable generator safety, we would like to report that the ANSI/PGMA G300 standard, *Safety and Performance of Portable Generators* has been published. The standard obtained recognition as an American National Standard in June after achieving consensus and acceptance from a wide range of interests including government, users, producers, and other bodies such as test labs, consultants, and safety professionals.

In closing, PGMA remains committed to promoting the safe use of portable generators and will continue to work in good faith to achieve this important goal.

Sincerely,

JOHN ADDINGTON.

JHA/SO/JH/jlb
pgma

cc: Elliot F. Kaye, Chairman, CPSC
John Thune, Chairman, Senate Committee on Commerce, Science,
and Transportation

Robert S. Adler, Commissioner, CPSC
 Ann Marie Buerkle, Commissioner, CPSC
 Joseph P. Mohorovic, Commissioner, CPSC
 Marietta S. Robinson, Commissioner, CPSC

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
 HON. ELLIOT F. KAYE

Question 1. In July, the House appropriations bill to fund the CPSC for FY 2015 included an amendment that would direct \$1 million to be used by the CPSC to proceed with regulations that would decrease the costs associated with third party testing. Additionally, the Commission amended its FY 2015 Operating Plan to spend the money allocated to it by Congress to find ways to reduce testing burdens. How, specifically, does the Commission intend to spend these funds? Please identify any specific deliverables and deadlines that the Commission has established in its work to provide third party testing relief.

Answer. Below please find a chart in response to your question regarding ongoing work to potentially reduce the costs of third party testing while assuring compliance with all applicable rules, bans, standards and regulations.

Item	Description	FY 2015 Estimated Expenditures	Deliverable (FY)
FY 2015 Operating Plan 4.1	Activities related to <i>Component Part Testing Update—Heavy Metals in Toys</i>	\$35,000	Notice of Proposed Rulemaking (FY 2015)
FY 2015 Operating Plan 4.2	Activities in support of <i>Determinations Expansion—Heavy Metals in Toys</i>	\$75,000	COMPLETED IN FY 2015: Direct Final Rule/Notice of Proposed Rulemaking
FY 2015 Operating Plan 4.3	Additional work on <i>Determinations Expansion—Phthalates in Additional Plastics</i>	\$250,000	Contractor report (FY 2016)
FY 2015 Operating Plan 4.4	Research and Development effort for <i>FTIR Study Expansion—Phthalates Testing</i>	\$510,000	Report from Award Recipients (FY 2016)
FY 2015 Operating Plan 4.5	Work in support of <i>Determinations Expansion—Lead in manufactured woods</i>	\$163,000	Contractor report (FY 2016)
FY 2015 Operating Plan 4.6	Work in support of <i>Determinations Clarification—Textiles dyes / prints</i>	\$10,000	Notice of Proposed Rulemaking (FY 2015)
FY 2015 Operating Plan 4.7	Supporting work on <i>Equivalency—Toy Standards</i> (Chairman's office)	N/A	Ongoing
FY 2015 Midyear	Work in support of <i>Determinations Clarification—Regulated chemicals (Lead, phthalates, ASTM elements) in manufactured fibers</i>	\$100,000	Contractor Report (FY 2016)
<i>Total</i>		\$1,143,000	

Question 2. What outreach has the CPSC done to the regulated community in order to better understand how best to fulfill the Commission's third party testing burden reduction directive under current law?

Answer. Engaging with the regulated community has been a priority for the Commission. Regarding the issue of test burden reduction consistent with assuring compliance, even beyond the numerous conversations we have continued to have with stakeholders on this matter, the Commission has specifically requested data and information in the following notices:

- Request for Comments: *Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens*. 76 FR 69596; 11/8/11.
- Request for Information Regarding *Third Party Testing for Lead Content, Phthalate Content, and the Solubility of the Eight Elements Listed in ASTM F963-11*. 78 FR 22518; 4/16/13.

- Announcement of Meeting and Request for Comments: *CPSC Workshop on Potential Ways to Reduce Third Party Testing Costs Through Determinations Consistent with Assuring Compliance*. 79 FR 11088; 2/27/14.

Each notice, supplementary information, and the comments are available at: www.regulations.gov, in CPSC Docket No. CPSC-2011-0081.

Additionally, since I have been Chairman, I have made it a priority to improve significantly the lines of communication with our stakeholders in all areas. To that end, I have met with industry groups when they have visited the Washington area, as well as meeting them on their own turf, whether it is at an association's annual conference or at an individual company's manufacturing facilities. As long as I am Chairman, we will continue to welcome comments and input from all of our stakeholders and continue to find ways to maintain a productive dialogue.

Question 3. In your September 16, 2014 letter, you, along with Commissioner Joe Mohorovic, highlighted three policies that, in your opinion, "would provide a substantial amount of third party testing relief." These policies included: CPSC determinations with respect to seven of the eight heavy elements currently regulated in ASTM 5963-11; a Commission finding that compliance with internationally recognized standards is equivalent to the ASTM Toy Standard; and creation of a *de minimis* third party testing exemption for materials in children's products where the total amount of material in or on the children's product is less than 10 mg. What is the timeline for implementing these three policies?

Answer.

- A Direct Final Rule/Notice of Proposed Rulemaking on Determinations regarding the ASTM elements in certain untreated wood was published in the *Federal Register* on July 16, 2015.
- My staff, which includes a nationally-recognized expert in toy safety and standards, has explored the concept of whether compiling an alternative standard composed of the most rigorous test methods from each alternative standard might allow multinational marketing of toys with a single test protocol. In discussions with the regulated community about this strategy on burden reduction consistent with assuring compliance, several challenges have been identified, making the likelihood that this strategy could actually provide meaningful benefits questionable. In addition to this effort, agency staff considered whether the statutory framework for certification might permit broader application of testing among standards and concluded that allowing certification to foreign standards would run counter to the intent of the law. My staff and I have repeatedly put out a call to industry to provide us with their thoughts on how to best address this issue in furtherance of consumer product safety. We will eagerly pursue any promising information or leads we receive.
- The timeline for any *de minimis* determinations work has not yet been established.

Question 4. In addition to the three policies you identified in your September 16, 2014 letter, has the Commission contemplated moving forward on any of the other recommendations for reducing third party testing burdens as put forth by CPSC staff, such as developing a list of materials determined not to contain prohibited Phthalates or allowing a *de minimis* testing exemption for phthalates in certain products?

Answer. The Commission has awarded contract task orders to study the presence of phthalates, lead, and the ASTM elements in specified plastics, manufactured woods, and manufactured fibers (*e.g.*, polyester, rayon). The Commission will receive the earliest of these contractor reports in late FY 2015, with the other reports due in FY 2016. Thereafter, staff would use these reports to inform its recommendation about whether the Commission could determine that certain plastics and/or manufactured woods and/or manufactured fibers do not require third party testing to assure compliance. In addition, CPSC staff is working closely with ASTM, industry, and other stakeholders to develop alternate lead and heavy metal testing methods for toys and children's products using HD XRF. The Commission has not yet determined a timeline for any *de minimis* determinations work.

Question 5. In October 2012, the CPSC voted to direct staff to proceed with nine of the staff recommendations, which included: international standards equivalency to Children's product safety rules; determinations regarding heavy metals; determinations regarding phthalates; the use of Fourier Transform Infrared Spectroscopy (FTIR) technology; determinations regarding adhesives in manufactured woods; determinations regarding synthetic food additives; guidance regarding periodic testing and periodic testing plans; accreditation of certain certification bodies; and staff

findings regarding production volume and periodic testing. What is the status of this work?

Answer.

- On the issue of equivalency, as previously mentioned, my staff, which includes a nationally-recognized expert in toy safety and standards, has explored the concept of whether compiling an alternative standard composed of the most rigorous test methods from each alternative standard might allow multinational marketing of toys with a single test protocol. In discussions with the regulated community about this strategy on burden reduction consistent with assuring compliance, several challenges have been identified, making the likelihood that this strategy could actually provide meaningful benefits questionable. In addition to this effort, agency staff considered whether the statutory framework for certification might permit broader application of testing among standards and concluded that allowing certification to foreign standards would run counter to the intent of the law. My staff and I have repeatedly put out a call to industry to provide us with their thoughts on how to best address this issue in furtherance of consumer product safety. We will eagerly pursue any promising information or leads we receive.
- A Direct Final Rule/Notice of Proposed Rulemaking, determining that wood from tree trunks does not require third party testing to assure compliance with the ASTM element solubility limits was published in the *Federal Register* on July 16, 2015.
- Two contract task orders have been awarded to study the potential presence of phthalates in specified plastics and classes of plastics. The first of these contractor reports is due in late FY 2015, with the other contractor report due in FY 2016.
- CPSC is soliciting grant proposals to develop FTIR technology capable of detecting the prohibited phthalates at 1,000 ppm, as an alternative testing/screening technology to the wet chemistry methods currently used. CPSC expects to award Phase I grants during FY 2015.
- CPSC awarded a contract task order to study the presence of phthalates in manufactured woods. The contractor's report is due in FY 2016.
- The guidance regarding periodic testing and periodic testing plans was published July 18, 2015, on our website at www.cpsc.gov/testing.

Question 6. During your confirmation hearing, you highlighted a track record of reaching out “to a wide coalition of stakeholders to try to find safety solutions.” You continued by stating, “[i]f confirmed, I would look forward to working across the agency and hopefully with our stakeholders to find solutions.” At the same hearing, Commissioner Mohorovic also highlighted the need to leverage the expertise of stakeholders.

a. How would you characterize the current relationship between the CPSC and key stakeholders, particularly manufacturers, retailers and importers?

Answer. I believe our relationship with those members of the stakeholder community who wish to engage with us in good faith and in a collaborative and constructive fashion is strong. I have made a concerted effort since I became Chairman to enhance significantly those relationships, and I believe those efforts have paid off. CPSC takes its mission to provide guidance and advice about our requirements seriously. To reach a large number of relevant stakeholders, we attend large industry trade shows, like the Toy Fair, the Hong Kong Toys & Games Fair, the All Baby & Child (ABC) Expo, and smaller, specialized trade shows, like the American Specialty Toy Retailers Association (ASTRA) Marketplace & Academy and others, to provide presentations and question and answer sessions. We also provide webinars in specific topic areas upon the request of industry groups, such as a webinar requested this Fiscal Year by RadTech, the association for ultraviolet and electron beam technologies. In June 2015, we conducted training on regulatory requirements for toys in a joint presentation with our North American colleagues at Health Canada and over 400 people registered to attend. We also initiated a product safety buyer training program for sourcing professionals based in China who export to the United States.

Our staff in the Office of Compliance and our Small Business Ombudsman is also very accessible and assist with thousands of individual safety and compliance-related questions every year, through our website at www.cpsc.gov/smallbiz/contact and via e-mail at sect15@cpsc.gov.

We work closely with industry and other stakeholders on voluntary standards committees and in other meetings to find solutions to unique and emerging safety

issues, often identified through CPSC's own data systems. Where possible, we elect to rely on the substantial compliance of an industry with robust voluntary standards. One hopefully promising area, for instance, appears to be our recent work with the recreational off-highway vehicle (ROV) industry. We have had extensive engagement with stakeholders from that industry and continue to place a priority on working with the industry to develop a standard that provides the needed safety improvements without undue burden. We have had numerous meetings and sent many detailed letters to industry and the two standards development organizations. Staff has also broadly shared technical work with the industry, making all technical reports and letters publicly available.

CPSC staff also has a positive relationship with importers and brokers. We respond to concerns from the import community, and we stay current with U.S. Customs and Border Protection (CBP) changes to inform risk-targeting strategies to alleviate the burden of stopping cargo unnecessarily. We have received praise from the brokerage community on allowing the electronic filing of critical targeting data to give the trade significant time to work with us and test as a pilot rather than forcing finalization of a mandatory rule before the December 2016 deadline to comply with filing in the Automated Commercial Environment (ACE).

b. You have sought to prioritize import surveillance under your Chairmanship. How has the CPSC engaged stakeholders on this important issue?

Answer. I believe a very recent news release from the Retail Industry Leaders Association (RILA) best reflects the state of our sustained and extensive dialogue with stakeholders on this critical consumer safety issue. In the subheading of that news release, RILA stated "[r]etailers applaud CPSC for incorporating industry input" into the agency's development of our import-related e-filing alpha pilot program as (The RILA news release is available at <http://www.rila.org/news/topnews/Pages/Retailers-React-to-CPSC-e-Filing-Decision.aspx>.) The release also requested that the agency continue to collaborate with our stakeholders which we will certainly continue to do. Moreover, the Office of Import Surveillance has been actively involved for many years with the Advisory Committee on Commercial Operations (COAC) within CBP to reach out to members in the trade community about imported product safety solutions. CPSC staff also participates in all three of the Border Interagency Executive Committee (BIEC) groups, including the External Engagement Committee, which frequently meets with participating government agencies and members of the trade community involved in the integration with ACE. Staff has also been actively engaging stakeholders through numerous webinars, more than 10 in-person port meetings with hundreds of representatives from the trade community, and other public workshops to solicit input from various stakeholder groups. I have also personally met with numerous members of the trade community, including holding three long sessions with them during the past few months, to assist in informed decision-making.

c. What are your plans to work with the trade community—manufacturers, retailers and importers—as you work to develop and nationalize the Risk Assessment Methodology (RAM)?

Answer. CPSC plans to work through the Trade Support Network (TSN) and trade associations, such as the American Association of Exporters and Importers (AAEI) and the National Customs Brokers & Forwarders Association of America (NCBFAA), to think creatively about solving problems regarding improving, and hopefully, nationalizing a full-production RAM. Until funding is secured, CPSC will not be able to support moving to a full national program. For Fiscal Year 2016, the Commission has requested that Congress authorize a CPSC product safety user fee to fund the agency's import surveillance activities in lieu of additional appropriations. A number of agencies across the Federal Government fund their import processing activities with a user fee paid by the importer. The CPSC estimates that a modest user fee of about 7 cents per every thousand dollars of import value could fully fund the import surveillance program without the need for additional appropriations.

d. Will you be creating a formal advisory committee, as industry has requested on multiple occasions?

Answer. CPSC has no plans at this time to create a formal advisory committee. The Federal Advisory Committee Act (FACA) imposes significant and time consuming obligations on formal advisory committees. In the interest of efficiency, CPSC has leveraged the COAC structure, which is operated as a formal advisory committee and which already meets FACA requirements. The COAC advises the Secretaries of the Department of the Treasury and the Department of Homeland Security (DHS) on the commercial operations of CBP and related DHS and Treasury functions. By relying on access to stakeholders provided by COAC task forces/work

groups, CPSC has secured valuable input, without the time delay that a new formal FACA advisory body would require, and without incurring the associated costs. For example, the TSN provides a forum for the discussion of significant modernization and automation efforts with the trade community. The TSN creates an environment where various stakeholders can provide input for both CBP and CPSC to consider. Creating and maintaining such an advisory committee takes a great deal of resources to operate. CBP is better positioned to manage the operation and maintenance of a formal advisory committee and our leveraging of the CBP advisory group has been extremely helpful. Moreover, as mentioned, I have been directly engaged with a large and representative group of members of the trade community and plan to continue to engage with them going forward as needs arise.

e. Is the CPSC a member of the Customs and Border Patrol Advisory Committee on Commercial Operations (known as the COAC)?

Answer. Since the COAC is limited to members of the trade community, government agencies are not actual members of the COAC. However, CPSC has participated in specific workgroups within COAC to align the 1 USG (1 U.S. Government at the Border) approach to importation issues for many health and safety concerns. We also participate in the COAC quarterly meetings and provide updates on product safety import changes to the COAC and the trade community.

Question 7. Congress established a clear preference that the Commission defer to a voluntary standard that adequately addresses a risk of harm and is widely followed by industry where one exists. Uniformity is encouraged, and the Commission's own rules (16 C.F.R. § 1031.7(a)(7)) provide that it may encourage state and local governments to reference or incorporate the provisions of a voluntary standard in their regulations or ordinances. There are a number of voluntary standards regarding chemical restrictions that apply to toys, apparel, children's jewelry and other products, most recently adopted by a local ordinance in the City of Albany.

a. What specific steps has the Commission taken to notify state and local governments of its support for standards like the toy safety standard (ASTM F963), the children's jewelry standard (ASTM F2923) and others?

Answer. Upon the request of trade associations, my office has attempted to engage jurisdictions about these issues. To date, we have not found jurisdictions to be receptive to our initiation of that engagement. When asked by states and localities, the Commission staff provides technical assistance regarding technical position or views of safety standards and will continue to do so.

b. If you haven't communicated with state and local bodies to relay the Commission's support for these standards, why not?

Answer. Please see my answer to the previous question.

Question 8. While it is my understanding that the CPSC Inspector General and the Commission share a good working relationship, other Inspectors General have mentioned issues concerning access and independence. Will you commit to providing the CPSC Office of Inspector General with complete and timely access to all agency information and materials?

Answer. As you mentioned, we enjoy a good working relationship with our Inspector General. As I strongly believe that Inspectors General serve a vital role, as long as I am in this position we will continue to provide the CPSC's Office of the Inspector General with any relevant agency information and materials in a timely manner.

Question 9. According to the Consumer Product Safety Commission Inspector General, almost 200 of his recommendations remain open.

a. Will you commit to working with the OIG and this Committee to address these outstanding recommendations?

Answer. Yes. A number of months ago I directed staff to work with the OIG to address the 181 open and unimplemented recommendations identified in OIG's March 23, 2015 report. Since that time, significant progress has been made to address the outstanding recommendations. The OIG's June 12, 2015 report reflects a change from 181 to 127 open and unimplemented recommendations. We will continue to address these outstanding recommendations.

b. What is the current plan for CPSC to address these open recommendations?

Answer. CPSC management plans to have 80 percent of the outstanding audit/report recommendations implemented during FY 2015. The remaining items deal with outstanding IT security recommendations that are planned to be implemented by FY 2017, subject to adequate funding.

c. The majority of the open recommendations involve the Commission's compliance with the Federal Information Security Management Act (FISMA). According to the Office of Management and Budget's annual report to Congress on FY 2014 FISMA

compliance, CPSC's score is one of the lowest of all micro agencies for its FISMA compliance. Especially in light of the many recent, high profile data breaches, particularly of government agencies, what is CPSC doing to prioritize addressing the identified deficiencies in its FISMA compliance?

Answer. CPSC contracted with a security vendor to review all open FISMA findings and to provide a risk-based priority for each open finding. Using the results of this analysis, we have created a high-level plan that addresses each of the open IG findings by the end of FY 2017. In a review of the findings, we determined that additional resources would be required to remediate successfully some of the findings. Therefore, IT has added additional security staff and has submitted funding requests for additional support—specifically to address FISMA findings. It is anticipated that ongoing annual funding will be required specifically to “maintain” FISMA compliance, once acceptable levels of compliance have been achieved.

Question 10. On May 15, 2015, Inspector General Dentel submitted the Improper Payments Elimination and Recovery Act (IPERA) review to the Commission. While the independent certified public accounting firm, Kearney & Company, found that CPSC was not compliant with IPERA, as amended by IPERIA, and OMB–M–15–02, the CPSC management did not concur with that finding.

a. Why did the Commission staff disagree with the findings of the independent certified public accounting firm?

Answer. The CPSC conducted a quantitative risk assessment for improper payments and reported the results of that assessment in its FY 2014 Agency Financial Report. The risk assessment results showed that the agency was not at-risk of “significant improper payments,” as defined in the Improper Payments and Elimination and Recovery Act and in OMB’s implementing guidance (M–15–02); the independent auditor acknowledged the agency’s robust statistical analysis procedure in the audit report. The auditor and management disagreed as to whether the audit documentation describing the agency’s policies and procedures was consistent with OMB’s implementing guidance, and whether certain OMB notifications were triggered. Management’s technical analysis of the audit finding was provided to the IG and published in the final report. Although management disagreed with the auditor’s conclusion, the agency acknowledges that the documentation provided was unclear to the auditor. Management implemented a remediation plan, which was submitted to this Committee on August 13, 2015, and is actively working to revise those procedures before the FY 2015 review. In addition, management has consulted with OMB to clarify the notification requirements.

b. What is the current state of discussions with the Inspector General and the accounting firm to resolve this disagreement?

Answer. The IG has published the FY 2014 IPERIA Review and concluded audit work. The IG will reassess the program as part of the required FY 2015 review, and at that time, the IG will formally assess the documentation improvements management is implementing. As an interim measure, management has shared the remediation plan with the IG and plans to share its revised policies and procedures under that remediation plan later this calendar year and before the FY 2015 review.

c. As required under OMB M–15–02, agencies that are not compliant with IPERA must submit a plan to certain congressional committees describing the actions that the agency must take to become compliant. Please provide a copy of that report to me and the Senate Commerce Committee, as soon as possible, but no later than August 15, 2015.

Answer. CPSC transmitted the report on August 12, 2015, and is also submitting a copy for the record here.

CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, MD, August 12, 2015

Hon. RON H. JOHNSON,
 Chairman,
 Committee on Homeland Security and
 Governmental Affairs,
 United States Senate,
 Washington, DC.

Hon. THOMAS R. CARPER,
 Ranking Member,
 Committee on Homeland Security and
 Governmental Affairs,
 United States Senate,
 Washington, DC.

Dear Chairman Johnson and Ranking Member Carper:

This letter reports the U.S. Consumer Product Safety Commission's ("CPSC") progress in meeting the requirements of the Improper Payments Elimination and Recovery Act ("IPERA") of 2010, further amended by the Improper Payments Elimination and Recovery Improvement Act of 2012 ("IPERIA").

The CPSC conducted a quantitative improper payment risk assessment in Fiscal Year 2013, and again in Fiscal Year 2014. I am pleased to report that the risk assessments have demonstrated that the CPSC is at low risk for significant improper payments, defined as 1.5 percent of program outlays and \$10,000,000 of all program or activity payments made during the fiscal years reported.

The Office of the Inspector General ("OIG"), through the services of Kearney & Company, an independent accounting firm, conducted a Fiscal Year 2014 IPERIA program review ("review"). The review noted several improvements to the CPSC's processes from the prior year, specifically complimenting the agency's robust statistical sampling of all payment activities, the centralized documentation supporting the review, and the enhanced description in the agency's year-end financial report.

The review identified two findings: (1) noncompliant audit documentation; and (2) failure to make Office of Management and Budget ("OMB") required disclosures. The agency management did not agree with finding (1) and did agree with finding (2). The agency management acknowledges the need to have clear, understandable audit documentation and to provide the needed disclosures; therefore, we have implemented a remediation plan with measurable milestones. I have designated CPSC's Executive Director as the senior official accountable for ensuring that the plan is executed successfully to meet the requirements for compliance. In addition, the agency has established an accountability mechanism by adding the remediation plan as a performance requirement under the SES Performance Management System, Executive Performance Agreement for the Executive Director.

The attached remediation plan addresses the statutory requirements to comply with IPERIA 2012 and OMB M-15-02.

Sincerely,

ELLIOT F. KAYE,
Chairman.

Enclosure
 cc: Christopher Dentel, CPSC Inspector General
 Patricia H. Adkins, CPSC Executive Director

CPSC IPERIA 2015 Remediation Plan**Based on:**

Inspection of the IPERIA Review Program
Fiscal Year 2014 Inspection Report
May 12, 2015

Conducted by the CPSC Office of the Inspector General (OIG) through retained services of Kearney & Company

Senior Designated Official: Executive Director

Accountability Mechanism: The Remediation Plan has been added as a performance requirement under the SES Performance Management System, Executive Performance Agreement for the Executive Director

Finding 1: Noncompliant audit documentation

Audit Observation	Agency Milestone	Target Completion
<i>In regards to the risk assessment performed by the CPSC for its FY 2014 IPERIA review Kearney noted that the risk assessment conducted was not consistent with the support provided by CPSC. As such, Kearney could not substantiate the conclusions made on the risk assessments performed by the CPSC.</i>	The CPSC will revise its standard operating procedure and follow the risk assessment process consistent with OMB's implementing guidance.	November 15, 2015
<i>The CPSC reported an improper payment estimate in the FY 2014 AFR based on FY 2013 transaction activity. "Concurrent" FY analysis is required unless approved by OMB. The CPSC could not produce an approval to use a different basis for their review year.</i>	The CPSC will make conforming changes to the AFR to align with the revised standard operating procedure and will request OMB approvals for use of noncurrent data, as necessary.	November 15, 2015
<i>Inconsistencies existed between the documentation of the Standard of Operating Procedure (SOP) for IPERIA review and actual procedures performed for the risk assessment. Specifically in our review, Kearney noted that the documented procedures received for the risk assessment could not be re-performed by following the procedures listed in its SOP.</i>	The CPSC will revise its standard operating procedure and follow the risk assessment process consistent with OMB's implementing guidance.	November 15, 2015
<i>There was a lack of evidence of the training provided to the CPSC Finance staff in preparation for the IPERIA review.</i>	CPSC staff will attend improper payments training (Improper Payments in Government Workshop) to increase understanding of the OMB requirements and identify best practices.	Completed June 18, 2015

CPSC IPERIA 2015 Remediation Plan**Based on:**

Inspection of the IPERIA Review Program

Fiscal Year 2014 Inspection Report

May 12, 2015

Conducted by the CPSC Office of the Inspector General (OIG) through retained services of Kearney & Company

Senior Designated Official: Executive Director**Accountability Mechanism:** The Remediation Plan has been added as a performance requirement under the SES Performance Management System, Executive Performance Agreement for the Executive Director**Finding 2: OMB Required Disclosures**

Audit Observation	Agency Milestone	Target Completion
<p><i>In addition to the disclosures that the CPSC made in its FY 2014 AFR, the CPSC is required to disclose the following:</i></p> <ul style="list-style-type: none"> <i>A list of programs and activities for which conducting a payment recapture audit program would not be cost-effective.</i> 	<p>The CPSC will conduct a payment recapture cost-effectiveness analysis of CPSC programs and activities and include analysis supporting management's conclusions.</p>	<p>Completed June 26, 2015</p>
<ul style="list-style-type: none"> <i>A description of the justifications and analyses used to determine that conducting a payment recapture audit program for these programs and activities was not cost effective.</i> 	<p>The CPSC will conduct a payment recapture cost-effectiveness analysis of CPSC programs and activities and include analysis supporting management's conclusions.</p>	<p>Completed June 26, 2015</p>
<ul style="list-style-type: none"> <i>Any decision stating that the CPSC would be unable to conduct a cost-effective payment recapture audit program for certain programs and activities that expend more than \$1M. The decision should be sent to OMB and the CPSC Inspector General (IG) directly and should include any analysis the CPSC used to reach its conclusion.</i> 	<p>The CPSC will notify OMB and the OIG of its payment recapture audit decision and provide the analysis supporting management's conclusions.</p>	<p>Completed June 26, 2015</p>

Question 11. On September 30, 2014, the CPSC Inspector General issued an evaluation of the CPSC's efforts to ensure its employees are satisfying their obligations for Federal, state, and local taxes. The Inspector General identified deficiencies in the CPSC's oversight procedures over wage garnishments related to tax deficiencies.

a. Please explain why CPSC management did not concur with the Inspector General's findings.

Answer. Management receives and monitors employee debts and garnishments through regular payroll reports and through the background investigation and re-investigation processes, which include a credit check. Appropriate corrective actions are taken, as necessary. These procedures have been in place and are expected to improve tax compliance among CPSC employees. Management concurred that there were no written procedures for monitoring and processing wage garnishments and subsequently has developed those written procedures.

b. What steps has the CPSC taken to address the Inspector General's recommendations issued in this report?

Answer. As recommended by the Inspector General, the CPSC has developed a Standard Operating Procedure on the reporting and processing of employee garnishments through our payroll provider. Management receives reports from our payroll provider to actively monitor garnishments and implement corrective actions, as necessary. Our payroll provider performs an annual review and audit of garnishment processing.

c. Has the CPSC taken any action with regard to the 20 CPSC civilian employees that may owe back taxes?

Answer. Twenty CPSC employees were identified in the 2011 IRS Federal Employee/Retiree Delinquency Initiative report as owing Federal taxes. Currently, CPSC has 6 employees that owe Federal taxes and have tax garnishments. CPSC is monitoring payroll reports to ensure these garnishments are processed and takes corrective/adverse action, where appropriate.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JERRY MORAN TO
HON. ELLIOT F. KAYE

Fireworks

Question 1. In regards to 16 C.F.R. Sec. 1500.17(a)(3), please state the objective performance specifications used in the "Ear Test", and describe the protocol employed to make the threshold determination that a fireworks device is intended to produce an audible effect.

Answer. The regulation at 16 C.F.R. Sec. 1500.17(a)(3) limits devices intended to produce an audible effect to not more than 2 grains (130 mg) of pyrotechnic composition, which is easily measurable. If the manufacturer, or importer, labels the device as "shoots flaming balls and reports," for example, then the pyrotechnic composition is measured to see if the objective regulatory limit of more than 2 grains is exceeded. In upholding the regulation, one Federal court referred to this particular test as "the amount test," accurately reflecting the objective character of the standard. See *United States v. Shelton Wholesale, Inc.*, 34 F. Supp. 2d 1147 (W.D. Mo. 1999), *aff'd* 277 F.3d 998 (8th Cir. 2002), *cert. denied*, 123 S.Ct. 514 (2002). Whether fireworks subject to the standard ultimately "pass" or "fail" is entirely dependent on the amount of pyrotechnic composition.

CPSC testing procedures are public. Fireworks devices are field tested per the "Consumer Fireworks Testing Manual" (<https://www.cpsc.gov/PageFiles/121068/testfireworks.pdf>). If the devices show indications of being designed to produce an audible effect, then in accordance with the Consumer Fireworks Testing Manual IV (A)(11)(b-e), the pyrotechnic composition is measured to ascertain whether the regulatory standard is met. Through field testing observations, if there is an indication that the device is designed to produce an audible effect, then the weight of the pyrotechnic composition is measured using a calibrated scale in a controlled laboratory environment. Significantly, fireworks that are designed to produce an audible effect will not be found to be noncompliant unless the objective regulatory limit on pyrotechnic composition is exceeded.

Question 2. How are these objective performance specifications communicated to manufacturers and importers of aerial fireworks to enable them to determine if their product is intended to create an audible effect?

Answer. The Consumer Fireworks Test Manual has been publicly available for more than 20 years (<https://www.cpsc.gov/PageFiles/121068/testfireworks.pdf>) and has been a valuable resource for the fireworks industry for reference and for training. CPSC Compliance staff continues to inform industry members on the manda-

tory regulations by meeting with firms and by actively participating in industry conferences. The letters of advice sent to firms for products that fail to comply with the mandatory standards explain the regulatory violation and the options that firms have to address their concerns with staff.

Question 3. Understanding the agency's limited budget and resources, please comment on the validity of continued enforcement of 16 C.F.R. Section 1500.17(a)(3) when "compliance determinations can be made only after a subjective determination of intent to produce an audible effect" [*CPSC Fireworks Safety Standards Development Project FY 2013 Status Report*, October 2013].

While I am disappointed that efforts to resolve the Ear Test issue first and foremost were put on hold in the agency's FY 2015 Operating Plan, I am encouraged by Chairman Kaye's stated intent to engage industry stakeholders as the CPSC continues its holistic review of fireworks standards. I look forward to any updates the agency can provide my staff throughout this process.

Answer. Fireworks continue to cause death and injuries every year, including to children. Based on the incident numbers as well as the trends, I am not comfortable choosing not to enforce this standard. The regulation, 16 C.F.R. § 1500.17(a)(3), has been in place since the CPSC was created and explicitly has been upheld by the Federal courts after legal challenge. *See United States v. Shelton Wholesale, Inc.*, 34 F. Supp. 2d 1147 (W.D. Mo. 1999), *aff'd* 277 F.3d 998 (8th Cir. 2002), *cert. denied*, 123 S.Ct. 514 (2002). Further, the standard is properly characterized as a limit on "amount," rather than as dependent on a subjective evaluation. *See Shelton Wholesale, Inc.*, 34 F. Supp. 2d 1147. No firework intended to produce audible effects will "fail" unless the amount of pyrotechnic composition, which is easily measurable, exceeds 2 grains (130 mg).

CPSC staff has many decades of experience in applying the standard. As previously noted, fireworks devices are field tested in accordance with the "Consumer Fireworks Testing Manual" (<https://www.cpsc.gov/PageFiles/121068/testfireworks.pdf>). The current testing structure continues to provide enforcement staff with an adequate identification method for audible effects in aerial devices. Staff's experience is that a majority of aerial devices tested that were found to be "intended to produce audible effects" in fact had pyrotechnic composition over the 2 grain limit. In many instances, the products tested have been found to contain grossly overloaded pyrotechnic composition, creating especially severe hazards. Staff's identification of such devices at the ports and continued testing has prevented such products from reaching U.S. commerce.

As part of its approval of the CPSC's FY15 Operating Plan, the Commission directed the staff to conduct a complete review of the agency's fireworks regulations. Staff's effort includes a review of consensus standards, such as the American Pyrotechnics Association "Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics" (APA 87-1) and standards that have been developed by the American Fireworks Standards Laboratory. Staff is preparing a briefing package to the Commission, recommending whether to maintain, revise, clarify, or update the regulations per Commission direction and will deliver it to the Commission in FY 2015. I have directed my staff to be certain to provide a copy to your office when it is available.

Liquid Laundry Packets

Question 4. My understanding is that your agency is working closely with manufacturers of liquid laundry packets, consumer groups and other stakeholders to develop an industry standard for the packaging and labeling of these products. Please update me on the progress of the American Society for Testing and Materials International (ASTM) standard for these products, and when you expect the standard will be finalized.

Answer. CPSC staff is very active in the ASTM voluntary standards process for liquid laundry packets, which relies heavily on input from *all* stakeholders, including consumer advocate groups. To keep the process moving, CPSC has hosted a number of subcommittee meetings. The subcommittee has twice balloted for approval a voluntary standard, and is working to resolve issues related to: (1) whether all packaging must meet the Poison Prevention Packaging Act protocol; (2) whether the packet compression test must be changed; and (3) whether additional requirements to reduce packet attractiveness are needed. CPSC staff believes a consensus can be reached after one more round of balloting, with the standard approved and published before the end of the calendar year. The subcommittee and CPSC plan to closely monitor the incidents after publication to measure the effectiveness of the standard. If the voluntary standard is ineffective in reducing injuries, I believe that formula changes, individually wrapping each laundry packet, and child-resistant packaging should be vigorously pursued by all interested parties. I have directed my

staff to continue to monitor this issue very closely and to keep my updated on its progress or lack thereof.

Portable Gas Cans

Question 5. In a statement provided to WISH TV for their November 13, 2014, story titled “Could small change stop gas can explosions?” I understand that the CPSC Communications Director provided the following statement: “If a consumer was to see a gas can at a retail that contained a flame arrestor system, we would encourage them to select such a model, as it provides a vital layer of fire protection.” What information, studies, or other relevant scientific research or testing data was relied upon by the CPSC to conclude that gas can models containing a flame arrestor system provide better safety?

Answer. CPSC staff has long been dedicated to protecting children and adults from a life of pain and suffering from gasoline-related burn injuries due to flashback fires or explosions. Manufacturers of portable gas cans must comply with the Children’s Gasoline Burn Prevention Act, which CPSC implemented in January 2009. To prevent children younger than 5 from accessing, ingesting, or spilling gasoline, all portable gas cans must include a child-resistant cap.

CPSC is proud of the role we played in encouraging the residential gas water heater industry to develop a consensus safety standard that incorporated flame arrestor technology into their products and safety standard. Residential gas water heaters sold in stores today have built-in flame arrestors that prevent flashback fires, and CPSC staff believes that this technology also should be included in gasoline containers.

Flame arrestors are intended to keep flames that are external to the gasoline container from passing into the container. CPSC staff continues to call on the industry and voluntary standards organizations to incorporate a flame-arrestor system into their designs and applicable safety standards for gas cans.

Worcester Polytechnic Institute engineers have shown that flammable mixtures of air and gasoline vapors can exist inside portable gasoline containers, especially when there are small amounts of liquid gasoline in a large container. Under certain circumstances, the gasoline vapors can ignite, causing the container to explode in the presence of a flame or heat source outside of the container. This research was published in the Fire Science Journal (<http://www.sciencedirect.com/science/article/pii/S0379711213000143>) in May 2013.

Manufacturers, retailers, researchers, voluntary standards organizations, safety advocates, and CPSC staff should continue to work together to address foreseeable risks and solutions that will make gas cans as safe as possible. The Communication Director’s statement to a television station in Indiana was taken out of context. He was indicating that if an individual manufacturer or ASTM International were to support the potentially life-saving incorporation of flame-arrestor technology in consumer models of portable gas cans, then that would be a product that CPSC would encourage consumers to buy.

Question 6. If CPSC indeed believes that flame arrestor systems should be included in portable consumer fuel containers, why has the CPSC not undertaken steps to promulgate a rule mandating the inclusion of such technology in gas cans?

Answer. CPSC staff has focused its efforts on actively participating in the ASTM Subcommittee F15.10 on flame arrestors for gas cans, working with ASTM members representing industry, consumer groups, and other stakeholders to improve the safety of portable consumer fuel containers.

Third Party Testing Burden Reduction

Question 7. I am pleased that an amendment was included in the agency’s FY 2015 Operating Plan accounting for the \$1 million Congress has directed to be used for third party testing relief. What is your plan for spending these funds to reduce testing burdens? Can you submit in writing a plan with concrete deadlines and deliverables?

Answer. Below please find a chart in response to your question regarding ongoing work to potentially reduce the costs of third party testing while assuring compliance with all applicable rules, bans, standards and regulations.

Item	Description	Fiscal Year 2015 Estimated Expenditures	Deliverable (FY)
FY 2015 Operating Plan 4.1	Activities related to <i>Component Part Testing Update—Heavy Metals in Toys</i>	\$35,000	Notice of Proposed Rulemaking (FY 2015)

Item	Description	Fiscal Year 2015 Estimated Expenditures	Deliverable (FY)
FY 2015 Operating Plan 4.2	Activities in support of <i>Determinations Expansion—Heavy Metals in Toys</i>	\$75,000	COMPLETED IN FY 2015: Direct Final Rule/Notice of Proposed Rulemaking
FY 2015 Operating Plan 4.3	Additional work on <i>Determinations Expansion—Phthalates in Additional Plastics</i>	\$250,000	Contractor report (FY 2016)
FY 2015 Operating Plan 4.4	Research and Development effort for <i>FTIR Study Expansion—Phthalates Testing</i>	\$510,000	Report from Award Recipients (FY 2016)
FY 2015 Operating Plan 4.5	Work in support of <i>Determinations Expansion—Lead in manufactured woods</i>	\$163,000	Contractor report (FY 2016)
FY 2015 Operating Plan 4.6	Work in support of <i>Determinations Clarification—Textiles dyes/prints</i>	\$10,000	Notice of Proposed Rulemaking (FY 2015)
FY 2015 Operating Plan 4.7	Supporting work on <i>Equivalency—Toy Standards</i> (Chairman's office)	N/A	Ongoing
FY 2015 Midyear	Work in support of <i>Determinations Clarification—Regulated chemicals (Lead, phthalates, ASTM elements) in manufactured fibers</i>	\$100,000	Contractor Report (FY 2016)
<i>Total</i>		\$1,143,000	

Phthalates

Question 8. Mr. Chairman, it appears the CHAP recommendations to continue the temporary ban relied solely on the basis of a cumulative risk assessment, and it recommended that any chemical that contributed in “any degree” to the risk should be banned.

I understand that cumulative risk assessment has not been a basis for regulating the use of chemicals in consumer products to date. I also understand that EPA is still in the process of reviewing how, and if, cumulative risk assessment can be used to regulate chemicals. Have you considered that the use of cumulative risk assessment as a regulatory tool has not been fully vetted or reviewed and is still in its formative stages for use in the Federal regulatory process?

Answer. The Congress in the Consumer Product Safety Improvement Act (CPSIA) explicitly directed the CHAP to “consider the potential health effects of each of these [specified] phthalates both in isolation and in combination with other phthalates,” and to “consider the cumulative effect of total exposure to phthalates, both from children’s products and from other sources, such as personal care products.” CPSIA, § 108(b)(2)(B)(ii) and (iv). Moreover, according to CSPP technical and scientific staff, the methods that the CHAP used to assess cumulative risk are consistent with the recommendations of the National Research Council, which issued a report on the cumulative risk assessment of phthalates in 2008 (<http://www.nap.edu/catalog/12528/phthalates-and-cumulative-risk-assessment-the-task-ahead>). Methods for assessing the effects of chemical mixtures have been available for many years. The Environmental Protection Agency (“EPA”) Office of Pesticide Programs uses cumulative risk methodology to assess the risks from pesticides, consistent with the Food Quality Protection Act of 1996. For example, EPA applies cumulative risk assessment methods to five classes of pesticides: organophosphates, carbamates, triazines, chloracetanilides, and pyrethrins (<http://www.epa.gov/pesticides/cumulative/>). The Agency for Toxic Substances and Disease Registry (ATSDR) uses a similar methodology for assessing chemical mixtures found in hazardous waste sites (<http://www.atsdr.cdc.gov/mixtures/>). EPA (http://www.epa.gov/oppfead1/trac/science/cumulative_guidance.pdf), ATSDR (<http://www.atsdr.cdc.gov/interactionprofiles/IP-ga/ippga.pdf>), and the International Program on Chemical Safety (<http://www.who.int/ipcs/methods/harmonization/areas/workshopreportdocument7.pdf>) have issued cumulative risk assessment (i.e., chemical mixtures) guidelines.

Question 9. Mr. Chairman, the CHAP seemed to ignore its charge to make recommendations on whether phthalates or alternatives should be “banned hazardous substances”—that is, they did not analyze whether the chemicals met the statutory

definition of a banned hazardous substance. They instead relied on the standard that any chemical that contributed to “any degree” of a cumulative risk should be banned. Your charge is to determine whether the interim prohibition on phthalates should continue to provide a “reasonable certainty of no harm” to susceptible groups.

Given the CHAP’s failure to follow its specific charge, do you feel the CHAP report reliably provides what you need to make your determination of whether there is a reasonable certainty of no harm and declare any children’s product containing any phthalates to be a banned hazardous product under section 8 of the CPSA?

Answer. CPSC staff believes the CHAP report provides the Commission with the information necessary to make the determination required by section 108(b)(3). The staff believes the CHAP followed its charge in section 108(b)(2)(B) to, among other things, “consider the potential health effects of each of these phthalates both in isolation and in combination with other phthalates.”

Question 10. Mr. Chairman, I am concerned that the peer review process for the CHAP’s draft report was conducted in secret and that those peer review comments were not subject to peer or public review and comment, as OMB’s guidelines require. I am also concerned that despite the fact that there were a number of public CHAP meetings in the first several years, there had not apparently been any public meetings for at least two years prior to the report being issued, in apparent violation of the Federal Advisory Committee Act and the agency’s own regulations and policies requiring public notice and openness of such meetings.

How does this meet the agency’s commitment to full openness, transparency and public scrutiny of the CHAP process given the importance of the issue and rule-making? Do you know why the public meetings of the CHAP apparently ceased during the latter (and in many respects the most critical) phase of the CHAP’s activities, including when it finalized its report, and can you please explain to the Committee why the CHAP ceased public meetings over such a long duration of time?

Answer. The CHAP requested peer review of their draft report, and my predecessor, Chairman Tenenbaum, made the decision to support that request, a decision which I believe was correct. Peer reviewers were nominated by the National Academy of Sciences and met the same conflict of interest requirements as CHAP members. CPSC took the additional step of posting on CPSC’s website the CHAP draft report submitted to peer review, the peer reviewer’s identities, and the peer review comments at the same time as the CHAP provided its final report to CPSC.

During the preparation of its draft report, the CHAP held seven public meetings and six public conference calls. The CHAP sought input from interested members of the public and invited scientific experts on topics relevant to the CHAP report. The CHAP also heard oral presentations and received numerous written comments from interested parties, all of which are posted on the CPSC website at <http://www.cpsc.gov/CHAP>. The last CHAP public meeting was February 2012. Due to the peer review process, the final report was not delivered to the Commission until July 2014.

Question 11. Mr. Chairman, there has been some controversy with the recommendations made in the CHAP report on phthalates and whether or not it complies with the legal standards that it was intended to comply with. We understand that the CPSC General Counsel provided guidance in this regard in a memo to the CHAP panel and to CPSC staff. Will you please provide the Committee with a copy of that memo, and do you concur that the CHAP complied with the legal standards enunciated by the CPSC General Counsel in their recommendations to your agency in their report?

Answer. This question appears to refer to a December 20, 2011 e-mail from Cheryl Falvey, General Counsel for CPSC at that time, to the members of the CHAP and CPSC staff. The e-mail is available on the portion of the CPSC website that contains CHAP-related documents and information. See <http://www.cpsc.gov/PageFiles/125699/cfalvey12202011.pdf>. The Falvey e-mail provided the CHAP and CPSC staff members with guidance regarding the charge to the CHAP and procedures as set forth in section 108 of the CPSIA. The Falvey e-mail did not enunciate any legal standards. The Commission’s notice of proposed rulemaking (“NPR”), “Prohibition of Children’s Toys and Child Care Articles Containing Specified Phthalates,” explained the legal requirements for the CHAP and the phthalates rulemaking. 79 Fed. Reg. 78324 -26 (December 30, 2014); available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-12-30/pdf/2014-29967.pdf>. We believe that the CHAP complied with the legal requirements as specified in section 108 of the CPSIA and explained in the NPR.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEB FISCHER TO
HON. ELLIOT F. KAYE

Question 1. Chairman Kaye, you said in your testimony regarding nanomaterials that “in the absence of CPSC driving this work as it relates to consumer products, it will not be done by any other Federal agency.” Are there Federal agencies you believe are spending resources on nanotechnology research that aren’t leading in developing sound science and data? What kind of work does CPSC currently perform on nanotechnology research today that’s providing a better return on investment than the work being done by the FDA, EPA, and other agencies? What is the justification for the CPSC to become more involved in this area and what would an additional \$5 million for a proposed interagency Center for Consumer Product Applications and Safety Implications of Nanotechnology provide?

Answer. CPSC is the sole regulatory authority over thousands of consumer products that may contain nanomaterials, including children’s products. For example, CPSC-supported research has found that nanosilver is used in children’s clothing and toys, and carbon nanotubes in anti-ballistic backpacks intended for children’s use. The backpacks are commercially available due to increasing concerns over shooting in schools. However, the efficacy and safety of using nanomaterials in this product that involves direct handling by children, is unknown. CPSC is sponsoring studies on (1) the effectiveness of these backpacks as “safety” products to reduce the potential for a bullet penetration; and (2) determining if there are any exposure concerns from the nano-carbon materials over time while the backpack is in use by children. Other Federal agencies do not conduct such studies of consumer products under CPSC’s jurisdiction, unless CPSC provides funding and a research strategy, thus the potential hazards associated with products such as the backpacks and toys will not be addressed otherwise. The research currently sponsored by CPSC meets critical data gaps on exposure and risk, trains the next generation of scientists, and provides robust methods that manufacturers can use to test their products.

The CPSC and National Nanotechnology Initiative (NNI) co-sponsored an international workshop Quantifying Exposure to Engineered Nanomaterials (QEEN) <http://www.nano.gov/node/1327>. The consensus was that there is an urgent need for more information on nanomaterial use and risk in consumer products. The absence of significant and coordinated research on nanomaterial exposure due to consumer products has been identified as a critical gap by the NNI. The NNI has involved considerable interagency collaboration to develop this emerging technology. An important component of this initiative includes the development of strategic plans and other documents that outline research needs and data gaps that must be addressed to develop this technology responsibly. Each Federal agency participating in the NNI is tasked with identifying the research needed to support its research or regulatory mission. CPSC, as an NNI participant, identified the nanotechnology center to address data gaps specific to CPSC’s regulatory mission. This proposal was vetted with the National Science Foundation, the EPA, and the White House Office of Science and Technology Policy. CPSC’s current funding levels do not allow for the development of robust test methodologies to answer questions regarding how exposure to a consumer product could be measured or how any potential identified risks can be addressed. Although CPSC staff possesses knowledge of consumer product use, human factors, testing requirements, and regulatory approaches for chemicals, this proposal would be an effective and efficient way to conduct the necessary research into exposure from consumer products containing nanomaterials.

We are requesting funding to: (1) develop robust test methods to determine and characterize human exposure to nanomaterials from consumer products; (2) characterize and understand consumer use of products containing nanomaterials; and (3) provide support to manufacturers, especially small businesses, with approaches to testing their products for the release of, and potential exposure to nanomaterials. All of these efforts are critical to ensuring the responsible commercialization of nanotechnology. In addition, these efforts will assist CPSC in assessing nanomaterials in products; assure consumers of the safety of these materials; and provide manufacturers with a robust and reliable means to test and assess these materials when used in products. In terms of return on investment, I believe it is far more prudent for Congress to allocate funds for us to address this critical knowledge gap now as opposed to waiting to address any health effects, especially to children, in the future.

Question 2. Chairman Kaye, in your testimony you mentioned that there are three regulatory changes the Commission is going to consider that would reduce the costs for small businesses associated with third-party testing. When can small businesses expect to see results on these changes and what other relief measures is the CPSC considering?

Answer. The first regulatory change, Direct Final Rule (DFR)/NPR on Determinations with respect to the ASTM elements was published in the *Federal Register* on July 16, 2015. Before the end of FY 2015, staff will bring to the Commission the other two proposed regulatory changes, an NPR on component part testing for heavy metals in toys and an NPR or DFR as appropriate on determinations clarification on textile dyes and prints.

Question 3. Chairman Kaye, as you know, industry stakeholders have been working collaboratively with the American Society for Testing and Materials International to develop standards for packaging, education and a labeling of liquid laundry packets. The voluntary standards for safe use and storage of these products are expected to be released later this year. Do you agree that we should allow industry to see this process through before moving forward with onerous regulations and mandates? Can you provide an update on CPSC's engagement on this issue and its interaction and collaboration with industry leaders to develop these standards?

Answer. CPSC staff is very active in the ASTM voluntary standards process for liquid laundry packets, which relies heavily on input from *all* stakeholders, including consumer advocate groups. To keep the process moving, CPSC has hosted a number of subcommittee meetings. The subcommittee has twice balloted for approval a voluntary standard, and is working to resolve issues related to: (1) whether all packaging must meet the Poison Prevention Packaging Act protocol; (2) whether the packet compression test must be changed; and (3) whether additional requirements to reduce packet attractiveness are needed. CPSC staff believes a consensus can be reached after one more round of balloting, with the standard approved and published before the end of the calendar year. The subcommittee and CPSC plan to closely monitor the incidents after publication to measure the effectiveness of the standard. If the voluntary standard is ineffective in reducing injuries, I believe that formula changes, individually wrapping each laundry packet, and child-resistant packaging should be vigorously pursued by all interested parties. I have directed my staff to continue to monitor this issue very closely and to keep my updated on its progress or lack thereof.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO
HON. ELLIOT F. KAYE

Question 1. Carbon monoxide is a silent, odorless killer that can strike at a moment's notice if the proper safeguards aren't put in place. According to the Center for Disease Control, there are over 400 deaths and approximately 15,000 emergency room visits as a result of CO poisoning each year. Just this winter in Minnesota a father and his 11 year-old daughter died of carbon monoxide poisoning because they didn't have carbon monoxide detectors installed in their home. That is why I introduced the Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act, which is named for two young brothers of Kimball, Minnesota who died from CO poisoning. This legislation would allow the CPSC to provide support for public safety education and to encourage installment of safe and reliable carbon monoxide detectors. Will you support my bill and commit to working with me to help reduce the number of deaths from carbon monoxide poisoning each year?

Answer. Working on preventing carbon monoxide ("CO") poisoning has been, and will continue to be, a priority as long as I am Chairman. The latest CPSC data indicates there were 160 non-fire CO poisoning deaths (in 2011) associated with consumer products, and more than 400 deaths per year from all products (according to the Centers for Disease Control and Prevention). The silent and unseen nature of this hazard makes the need to warn consumers even more pressing.

CPSC staff published a report in 2013 studying non-fire CO incidents and deaths associated with engine-driven generators and other engine-driven tools from 1999 to 2012. This report indicated that where alarm presence (or not) was known, over 90 percent of CO incidents and deaths occurred where there was no CO alarm. Accordingly, I support your continued efforts, including the Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act, to achieve greater installation and use of working carbon monoxide alarms in U.S. homes. My staff has spoken to the Burt family in the past, and we do not want any other family to suffer as they did after the loss of their two sons. If the Act is enacted and funded, CPSC will work closely with your office to make sure steps are taken to ensure its effective implementation.

Question 2. Chairman Kaye, do you agree it is important to ensure that every home has access to a reliable carbon monoxide detector? What more can be done to ensure that all Americans have access to a reliable carbon monoxide detector? In your opinion, how aware is the public about the dangers of carbon monoxide poi-

soning and proper use of carbon monoxide detectors? Do you believe we should be doing more to increase awareness?

Answer. CPSC believes in the life-saving value of carbon monoxide (“CO”) alarms in homes. As I noted above, when studying incidents and deaths associated with CO poisoning, where alarm presence (or not) was known, over 90 percent of CO incidents and deaths occurs where there is no CO alarm present. Because this issue is so important, CPSC takes a multi-faceted approach to educating the public:

- *Information center:* The agency has a CO information center on its website (at: CPSC CO Education Center) and regularly puts out a variety of educational materials intended to reach diverse audiences on the need for a CO alarm on every level of every home and outside each sleeping area.
- *Outreach to middle school students:* As part of our safety campaign, we have twice sponsored a CO poster contest for middle school students across the United States. The aim is to educate young people about the dangers of this invisible killer and leverage their knowledge, passion and posters to inform the population more broadly. The contest materials encourage science teachers and schools generally to educate their students about the dangers of CO poisoning and to communicate that message more broadly. The posters created by the students help educate their fellow Americans. This outreach effort has been successful. On May 13, 2015, CPSC announced the 10 winners of the contest out of a record 700 entries. Complete details, including the winning poster entries, can be found here: *CPSC Carbon Monoxide Poster Contest Winners Announced*.
- *Timely Press Releases/Blogs:* Twice every year, coinciding with the beginning and end of Daylight Savings Time, CPSC issues media and consumer alerts recommending that consumers change the batteries in their CO and smoke alarms when they change their clocks. These communications also provide an opportunity for the agency to remind consumers about the need for CO alarms.
- *Death and incident data:* Annually CPSC releases two reports relating to incidents and deaths associated with CO poisoning. One analyzes the non-fire CO deaths associated with the use of consumer products in order to help educate the public, the media, and all related stakeholders about the seriousness of the hazard. The most recent report can be found here: *Non-Fire Carbon Monoxide Deaths Associated with the Use of Consumer Products 2011 Annual Estimates*—released January 2015. Unfortunately, the data show that the number of non-fire CO deaths in 2011 was 160, which was an increase from previous years. The next version of this report is due to be completed this Fiscal Year. The second report is focused specifically on generators and engine-driven tools, because those products represent the largest percentage of incidents and deaths related to CO poisoning from consumer products. The next version of this report is also due to be released this fiscal year.
- *Rule development:* As noted, the largest percentage of consumer product-related CO deaths are associated with engine-driven tools such as portable generators. It is for this reason that I have continued to support CPSC staff’s work on the mandatory portable generator standard. In the interest of inter-agency collaboration and in order to further this important effort I have personally traveled to the National Institute for Standards and Technology (NIST) and met with my counterpart, Director Willie E. May, to further the work of both agencies in this area that will be vital to our final rule. In addition, CPSC staff continues to work with manufacturers and other stakeholders to improve the existing voluntary standards for portable generators to reduce or eliminate the exposure to CO that consumers face when using these products—particularly after a disaster such as a storm or hurricane that results in power outages.

In addition, CPSC is continuing to work on voluntary standards in the areas of CO sensors for gas furnaces. Currently, there is a proposal in development with one of the voluntary standards organizations to augment the existing requirements of the standard to require the furnace to shut itself down should excess CO be emitted. Our mid-year budget adjustment included additional resources to research and evaluate this technology.

There is no question that more can be done to increase public awareness of the dangers of CO poisoning and proper use of CO detectors. As revealed in the U.S. Census Department American Housing Survey in 2011, only 42 percent of all U.S. households reported having working CO detectors and for those living below the poverty line, the percentages dropped to 31 percent. We look forward to working with you and your office to help support these important efforts to increase the use

of this safety device to help protect American families from the dangers of this invisible killer.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOE MANCHIN TO
HON. ELLIOT F. KAYE

Question 1. I appreciate the hard work of the men and women at the Consumer Product Safety Commission, and I thank you for your commitment to protecting children, pregnant women and all Americans from unsafe products on our shelves. I have recently begun hearing a lot about phthalates, chemicals used to soften plastic and make it more durable. Advocates say that it can be a very useful additive for children's toys and other plastic products that are heavily used and could, without them, become brittle and more susceptible to cracking and breaking. While I agree that we do not want our children's toys disintegrating into plastic shrapnel that could become a choking hazard, I remain somewhat confused about the CPSC's perspective on phthalates. From my understanding, the Chronic Hazard Advisory Panel on phthalates and phthalate alternatives recommended a continuation of the current temporary ban because of the "cumulative risk" posed by phthalates.

Question 1a. Cumulative risk is a pretty general term. Please explain the specific dangers that phthalates pose in this cumulative risk assessment.

Answer. Section 108 of the Consumer Product Safety Improvement Act stated that the Chronic Hazard Advisory Panel (CHAP) "shall . . . consider the cumulative effects of total exposure from phthalates, both from children's products and from other sources, such as personal care products." The CHAP based its cumulative risk assessment on male developmental reproductive effects, also known as the "phthalate syndrome." Research has shown that prenatal exposure to certain phthalates (including DEHP and DINP) leads to undescended testes, malformations of the penis (hypospadias), anatomical variations (reduced anogenital distance), and reduced fertility in adulthood. Although the male fetus is the most sensitive, infants, juveniles, and adult males, and females are also affected. Laboratory studies demonstrate that mixtures of certain phthalates are additive; that is, they have cumulative effects. In addition, a growing number of studies have found associations between phthalate exposure and adverse health effects in humans, including infants and adults. Studies have indicated that the health effects in humans are generally consistent with the effects seen in animals.

Question 1b. Are cumulative risk assessments a proven and effective means of regulating chemicals?

Answer. Cumulative risk assessment (CRA) and mixtures risk assessment methods have been in development for many years. The U.S. Environmental Protection Agency (EPA) began developing a cumulative risk framework in the 1990s. The EPA's Office of Pesticide Programs uses cumulative risk methodology to assess the risks from pesticides, consistent with the Food Quality Protection Act (FQPA). The Agency for Toxic Substances and Disease Registry (ATSDR) uses similar methodology for chemical mixtures in the environment. EPA, ATSDR, and the International Program on Chemical Safety have issued cumulative risk assessment guidelines. The National Research Council, in 2008, recommended male reproductive development as the appropriate health endpoint for cumulative risk assessment of phthalates. After reviewing all the available data, the CHAP reached a similar conclusion. The methods that the CHAP used to assess cumulative risk are consistent with the recommendations of the National Research Council.¹

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO
HON. ROBERT S. ADLER

Question. Carbon monoxide is a silent, odorless killer that can strike at a moment's notice if the proper safeguards aren't put in place. According to the Center for Disease Control, there are over 400 deaths and approximately 15,000 emergency room visits as a result of CO poisoning each year. Just this winter in Minnesota a father and his 11 year-old daughter died of carbon monoxide poisoning because they didn't have carbon monoxide detectors installed in their home. That is why I introduced the Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act, which is named for two young brothers of Kimball, Minnesota who

¹NRC, 2008. Phthalates and Cumulative Risk Assessment. The Task Ahead., Committee on the Health Risks of Phthalates, National Research Council, National Academy Press, Washington, DC.

died from CO poisoning. This legislation would allow the CPSC to provide support for public safety education and to encourage installment of safe and reliable carbon monoxide detectors. Will you support my bill and commit to working with me to help reduce the number of deaths from carbon monoxide poisoning each year?

Answer. I share your concern about carbon monoxide ("CO"), and am heartbroken by the lives this silent killer takes: over 400 consumers each year. These deaths are made all the more tragic knowing that they are preventable with the use of a properly functioning CO alarm. I fully support your bill, the *Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act*, and believe it could do much to raise awareness of this critical public health issue. I assure you that CPSC continues to dedicate significant resources to reducing the risk of CO poisoning from consumer products, and our staff stands ready to implement the grant program described in the bill if enacted and funded.

I thank you for your efforts, and hope that you will call on me if I can assist in any way with protecting consumers from this silent killer. I encourage everyone to install working CO alarms in homes for an early warning. I remind consumers to use precaution when operating portable generators, and to get a professional inspection of all fuel-burning appliances every year, including furnaces, chimneys and water heaters to guard against CO leaks. We can work together to stop this invisible killer from threatening the safety of our friends, family, and community.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOE MANCHIN TO
HON. ROBERT S. ADLER

Question 1. I appreciate the hard work of the men and women at the Consumer Product Safety Commission, and I thank you for your commitment to protecting children, pregnant women and all Americans from unsafe products on our shelves. I have recently begun hearing a lot about phthalates, chemicals used to soften plastic and make it more durable. Advocates say that it can be a very useful additive for children's toys and other plastic products that are heavily used and could, without them, become brittle and more susceptible to cracking and breaking. While I agree that we do not want our children's toys disintegrating into plastic shrapnel that could become a choking hazard, I remain somewhat confused about the CPSC's perspective on phthalates. From my understanding, the Chronic Hazard Advisory Panel on phthalates and phthalate alternatives recommended a continuation of the current temporary ban because of the "cumulative risk" posed by phthalates.

Question 1a. Cumulative risk is a pretty general term. Please explain the specific dangers that phthalates pose in this cumulative risk assessment.

Answer. Senator, I appreciate your interest in phthalates. As the process required by Section 108 of the Consumer Product Safety Improvement Act (CPSIA) continues, I consult with CPSC's highly-trained technical staff of scientists and engineers, who are best qualified to quantify the risks phthalates pose to consumers. Section 108 of the CPSIA stated that the Chronic Hazard Advisory Panel (CHAP) "shall . . . consider the cumulative effects of total exposure from phthalates, both from children's products and from other sources, such as personal care products." The CHAP based its cumulative risk assessment on male developmental reproductive effects, also known as the "phthalate syndrome." Prenatal exposure to certain phthalates (including DEHP and DINP) leads to undescended testes, malformations of the penis (hypospadias), anatomical variations (reduced anogenital distance), and reduced fertility in adulthood. Although the male fetus is the most sensitive, infants, juveniles, and adult males, and females are also affected. Laboratory studies demonstrate that mixtures of certain phthalates are additive; that is, they have cumulative effects. In addition, a growing number of studies have found associations between phthalate exposure and adverse health effects in humans, including infants and adults. The health effects in humans are generally consistent with the effects seen in animals.

Question 1b. Are cumulative risk assessments a proven and effective means of regulating chemicals?

Answer. According to CPSC's technical staff, cumulative risk assessment (CRA) and mixtures risk assessment methods have been in development for many years. The U.S. Environmental Protection Agency (EPA) began developing a cumulative risk framework in the 1990s. The EPA's Office of Pesticide Programs uses cumulative risk methodology to assess the risks from pesticides, consistent with the Food Quality Protection Act (FQPA). The Agency for Toxic Substances and Disease Registry (ATSDR) uses similar methodology for chemical mixtures in the environment. EPA, ATSDR, and the International Program on Chemical Safety have issued cumulative risk assessment guidelines. The National Research Council, in 2008, rec-

ommended male reproductive development as the appropriate health endpoint for cumulative risk assessment of phthalates. After reviewing all the available data, the CHAP reached a similar conclusion. The methods that the CHAP used to assess cumulative risk are consistent with the recommendations of the National Research Council.¹

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JERRY MORAN TO
HON. ANN MARIE BUERKLE

Question 1. Commissioner Buerkle, when the Commission voted on the NPR on Section 108 of the CPSIA, there was a lot of discussion concerning the CPSIA's requirement for the Commission to make a determination on whether to keep the interim bans in place "based on" the CHAP report.

If it shown that the CHAP analysis was scientifically flawed or is now outdated, do you believe the Commission has the discretion to make a determination that would contradict the recommendations of the CHAP with respect to the interim bans in the final rule?

Answer. Yes, I believe the Commission has not only the discretion but the duty to make our determination based on the best available scientific evidence. Under Section 108 of the CPSIA, the Chronic Hazard Advisory Panel (CHAP) was charged to make recommendations on which phthalates should be banned and which interim bans should be continued. The CHAP operated in an advisory capacity to the Commission. The CPSIA also directed the Commission to provide an opportunity for public comment. That would be an empty gesture if the Commission were obligated to follow the CHAP's recommendations in spite of public comment showing that those recommendations were not based on the best available science.

Question 2. Commissioner Buerkle, the CHAP report on phthalates was supposed to make recommendations on whether any phthalates or alternatives were supposed to be banned as hazardous substances—a term defined by CPSC statute and regulation. Instead of making recommendations on the basis of CPSC precedent on the safety of chemicals, the CHAP recommended to ban chemicals based on the fact that they could contribute, even if only in a marginal way, to a cumulative risk.

In the same report, the CHAP indicated that they did not have any data to evaluate the chemical safety of the alternatives that will replace banned phthalates. Do you feel comfortable recommending a ban of something that "only very marginally contributes" to a cumulative risk, in favor of an untested alternative?

Answer. No, I am very uncomfortable with a ban under such circumstances. If one chemical contributes only "very marginally" to a cumulative risk—and more recent data suggest even that may be overstated, then it is quite possible that an untested alternative could pose a substantially greater risk to consumers. That cannot be what Congress had in mind when it enacted CPSIA.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DEBRA FISCHER TO
HON. ANN MARIE BUERKLE

Question. Commissioner Buerkle, you highlighted some of the issues surrounding the Notice of Proposed Rulemaking regarding phthalates. Specifically, you mentioned the use of data from 2005 and 2006 when data from 2009 and 2010 was available, as well as a lack of transparency in the peer review process. Additionally, there are concerns CPSC relied on a risk assessment that is unproven and the rule-making did not address other issues. Have these concerns been addressed? If not, why?

Answer. I have repeatedly expressed my strong concern that the CHAP's cumulative risk assessment relied on outdated exposure data. The CHAP used data from the 2005–2006 NHANES study to evaluate the exposure of pregnant women and even older data from the 1999–2005 SFF study to evaluate the exposure of children under 3. This was inappropriate because CPSIA was enacted in 2008, restricting the use of several phthalates included in the cumulative risk assessment.

In response to my concern, the CPSC Chairman asked the staff to analyze the more recent exposure data. The staff's analysis appears to me to vitiate the basis for the CHAP's original recommendation; however, the staff offered no comment on how the latest analysis would affect the proposed bans. While the Commission re-

¹NRC, 2008. Phthalates and Cumulative Risk Assessment. The Task Ahead., Committee on the Health Risks of Phthalates, National Research Council, National Academy Press, Washington, DC.

opened the comment period to allow comment on the staff's analysis, I remain concerned that the public should have had an opportunity to comment on the science before the Commission formulated its proposal last fall.

As for the other concerns I have raised, I do not yet know whether they will be addressed. The staff is reviewing public comments and preparing its recommendations for a final rule, but I am not privy at this point to their thinking. I remain extremely concerned that despite the analysis of the more recent data, that the agency will continue to accept the recommendation of the CHAP.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO
HON. ANN MARIE BUERKLE

Question. Carbon monoxide is a silent, odorless killer that can strike at a moment's notice if the proper safeguards aren't put in place. According to the Center for Disease Control, there are over 400 deaths and approximately 15,000 emergency room visits as a result of CO poisoning each year. Just this winter in Minnesota a father and his 11 year-old daughter died of carbon monoxide poisoning because they didn't have carbon monoxide detectors installed in their home. That is why I introduced the Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act, which is named for two young brothers of Kimball, Minnesota who died from CO poisoning. This legislation would allow the CPSC to provide support for public safety education and to encourage installment of safe and reliable carbon monoxide detectors. Will you support my bill and commit to working with me to help reduce the number of deaths from carbon monoxide poisoning each year?

Answer. I strongly support information and educational campaigns that help consumers understand health and safety issues that fall within the jurisdiction of Consumer Product Safety Commission.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOE MANCHIN TO
HON. ANN MARIE BUERKLE

Question 1. I appreciate the hard work of the men and women at the Consumer Product Safety Commission, and I thank you for your commitment to protecting children, pregnant women and all Americans from unsafe products on our shelves. I have recently begun hearing a lot about phthalates, chemicals used to soften plastic and make it more durable. Advocates say that it can be a very useful additive for children's toys and other plastic products that are heavily used and could, without them, become brittle and more susceptible to cracking and breaking. While I agree that we do not want our children's toys disintegrating into plastic shrapnel that could become a choking hazard, I remain somewhat confused about the CPSC's perspective on phthalates. From my understanding, the Chronic Hazard Advisory Panel on phthalates and phthalate alternatives recommended a continuation of the current temporary ban because of the "cumulative risk" posed by phthalates.

Question 1a. Cumulative risk is a pretty general term. Please explain the specific dangers that phthalates pose in this cumulative risk assessment.

Answer. The Consumer Product Safety Improvement Act of 2008 (CPSIA) directed that U.S. Consumer Product Safety Commission to convene a Chronic Hazard Advisory Panel (CHAP) to study the effects of all phthalates and phthalate alternative used in children's toys and child care articles. The CHAP's recommendations depend on a cumulative risk assessment incorporating five phthalates that, to varying degrees, are associated with anti-androgenic effects. By far the strongest contributor to the cumulative risk assessment was a phthalate (DEHP) that has already been permanently banned by Congress in the CPSIA.

I have repeatedly expressed my strong concern that the CHAP's cumulative risk assessment relied on outdated exposure data. The CHAP used data from the 2005–2006 NHANES study to evaluate the exposure of pregnant women and even older data from the 1999–2005 SFF study to evaluate the exposure of children under 3. This was inappropriate because CPSIA was enacted in 2008, restricting the use of several phthalates used in the cumulative risk assessment.

Question 1b. Are cumulative risk assessments a proven and effective means of regulating chemicals?

Answer. No. While Federal agencies have begun to grapple with the problems of cumulative risk assessment, it is my understanding that no U.S. agency has ever before banned a chemical based solely on a cumulative risk assessment. The CPSIA did not require us to do so here.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO
HON. JOSEPH P. MOHOROVIC

Question. Carbon monoxide is a silent, odorless killer that can strike at a moment's notice if the proper safeguards aren't put in place. According to the Center for Disease Control, there are over 400 deaths and approximately 15,000 emergency room visits as a result of CO poisoning each year. Just this winter in Minnesota a father and his 11 year-old daughter died of carbon monoxide poisoning because they didn't have carbon monoxide detectors installed in their home. That is why I introduced the Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act, which is named for two young brothers of Kimball, Minnesota who died from CO poisoning. This legislation would allow the CPSC to provide support for public safety education and to encourage installment of safe and reliable carbon monoxide detectors. Will you support my bill and commit to working with me to help reduce the number of deaths from carbon monoxide poisoning each year?

Answer. I fully support raising awareness of the dangers of carbon monoxide poisoning from portable generators and other sources. Indeed, during debate on our Fiscal Year 2015 Midyear Operating Plan Adjustments I asked my fellow Commissioners to dedicate \$500,000 to fund an expansion of a successful public information campaign our Office of Communications has run that includes distributing CO warnings in disaster-stricken areas. Portable generators are the leading cause of CO deaths over the last decade,¹ and disasters bring increases in generator use and, unfortunately, generator-related CO deaths.

While I was unsuccessful in that request, I continue to believe that CO from generators and other sources should be a priority of the Commission. It is a latent hazard that is exactly the kind of risk Congress envisioned the CPSC addressing. Even consumers who understand CO is a risk of generator use may not appreciate the seriousness of the risk. According to our staff's research, portable generator can emit 1500 times as much CO per hour as an automobile.²

While I support the spirit of the grant program envisioned by your legislation, however, I am concerned that it not distract from the Commission's efforts to more directly address the hazard through standards development for portable generators. In conjunction with the relevant voluntary standards bodies, we are working to develop requirements that govern how much CO generators can produce and what safety features they should incorporate to guard against toxic environments. Despite my usual preference to educate consumers and respect their educated choices, with this hazard—where we see deaths of people who were clearly aware of the risk and tragically thought that keeping the generator in an open garage would be sufficient—I believe there may be a greater need for demanding safer performance from this product.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TOM UDALL TO
HON. JOSEPH P. MOHOROVIC

Question. Commissioner Mohorovic, could you expand on your idea of improving import surveillance by implementing a "trusted trader" program for importers? For example, could you give more details about what an importer would need to do to be certified as a "trusted trader" and how you envision such an effort would be funded?

Answer. While the specifics would be developed by the Commission and our staff through engagement with all stakeholders, the bedrock principle of Trusted Trader status would be empirical evidence of competence for and commitment to consumer safety throughout a company's processes, including its supply chain.

In June of 2014, in conjunction with U.S. Customs and Border Protection, we invited companies to participate in a test of the trusted trader concept. The requirements for participation in that program comprised a thorough desktop audit of an applicant's policies and compliance history. The Trusted Trader program I envision

¹See Matthew Hnatov, U.S. Consumer Product Safety Commission, *Non-Fire Carbon Monoxide Deaths Associated with the Use of Consumer Products*, 3 (2014), available at http://www.cpsc.gov/en/Media/Documents/Research—Statistics/Injury-Statistics/Non-Fire-Carbon-Monoxide/Non-fire-Carbon-Monoxide-Deaths-Associated-with-the-Use-of-Consumer-Products-2011-Annual-Estimates/?utm_source=rss&utm_medium=rss&utm_campaign=Carbon+Monoxide+Injury+Statistics.

²Janet Buyer, U.S. Consumer Product Safety Commission, *CPSC Activities to Address CO Poisoning Hazard of Portable Generators*, 17 (2014), available at <http://www.cpsc.gov/Global/Research-and-Statistics/Technical-Reports/Home/Portable-Generators/PresentationonPortableGeneratorProjectforNIOSHConstructionSectorCouncilMeeting.pdf>.

would go well beyond such an audit to include site visits and other investigative tools designed to assure not only that a company's products had been safe and compliant to that point, but that they would continue to be safe and compliant because the sophistication of its processes made any other result as unlikely as possible.

As for funding, I believe that, while a modest dedicated appropriation may be necessary to create the program, its ongoing operation can be accomplished through existing appropriations. Properly structured, a Trusted Trader will in essence save money for importers at the ports by obviating needless inspections of compliant companies' products.

Incorporating the trusted trader program assists with shaping the overall risk profile of the agencies import program. Having more participants in this program reduces the overall volume of cargo that both CBP and CPSC would be required to inspect. Operational costs to effectively monitor such a program would continue year after year as infrequent validations of trusted trader participants are required.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOE MANCHIN TO
HON. JOSEPH P. MOHOROVIC

Question 1. I appreciate the hard work of the men and women at the Consumer Product Safety Commission, and I thank you for your commitment to protecting children, pregnant women and all Americans from unsafe products on our shelves. I have recently begun hearing a lot about phthalates, chemicals used to soften plastic and make it more durable. Advocates say that it can be a very useful additive for children's toys and other plastic products that are heavily used and could, without them, become brittle and more susceptible to cracking and breaking. While I agree that we do not want our children's toys disintegrating into plastic shrapnel that could become a choking hazard, I remain somewhat confused about the CPSC's perspective on phthalates. From my understanding, the Chronic Hazard Advisory Panel on phthalates and phthalate alternatives recommended a continuation of the current temporary ban because of the "cumulative risk" posed by phthalates.

Question 1a. Cumulative risk is a pretty general term. Please explain the specific dangers that phthalates pose in this cumulative risk assessment.

Answer. As you know, Section 108 of the Consumer Product Safety Improvement Act required that the CHAP consider the cumulative effects of phthalates. The premise behind that requirement seems to be that, where various phthalates have similar effects, exposure to otherwise-acceptable levels of all of them could yield an unacceptable total exposure.

Question 1b. Are cumulative risk assessments a proven and effective means of regulating chemicals?

Answer. Cumulative risk assessments of the kind the CHAP performed are novel and, thus, not a proven and effective means of regulating chemicals. Further, while the final CHAP report was circulated for a closed peer review, the CHAP did not subject the methodology it used to evaluate cumulative risk to separate, open peer review. This is inconsistent with Federal scientific standards. "More rigorous peer review is necessary for information that is based on novel methods or presents complex challenges for interpretation."³

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO
HON. MARIETTA S. ROBINSON

Question. Carbon monoxide is a silent, odorless killer that can strike at a moment's notice if the proper safeguards aren't put in place. According to the Center for Disease Control, there are over 400 deaths and approximately 15,000 emergency room visits as a result of CO poisoning each year. Just this winter in Minnesota a father and his 11 year-old daughter died of carbon monoxide poisoning because they didn't have carbon monoxide detectors installed in their home. That is why I introduced the Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act, which is named for two young brothers of Kimball, Minnesota who died from CO poisoning. This legislation would allow the CPSC to provide support for public safety education and to encourage installment of safe and reliable carbon monoxide detectors. Will you support my bill and commit to working with me to help reduce the number of deaths from carbon monoxide poisoning each year?

³ Office of Management and Budget, Final Information Quality Bulletin for Peer Review, 70 FED. REG. 2664 (Jan. 14, 2005).

Answer. I am committed to reducing the number of deaths from carbon monoxide (CO) poisoning which is why I support S. 1250: The Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act, and look forward to it being enacted and funded. CPSC has a longstanding outreach campaign on the dangers of CO poisoning which includes press releases, semi-annual reminders to consumers to check and change batteries in CO alarms, several publications on our website, as well as a national poster contest for middle school students aimed at educating students and families about poisonous carbon monoxide.

According to our latest available data on CO incidents associated with all engine-driven tools (EDTs), there were 931 fatalities from 725 incidents from 1999 through 2012.¹ A CO alarm was reported to have been present in only 21 of 279 incidents where alarm presence was known, which accounted for 30 of 385 fatalities caused by CO from EDTs.² Additionally, the data show that in eleven of the incidents, the CO alarm was inoperable due to batteries being installed improperly or not having batteries at all, drained batteries, or lack of an electric current.³

I am encouraged by the growing number of state and local requirements regarding the proper installation of CO detectors and it is my hope that additional states and jurisdictions will adopt similar requirements. I will continue to support public safety education efforts on the importance of having properly installed carbon-monoxide detectors, especially during winter months and hurricane season when CO-related fatalities are more prevalent.⁴

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOE MANCHIN TO
HON. MARIETTA S. ROBINSON

Question 1. I appreciate the hard work of the men and women at the Consumer Product Safety Commission, and I thank you for your commitment to protecting children, pregnant women and all Americans from unsafe products on our shelves. I have recently begun hearing a lot about phthalates, chemicals used to soften plastic and make it more durable. Advocates say that it can be a very useful additive for children's toys and other plastic products that are heavily used and could, without them, become brittle and more susceptible to cracking and breaking. While I agree that we do not want our children's toys disintegrating into plastic shrapnel that could become a choking hazard, I remain somewhat confused about the CPSC's perspective on phthalates. From my understanding, the Chronic Hazard Advisory Panel on phthalates and phthalate alternatives recommended a continuation of the current temporary ban because of the "cumulative risk" posed by phthalates.

Question 1a. Cumulative risk is a pretty general term. Please explain the specific dangers that phthalates pose in this cumulative risk assessment.

Answer. Section 108(b)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) directed the Chronic Hazard Advisory Panel (CHAP) to:

"complete an examination of the full range of phthalates that are used in products for children and shall . . .

(iv) consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources, such as personal care products"

As the CHAP report has shown, many of the phthalates to which we are exposed can cause severe health problems such as liver toxicity, cancer, and neurological and behavioral problems.⁵ Even more troubling, cumulative exposure to some phthalates combines to increase the risk of adverse effects.⁶ Therefore, if we are to effectively address the hazard these phthalates pose, we must take into account our total exposure to them as opposed to looking only at each phthalate in isolation. As the CHAP has found, the most widely-studied of these cumulative effects is antiandrogenicity,

¹Incidents, Deaths, and In-Depth Investigations Associated with Non-Fire Carbon Monoxide from Engine-Driven Generators and Other Engine-Driven Tools, 1999–2012, August 2013, at 4, available at: <http://www.cpsc.gov/Global/Research-and-Statistics/Injury-Statistics/Carbon-Monoxide-Poisoning/GeneratorsAndOEDTFatalities2013FINAL.pdf> pg. 4

²*Id.* 5

³*Id.* 5

⁴Non-Fire Carbon Monoxide Deaths Associated with the Use of Consumer Products, September 2014, at 5 and 10, available at: <http://www.cpsc.gov/Global/Research-and-Statistics/Injury-Statistics/Carbon-Monoxide-Poisoning/NonFireCarbonMonoxideDeathsAssociatedwiththeUseofConsumerProducts2011AnnualEstimatesSept2014.pdf>

⁵Chronic Advisory Panel on Phthalates and Phthalate Alternatives, July 2014, at 13, 25, 31 available at <https://www.cpsc.gov/PageFiles/169876/CHAP-REPORT-FINAL.pdf>

⁶See *Id.* 26

whereby these phthalates disrupt the normal development of male fetuses.⁷ These effects can cause debilitating lifelong physical deformities such as cryptorchidism (undescended testes), hypospadias (a deformity of the penis), and reduced anogenital distance, as well as reduced fertility and increased risk of testicular cancer.⁸ For its cumulative risk assessment, the CHAP studied the antiandrogenic effects of phthalates and found, using bio-monitoring studies, that about ten percent of pregnant women and five percent of children have a Hazard Index (HI) of over one for active phthalates. The HI is an application of the dose-addition principle and is widely used in cumulative risk assessments of chemical mixtures. An HI greater than one indicates that the exposure exceeds the acceptable exposure for the mixture.⁹ The CHAP's cumulative risk assessment resulted in the recommendations for permanent bans on phthalates with antiandrogenic effects, which were adopted by the CPSC in its Notice of Proposed Rulemaking.

Question 1b. Are cumulative risk assessments a proven and effective means of regulating chemicals?

Answer. As the CHAP found, there is significant scientific literature supporting the conclusion that antiandrogenic phthalates have cumulative effects in terms of the risk they pose to human health.¹⁰ The CHAP also considered how to assess these cumulative effects and found that the phthalates act in a "dose additive" effect.¹¹ The cumulative risk assessment was based on sound science and followed recommendations of the National Research Council. The cumulative risk methodology has also been used by other agencies, such as the U.S. Environmental Protection Agency and the Agency for Toxic Substances and Disease Registry. Given the serious health risks associate with phthalates and exposure patterns, cumulative risk assessment was necessary to properly address the real risks posed by phthalates in children's toys and child-care articles.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TOM UDALL TO
HON. MARIETTA S. ROBINSON

Question. Commissioner Robinson, I want to thank you again for coming to Albuquerque two years ago to speak about toy safety. I would like to follow up on this issue as it relates to import surveillance. Congress and this Committee turned their attention to the issue of children's toy safety in 2007 following an infamous "Summer of Recalls" and problems with imported toys. Toys coated in lead paint. Children being rushed to the emergency room after swallowing powerful magnets that attached inside the body. Congress found that CPSC did not have the resources to meet its mandate. Some imported toys did not meet voluntary industry standards for safety. That's why I supported landmark legislation, the 2008 Consumer Product Safety Improvement Act. This new law set the strictest toy safety standards in the world. It increased the CPSC's ability to keep unsafe imported toys from reaching store shelves. Families can now report and search for product safety hazards through an online CPSC database. As a result, parents today can have more confidence this holiday season that their children's toys are safe. Can you describe for me how CPSC can continue to build on its positive record here in terms of improving consumer safety, especially in terms of imported consumer products?

Answer. It was a pleasure to participate with Senator Udall at the toy safety event at the Children's Hospital in New Mexico. I believe we were able to deliver a powerful toy safety message at the peak of the holiday shopping season.

Section 222 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires CPSC to create an import surveillance Risk Assessment Methodology (RAM) to identify products imported into the United States that are most likely to violate consumer product safety statutes and regulations. CPSC has been successfully operating a pilot RAM in a limited number of areas and is now ready to fully implement it nationwide.

CPSC's proposed RAM surveillance system will rely upon existing data collected through Customs and Border Protection's (CBP's) International Trade Data System (ITDS). When fully implemented, the RAM surveillance system will analyze all incoming import product lines under CPSC's jurisdiction and determine high-risk entries before they arrive at U.S. ports. These entries will be inspected by CPSC and

⁷*Id.*

⁸*Id.* 28

⁹*Id.* 26

¹⁰*Id.* 26

¹¹*Id.* 4

CBP at the port with the goal of reducing the number of violative or potentially hazardous consumer products from entering the U.S.

CPSC has requested authorization from Congress of a user fee to fund the building of the information technology system to fully implement the RAM. Additionally, CPSC will need additional inspectors co-located with CBP at the ports of entry and lab scientists to review entry samples. CPSC estimates the total cost of the RAM system to be approximately \$60M. CPSC proposes to collect \$36M in user fees, which is a small amount compared to the annual average of \$723B in consumer products under CPSC's jurisdiction that arrive in U.S. ports. CPSC estimates the average fee will be about \$1 for every \$14,000 in import value, resulting in a user fee payment of about \$3-\$5 for a typical shipment.

Additionally, we are considering the electronic filing of certificates of compliance as part of the single-window initiative, in the spirit of Executive Order 13659, *Streamlining the Export/Import Process for America's Businesses*.¹² This would create a simpler, more efficient trade process for importers by utilizing modernized technology. Also, this would enhance the CPSC's ability to target high-risk entries before they enter U.S. commerce. We have actively engaged stakeholders in discussions on the technical aspects of electronic filing of certificates and are encouraging stakeholders to participate in the pilot program. Many other government agencies already have the IT systems and funding necessary to update their current import systems, processes and procedures to comply with the single-window initiative.



¹² <https://www.whitehouse.gov/the-press-office/2014/02/19/executive-order-streamlining-exportimport-process-america-s-businesses>