

OVERSIGHT OF THE CONSUMER PRODUCT SAFETY COMMISSION

HEARING BEFORE THE SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS

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¹Mr. Kaye's answers to submitted questions have been retained in committee files and also are available at <http://docs.house.gov/meetings/IF/IF17/20150519/103481/HHRG-114-IF17-Wstate-KayeE-20150519-SD005.pdf>.

OVERSIGHT OF THE CONSUMER PRODUCT SAFETY COMMISSION

TUESDAY, MAY 19, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND
TRADE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:20 a.m., in room 2322 of the Rayburn House Office Building, Hon. Michael C. Burgess (chairman of the subcommittee) presiding.

Members present: Representatives Burgess, Lance, Blackburn, Harper, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Brooks, Mullin, Schakowsky, Clarke, Kennedy, Butterfield, Welch, and Pallone (ex officio).

Staff present: Leighton Brown, Press Assistant; James Decker, Policy Coordinator, Commerce, Manufacturing, and Trade; Graham Dufault, Counsel, Commerce, Manufacturing, and Trade; Melissa Froelich, Counsel, Commerce, Manufacturing, and Trade; Kirby Howard, Legislative Clerk; Paul Nagle, Chief Counsel, Commerce, Manufacturing, and Trade; Olivia Trusty, Professional Staff Member, Commerce, Manufacturing, and Trade; Michelle Ash, Democratic Chief Counsel, Commerce, Manufacturing, and Trade; Christine Brennan, Democratic Press Secretary; Jeff Carroll, Democratic Staff Director; Elisa Goldman, Democratic Counsel; Tiffany Guarascio, Democratic Deputy Staff Director and Chief Health Advisor; Brendan Hennessey, Democratic Policy and Research Advisor; and Adam Lowenstein, Democratic Policy Analyst.

Mr. BURGESS. Subcommittee on Commerce, Manufacturing, and Trade will now come to order. The Chair will recognize himself 5 minutes for the purpose of an opening statement.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

The Consumer Product Safety Commission was established in 1972 by Congress to protect consumers against unreasonable risks of injuries associated with consumer products. This statutory mission is a serious responsibility for the Commission, and it is critically important that Congress conduct oversight to ensure that public confidence in the Commission's adherence to its responsibilities and stewardship of the taxpayer's dollar. I would like to thank Chairman Kaye and Commissioners Adler, Buerkle, and Mohorovic for their testimony today.

We will also hear from a second panel of witnesses about Representative Pompeo's bipartisan legislation, H.R. 999, the ROV In-Depth Examination Act, and the open ROV rulemaking that has garnered substantial bipartisan concern from members on both sides of the dais, and both sides of the Capital. Consumer safety is a top priority for this subcommittee, and at a time where difficult budget decisions are being made across the Government, it is critical that all agencies are held accountable for their prioritization decisions, particular concern about the role of sound scientific principles at the Commission, the interaction between the Commission and its regulated industries, the rulemaking agenda, and the execution of Congressional mandates for third party test burden reduction, and the Commission's continued request for new authority to impose user fees. There is a fundamental Constitutional issue with moving the power of the purse from Congress to a regulatory agency with no experience in disbursing fees.

A wide range of open agenda items at the Commission require significant scientific evaluation and testing, from thiolates, to nanotechnology, to window coverings, and recreational off-highway vehicles. Consumer confidence is rooted in the belief that the Commission has the capacity to base its decision on supportable scientific findings. It is dangerous and short sighted for a safety agency to move away from science and scientific principles, as may have happened with the Chronic Hazard Advisory Panel report regarding thiolates, where even the Office of Management of the Budget guidelines for peer review were ignored.

The Commission's authorizing statute is based around the presumption that voluntary industry standards and cooperative relationships with the regulated industry are the preferred method of regulation for product safety. Safety is a strong incentive for both parties. There are a number of open rulemakings that fundamentally change the relationship between the Commission and the regulated industry. In an area where it is said that 90 percent of the threats to consumer safety are created by 10 percent of the participants, it seems counterintuitive to put additional barriers between the Commission and the regulated industry when the common ground is consumer safety.

This is especially so where resources are always going to dictate the Commission will need help from industry in identifying problems. One open rulemaking fundamentally changes the fast track voluntary recall process, an award winning program established 20 years ago to address long recall processes, which has produced tremendous results. Under this program last year, 100 percent of fast track recalls were initiated within 20 days. The positive impact for consumers is real when potentially dangerous products can be taken off the shelves in days, instead of weeks or months.

Finally, there has been a bipartisan—there has been bipartisan support to reduce third party testing burdens for small businesses around the United States. In 2011 Congress passed H.R. 2715, with explicit instructions to the Commission to evaluate the testing burden relief in good faith, but the Commission has struggled to carry out the statutory requirement, even with additional funding. Three and a half years later, small businesses are reporting they

still have not seen any real burden reductions, and are facing seemingly endless comment rounds, but no real solutions.

We are here to make certain that we are doing what we can to prevent tragic and unfortunate injuries from consumer products. However, additional funds for the Commission are difficult to justify when there are so many questions about the scientific methodology used by the Commission to support its regulatory agenda, and how the Administrative Procedure Act solicited comments are incorporated through the rulemaking process, and how the Commission operates without bipartisan support from any initiative.

The Consumer Products Safety Commission's mission must remain a touchstone for its important work, and not a launching pad for an active estate driven by headlines, rather than science and economics. Such an approach compromises the trust in an agency that has successfully removed thousands of unsafe consumer products from the economy, from product—from consumer shelves, as well as the voluntary safety standards that build safety into the products on the front end.

[The prepared statement of Mr. Burgess follows:]

PREPARED STATEMENT OF HON. MICHAEL C. BURGESS

The Consumer Product Safety Commission was established in 1972 by Congress to protect consumers against unreasonable risks of injuries associated with consumer products. This statutory mission is a serious responsibility for the Commission, and it is critically important for Congress to conduct oversight to ensure public confidence in the Commission's adherence to its responsibilities and stewardship of taxpayer dollars.

I would like to thank Chairman Kaye and Commissioners Adler, Buerkle, and Mohorovic for testifying today. We will also hear from a second panel of witnesses about Representative Pompeo's bipartisan legislation, H.R. 999, the ROV In-Depth Examination Act and the open ROV rulemaking that has garnered substantial bipartisan concern from Members on both sides of the Hill.

Consumer safety is a top priority for this subcommittee and at a time where difficult budgeting decisions are being made across the Government, it is critical that all agencies are held accountable for their prioritization decisions. I am particularly concerned about the role of sound scientific principles at the Commission, the interaction between the Commission and regulated industries, the rulemaking agenda, the execution of Congressional mandates for third-party test burden reduction, and the Commission's continued request for new authority to impose user fees. There is a fundamental constitutional issue with moving the power of the purse from Congress to a regulatory agency with no experience with user fees.

A wide range of open agenda items at the Commission require scientific evaluation and testing, from phthalates and nanotechnology to window coverings and recreational off-highway vehicles. Consumer confidence is rooted in the belief that the Commission has the capacity to base its decisions on supportable scientific findings. It is dangerous and short sighted for a safety agency to move away from sound science and scientific principles as I believe has happened with the CHAP Report regarding phthalates where even OMB guidelines for peer review were ignored.

The Commission's authorizing statute is based around the presumption that voluntary industry standards, and cooperative relationships with the regulated industry, are the preferred method of regulation for product safety. Safety is a strong incentive for both parties. There are a number of open rulemakings that fundamentally change the relationship between the Commission and the regulated industry. In an area where it's said that 90 percent of the threats to consumer safety are created by 10 percent of the players—it seems counterintuitive to put additional barriers between the Commission and the regulated industry when the common goal is consumer safety. This is especially so where resources are always going to dictate that the Commission will need help from industry in identifying problems.

One open rulemaking fundamentally changes the Fast Track voluntary recall process, an award-winning program established 20 years ago to address long recall processes, which has produced tremendous results. Under this program last year, 100 percent of fast track recalls were initiated within 20 days. The positive impact

for consumers is real when potentially dangerous product can be taken off the shelf in days instead of months.

Finally, there has been bipartisan support to reduce third party testing burdens for small businesses around the U.S. In 2011, Congress passed H.R. 2715 with explicit instructions for the Commission to evaluate testing burden relief in good faith. But the Commission has struggled to carry out this statutory requirement even with additional funding. Three and a half years later, small businesses are reporting they still have not seen any real burden reductions and are facing seemingly endless comment rounds but no real solutions.

We are all here to make sure we are doing what we can to prevent tragic and unfortunate injuries from consumer products. However, additional funds for the Commission are difficult to justify when there are so many questions about the scientific methodology used by the Commission to support its regulatory agenda, how Administrative Procedure Act solicited comments are incorporated through the rule-making process, and how the Commission operates without bipartisan support for many major initiatives.

The CPSC's mission must remain a touchstone for its important work and not a launching-off point for an activist State driven by headlines rather than science and economics. Such an approach compromises the trust in an agency that has successfully removed thousands of unsafe consumer products from the economy as well as the voluntary safety standards process that builds safety into products on the front end.

Mr. BURGESS. The Chair will recognize the ranking member of the subcommittee, Ms. Schakowsky, for the purposes of an opening statement.

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

Ms. SCHAKOWSKY. Thank you, Mr. Chairman, for holding this important hearing about Consumer Product Safety Commission. The Commission, and its mission of protecting consumers from unsafe products, is very near and dear to my heart. I began work as a consumer advocate many moons ago, as a young mother working to get freshness dates on food. So when you go and look at the date on food, moi. And I know how important it is that consumers have access to health and safety information about the products that they purchase and use, and that they are protected against harmful products.

In 2008 the landmark Consumer Product Safety Improvement Act was signed into law by President Bush. The bill was the product of broad bipartisan negotiation, and it marked the most significant reform of the CPSC and its responsibilities in decades. I also want to thank some of the advocates that are here in this room, and appreciate their work. The bill passed the committee 51 to 0, and the House by a vote of 424 to one. I was—it was slightly amended, again, on a bipartisan basis, in 2011, and the legislation gave the CPSC additional authority and resources so it could become the consumer watchdog that Americans deserve, and, frankly, expect.

I am proud to have authored several provisions to the bill, including a provision requiring mandatory standards and testing for infant and toddler products, such as cribs and high chairs. I also successfully added to the reform bill a requirement for postage-paid recall registration cards to be attached to products so that customers can be quickly notified their products are dangers.

The CPSC has been incredibly successful in its efforts to improve consumer protection over the last few years. There was a 34 per-

cent reduction in children's product recalls, just from 2013 to 2014. The 75 children's product recalls in 2014 was the lowest number in more than a decade. Thank you very much. We have seen enhanced proactive outreach to provide consumers with information about the dangers and best practices associated with everything from window blinds, to electric generators, to lawnmowers. And we have seen rulemaking to reduce the likelihood of preventable tragedies. I applaud the Commission on its important work. While I am disappointed that we move forward with this hearing on a day that Commissioner Robinson was unable to appear, I look forward to hearing the perspectives of the other Commissioners about the CPSC's work, and its next steps.

The second panel today will provide analysis of H.R. 999, the Ride Act. I am strongly opposed to this bill, which would suspend CPSC's statutory authority to complete a rulemaking affecting recreational off-highway vehicles, or ROVs, until after a study is completed at the National Academy of Science. It is not clear to me why this study is needed. After all, the CPSC has gone through its regular rulemaking process on this issue, taking into account the input of technical experts, the private sector, and the public.

I am also not sure why the National Academy of Sciences would analyze the feasibility of, among other things, providing consumers with safety information at the point of sale. While the NAS has a highly skilled staff, market and consumer analysis is not its strong suit. It also makes no sense that NAS would be required to consider the impact of a rulemaking on ROVs used in the military. The CPSC is responsible for consumer products, not military vehicles. The proposed rule is irrelevant to military ROVs. I believe this legislation is a delay tactic, pure and simple. It would delay the implementation of the CPSC's commonsense, consumer-focused rule to reduce ROV rollovers, enhance safety, and increase consumer information.

It is not as if this rulemaking is moving too fast. The risk of ROV death is not a new one, and the public comment period for the ROV rulemaking is currently open. There is nothing preventing the supporters of this legislation from making their concerns, and their suggestions, known. That is the way the process is supposed to work. What we cannot do is usher in a long delay for the sake of delay. The 335 ROV related deaths, and 506 injuries, from 2003 to 2013, I think it is time to act to enhance ROV safeguards, not tie the hands of the CPSC.

Again, I look forward to hearing from our witnesses, thank them for coming today, and I yield back.

Mr. BURGESS. Chair thanks the gentlelady. Gentlelady yields back. The Chair recognizes the vice chair of the full committee, Ms. Blackburn, 5 minutes for an opening statement, please.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman, and I want to say thank you to our witnesses. We appreciate that you are here. You know, 2008 was really the year of the recall, and since that point

in time we have been very interested in the work that you are doing, and have looked at your deliverables, and your outcomes.

Now, one of the things that is of tremendous concern to us—and I have got to tell you, I heard a lot about this during small business week, which was just a couple of weeks ago. And I was out and about in my district, visiting with small businesses, visiting with some retailers, and there are a lot of complaints that are coming about the way you all are going about your task, and some of the unnecessary burdens that are being put on retailers, and on businesses, and changes in reporting requirements. And I have got to tell you, I think there is a lot of unhappiness with the American public in how you are doing your job. I would say too there is probably some confusion as to what your mission statement is, and you are meeting that.

Now, I think it is fair to say that, as we look at the cost to business, and the cost to consumers, and a cost-benefit analysis, what we want to do is drill down with you a little bit. We share the same goal, being certain that the supply chain is safe, that products are safe when consumers get those products. There are different ways to go about this, and we want to make certain that there is an accountability issue, a transparency issue, and a fairness issue, or standards, that are being met. So we will have questions, and will move forward with those—so want to take a moment and welcome our former colleague. Commissioner Buerkle, it is wonderful to see you back in these halls, and it is wonderful to see you back in a hearing room, and we appreciate the work that you are doing.

With that, Mr. Chairman, I am going to yield the balance of my time to Mr. Pompeo for a statement.

Mr. POMPEO. Thank you, Madam Vice Chairman. Look, we have a—thank you all for being here, Chairman Kaye, and your colleagues, for coming today. We have this obligation, just as you do, to make sure that the CPSC statutes are implemented in a way that is both legal, and appropriate, and useful, and gets the economics and the safety balance just right. I think with respect to the ROV rules that you all have put forward, there is a lot of work that could be done. I think industry is prepared to try and get to a really good outcome that is a better place than the rulemaking that is proceeding will end up.

I was out last week too. I was actually on an ROV vehicle, out in Kansas in the woods. Wore my helmet, did all the things right, and I am here today to tell about it, which is good. I hope we can get this right, and the legislation that I have proposed isn't aimed at delaying. It is aimed at getting to a good outcome. It may cause a little more time, and a little more thoughtfulness, and a little more work to be done, but I hope we can get that right, that we can get the best science, and the best engineering associated with getting these rules in the right place, and get a voluntary standard put that industry can do the right thing, and get these vehicles in a safe place, to the right people. And I hope—and look forward to working with you to see if we can't achieve that. With that, I will yield back my time.

Mrs. BLACKBURN. I thank the gentleman, and does any other member seek the balance of my time? None so doing, I yield back, Mr. Chairman.

Mr. BURGESS. Chair thanks the gentlelady. Gentlelady yields back. Chair recognizes Democratic side for an opening statement.

Ms. SCHAKOWSKY. Mr. Chairman, if I could just submit for the record Mr. Pallone's opening statement?

Mr. BURGESS. Without objection, so ordered.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Thank you, Chairman Burgess, and welcome to the Commissioners.

While I know this is a rescheduled hearing, and we face time constraints, I want to start by saying that I am sorry that Commissioner Robinson is unable to be here due to prior commitments. This is particularly true today, as she has raised concerns about the length of time it takes to get a mandatory standard passed when the voluntary standard is inadequate. Her views would have been of value to the subject of today's second panel, since the potential delay of a proposed rule for strengthening the safety of Recreational Off-Highway Vehicles (ROVs) is being discussed.

The first part of today's hearing examines the ongoing work of a relatively small, yet essential Federal agency—the Consumer Product Safety Commission (CPSC).

After years of CPSC being ineffective and reactive, members of Congress worked together and produced landmark bipartisan legislation, the Consumer Product Safety Improvement Act of 2008 (CPSIA). In 2011, Congress again passed bipartisan legislation, giving CPSC additional flexibilities in implementing CPSIA (C*P*S*I*A). As a result, CPSC is now both an effective and proactive agency.

Passage of CPSIA was a tremendous victory for consumers and improved the safety of products sold in the United States. CPSIA's successes include getting lead and toxic phthalates out of children's products and toys, strong safety standards for infant and toddler products such as cribs and high chairs and a publicly accessible database of reported unsafe products.

As the Product Safety Commission finishes implementing stronger safety standards for products such as cribs, walkers, bath seats, toddler beds, and infant swings, we see the number of dangerous products on the market falling, the number of recalls falling, and the number of injuries falling.

The Product Safety Commission now is moving beyond CPSIA implementation, and there is still a lot of hard work ahead. The Commission has worked aggressively to engage industry in the process of setting voluntary safety standards. And while that is essential, sometimes voluntary standards are not enough.

That is why I am pleased it has begun the rulemaking process to protect children from the preventable strangulation hazard posed by cords in window blinds. In addition, the Product Safety Commission should ensure that any new Federal requirements regarding upholstered furniture flammability offer real public safety benefits and do not require or drive the use of harmful flame retardants.

Unfortunately, some of the efforts of the Commission to protect consumers are being met with opposition by industry and members of this committee. Today's second panel will focus on legislation that would unnecessarily delay the implementation of important safety standards for ROVs that would save lives.

ROVs can be very dangerous, especially when they are built without key safety measures. These vehicles, which look like something between a car and a go-cart, can rollover on top of the driver or passengers, badly hurting or killing them. In other cases, people have lost limbs when ejected from the vehicle or when a foot or arm struck an object outside the vehicle.

This is another case in which voluntary standards are simply not providing adequate protection for consumers. CPSC found that between 2003 and April of 2013, there were 335 reported deaths and 506 reported injuries related to ROV accidents.

The reasonable standards being proposed by the Product Safety Commission require manufacturers to build certain safety measures into ROVs, including a minimum level of resistance for preventing rollovers and minimum protection to keep occupants inside the vehicle.

We are very fortunate to have Heidi Crow-Michael, who has travelled all the way from Winnsboro, Texas, to join us today. In 2007, Ms. Crow tragically lost her 9-year-old son, J.T., in a ROV accident. I believe that her story is an important one for everyone on this subcommittee to hear.

Ms. Crow-Michael has been advocating for the type of safety standards included in the Commission rule, so that the same tragedy does not befall another family.

Unfortunately, the fact is that preventable deaths continue to occur because important safety features are not being built into ROVs.

The time to get this done is now—no more delays.

Thank you, and I yield back the balance of my time.

Mr. BURGESS. That concludes member opening statements. The Chair would like to remind members that, pursuant to committee rules, opening statements will be made a part of the record.

We will now hear from our witnesses. I want to welcome all of our witnesses, and thank you for taking time to testify before the subcommittee. Today's hearing will consist of two panels. Each panel of witnesses will have the opportunity to give an opening statement, followed by a round of questions from members. Once we conclude questions with the first panel, we will take a brief—underscore brief—recess to set up for the second panel.

Our first panel today, we have the following witnesses, testifying on behalf of the Consumer Product Safety Commission. Chairman Elliot F. Kaye, Chairman of the Consumer Product Safety Commission, thank you for your attendance. Commissioner Robert Adler, and we welcome you, sir, to the subcommittee. Commissioner Ann Marie Buerkle, thank you for—it is good to see you again. You give me confidence that there is an afterlife. And Commissioner Joseph P. Mohorovic, thank you so much for your attendance today. We are honored to have all of you today. Chairman Kaye, you will begin the first panel, and you are recognized for 5 minutes for the purposes of an opening statement, please.

STATEMENTS OF ELLIOT F. KAYE, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION; ANN MARIE BUERKLE, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION; ROBERT S. ADLER, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION; AND JOSEPH P. MOHOROVIC, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

STATEMENT OF ELLIOT F. KAYE

Mr. KAYE. Good morning, Chairman Dr. Burgess, Ranking Member Schakowsky, 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 by my friends and colleagues from the Commission, Commissioners Adler, Buerkle, and Mohorovic, and I bring regrets from Commissioner Robinson.

CPSC's vital health and safety mission touches us all in some way every day. From the parents 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, 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, and we cover thousands of different kinds of consumer products, with a budget in the mil-

lions, 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 Products Safety Improvement Act of 2008, 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.

Our staff has also been hard at work trying to reduce costs associated with third party testing, while also assuring compliance with the law. Congress' inclusion of the \$1 million as part of our funding for the current fiscal year has enhanced those efforts. I have emphasized priority—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.

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 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 the consumer products imported into the United States.

To meet our mandate, in 2011 we created a small scale pilot that has been a success. However, a 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, and safer products in the hands of American consumers.

Our proposed budget also seeks to address critical emerging and safety—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 effects 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, especially to children, from consumer products.

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 life-saving work undertaken by our staff. I look forward to answering questions you may have.

[The prepared statement of Mr. Kaye follows:]



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

**STATEMENT OF CHAIRMAN ELLIOT F. KAYE
TO THE COMMERCE, MANUFACTURING, AND TRADE SUBCOMMITTEE
OF THE U.S. HOUSE OF REPRESENTATIVES ENERGY AND COMMERCE COMMITTEE**

**OVERSIGHT OF THE CONSUMER PRODUCT SAFETY COMMISSION
AND THE FY 2016 PERFORMANCE BUDGET REQUEST HEARING**

MAY 19, 2015

Good morning Chairman Burgess, Ranking Member Schakowsky 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, and Mohorovic, and I bring regrets from our colleague, Commissioner Robinson who was unable to join us today. 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- we are an agency that is saving 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

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

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.

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

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.

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

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 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 US Government-wide effort to create a "Single Window" for import and export filing of all

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

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 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

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

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.

Mr. BURGESS. Chair thanks the gentleman. The gentleman yields back. The Chair recognizes the gentlelady, Ms. Buerkle, for her question—her statement, please.

STATEMENT OF ANN MARIE BUERKLE

Ms. BUERKLE. Thank you, Mr. Chairman, and good morning, Mr. Chairman and Ranking Member Schakowsky, and distinguished members of this committee. Thank you for holding today's hearing with regard to the Consumer Product Safety Commission. I had the honor of serving alongside many of the subcommittee members in the 112th Congress, and I am delighted to be back here on Capitol Hill in my capacity as a Commissioner at the CPSC. And I do hope that today's hearing strengthens our partnership to keep consumers safe from unreasonable risks of injury.

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

As a Commissioner I have stressed three general priorities, collaboration, education, and balance. Number one, it is crucial to—that CPSC builds strong relationships with all stakeholders. If the lines of communications are open, we can tap the knowledge, insight, and expertise of many outside experts. This is especially important in the case of the regulated community. If we inspire cooperation, rather than hostility, we will see quicker introduction of safer designs, as well as timely removal of defective products, all to the benefit of the consumer. That is why I am deeply troubled regarding the discussion of high—higher civil penalties, changes to important programs known as retailer reporting, and the proposals known as voluntary recall in 6(b). Without question, I believe these undermine engagement and collaborative efforts.

Number two, education. It is crucial to our mission. We need to make the regulated community aware of best practices and be honest regarding what we are intending to achieve. More importantly, we also need to engage the consumer, helping them to avoid hidden hazards and take advantage of safer products that are already available to them. A prime candidate for a comprehensive educational campaign is the issue of window coverings. Increased awareness and education will prevent many unfortunate injuries and death.

And number three, while consumer safety is our top priority, I believe that that 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. Our statutes express a strong preference for voluntary standards rather than mandatory standards. Where mandatory standards are unavoidable, the CPSC

instructs us to find the least burdensome solution that adequately addresses the risk.

Mandatory standards have unintended consequences. They tend to stagnate, while the world of consumer products evolves rapidly. It makes then—sense, therefore, to revisit our rules periodically and make sure they are effective without stifling innovation. I am pleased that the Commission voted unanimously last week for a retrospective review of our rules, and I do hope it will become a more regular activity of the Commission.

Regulation is a necessary function of the Government, and the Consumer Products Safety Improvement Act strengthened our authority. It is clear, however, the CPSIA went too far in some respects, forcing regulation without regard to risk, let alone cost. This subcommittee led the way in moderating some of the untoward consequences of CPSIA through its work on H.R. 2715, which passed into Public Law 112–28 while I was a member of the House. Some objectives of that law remain unfulfilled. Last year, the House included \$1 million in our 2015 appropriations, thanks to Representative Blackburn, to kick start our efforts on test burden reduction. There is still much more we can do to remove unnecessary regulatory burdens in this arena, and I do look forward to working with this committee on those unresolved CPSIA issues.

The common goal among all of us, 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 16 grandchildren. I do not want dangerous products hurting them, or anyone, however, the United States Government cannot, and should not, try to create a zero risk society. The solutions we seek should be balanced, and address actual problems. Consumers should be protected from unreasonable risks, while the regulated community is protected from an arbitrary Government. Thank you for this time today, and I do look forward to taking any questions you might have. Thank you, Mr. Chair.

[The prepared statement of Ms. Buerkle follows:]



**Testimony of Ann Marie Buerkle
Commissioner
United States Consumer Product Safety Commission**

**Hearing on "Oversight of the Consumer Product Safety Commission"
Before the**

**U.S. House of Representatives
Committee on Energy and Commerce**

Subcommittee on Commerce, Manufacturing, and Trade

May 19, 2015

Chairman Burgess, Ranking Member Schakowsky, 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 alongside many of the subcommittee's Members in the 112th Congress, and I'm glad to be back on Capitol Hill in my capacity as a Commissioner of the CPSC. I hope that today's hearing strengthens our partnership to keep consumers safe from unreasonable risks of injury from consumer products.

I have been a Commissioner at the agency since July 2013. Throughout that time, what has continued to impress me most is the dedication of CPSC's staff. They take our safety mission very seriously. The regulated community has also impressed me, not only with their eagerness to understand and follow our regulations, but also with their entrepreneurial drive to innovate and advance safety. I am thankful too for the tone set by our Chairman and joined by my colleagues. We often differ on matters of policy, but we discuss those differences in a mutually respectful manner.

In my work as a Commissioner, I have stressed three general priorities-- collaboration, education and balance.

It is important for CPSC to build strong, positive relationships with all stakeholders. If we keep the lines of communications open, we can tap the knowledge, insight, and expertise of many outside experts. This is especially important in the case of the regulated community. If we inspire cooperation rather than hostility, then we will see quicker introduction of safer designs as well as timely removal of defective products, all to the benefit of families.

Education is crucial to our mission. We need to make the regulated community aware of best practices and help them understand what we are trying to achieve. We also need to engage consumers, helping them to avoid hidden hazards and to take advantage of safer products that are already available. Increased awareness and education can prevent many unfortunate injuries and deaths.

Consumer safety is our top priority, but I believe that safety can be achieved in a balanced, reasonable way that does not unnecessarily burden the regulated community or deprive consumers of products they prefer. Our statutes express a strong preference for voluntary standards rather than mandatory standards. Where mandatory standards are unavoidable, the

Consumer Product Safety Act instructs us to find the “least burdensome” solution that adequately addresses the risk. Of course, mandatory standards may have unintended consequences, and they tend to stagnate while the world of consumer products evolves rapidly. It makes sense, therefore, to revisit our rules periodically and make sure that they are doing what is needed without stifling innovation. I am pleased that the Commission voted unanimously last week to make retrospective review of our rules a more regular activity of the Commission.

Regulation is a necessary function of government, and the Consumer Product Safety Improvement Act (CPSIA) strengthened our authority in a number of important ways. I think it is clear, however, that CPSIA went too far in some respects, forcing regulation without regard to risk, let alone cost. This subcommittee led the way in moderating some of the untoward consequences of CPSIA through its work on H.R. 2715, which passed into law as Public Law 112-28 while I was a Member of the House. Some objectives of that law remain unfulfilled. Just last year, the House included \$1 million in our FY 2015 appropriation, thanks to Rep. Blackburn, to kickstart our efforts on test-burden reduction. I think there is still much

more we can do to remove unnecessary regulatory burdens in this arena, and I look forward to working with this Committee to that end.

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.

The solutions we seek should be balanced and actually address a problem. Consumers should be protected from unreasonable risks and the regulated community from an arbitrary government.

Mr. BURGESS. The Chair thanks the gentlelady. The Chair recognizes Commissioner Adler, 5 minutes, please, for an opening statement, sir.

STATEMENT OF ROBERT S. ADLER

Mr. ADLER. Good morning, Chairman Burgess, Ranking Member Schakowsky, and the distinguished members of the subcommittee. Thank you for the opportunity to appear along with my fellow CPSC Commissioners today. I am pleased to be able to testify about an agency that I have been associated with in some fashion since its establishment 40 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. I want to put that in perspective. 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, which is an increase of roughly \$148 million. Or, to put it more succinctly, FDA has asked for an increase that is larger than CPSC's entire budget.

Notwithstanding our modest budget, our jurisdictional scope is extremely wide, encompassing roughly 15,000 categories of consumer products found in homes, stores, school, 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. We don't operate alone. We have always sought to include our various stakeholder partners in a quest to reduce or eliminate unreasonable risks. Included in this group are our friends in the business and the consumer communities, as well as the various standards development bodies that work closely with the agency.

And I want to note, looking from the perspective of 40 years, just how much good work has been done. There has been an estimated 30 percent decline in the rate of deaths and injuries associated with consumer products over this 40 years. And let me just cite a few statistics, particularly pertaining to children. Over this period of time we have seen an 83 percent drop in childhood poisoning, a 73 percent drop in crib death, an 86 percent reduction in baby walker injuries, and almost complete elimination of childhood suffocation in refrigerators.

I would also like to mention the tremendous strides the agency has taken to implement the Consumer Products Safety Improvement Act, which has been noted was approved by the House by a vote of 424-1, signed by President Bush on August 4-14, 2008. And among the things we have done to implement the law, we have enforced stringent limits on lead and thiolates 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. We have written, and continue to write, a series of standards for durable infant products, like play yards and

strollers, and we have developed new approaches to catching dangerous imported products, which we hope to expand.

Since I last appeared before this committee, the Commission has experienced a significant turnover in members. In fact, I am the last one standing. 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 a host of issues, and they have done so in a way that has brought a new era of civility to the agency. We certainly disagree, vigorously sometimes, on issues, but we listen to and we trust one another in ways I have not seen at this agency in many, many years.

A final point, Mr. Chairman, I would like to reiterate my concern about a set of issues that surrounds a critical demographic that I don't think has received enough attention of the past number of years, and that is 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 this is a rapidly growing group doing to—due to the aging of baby boomers, and the greater longevity of our citizens. An interesting statistic, there are more of us in the over 65 age group in this country than there are people in Canada.

But what is particularly troubling to me is that seniors, while comprising only 13 percent of the 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 Chair, I worked with staff to create a senior safety initiative, which is ongoing, and which I hope to have the Congress include, and hope to work with you.

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

[The prepared statement of Mr. Adler follows:]



**Statement of
Robert S. Adler
Commissioner
United States Consumer Product Safety Commission**

**Before the
House Committee on Energy and Commerce
Subcommittee on
Commerce, Manufacturing, and Trade**

**May 19, 2015
Rayburn House Office Building, Room 2322**

“Oversight of the Consumer Product Safety Commission”

Good morning Chairman Burgess, Ranking Member Schakowsky, 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% drop in childhood poisoning,
- A 73% drop in crib deaths,
- An 86% 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 US 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.

Since I last appeared before this Committee, the Commission has 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 US population, account for 65 percent of our consumer product-related deaths. And, by 2020, they—we – will be 20 percent of the US 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.

Mr. BURGESS. Gentleman yields back. Chair thanks the gentleman. The Chair recognizes Commissioner Mohorovic, 5 minutes for your opening statement, please.

STATEMENT OF JOSEPH P. MOHOROVIC

Mr. MOHOROVIC. Thank you, Chairman Burgess, Ranking Member Schakowsky, members of the committee. I very much appreciate the opportunity to be here today. I will keep my opening remarks very, very brief and focus on only one element of evolving CPSC policy, and that is our import surveillance. This is one area that I think we can dramatically improve both our efficiencies and—as well as our effectiveness.

And while we are developing our strategies to better target illegitimate inbound consumer products, I believe CPSC can and should do more to facilitate legitimate trade through public/private partnerships with those importers voluntarily willing, identified, and carried down the stream of commerce without disruption. This concept, a trusted trader program and model, moves beyond incremental increases in targeting to more evolved, account-based understanding of importers' demonstrated commitment to making safe products.

But to earn CPSC's trust, traders would undergo intense scrutiny, including thorough reviews of their supply chain competencies. They would have to empirically demonstrate a culture of compliance reflecting the highest standards, and membership would have its privileges. To attract applicants, trusted trader status would offer fewer inspections and faster, more predictable time to market. But should a trader violate the trust we have placed in them, the Government's response would be swift and sure.

No discussion of CPSC import surveillance is complete without addressing the \$36 million annual funding level we outlined in our most recent budget request, and the user fees we hope will pay for it. I am not entirely convinced of the legality of the user fee mechanism. Moreover, while I am generally supportive of what we want to spend that money on, I look forward to further discussions with our staff to develop a more nuanced understanding of that expenditure.

However, my potential support for that spending, whether from user fees or from appropriations, is predicated on implementation of a properly resourced trusted trader program that is capable of attracting robust participation. If we are going to ask for more money, particularly if it comes from the very importers whose shipments we are rooting around in, we need to spend some of that money making life easier for the good actors who voluntarily subject themselves to intense scrutiny. If we can develop the confidence necessary to take those good actors' shipments out of our haystack, finding the needles will be that much easier. Thank you, Mr. Chairman.

[The prepared statement of Mr. Mohorovic follows:]

Testimony of CPSC Commissioner Joseph P. Mohorovic before the
U.S. House Committee on Energy & Commerce
Subcommittee on Commerce, Manufacturing, and Trade

SUMMARY OF TESTIMONY

CPSC can and should do more to facilitate legitimate trade through public-private partnerships – not unlike similar CBP, TSA, and FDA programs. Harmful and non-compliant consumer goods should be intercepted and rejected, while legitimate cargo should be identified and carried down the stream of commerce without disruption.

- This concept – a Trusted Trader model – moves beyond incremental improvements in targeting to a more evolved, account-based understanding of importers’ demonstrated commitment to make safe products.
- To earn CPSC’s trust, traders would undergo intense scrutiny, including thorough reviews of their supply chain competencies. To attract applicants, Trusted Trader status would offer fewer inspections and faster, more predictable, time-to-market.
- However, my potential support for the import surveillance funding CPSC has requested – whether from user fees or appropriations – is predicated on implementation of a properly resourced Trusted Trader program capable of attracting robust participation. If we’re going to ask for more money – particularly if it comes from the very importers whose shipments we’re rooting around in – we need to spend some of that money making life easier for the good actors who voluntarily subject themselves to intense scrutiny.

Testimony of CPSC Commissioner Joseph P. Mohorovic before the
U.S. House Committee on Energy & Commerce
Subcommittee on Commerce, Manufacturing, and Trade

TESTIMONY

Chairman Burgess, Ranking Member Schakowsky, and members of the Subcommittee, I appreciate the opportunity to be here. I would like to discuss with you the substantial challenges and tremendous opportunities CPSC has in the area of imported consumer products.

Imported products make up 80% of our recalls, not because they are more dangerous, but because there are so many imports – over \$700 billion worth in 2013. Our most effective safety strategy is to evolve our import surveillance and keep more violative products out of the country. Under the leadership of our Import Surveillance team, including Chairman Kaye, who also represents the agency as Vice Chair of the Border Interagency Executive Council, we are improving, but there is much more we can do.

The next evolution is not inspecting *more*, but inspecting *more intelligently*. It is in finding a way to remove large segments of the roughly 230,000 importers-of-record we see each year before targeting or inspections are even a thought. The path to achieving that evolution is a Trusted Trader program that allows importers to volunteer for greater scrutiny in exchange for lower risk classification.

We have seen this concept succeed in programs like TSA's Pre-Check and CBP's Customs-Trade Partnership Against Terrorism (C-TPAT), and more are on the way, including FDA's Voluntary Qualified Importer Program (VQIP). Pre-Check flyers and C-TPAT importers receive substantial benefits – usually in the form of shorter wait times – in exchange for greater scrutiny. Those agencies cannot enroll volunteers fast enough, and the agencies are better off, as well.

Testimony of CPSC Commissioner Joseph P. Mohorovic before the
U.S. House Committee on Energy & Commerce
Subcommittee on Commerce, Manufacturing, and Trade

They gain information and conserve limited resources. I believe CPSC needs to emulate that model with a robust, sophisticated Trusted Trader program.

The Consumer Product Safety Improvement Act required the agency to institute a Risk Assessment Methodology, or RAM, to spot imports likely to be violative. The pilot RAM has improved our targeting, but even the best targeting will still result in false positives. Anytime we delay and inspect cargo we should have known was compliant, we do so at significant economic cost¹ that adds no direct safety value.

RAM helps us find the needles in our import haystack. Trusted Trader shrinks the haystack. Even if the number of inspections remains constant, those inspections would be concentrated among the importers who have not undergone the additional scrutiny necessary for us to verify the robustness of their compliance and safety efforts.

To reach that level of confidence, Trusted Trader 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 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. The program should give the agency sufficient confidence that inspecting Trusted Traders' shipments would be a waste of scarce

¹ "Each shipment held costs industry an average of \$1,500 in port charges and unknown losses resulting from delays to market." U.S. Consumer Prod. Safety Comm'n, *Staff Report to Congress Pursuant to Section 222 of the Consumer Product Safety Improvement Act of 2008: Risk Assessment Methodology*, 6 (Sept. 9, 2011).

Testimony of CPSC Commissioner Joseph P. Mohorovic before the
U.S. House Committee on Energy & Commerce
Subcommittee on Commerce, Manufacturing, and Trade

resources that we should be focusing on higher-risk companies. 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.

No discussion of CPSC import surveillance is complete without addressing the \$36 million annual funding level we outlined in our most recent budget request and the user fees we hope will pay for it. I am not entirely convinced of the legality of the user fee mechanism. Moreover, while I am generally supportive of what we want to spend that money on, I look forward to further discussions with our staff to develop a more nuanced understanding of that expenditure.

However, my potential support for that spending – whether from user fees or appropriations – is predicated on implementation of a properly resourced Trusted Trader program capable of attracting robust participation. If we’re going to ask for more money – particularly if it comes from the very importers whose shipments we’re rooting around in – we need to spend some of that money making life easier for the good actors who voluntarily subject themselves to intense scrutiny.

If we can develop the confidence necessary to take those good actors’ shipments out of our haystack, finding the needles will be much easier.

Mr. BURGESS. The Chair thanks the gentleman. The Chair would note that it appears that the era of good feelings is now settled upon the Consumer Products Safety Commission. You all referenced how well you work together, so the Chair takes that as a good sign as we move forward. And, again, I want to thank you all for being in our hearing. We will now move into the question portion of the hearing. Each member will have 5 minutes for questions.

And, Chairman Kaye, let me begin, and again, thank you for your willingness to be here, and apologize about us having to reschedule during the snow day. Kind of an unexpected snowfall in March that caught a lot of us by surprise. But thank you for your flexibility in rescheduling. The budget for fiscal year 2016 requests—the Commission requests new Commission authority to impose undefined user fees on importers.

I think I have already shared with you I have some misgivings about that, and would really welcome further discussion from the Commission as to how these user fees, not just how they are collected, but how they are disbursed. Are these fees that are paid into the Treasury, and then subject to appropriations by the Appropriations Committee, or are they fees that are retained within the agency for use within the agency? So I would like some clarification about that. And I would just remind the members the appropriation—we are in appropriations season. The appropriations for the Consumer Products Safety Commission I believes comes through the Financial Services Appropriation bill, so we all will want to be vigilant about that and make certain that we do pay attention to the agency during the appropriations.

But there is the risk assessment methodology, which is a pilot program to assess hazardous imports in the Commission's performance, budget requests to Congress to target a percentage of entries sampled is identified through the pilot system for fiscal year 2015 but is only labeled baseline, and fiscal year 2016 the target is to be decided. So are we on the brink of nationalizing a pilot program where we don't know the metrics for inspection and evaluation?

Mr. KAYE. Thank you, Mr. Chairman. No, we are definitely not on the brink of nationalizing the program, even though the Government is on the brink of nationalizing the single window requiring electronic filing, which is a big reason why the CPSC is trying to do its part. We want to make sure that, as close as possible, by December of 2016, when the system that Customs and Border Protection runs to receive electronic filing is up and running, and there is truly one single window, that we are not creating an unnecessary disruption to the market by not being a part of that.

But, as we envision in our appropriations request, if a permanent funding mechanism one way or another would allow the agency to collect and retain the funds solely for the purpose of funding this program—it wouldn't be used for any other reason. There is a long history of agencies with border authorities doing this. We took the time to study those other agencies and work with the Office of Management and Budget to come up with what was the preferred method, to not reinvent the wheel so that CPSC could do its part with the single window.

Mr. BURGESS. Yes, it is actually some of the activities of those other agencies and departments that has been the genesis for my concern about this. And, again, I—we are coming into the appropriations time. I want us to be careful about how we approach things. But on the single window issue, and, Commissioner Mohorovic perhaps you can address this as well, I was on the committee in the 110th Congress. That was the committee that actually did the reauthorization of the CPSC, and the toy safety bill.

And I became very concerned—we did hearings—Chairman Rush was sitting in this chair at the time, but that was the year that so many things were imported into the country, and then found to be problematic. So there didn't seem to be a way to stop things before they came in, and then the concern became what happens to all this stuff in warehouses that is offloaded by longshoremen in Long Beach, California, and then where is it going to end up? Nobody seemed to talk about shipping it back to the point of origin and saying, you deal with it, other country that shouldn't have sent this stuff to us in the first place, because your attention was lax. So are we any better off today than we were in 2007 and 2008, as far as containing things that come into the country that may be hazardous?

Mr. MOHOROVIC. Thank you, Dr. Burgess. In short, I do think we are in a much better position today than we were before. And one of the points that I remind folks of is the fact that I am the only non-lawyer on this Commission. So I think in terms of metrics for my formal education, being the only MBA, so I think of things in terms of risk—on return on investment. And so in applying that to the—to public service, I think about safety return on investment. And I am committed to the fact that the investment and the evolution of our import targeting activities, and the sophistication of those strategies, is the greatest safety return on investment that we can apply, in terms of our resources and our budget. It completely bypasses the difficulties that you mentioned, Mr. Chairman, with regards to recall effectiveness, et cetera, and it will ensure that we don't have to learn from that experience.

Of course, before us we have the potential to scale up into a nationalized program a very significant program. Do I believe that we have a proof of concept, and do we have reason to move forward, based on the success of our pilot project, the RAM? And the question for—the answer for me is absolutely. But, again, I think we do have to look at more closely the significant IT spend so it will be able to yield the kind of targets, and the targeting effectiveness, that we hope to achieve, as well as the operationalization.

Prior to joining the agency, I was in the conformity assessment business, as part of the testing community, for 8 years, so I have had to scale up a massive supply chain, testing operations, and with that you expect to see significant economies of scale. That is something that I have yet to see in terms of some of the operational scope that we have identified, but I am sure further communication will identify that.

Mr. BURGESS. And I am certain that it will. It may even in this hearing. I will yield back my time, recognize the gentlelady from Illinois, Ms. Schakowsky, 5 minutes for questions, please.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. Commissioner Adler, like you, I identify as a senior citizen, and wonder what you anticipate will be, or what already is part of this Commission's senior safety initiative?

Mr. ADLER. Well, thank you very much for the question. First thing I would like to announce is that we are participating in a 2015 healthy aging summit which is sponsored by HHS, which will be held on July 27 and July 28, and the Commission will be there in a listening mode. So the agency is committed to the senior safety initiative.

One of the things that I asked the staff to do was to look at mechanical hazards, because that seems to be the area where seniors suffer the most. And one of the issues that we addressed was what can you do with respect to senior citizens when there are other citizens who are not senior citizens using the same products?

Ms. SCHAKOWSKY. What do you mean by mechanical hazards?

Mr. ADLER. Falls, sawings, cuts, lacerations, things along those lines.

Ms. SCHAKOWSKY. Um-hum.

Mr. ADLER. And so what the staff has done I think is a very smart thing. They first look to see products that present unique hazards, and they are intended for senior citizens, such as bed rails, and these panic buttons that seniors wear if they fall. The next thing they have looked at is products that present disproportionate risks to seniors, but that also present unreasonable risks to the public at large, and a product there I would say would be table saws.

And then even with respect to products where the Commission might find that there is disproportionate injury to seniors, the staff is looking into areas where we can at least alert seniors that they are at particular risk of harm, and their caregivers as well. So I think it is a fairly comprehensive program—

Ms. SCHAKOWSKY. Um-hum.

Mr. ADLER [continuing]. That we are doing, and I am delighted that the staff has taken to this with such enthusiasm.

Ms. SCHAKOWSKY. Well, as the co-chair of the Senior Citizens Task Force, let us stay in touch on that. I am really interested.

I wanted to get to the issue of flammability standards. The—I know the Consumer Products Safety Commission has the authority, under the Flammable Fabrics Act, to issue standards. And I know there are some promulgated flammability standards, and as a—including some children's products that it is possible, and it looks likely, have contributed to significant use of flame retardant chemicals that pose health risks.

The Chicago Tribune, which was an early reporter about this, said the average American baby is born with the highest recorded levels of flame retardants among infants in the world. And I know recent studies have linked flammable—flame retardant chemicals to a wide variety of adverse health effects, endocrine disruption, immunotoxicity, reproductive toxicity, developmental effects, impaired thyroid, neurological function and cancer, et cetera.

My question really is if we, one, have any studies or information demonstrating that flammability standards promulgated by CPSC reduce instances of fire-related injuries, and, looking—and if you

have any plans to revisit—to find out if the issue of the flame retardants themselves is a danger?

Mr. KAYE. Thank you, Congresswoman. So, I don't know if I can do justice to this topic in a minute 23, but I will do my—

Ms. SCHAKOWSKY. Yes.

Mr. KAYE [continuing]. Best. Certainly, Commissioner Adler's point in the beginning, thanks in large part to the fire community, and the CPSC staff, over time, and I believe this is attributable to some of the flammability standards, especially with clothing and children's pajamas, there has been a reduction of fire related incidents. The issue you are getting at, though, is flame retardants, and to what extent those have had any impact on it.

I am not aware that flame retardants have been proven to be effective, and I am certainly aware of the studies that you are talking about, or at least some of the studies, that go to the potential health concern. And I can say to you that it bothers me even more than as a regulator, it bothers me as a parent of two young children that there has to be this uncertainty about products that we interact with, and the chemicals that might be in them. And a perfect example of that is a couch.

Most people don't view a couch as a potential hazardous product, but if it is true that the flame retardants that the Trib pointed out, that have doused the foam in an attempt to deal with cigarette fires, have ended up getting in the dust, and children, as we know, go under couches, they put their hands in their mouth, if it is true that that has had a very negative impact on the health of children, that is a significant concern of ours.

Ms. SCHAKOWSKY. And uncertain usefulness in reducing—

Mr. KAYE. Correct.

Ms. SCHAKOWSKY [continuing]. Flammability.

Mr. KAYE. Correct. So one of the things that I have tried to do at my level is talk to our sister agencies, who have overlapping jurisdictions and similar interests in this area, to try to get the Government working more cohesively to address this uncertainty. I think consumers deserve to know answers to these questions as quickly as possible.

Ms. SCHAKOWSKY. What are the other agencies?

Mr. KAYE. The EPA, the FDA, ATSDR with CDC, and the National Toxicology Program as part of the National Institutes of Health, and the National Institute of Environmental Health Sciences.

Ms. SCHAKOWSKY. Thank you. I yield back.

Mr. BURGESS. Chair thanks the gentlelady, gentlelady yields back. The Chair recognizes the gentlelady from Tennessee, 5 minutes for questions, please.

Mrs. BLACKBURN. Thank you, Mr. Chairman. Chairman Kaye, let me come to you first. Commissioner Buerkle mentioned and referenced the million dollars that my amendment put in to advancing the Consumer Products Safety Improvement Act, and I just want to ask you what you all have done to reduce that third party testing requirement, where you are in that process? How are you putting that million dollars to work?

Mr. KAYE. So thank you for the \$1 million, Congresswoman. It has certainly made a big difference. As soon as the \$1 million was

appropriated, we moved, at the Commission level, via an amendment to our operating plan, to allocate that \$1 million to seven different projects that we had identified, primarily based on stakeholder feedback, but also with discussions at the Commission level, to try to get to this issue. And so——

Mrs. BLACKBURN. Um-hum.

Mr. KAYE [continuing]. Where we are now is there are three projects that staff is very close to sending up to the Commission for us to vote on to try to provide some of that relief. And as I mentioned in my opening statement, my direction to staff has been to prioritize those actions that will have the widest potential benefit to small businesses.

Mrs. BLACKBURN. OK. Let me ask you this. In your letter to Senator Thune you identified three areas for—the determinations of lead content, finding international toy standards, and then guidance allowing for third party testing exemptions. So those are the three areas that you are——

Mr. KAYE. No, those are actually three separate areas that my staff and I continue to work on, and have discussions with Commissioner Mohorovic. So, in total, you are talking about 10 different projects.

Mrs. BLACKBURN. OK. Commissioner Mohorovic, you want to respond?

Mr. MOHOROVIC. I would love to, thank you. It is perfectly logical to wonder why, with the full commitment of the entire Commission behind reducing third party test burden, why we have achieved very little in terms of results. And that is because we are replying to these proposals an unreasonable interpretation of our statute, this language, consistent with assuring compliance. And the problem is, very quickly, it is inconsistent with established CPSC policy. If you looked at the component part testing rule, which was non-controversial——

Mrs. BLACKBURN. So you are in a bureaucratic——

Mr. MOHOROVIC. We are——

Mrs. BLACKBURN [continuing]. Quagmire?

Mr. MOHOROVIC. Absolutely, yes.

Mrs. BLACKBURN. OK.

Mr. MOHOROVIC. Absolutely, Congresswoman.

Mrs. BLACKBURN. So you can't get to the outcome, the deliverable, because you are still talking among yourselves?

Mr. MOHOROVIC. Not until we change that standard. I wouldn't recommend——

Mrs. BLACKBURN. OK. What is the timeline for getting it finished? We want this finished, so when are you going to have it finished by?

Mr. MOHOROVIC. So we will have three in the next few months to vote on, and then there is more to come after that.

Mrs. BLACKBURN. Give me few months.

Mr. MOHOROVIC. I——

Mrs. BLACKBURN. I mean, a month, 2 months, 3 months? What do you mean by that?

Mr. MOHOROVIC. I think that within June we will have the first up, and then two more by September.

Mrs. BLACKBURN. OK. All right. So that is going to be your deliverable. Let me ask you something else. I mentioned being out, and a lot of dissatisfaction, and the way you are going about the 11/10 rule, all the public comment, except one, was against that. But I think what I am hearing is you moved forward with a little bit more of a heavy hand than what you would represent to us.

And you say you want to be engaging the industry, and you want to be collaborative, but what I—the feedback I am getting, it is those are your words, but your actions are much more heavy handed, that you have determined what you want as the outcome, thereby—you are going to let people think they are participating, but in the end, you are the rulemaker, and you are going to get your way. So do you feel like that is a collaborative atmosphere, and trying to work with the industry? And how would you respond to those type of comments that are made about the way you all are approaching rulemaking?

Mr. KAYE. Is that for me? I am happy to——

Mrs. BLACKBURN. Yes, sir.

Mr. KAYE [continuing]. Answer that. And——

Mrs. BLACKBURN. You are the Chairman.

Mr. KAYE. And is that question specifically to 11/10 rule, or more general?

Mrs. BLACKBURN. It is specifically to 11/10, but in general, when it comes to dealing with industry.

Mr. KAYE. Sure, so I will address both. The 11/10 rule is in a definite pause at this point. I was not the Chairman when that came up, and that was not part of what I worked on, but as soon as I became Chairman I engaged our staff, and I worked with them to make sure that they were doing much more collaborative engagement with the—with our——

Mrs. BLACKBURN. Are you still advancing that?

Mr. KAYE. No. It is not moving right now. It is in a——

Mrs. BLACKBURN. OK.

Mr. KAYE [continuing]. Pause mode.

Mrs. BLACKBURN. You are going to put it completely in pause?

Mr. KAYE. It is in pause mode. It is already——

Mrs. BLACKBURN. OK.

Mr. KAYE [continuing]. Completely paused, and what we have——

Mrs. BLACKBURN. OK.

Mr. KAYE [continuing]. Been doing is working with our stakeholder community, through an advisory panel, on the issue of the single window in our imports. We are running a pilot that is going to be coming out, the FR notice, in a few months, and we are trying to get it right. And so we are having——

Mrs. BLACKBURN. OK.

Mr. KAYE [continuing]. Those exact collaborations that you are talking about.

Mrs. BLACKBURN. OK. My time is out, and I have got one other question, but I will submit that question to you in writing. And I thank you all, and I yield back.

Mr. BURGESS. Chair thanks the gentlelady. The Chair now recognizes the gentleman from Texas, Mr. Olson, 5 minutes for questions, please.

Mr. OLSON. I thank the Chair, and welcome to our witnesses. A special welcome to a former House colleague, Ann Marie Buerkle. Good to see you again, Ann Marie.

I want to talk about nanotechnology. As a 1985 graduate of Rice University in Houston, Texas, we are proud that two of our professors, Robert Curl and Richard Smalley, won the Nobel Prize for nanotechnology. In fact, Dr. Smalley taught me Chemistry 102, so it is very special to me about nanotechnology.

Chairman Kaye, I wrote you a letter on February 25 about this issue. The fact that your budget requests for \$5 million more for nanotechnology—the research center is almost 85 percent of the proposed budget increase. That caught my eye. I appreciate your response by letter, and, Mr. Chairman, I ask unanimous consent to enter my letter and Chairman Kaye's response in the record.

Mr. BURGESS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. OLSON. Thank you. I only have a few questions to clarify issues from your letter. You stated that the reason that CPSC needs five million is—for a new research center is because your work has “identified significant data gaps regarding exposure to nanomaterials present in consumer products.” Can you elaborate on what these data gaps are, more details on the data gaps, sir?

Mr. KAYE. Absolutely, and it is not only that we have identified, Congressman, those data gaps, it is that the larger nanotechnology initiative, the NNI, that is the collaboration that I think that everyone would want to see from the Federal Government, where all the agencies that have a present on nano are working together, actually, the NNI working groups have identified this data gap. And it really goes to understanding the exposure from consumer products that have nanomaterials in them.

And so there are plenty—there is a billion dollars—more than a billion dollars that have been—billions of dollars that has been spent by the Federal Government on advancing nanotechnology, but none of that, or very little of that money has gone to understanding the specifics of consumer product exposure, which is a unique exposure pathway.

If you have a child that is out swinging a tennis racket, and every time that child hits that—hits a ball, some nanoparticles fly off, and the child is breathing those nanoparticles in, and those nanoparticles in, and those nanoparticles supposedly mirror asbestos, these are the types of critical health and safety questions that we want to get at, and are behind our request.

Mr. OLSON. Also in your letter you listed four categories as criteria for success. The first one was to develop, and this is a quote, “robust test methods to determine and characterize human exposure to nanomaterials.” What defines a robust testing method?

Mr. KAYE. That is what I leave to our toxicologists. Certainly I think that is what this working group has been working on, with the money that Congress has been giving us, and that we, in conjunction with the National Science Foundation, as well as a number of manufacturers in other agencies, would hope to get to those answers.

I can't—I am not a technical expert. I can't decide what reaches that threshold of robustness, but I think we have got the technical expertise at our staff level to be able to make that determination.

Mr. OLSON. In your letter you expect to staff this research center with 12 senior scientists, 15 technicians, 10 post-doctoral students, and 12 graduate students. These positions come from your current staff, or come from outside?

Mr. KAYE. I think they would come from outside. It would be part of the funding.

Mr. OLSON. How much expertise does your current staff have on these nano-issues? Because they have been working this since 2011, I do believe.

Mr. KAYE. We have some expertise. I think we—it is thin, though. We have a thin bench. We have a phenomenal toxicologist, who is our representative in this space with the other agencies on the NNI, but, admittedly, it is not a deep bench, and I think that is one of the reasons why we are not trying to go in the more costly way, and try to just hire internally and procure a bunch of expensive test materials that we might not end up needing. We are trying to do the more cost efficient way of building off a successful model, and pursue it through the NSF.

Mr. OLSON. How about stakeholders in nanospace? What kinds of interaction do you have with these stakeholders?

Mr. KAYE. Through the NNI working groups, there is a good amount of interaction our staff reports back.

Mr. OLSON. Anybody else—the NNI mean other agencies working on nano with yourselves, or just—that is pretty much the primary agency?

Mr. KAYE. So there is—

Mr. OLSON. The EPA? Who else is working—what other agencies are—

Mr. KAYE. Department of Defense, Homeland Security. There is—there are many, many agencies as part of NNI.

Mr. OLSON. OK, that is my questions. Yield back by saying go Rockets.

Mr. BURGESS. Chair thanks the gentleman, the gentleman yields back. The Chair now recognizes Mr. Guthrie from Kentucky, 5 minutes for your questions, please.

Mr. GUTHRIE. Thank you, Mr. Chair. And I was preparing for the hearing today, and I talked about Commissioner Buerkle, and showed up, and it is you. I am glad to have you back. I didn't realize that you are in this row, and really enjoyed serving with you, as Mr. Pompeo and I spent 4 years of our life in the State of New York. It was always fun to talk about what was going on with you back there.

So I do have a question, it is—in table saws. I guess when we were serving together, I had table saw manufacturers in my district, and I understand that the CPSC has begun a special study of National Electronic Injury Surveillance System data to obtain information about the type of table saws involved in incidents, along with other information about incidents.

And this study began on July 2014, and it concerns me, because it seems to me, and I am not sure, but it seems to me that no outreach has—to members of the industry by the CPSC was—for this

study. And for years the industry has tried to work cooperatively with CPSC, and the industry's input could have been of value. So, Commissioner Buerkle, was there any outreach to the industry representatives or manufacturers regarding this special study?

Ms. BUERKLE. Thank you, and it is good to be back here on Capitol Hill. To—in fact, a specific request was made that would—we would reach out to industry and allow them to participate and be a part of that survey, and it did not happen. So, you know, I think that is—goes to the point I made earlier about collaboration and outreach. I think it is—

Mr. GUTHRIE. Um-hum.

Ms. BUERKLE [continuing]. Incumbent upon the agency to make sure we have these conversations with industry beforehand. Whether it is before a survey, or before it is a proposed rule, that we engage with them so that we go forward, and we get the right information.

I will say that NICE is one of the—it is a data collection system that we use, and it avails us of a lot of very helpful information. And—so, to that end, that is an important project. But having stakeholder engagement before the survey goes out, I think, is crucial.

Mr. GUTHRIE. You know, a lot of them are concerned about mandating certain technologies, particularly patent questions that are mandating a specific technology in a Federal standard. And there are patent concerns that have been raised throughout the table saw petition discussions over the years. And is the Commission aware that there are 140 patents related to the proposed technology held by the petitioner to mandate this technology on all table saws?

Ms. BUERKLE. Are you referring that question to me?

Mr. GUTHRIE. Yes, ma'am.

Ms. BUERKLE. Well, let me say this. Quite frankly, and quite honestly, my colleague, Commissioner Adler, this is his pet project.

Mr. GUTHRIE. Um-hum.

Ms. BUERKLE. And I don't mean to pass the buck, because this is not a priority of mine, nor do I think it should be a priority of the agency. But to your point about the patents, and the concerns about that, I have tremendous concerns about that. But it is not a project, quite frankly, that I think should be a priority of the agency right now.

Mr. GUTHRIE. OK. I have one more question for you before we—

Ms. BUERKLE. Thank you. OK.

Mr. GUTHRIE [continuing]. You recently stated—I am sorry, I couldn't see you through Mr. Pompeo there. You recently stated that the sole basis for CHAP's recommendation to the ban of most widely used chemicals was a cumulative risk assessment which found that the majority—I guess Citizens' Health Advisory Panel's what—recommendation, which found that the majority of the risk associated with these chemicals was from another chemical, DEHP. Can you explain your concerns for using cumulative risk assessment as a basis for such regulatory determination?

Ms. BUERKLE. Thank you. The CHAP, of course, is a—and then thiolate proposed rule is of great concern to me. It has been of con-

cern to me since the CHAP issued its report, because I believe the CHAP report should have been a public—should have been subject to a public peer review at that point. So from that point on, to me, the system, and the whole process, has been flawed.

The cumulative risk assessment that you are talking about is one of my concerns, and that—it—the process that is used, that is not well accepted in the scientific community, cumulative risk assessment. So I think that goes to the process, and the validity, and the integrity of the CHAP report. More importantly, though, I think—and certainly another grave concern I have is when the CHAP did their review, they used very old data, that was—data that was before CPSIA, and before the ban of those thiolates. So that study, to me, and the CHAP report, is almost—it is, it is irrelevant because it doesn't use timely data.

So the Commission has taken on analyzing the more recent data, and I have constantly and consistently said, and advocated that we put that, the findings and the analysis of the staff on the more current data out for public comment. It should be put out for at least 60 days, and the staff should comment on how they are going to use that analysis relative to the proposed rule. Because, in order to get comments from the public, we have to include that information in the proposed—in that opportunity for them to comment.

Mr. GUTHRIE. OK. Chairman Kaye, are you concerned about cumulative data, and do you believe it should be out for public comment?

Mr. KAYE. I agree with Commissioner Buerkle that the staff's analysis should go out for public comment, and I was the one who directed staff, at the beginning of the process, to even undertake that analysis. And my hope is that we will reach an agreement in the coming days, when the staff is ready to put that out for analysis, for it to go out.

As far as the cumulative risk assessment, I have to respect the work of the CHAP, because that is the statutory regimen that was set up by Congress in Section 108 of the Consumer Products Safety Improvement Act. That was the scientific direction, or the policy direction, to the CHAP members, which, by the way, were picked through the National Academy of Sciences as the leading experts around the world on this issue. And so, considering that that is what the statute told them to look at, and that is what they looked at, I respect that decision on their part.

Mr. GUTHRIE. Thank you, my time has expired.

Mr. BURGESS. Gentleman yields back. The Chair thanks the gentleman. Chair recognizes the gentleman from Kansas, Mr. Pompeo, 5 minutes for your questions, please.

Mr. POMPEO. Thank you, Mr. Chairman. Mr. Kaye, I want to talk about the ROV rulemaking. You testified before the Appropriations Committee. You described the hearing as the longest in—the hearing that was held as the longest in the CPSC's history. Went late into the night, many panels, many witnesses. I appreciate you all taking the time to do that. Now I want to make sure that we don't cut short this process, that we get the data right, the science, and the engineering, and technology right. That is why I have introduced a piece of legislation. Have you had a chance to take a look at that—

Mr. KAYE. I have.

Mr. POMPEO [continuing]. 999?

Mr. KAYE. I have.

Mr. POMPEO. And I didn't see your name as a co-endorser, but I am looking forward to hearing you today say that you think it is something that wouldn't make sense, to make sure that industry can work alongside you, and get a chance to get a set of voluntary standards that make sense.

Mr. KAYE. So, thank you, Congressman, and I know that you have been particularly interested, and I appreciate that, since the time you have been in office in the work of the CPSC, and I think that is a good thing. I think it is important to have this continued dialogue.

The ROV issue is one of great significance to the Commission. We are taking it very seriously. Similar to the work on directing staff to do an analysis on the thiolates issue, I directed staff to redouble their efforts to engage with the voluntary standards effort to try to reach a solution. I think that that is the preferred solution many of us would like to see, if they can adequately address the hazard, and it can be substantially complied with.

As far as the bill is concerned, unfortunately, I am not going to be able to tell you what you want to hear. I don't have the ability to co-endorse, even if I wanted to.

Mr. POMPEO. You can just say it here this—

Mr. KAYE. Yes. I—sounds like I could say it, but based on where we are, and our discussions, I think it is well intended, but, unfortunately, it would have a negative impact for three reasons. One, I don't want to call it a delay, but it looks like a delay, even if it is not intended to be, and those delays cost lives. Every year we are looking at getting close to now 80 deaths per year, many of them children, associated with ROVs. So every year that this issue is not addressed, whether it is through a robust voluntary standard, or a mandatory standard, is more deaths, and I think that that is something we should all be concerned about.

Second of all, there are real costs. Every time that there is a death, you are talking about, from an impact the community and society, about \$8 million, as our staff estimates it, from an economic standpoint. So with 100 and—if it is a 2-year study, and you are talking about 150 deaths, that is upward near a billion dollars in cost to society that would result from this.

And probably in the area, from a timing perspective, and I just had a conversation with Mr. Pritchard, who you will hear on the second panel, before we came here, the staff and the voluntary standards body, meaning industry, are really at a position that I don't think they have been at for many, many years, where they are finally engaging in a substantive technical discussion to try to resolve these issues. If this bill were to pass, it puts out for question for 2 years one of the key areas that both industry and the staff are driving to try to solve now. I just don't think that that is going to help the timing of it.

Mr. POMPEO. I appreciate that. No one wants more deaths. I mean, no one is advocating for delay in order to achieve that result. I know I am not, no one on this committee would either. Party—it is a bipartisan piece of legislation. I know industry would want

that either. I don't think it—because of that, I think it is required. I think you have to get the data.

I am not going to go through it, but there—but I have seen testimony from staff that says that we don't have the engineering and technology, right? The—Bob Franklin on your staff said we would have to look at the data, looking at exposure over time to the different ROVs. It might be possible to do something like that, but we have not done it.

I am thrilled to hear that you are having these discussions with industry, and that you are making progress. That is absolutely a preferred solution, I think, for the CPSC, and from my perspective as well, it would be a great outcome. But I would hope that you would be prepared to at least suspend the rulemaking for a period of time. Put it on hold, keep it out there as something that might happen in the event that the discussions don't move forward in the way that—sounds like you have at least some optimism, as do I. I would love to see you at least consider suspending the rulemaking, or put it on hold while those discussions were happening. If they fall apart, industry and you can't get together, then so be it, you can continue to proceed. Would you at least consider that?

Mr. KAYE. Well, one, I can't—I don't have the power unilaterally to suspend the rulemaking, so that would have to be a Commission decision. And I would say that, from my perspective, I do think, whether industry likes it or not, one of the reasons that we have reached this situation, where we are at a position where everybody is trying to finally reach a solution, I think that everyone has proper incentives. And, from my perspective, the fact that the CPSC has taken it seriously to this point, and is prepared to move toward a mandatory standard, has provided the types of conditions that have created this environment. And I so I think that it is incumbent upon us to keep moving forward. As I mentioned, the deaths, they do certainly weigh on me, and so that is not something, at this point, that I think would be a positive.

Mr. POMPEO. Well, I hope you will reconsider that. I may or may not be the incentive structure that has been achieved, but we have a June 19 deadline now for comments to come in. Those comments, I know, will be critical of the rule from many in the industry. I hope that doesn't put—I want to keep it in a constructive way, and I hope that this deadline won't artificially create animosity where I think there is a chance to really get it right, save lives, and get the rule right. So, with that, Mr. Chairman, I yield back.

Mr. BURGESS. Chair thanks the gentlemen, gentleman yields back. The Chair recognizes the gentlelady from Indiana, 5 minutes for questions, please.

Mrs. BROOKS. Thank you, Mr. Chairman. Indiana has a large presence of juvenile product manufacturers in the state that make everything from strollers to car seats, and I have heard firsthand about the challenges that they face with regards to redundant testing requirements that might do nothing to advance safety, while siphoning away money that could have been spent on R and D in these companies, innovation and resources like additional employment.

And one Hoosier manufacturer told me recently the Consumer Product Safety Improvement Act was passed—since it is passed,

they have spent \$12 ½ million in testing costs alone. And that is not—that is because they not only have to test every platform that the products are on, but every SKU as well. So not only do they spend an average of \$8,900 to test every new stroller or cradle design, but they have to spend an extra \$1,000 to test every paint, every new paint color as well.

And so I think we all agree that the safety of our children is of utmost importance, and shouldn't be compromised, however, I think we have to draw the right balance, and—to ensure that the companies have the needed resources to do further R and D to ensure their products are safer. And so, Mr. Chairman, I have a question to you that—with this in mind, what actions have you taken in the past year to provide relief to companies with respect to these—cost of these third party testing requirements?

Mr. KAYE. Thank you, Congresswoman. One of the areas that we found really interesting, and this has been discovered by our small business ombudsman, and I don't want to get Commissioner Mohorovic upset, since it involves his prior occupation, but we have found that a lot of the third party labs are testing for services that are not required.

And so our small business ombudsman and his office provide phenomenal support and assistance working with small businesses, and I would encourage any of the members who have small businesses in particular that have issues to reach out to Neal Cohen of the CPSC because he can work with companies to go through their testing reports and to find out whether or not they really need certain testing.

Now, he doesn't actually go line by line, but what he says is, here are some general guidances, and here are some questions that you should be asked. He really does a phenomenal job of empowering a lot of companies, and I think that has gone a huge way to addressing some of these issues.

Mrs. BROOKS. Thank you. Commissioner Mohorovic?

Mr. MOHOROVIC. Thank you, Congresswoman. I think what you will get is a lot of the dodging tactics from the agency to try to explain why we haven't achieved much in terms of measurable outcomes in reducing the cost and burden of third party testing. We have all of the resources we need. We have the legal authority. We just lack the will to be able to enact very many of the policies and suggestions that have come before the agency.

So we can blame the testing labs, we can blame retailers for retail protocols, we can dodge and weave on this as long as we want, but, as I said earlier, it is frustrating for me particularly because it is so—it lacks alignment. It is so inconsistent with established CPSC policy. If we applied the same appreciation for risk tolerance that we did in the promulgation of the Component Part Testing Rule, we would have all of the emphasis, and staff would be able to recommend countless means to reduce the cost and burden without any adverse health or safety impact.

Mrs. BROOKS. Thank you. Chairman Kaye, it is my understanding that a million dollars of your 2015 budget was to be allocated to reducing the needless and duplicative testing burdens. Can you explain what actions you have actually taken in leading the Commission to fulfill that role? What—how have you reached out,

what do companies expect to see from this relief if we have, you know, mandated that in your budget?

Mr. KAYE. Sure. And one of the limitations in—on—I agree with Commissioner Mohorovic that we do have a lot of what we need, but we don't have everything that we need. But one of the areas is that it is a one-time appropriation, which means we cannot staff up from it. We can't count on—it is not prudent to hire a bunch of people without knowing how you are going to pay for them in the following fiscal year, so most of this money has gone through contracting. So we contract out with organizations who can do a lot of the technical work to figure out if there is possibility for relief. But ultimately our staff has to take that work. There has to be resources internally to be able to turn that work around, and to try to make it something actionable.

And so the three areas that I mentioned in response to Congresswoman Blackburn's questions have to do with providing this exact type of relief. Looking, for instance, at natural wood, and whether or not, if you use natural wood alone, you have to test for certain heavy metals that are required by law. We keep trying to check off lists of materials and types of products that you don't actually have to test to avoid these costs. And that has been the theme, both in terms of stakeholder engagement and internal deliberations, that we are trying to pursue to provide—to make it worth the while.

Mrs. BROOKS. Thank you. My time is up. I yield back.

Mr. BURGESS. Chair thanks the gentlelady. The Chair recognizes the Ranking Member of the full committee, Mr. Pallone, 5 minutes for your questions, please.

Mr. PALLONE. Thank you, Mr. Chairman. My question is of Chairman Kaye. There have been concerning reports of young athletes that have non-Hodgkin lymphoma and other blood cancers, and who also have been playing sports on athletic fields that are filled with crumb rubber coming from tires, which often contains cancer causing chemicals. This past October I wrote to the Agency for Toxic Substances and Disease Registry explaining that I believe additional research is needed into whether synthetic turf athletic fields increase the risk of lymphoma, leukemia, and other blood cancers. In the agency's reply, they stated that they are supporting efforts by the Commission in this area.

Yet in 2008 the Commission released a statement saying that field filled with crumb rubber are "OK to install, OK to play on," and I was pleased to hear more recently that a spokesperson explained that the 2008 statement does not reflect your current views. So I just wanted to ask, is it correct that your views are not reflected in that 2008 report, and do you agree that additional research and study is necessary to determine whether crumb rubber used in synthetic turf athletic fields presents any public health dangers? And also, is the Commission committed to working with other Federal agencies to obtain this information, and to ensure young athletes playing on these fields are protected? Just ask you, Mr. Chairman.

Mr. KAYE. Thank you, Congressman, and thank you for your leadership on this area. I think you have three questions embedded in there, so I am going to try to address all three—

Mr. PALLONE. Sure.

Mr. KAYE [continuing]. In turn. The first is, you are absolutely correct that that 2008 release does not reflect my views of the state of play, and I think it is important to note that that 2008 didn't—release didn't even reflect, as far as I understand it, the technical staff's views at the time, that there was a political effort at the time at the Commission to say something in the headline of the release that may not actually reflect the state of play, which is basically that those products are safe.

I think there is a big difference in looking at the lead exposure that might exist from the blades of the grass and determining that, based on a small sample size, the staff was not able to say that there are—were disconcerting levels of lead in those fields in that particular aspect. That is very different from saying these things are safe to play on. Safe to play on means something to parents that I don't think we intended to convey, and I don't think we should have conveyed. So that is the answer to the first question.

The answer to the second question is, absolutely we are working with our Federal partners to try to figure out a better and faster way, working together, to see if an issue such as crumb rubber can be resolved more quickly. As I mentioned to the Ranking Member earlier, we are working with EPA, we are working with NIH, through their center down in Research Triangle Park, North Carolina, the National Institute of Environmental Health Sciences and the National Toxicology Program, CDC, ATSDR, and then also the FDA. We are trying to figure out a way for the Government to come together, use our existing resources and authorities to address these issues. Parents don't care which acronym-name Government agency is supposed to do what. They just want answers, and they want this uncertainty resolved.

And the third question—I apologize, I can't even remember what the third one was. If you could—if you wouldn't mind asking me again?

Mr. PALLONE. Well, I am just—I think you are, you know, just really basically trying to find out what your view is, and what the Commission is doing, and whether you are working with other Federal agencies—

Mr. KAYE. Absolutely.

Mr. PALLONE [continuing]. On the issue.

Mr. KAYE. Absolutely.

Mr. PALLONE. All right. Thank you very much.

Mr. KAYE. Thank you.

Mr. PALLONE. Thank you.

Mr. BURGESS. Gentleman yields back. The Chair thanks the gentleman. The gentleman from Illinois, Mr. Kinzinger, recognized 5 minutes for your questions.

Mr. KINZINGER. Thank you, Mr. Chairman. Thank you all for being here today, and it is nice to have you in front of the committee.

Chairman Kaye, it seems that banning a chemical that has been deemed safe by other Government agencies opens the door to the use of substitutes that have been far less studied, and with far fewer scientific and performance data available. Is the agency prepared to deal with the market and potential safety repercussions

of transitioning from well tested thiolates to the uncertainty associated with any potential substitutes?

Mr. KAYE. Well, this gets into, Congressman, some of the answers to Congressman Pallone. There is a larger issue going on from a public policy matter, where, unfortunately—and the concept that you are getting to is regrettable substitution, where one chemical is banned, and we don't really have a full sense, from a scientific and safety perspective, what the substituting chemical will be. I think that is a failed public policy, I have to admit.

I think the better approach, and this can be done working with industry, and this would be something that I would like to see happen, is for the Government and industry to come together to not only focus on which chemicals shouldn't be used, but to try to get to a faster way to figure out which chemicals should be used. So, as a public policy matter, that is my preference. Unfortunately, neither the resources or the authorities and the directions that agencies have been going in for a long time are moving in that direction.

But, again, as part of these collaborative efforts that I am trying to undertake, and that we are trying to undertake from CPSC with these other agencies, that is one of the key goals that we are looking at.

Mr. KINZINGER. Yes, and I think, you know, until we get to that point, where we can have that perfect system, we—I think we ought to be very careful when we look at banning substances. Because if we don't have a situation in place where we can do all the studying of alternatives, I think, you know, we ought to be very careful.

Let me—following the thiolate rulemaking, Commissioner Buerkle noted in—her concern on banning chemicals that have been in use for many years, and there is risk even studying what little is known about the substitutes. So you said you agree with that. I want to see—Commissioner Buerkle, what are your thoughts on the idea of banning something with unknown substitutes to follow?

Ms. BUERKLE. Thank you for your question. As you note, that was one of my concerns when the MPR came out, that we are not proposing substitutes be used that we know little—less about than we know about the chemicals that are already banned. My more general concern, with regards to the CHAP, and I have, both in comment and—here today, and also in previous statements—was the whole process for how the CHAP report was done, and now this proposed rule. And I think we really need to take a step back.

Whether it is regarding chemicals, or whether it is regarding any of the things we do, we are a data driven agency. And so to make sure that we have the data correct, and to make sure that the processes we follow are correct, and that the CHAP followed a process that the entire scientific community can accept as credible is very key to our agency, and the credibility of our agency. It has been noted the American people rely on information coming from us, so it is important that we get it right. And so if it takes a little more time, if it requires a request to Congress that we can't promulgate that rule within 180 days after the CHAP report was issued, so be

it. We have to make that request, because it is incumbent upon our agency to get it right, to take the time that we need to do.

Mr. KINZINGER. Yes, and, you know, I want to add to that especially—I guess maybe to reiterate what you said. You know, I understand that there is, in many cases, a need for 180 days. Going past deadlines isn't fun, it is nothing that any of us like to do. But I think at the risk of maybe getting something wrong, versus getting something right, even if we have to go past a little bit of a deadline, I think, frankly, Republicans, Democrats, Americans, Independents, far right, far left would all agree that that is probably a preferable way to go. And so that is, you know, some of the concerns we have there.

Chairman Kaye, I want to go to a bit of a different subject just real quick. In the preamble for the proposed rule on voluntary recalls, the CPSC indicated that it has encountered firms that have deliberately and unnecessarily delayed the timely implementation of the provisions of their correction action plans. How many firms have deliberately and unnecessarily delayed the implementation of provisions of their corrective action plans?

Mr. KAYE. Congressman, I will have to follow up and give you an answer to that. I don't know the answer to that question. The voluntary recall rule, as my colleagues know very well, at this point, from our continued reiterations of our positions on it, is not something that has been a high priority for me. I have had higher priorities that go to saving lives. I am not saying the rule is without merit. I think it has some value, but it has not been something that I have spent a lot of time on. I thought that early——

Mr. KINZINGER. Well, can you give me, like, an example maybe of——

Mr. KAYE. I can certainly give you anecdotal examples of where we have reached a situation—the agreements are voluntary. So we have reached a voluntary corrective action plan with a company, and we notice, when they file their quarterly reports, that they are not doing what they said they were going to do. They are either not engaging on social media, or they are not attempting to reach out and put forth the amount of resources and effort that they said they would. I—one, I wouldn't name a company, even if I could——

Mr. KINZINGER. I understand.

Mr. KAYE [continuing]. But I can't name a company at this point. But I thought Commissioner Adler, last week, during a public meeting that we had, when this topic came up, had a phenomenal suggestion, where he asked our staff to spend a few months collecting this data, and reporting back to the Commission to see whether or not this is a real issue. And, to Commissioner Buerkle's point, we are data driven, and I think that will be a useful exercise, and we will all be curious to see that.

Mr. KINZINGER. Good. Well, yes, I would be interested too, and I just want to point out, let us make sure, if you are going to throw out the entire system, that it is very data driven. So, with that, thank you all for being here, and I will yield back.

Mr. BURGESS. Chair thanks the gentleman, gentleman yields back. The Chair recognizes the gentleman from Oklahoma, Mr. Mullin, 5 minutes for questions, please.

Mr. MULLIN. Thank you, Mr. Chairman, and thank you to the Commissioners for taking the time to be here. I know you guys have a very busy schedule too, and anytime you've got to come to the Hill, you have got to be thrilled about that, right?

But, you know, we are all held accountable for statements that are made, and sometimes, when you are sitting in a position, Chairman, that you sit in, your agency carries a pretty big stick, and your statements can be devastating to people that are producing a product that depend on retail sales. Would you agree with that?

Mr. KAYE. Absolutely, and I think about that all the time. There is a lot of thought that goes into what I say, whether I end up saying something like that or not.

Mr. MULLIN. Well, I am holding in my hand right here a story that was published by an Indianapolis news agency, and it says, "If a consumer was to see a gas can at a retail that contained a flame arrester, we would encourage them to select such a model, as it provides a vital layer of fire protection." That was made by your agency. Are you familiar with that news story?

Mr. KAYE. I am.

Mr. MULLIN. Do you agree with that statement?

Mr. KAYE. I don't understand enough about the technical aspects of flame arresters, I am sorry. That is just not—on gas cans. I can't comment one way or another.

Mr. MULLIN. But your statements have an impact, and the flame arresters that we are talking about, they are only sold on commercial cans. They are not in retail stores. Are you familiar with that?

Mr. KAYE. No, I am not familiar with that. I don't have any familiarity with gas cans, other than talking to our staff, and knowing that the issue that you are talking about—

Mr. MULLIN. But someone on your staff made this statement. And the reason why I say this is because, in my district, I had a manufacturer that produced retail gas cans, and your agency came out and made a statement referring to retail gas cans, and—has nothing to do with retail gas cans. They are only regulated by OSHA and the EPA with the flame arresters. Once again, we are held accountable for what we said, and your agency made a statement that could have possibly cost real people their jobs. So does the CPSC regulate commercial safety cans?

Mr. KAYE. We do not, but the statement that you are talking about, I am not sure that it is inconsistent with the position that our staff has taken in the voluntary standards capacity.

Mr. MULLIN. OK. Well, then let us talk about that. Are you aware that the commercial safety—a commercial safety can with the flame arrester failed an ASTM protocol?

Mr. KAYE. I am not.

Mr. MULLIN. But you made the statement. Your agency made the statement encouraging people to go out and buy a gas can from a retail store that doesn't even exist, and the purpose of it is to keep children from being burned. But you guys made a statement that failed that exact test, but yet the consumer can does. It met those ASTM standards. You don't see a problem with this?

Mr. KAYE. I see a problem with it if what you are saying is 100 percent accurate, and I am not——

Mr. MULLIN. Well, I am holding the news story.

Mr. KAYE. No, I understand——

Mr. MULLIN. You guys sent the press release.

Mr. KAYE. I am not doubting——

Mr. MULLIN. And this is coming from ASTM, their testing protocol, that said it failed.

Mr. KAYE. I understand that, but what I am—my point is that I am not familiar enough with the area that you are talking about where I can give you the type of answer you are looking for.

Mr. MULLIN. Then how about we do this? Why don't you get back with my office——

Mr. KAYE. Absolutely.

Mr. MULLIN [continuing]. Since you guys are making those statements, and since they affect real jobs in my district? Why don't you get back with me and give me that information so you can be spun up to it, so the next time that your agency opens its mouth and gives a statement like that, maybe they are informed about what they are saying.

Mr. KAYE. Would you be willing to have a meeting with my staff and me on it?

Mr. MULLIN. Without question. We would——

Mr. KAYE. OK.

Mr. MULLIN [continuing]. Love to, because we would——

Mr. KAYE. OK.

Mr. MULLIN [continuing]. Like to get to the problem of this, too, because statements like that hurt real people.

Mr. KAYE. Excellent. So my hope is that you would be willing to come out to our testing center, where we have the technical expertise, and we can walk through the gas cans, and we can look at the issue together. Would you be willing to do that?

Mr. MULLIN. Absolutely I would.

Mr. KAYE. That would be great.

Mr. MULLIN. But then we have got to come back and—if I am going to be willing to do that——

Mr. KAYE. Yes.

Mr. MULLIN [continuing]. If what I am saying is accurate, I would like you guys to make another statement publicly——

Mr. KAYE. You got it.

Mr. MULLIN [continuing]. Backing that up.

Mr. KAYE. Yes. Let us get to the answers together, and then we will figure out where we go from there. And you have my commitment that if it turns out that we said something that we both believe——

Mr. MULLIN. Well, it is not if. The statement says it, and you guys——

Mr. KAYE. No, the rest of it——

Mr. MULLIN. We checked it.

Mr. KAYE. If we said something that is not accurate, you have my commitment that I will say something that is accurate. I am not going to leave it to anybody else. I will say it.

Mr. MULLIN. Good enough. Mr. Chairman, I yield back. Thank you.

Mr. KAYE. You are welcome.

Mr. BURGESS. Chair thanks the gentleman. The gentleman brings up an excellent point. Several years ago I actually took a field trip up to the CPSC testing facility, and it was a very illuminating day. My understanding is you are in new headquarters now, and I think the gentleman is quite right. A field trip of the subcommittee out to the CPSC would be both informative and instructive, and probably help the Commission, as well as the subcommittee members, and we will see about putting that in the process.

I would just also observe that I am, in addition to being chairman of this subcommittee, I am the chairman of the House Motorcycle Caucus. I know that is kind of a disconnect, but I am. And going over to talk to that group one day after we passed the CPSIA here in the subcommittee in 2007 or 2008, there was a young man, very young man, probably 12 or 13 years old, who stood up in front of the group and said, "Mr. Congressman, if you promise to give me my motorcycle back, I promise I won't eat the battery anymore." Apparently youth motorcycles had been—the sale had been prohibited during the bill that we passed, and until those technical corrections were enacted, it made it very, very difficult for the people who sold youth motorcycles and their parts. So we do have to be careful about the unintended consequences.

Seeing no other members—did you have a follow up question, Ms.——

Ms. SCHAKOWSKY. No.

Mr. BURGESS [continuing]. Schakowsky? Seeing no further members wishing to ask questions for this panel, I do want to thank you all for being here today. This will conclude our first panel, and we will take an underscore brief recess to set up for the second panel. And thank you all very much for your time today.

[Recess.]

Mr. BURGESS. The subcommittee will come back to order, and I will thank everyone for their patience and taking time to be here today. We are ready to move into our second panel for today's hearing, and we will follow the same format as during the first panel. Each witness will be given 5 minutes for an opening statement, followed by a round of questions from members.

For our second panel, we have the following witnesses. Mr. Ronald Warfield—I have here "Buck," is that correct?—CEO of ATV/ROV/UTV Safety Consulting. Ms. Heidi Crow-Michael from Winnsboro, Texas. Thank you for being here today. Ms. Cheryl Falvey, Co-Chair of the Advertising and Product Risk Management Group at Crowell, Moring, and Mr. Erik Pritchard, Executive Vice President and General Counsel for the Recreational Off-Highway Vehicle Association.

We will begin our second panel with Mr. Warfield. You are recognized for 5 minutes for the purpose of an opening statement, please.

STATEMENTS OF RONALD WARFIELD, CHIEF EXECUTIVE OFFICER, ATV/ROV/UTV SAFETY CONSULTING; HEIDI CROW-MICHAEL, WINNSBORO, TEXAS; CHERYL A. FALVEY, CO-CHAIR, ADVERTISING AND PRODUCT RISK MANAGEMENT GROUP, CROWELL & MORING, LLP; AND ERIK PRITCHARD, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, RECREATIONAL OFF-HIGHWAY VEHICLE ASSOCIATION

STATEMENT OF RONALD WARFIELD

Mr. WARFIELD. Thank you, Mr. Chairman, Ranking Members, and members of the committee. Thank you for this opportunity to testify in support of H.R. 999, the ROV In-Depth Examination, or the RIDE Act. My name is Buck Warfield, and I have extensive experience in dealing with safe and appropriate use of off-highway vehicles. First a bit of background. I was employed by the Maryland State Police as a police officer, or a trooper, for over 23 years, and I retired in 1993. With regard to off-highway vehicle experience, in 1985 I was trained and certified by the Specialty Vehicle Institute of America, SVIA, as an ATV instructor. In 1989 I became an ATV Safety Institute, or ASI, licensed chief instructor, and I continued to be contracted by ASI to train, license, and monitor other ATV instructor staff.

With respect to recreational off-highway vehicles, known as ROVs, or side by sides, I have assisted several agencies, including military and Government groups, in developing primary ROV training programs, and combining the Recreational Off-Highway Vehicle Association, or ROHVA, approved training program in December of 2010. I currently serve as chief ROV driver coach/trainer, and I have a training facility at my farm in Sikesville, Maryland which has been designated by ROHVA as a driver/coach training center, and that is one of only three in the entire United States. On a personal note, I have logged over 900 hours as an operator of my personal ROV since 2006. I currently own two ROVs, utilized primarily for ROV training, and two more utilized for daily facility maintenance at my training center and farm.

I participated in the development of the ROV basic driver course curriculum, which is designated for current and prospective recreational off-highway vehicle drivers. The basic driver course is a training opportunity that provides current and experienced ROV drivers the chance to learn and practice basic skills and techniques. It addresses basic operation, and emphasizes safety awareness related to specific—related specifically to ROV operation. The overall aim of the driver/coach course is to provide for drivers' development in the area of skill and risk management strategies. This includes learning to foster driver gains in basic knowledge, skill, attitude, values, and habits.

I am here to support H.R. 999. The legislation would only pause the Consumer Product Safety Commissions ongoing ROV rule-making until the National Academy of Science, in cooperation with the Department of Defense, and the National Highway Traffic Safety Administration, perform a study of the vehicle handling and requirements proposed by CPSC. I do not claim to be an engineer, or to fully understand the complex engineering issues, but I do understand that these are some basic disagreements on a select few

issues between engineers at CPSC and the engineers who work for major manufacturers. I appreciate the CPSC is well intended. I also know that the manufacturers develop safe, capable vehicles for me, my family, my friends, and the students that I train to use—with power sport vehicles, including training countless people who have no prior experience with ATVs or ROVs show me that these vehicles are safe, with amazing capabilities when operated as intended.

H.R. 999 is a narrowly tarrowed—tailored—is narrowly tailored to examine, first of all, the technical validity of CPSC's proposed lateral stability and vehicle handling requirements. Also, the number of ROV rollovers that would be prevented if the rule were adopted, and whether there is a technical basis for the proposal to provide information on a point of sale hang tag about a vehicle's rollover resistance on a progressive scale. And, lastly, the effects on the utility of ROVs used by the U.S. military if the rule were adopted.

So, in conclusion, I think the best way to—forward would be for the industry and CPSC to work together to find a voluntary solution that works for all the parties, and protects the safety of ROV drivers and passengers. Barring a cooperative solution, the best and safest way forward is for independent third party experts to make sure that we get it right. Thank you, sir.

[The prepared statement of Mr. Warfield follows:]

Testimony of Ronald "Buck" Warfield
House Energy and Commerce Committee,
Subcommittee on Commerce, Manufacturing and Trade
United States House of Representatives
Oversight of the Consumer Product Safety Commission
May 19, 2015

Mr. Chairman, Ranking Member and Members of the Committee, thank you for this opportunity to testify in support of H.R. 999 – the ROV In-Depth Examination or RIDE Act.

My name is Buck Warfield, and I have extensive experience in dealing with safe and appropriate use of off-highway vehicles.

First a bit of background – I was employed by the Maryland State Police as a police officer for twenty-three years and retired in January 1993.

With regard to off-highway vehicle experience - In 1985 I was trained and certified by the Specialty Vehicle Institute of America (SVIA) as an ATV Instructor. In 1989, I became an ATV Safety Institute (ASI) Licensed Chief Instructor and I continue to be contracted by ASI to train, license and monitor other ATV Instructor staff.

With respect to recreational off-highway vehicles, known as ROVs or side-by-sides, I have assisted several agencies including military and governmental groups in developing preliminary ROV training programs and completed the Recreational Off-Highway Vehicle Association (ROHVA) approved training program in December 2010.

I currently serve as a Chief ROV DriverCoach Trainer and I have a training facility at my farm in Sykesville, Maryland which has been designated by ROHVA as a DriverCoach Training Center, one of only three in the United States. On a personal note, I have logged over 900

hours as an operator of my personal ROV since 2006. I currently own two ROVs utilized primarily for ROV training and two utilized daily for facility maintenance.

I participated in the development of the ROV Basic *DriverCourse* curriculum which is designed for current and prospective recreational off-highway vehicle drivers.

The Basic *DriverCourse* is a training opportunity that provides current and experienced ROV drivers the chance to learn and practice basic skills and techniques. It addresses basic operation and emphasizes safety awareness related specifically to ROV operation. The overall aim of the *DriverCourse* is to provide for driver development in the areas of skill and risk management strategies. This includes learning experiences to foster driver gains in basic knowledge, skill, attitude, values, and habits.

I am here to support H.R. 999. This legislation would only pause the Consumer Product Safety Commission's (CPSC) ongoing ROV rulemaking, until the National Academy of Sciences, in consultation with the Department of Defense and the National Highway Traffic Safety Administration, perform a study of the vehicle handling requirements proposed by CPSC.

I do not claim to be an engineer or to fully understand the complex engineering issues, but I do understand that there are some basic disagreements on a select few issues between the engineers at CPSC and the engineers who work for major manufacturers. I appreciate that CPSC is well-intentioned. I also know the manufacturers develop safe, capable vehicles for me, my family, friends and students.

My decades of experience with powersports vehicles, including training countless people who had no prior experience with ATVs or ROVs, show me that these are safe vehicles with amazing capabilities when operated as intended.

H.R. 999 is narrowly tailored to examine:

1. the technical validity of CPSC's proposed lateral stability and vehicle handling requirements;
2. the number of ROV rollovers that would be prevented if the rule were adopted;
3. whether there is a technical basis for the proposal to provide information on a point-of-sale hangtag about a vehicle's rollover resistance on a progressive scale, and;
4. the effects on the utility of ROVs used by the U.S. military if the rule were adopted.

To put it simply, this makes sense. Some may say that taking the time to examine the impacts of CPSC's proposals will lead to some delay, but it is not that simple. I have vast experience driving ROVs in all sorts of off-highway environments. I fear that the CPSC's proposed rule changing ROVs could lead to serious and unintended safety issues.

In conclusion, I think the best way forward would be for industry and CPSC to work together to find a voluntary solution that works for all parties and protects the safety of ROV drivers and passengers. Barring a collaborative solution, the best and safest way forward is for independent third party experts to make sure we get this right.

Thank you and please support H.R. 999.

Mr. BURGESS. Gentleman yields back, the Chair thanks the gentleman. Ms. Crow-Michael, you are recognized for 5 minutes for the purpose of an opening statement, please.

STATEMENT OF HEIDI CROW-MICHAEL

Ms. CROW-MICHAEL. Thank you. My name is Heidi Crow-Michael, and I would like to thank you all for allowing me to speak today on behalf of my son, J.T. Crow.

I play many roles in life. I am a homemaker, and an advocate, but most importantly a mother to five children. J.T. Crow is my second child, and firstborn son. He was a happy and extraordinary 9-year-old boy. At school he was a straight A student with perfect attendance. He loved science, and learning about birds and butterflies. J.T. also loved being outside and playing sports like soccer and football.

J.T.'s life was cut short when he went for a ride in a 2007 Yamaha Rhino 450. While riding at a slow speed around a slight curve, the ROV suddenly and inexplicably rolled over. Through J.T. was wearing a safety belt, he was thrown from the Rhino ROV, and then crushed by the half ton vehicle as it rolled over. Paramedics rushed J.T. to the emergency room, but he had sustained more injuries than his young body could handle. My son died that day, when he was 9 years old, and my life was forever changed. On a daily basis I live with the pain of the tragedy that struck my family, and the fear of knowing that it could happen to other families. This fear has led me to become an advocate for ROV safety and industry reform. I have been given the opportunity to use my son's life to make a difference, a difference that can save lives.

As we sit here this morning, the ROV industry is one that sets its own safety standards and makes its own rules, and innocent people are paying the price. I am not against ROVs. I just want safe ROVs. Many consumers buy ROVs because they have four wheels, and sometimes seat belts, roll bars and roofs, and they look safer than ATVs, but ROVs are not safe. And it has been many years, and every year, every day that there is not a better solution implemented for ROV safety is a day that more people, more children, our children, are put at risk.

When we wrote the Citizens' Report on Utility Trained Vehicle Hazards and Urgent Need to Improve Safety and Performance Standards in February of 2009, asking for safety and performance standards, including minimum occupant containment stability and seat belt standards, we were hopeful our recommendations for safer ROVs would become standard. We asked for action. Nothing happened. An already unacceptably high casualty rate will continue unless action is taken.

In 2014 ROV use resulted in at least 61 deaths, and eight more in 2015. While less stringent than the recommended safety measures in the Citizens' Report, the CPSC has proposed standards that would significantly improve ROV safety. If the ROV industry really wants to protect their consumers, why wouldn't they want to make the safest product possible? Why wouldn't they want to do all they could do to protect the people who purchase their vehicles? I have been given the opportunity to speak to many families, and we all share a common bond. We have lost someone we love in an ROV

rollover accident. Perhaps the most painful part of my role as an advocate for this cause is hearing the heart wrenching stories from those families.

I know I am not alone in asking this committee to allow the CPSC to move forward with its rulemaking to issue ROV safety standards and stop the senseless death of our loved ones. In my journey over the last 8 years, I have collected the names and stories of those who shared a fate similar to J.T.'s, and it is for them that I speak today. For Ellie Sand, age 10, Kristin Lake, 11, Dusty Lockabey, 14, Ashlyn Vargas, 12, Dani Bernard, 18, Stephanie Katin, 26, Whitney Bland, 13, Sydney Anderson, 10, and Abbey West, age 13.

Our stories do not begin and end on the day our loved ones were killed or injured. The battle is ongoing for all of us. We will miss soccer games, dance recitals, graduations, birthdays, weddings, and holiday celebrations. We will live with the consequences forever. Today you have the opportunity, and I think the obligation, to help me honor these young lives, their families, and the life of my son, J.T. Crow, but it is more than that. You have an opportunity to become a part of their story, the part that offers hope for the future by bringing about change. Our request is simply common sense. It is unimaginable that anyone would feel differently. If you don't do something about it, can you live with yourself?

Delay is a problem. Delay puts our children at risk. It has been too many years and too many tragedies already. We urge you not to contribute to any further delay. Thank you for your time.

[The prepared statement of Ms. Crow-Michael follows:]

Testimony of Heidi Crow- Michael
Mother of J.T. Crow
before the
U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing and Trade
On
“Oversight of the Consumer Product Safety Commission”
May 19, 2015

Good Morning, My name is Heidi Crow-Michael. I would like to thank you all for allowing me to speak today on behalf of my son, J.T. Crow.

I play many roles in life; I am a homemaker and an advocate, but most importantly a mother to five children.

JT Crow is my second child, and first born son, he was a happy and extraordinary 9-year-old boy. At school, he was a straight ‘A’ student, with perfect attendance. He loved science and learning about birds and butterflies. J.T. also loved being outside playing sports like soccer and football.

J.T.’s life was cut short when he went for a ride in a 2007 Yamaha Rhino 450. While riding at a slow speed around a slight curve, the ROV suddenly and inexplicably rolled over. Though J.T. was wearing a safety belt, he was thrown from the Rhino ROV and then crushed by the half-ton vehicle as it rolled over.

Paramedics rushed J.T. to the emergency room but he had sustained more injuries than his young body could handle. My son died that day when he was 9 years old and my life was forever changed. On a daily basis I live with the pain of the tragedy that struck my family and the fear of knowing that it could happen to other families. This fear has led me to become an advocate for ROV safety and industry reform. I have been given the opportunity to use my son’s life to make a difference, a difference that can save lives.

As we sit here this morning, the ROV industry is one that sets its own safety standards and makes its own rules and innocent people are paying the price. I am not against ROVs; I just want

safe ROVs. Many consumers buy ROVs because they have four wheels and sometimes seatbelts, rollbars and roofs and look safer than ATVs. But ROVs are not safe. And it has been many years, and every year, every day, that there is not a better solution implemented for ROV safety, is a day that more people, more children, our children are put at risk.

As we reported in the Citizen Report on Utility Terrain Vehicle (UTV) Hazards and Urgent Need to Improve Safety and Performance Standards; February 26, 2009, There is a vital need for ROV manufacturers, their trade group, the Recreational Off Highway Vehicle Association ("ROHVA"), the National Highway Traffic Safety Administration ("NHTSA") and the Consumer Product Safety Commission ("CPSC") to adopt rigorous minimum ROV safety standards and performance standards, including minimum occupant containment, stability, and seat belt standards. When we wrote the report, we were hopeful our recommendations for safer ROVs would become standard. We asked for action and nothing happened.

An already unacceptably high casualty rate will continue unless action is taken. In 2014, ROV use resulted in at least 61 deaths and 8 more in 2015. While less stringent than the recommended safety measures in the Citizen Report, the CPSC has proposed standards that would significantly improve ROV safety. If the ROV industry really wants to protect their consumers, why wouldn't they want to make the safest product possible? Why wouldn't they want to do all they could to protect the people who purchased their vehicles?

I have been given the opportunity to speak to many families, and we all share a common bond, we have lost someone we love in an ROV rollover accident. Perhaps the most painful part of my role as an advocate for this cause is hearing the heart wrenching stories from those families. I know that I am not alone in asking this Committee to allow the CPSC to move forward with its rulemaking to issue ROV safety standards and to stop the senseless death of our loved ones.

In my journey over the last eight years I have collected the names, and stories of those who shared a fate similar to JT's, it is for them that I speak today.

For:

Ellie Sand, Age 10

Kristin Lake, Age 11

Dusty Lockabey, Age 14

Ashlyn Vargas, Age 12

Dani Bernard, Age 18

Stephanie Katin, Age 26

Whitney Bland, Age 13

Sydney Anderson, Age 10

Abbey West, Age 13

Karen Harwood, Age 46

Andrea Hayes, Age 16

Mikhail Ayrepetyan, Age 56

Lane McCloud, Age 8

Andrew Bahl, Age 3

Lauren Dilworth, Age 11

Emily Bates, Age 11

Cathy Piekarczyk, Age 51

James Spencer, Age 13

Andrea Jones, Age 34 (Mother of 2)

Lindsey Quimby, Age 29

Emily King, Age 20

Cheyenne Ellis, Age 12

Eddie Ray, Age 13

David Morgan, Age 21

Josh Davis, Age 14

All killed in rollover accidents involving the Yamaha Rhino, and the injured

Dwight Grimes (Leg Destroyed)

Sunny Chism (Lost Arm)

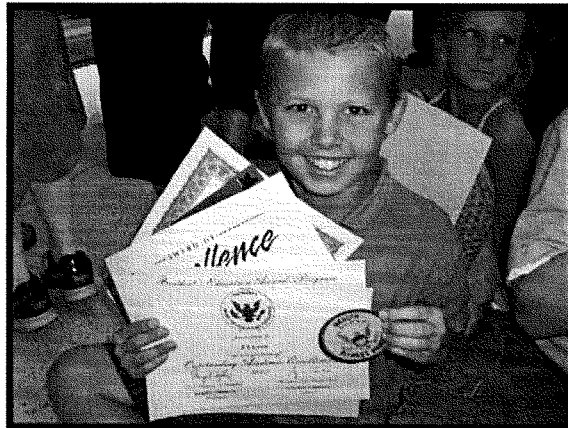
Our stories did not begin and end on the day our loved ones were killed or injured. This battle is ongoing for all of us. We will miss soccer games, dance recitals, graduations, birthdays, weddings, and holiday celebrations. We will live with the consequence forever. Today you have the opportunity, and I think, the obligation, to help me honor these young lives, their families, and the life of my son, J.T. Crow, but it is more than that, you have an opportunity to become a part of their story, the part that offers hope for the future by bringing about change. Our request

is simply common sense: it is unimaginable that anyone would feel differently. If you don't do something about it, can you live with yourself? Delay is a problem. Delay puts our children at risk and it has been too many years and too many tragedies already. We urge you not to contribute to any further delay.

Thank you for your time.

J.T. Crow, age 9, killed by Yamaha Rhino tipover, died on 6/22/07

Parent Contact:



**Ellie Sand, age 10, killed by Yamaha
Rhino tipover, died on 10/28/07**

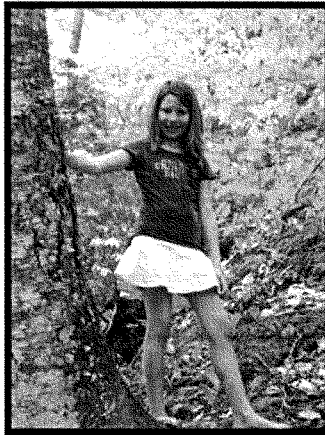
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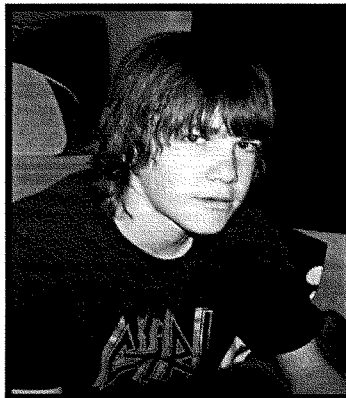
**Kristin Lake, age 11, killed by Yamaha
Rhino tipover, died on 5/29/06**

Parent Contact:



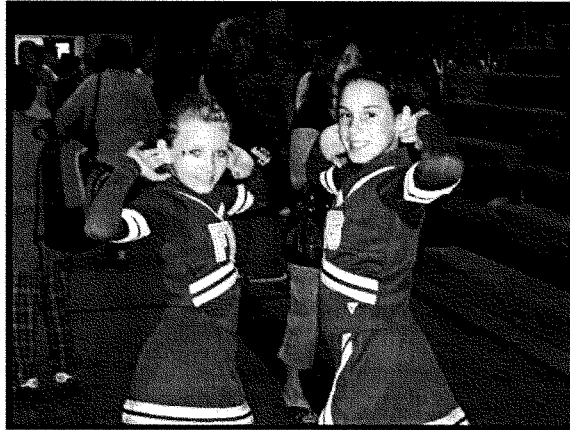
**Dusty Lockabey, age 14, killed by
Yamaha Rhino tipover, died on 8/07/07**

Contact care of



**Ashlyn Vargas, age 12, killed by
Yamaha Rhino tipover, died on 11/29/07**

Parent Contact:



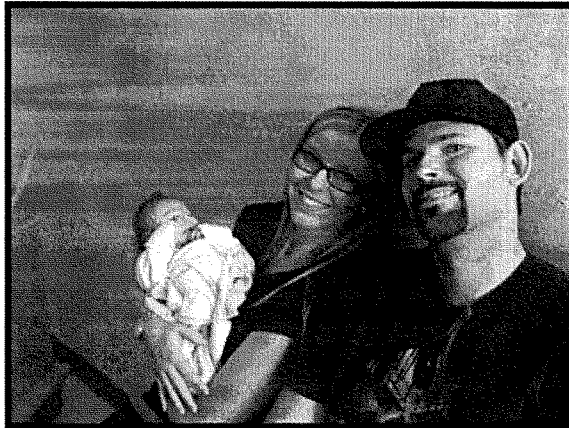
**Dani Bernard, age 18, killed by Yamaha
Rhino tipover, died on 11/26/06**

Parent Contact:



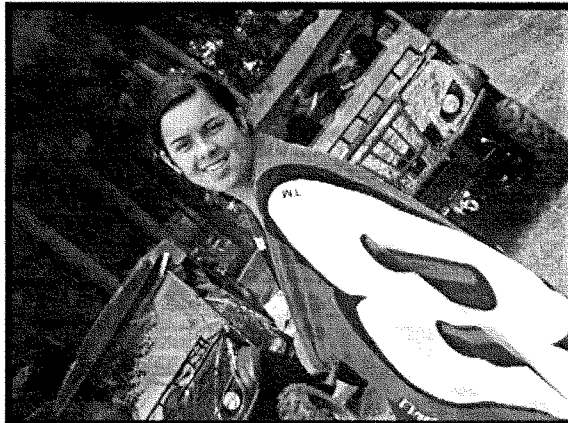
**Stephanie Katin, age 26, killed by
Yamaha Rhino tipover, died on 2/23/08**

Contact care of



**Whitney Bland, age 13, killed by
Yamaha Rhino tipover, died on 5/22/07**

Parent Contact:



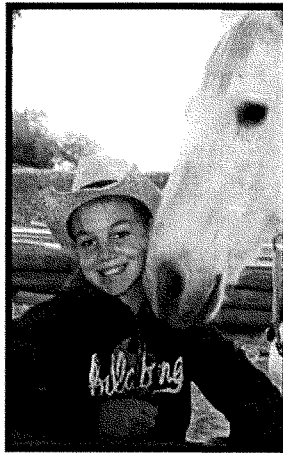
**Sydney Anderson, age 10, killed by
Yamaha Rhino tipover, died on 11/22/06**

Parent Contact:



**Abbey West, age 13, killed by Yamaha
Rhino tipover, died on 11/23/06**

Parent Contact:

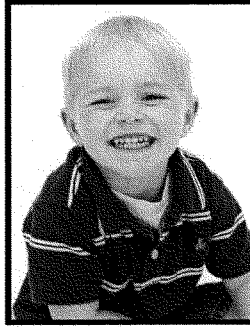


**Karen Harwood, age 46, killed by
Yamaha Rhino tipover, died on 9/10/05**



Andrew Bahl, age 3, killed by Yamaha
Rhino tipover, died on 8/24/08

Parent Contact



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David Morgan, age 21, killed by
Yamaha Rhino tipover, died on 2/22/08

Parent Contact



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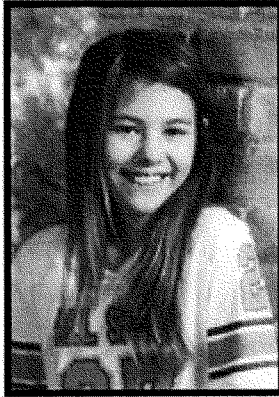
**Lauren Dilworth, age 11, killed by
Yamaha Rhino tipover, died on 10/18/08**

Parent Contact:



**Emily Bates, age 11, killed by Yamaha
Rhino tipover, died on 10/18/08**

Parent Contact:



**Emily King, age 20, killed by Yamaha
Rhino tipover, died on 4/14/07**

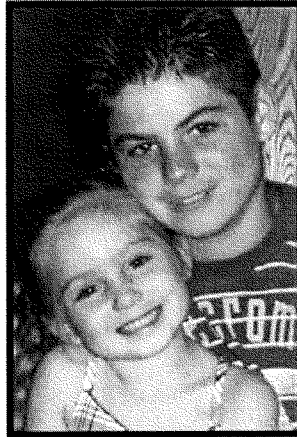
Parent Contact:



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**Eddie Ray, age 13, killed by Yamaha
Rhino tipover, died on 9/13/07**

Parent Contact:



Mr. BURGESS. Chair thanks the gentlelady, gentlelady yields back. Ms. Falvey, you are recognized, 5 minutes for opening statement, please.

STATEMENT OF CHERYL A. FALVEY

Ms. FALVEY. Thank you, Chairman Burgess, Ranking Member Schakowsky, distinguished members. Thank you for providing the opportunity to discuss the statutory framework that the Consumer Product Safety Commission will use to address the kind of risk we have just heard about. I have served as the General Counsel of the Consumer Products Safety Commission from 2008 to 2012, during the implementation of both the Virginia Graeme Baker Pool and Spa Safety Act, as well as the Consumer Product Safety Improvement Act. Both of those statutes made voluntary standards mandatory. I have been asked to discuss the way the CPSC statutes interrelate to the voluntary standards process to inform the committee's consideration of H.R. 999.

My oral remarks will focus on three important aspects of the interrelationship between the voluntary standards process and mandatory law. First, safety standards developed by the CPSC require time and effort to develop in order to meet the statutory requirements. It is not easy. Section 7 of the CPSA provides the CPSC with the authority to promulgate rules that set forth performance standards and require warnings and instructions, but only when the CPSC finds such a standard reasonably necessary to prevent or reduce an unreasonable risk of injury, and that the benefits of such regulation bear reasonable relationship to the costs of the regulation. The Commission must consider and make appropriate findings on a variety of issues, including the degree and nature of the risk, along with the utility of the product, and the costs and means to achieve the objective.

To issue a final rule, the Commission must find that the rule is necessary to reasonably eliminate or reduce the unreasonable risk of injury, and that issuing that rule is in the public interest. Must also find that the rule imposes the least burdensome requirement that would adequately reduce the risk of injury. Congress recognized just how difficult it is for CPSC to do that when it enacted the CPSIA, and made it easier to make voluntary standards mandatory law in the Danny Keysar Child Safety Notification Act, due in part to resolute efforts by Ranking Member Schakowsky, which streamlined the process of making voluntary standards mandatory law.

Second, the CPSC statute favors voluntary standards when they eliminate the risk of injury, and are complied with by manufacturers. If a voluntary standard addressing the same risk of injury is adopted and implemented, the Commission cannot proceed with a final rule unless it finds that the voluntary standard is not likely to eliminate the risk of injury, and that—and/or that it is unlikely that there will be substantial compliance with the voluntary standard. These can be very difficult findings for the Commission to make. As a data driven agency, the CPSC staff has to look for hard science to demonstrate the intended safety benefits of both its standards and consensus driven voluntary standards, but the

CPSC must still attempt to extrapolate from current data the likely future effects of its proposed rulemaking.

The legislative history of the CPSA sets a high bar, directing the CPSC to consider whether the voluntary standard will reduce to a sufficient extent, such that there will no longer exist an unreasonable risk of injury. Predicting that there is an unreasonable risk in certain circumstances is easy. It can be extremely difficult when you are dealing with the highly technical issues of vehicle rollover. And that is why it takes staff time to develop the rulemaking packages, and why it is over 500 pages long. Determining whether there is substantial compliance is also a challenge when so many products come into the country now from overseas. The legislative history of the CPSC—CPSA directs that the Commission look at the number of complying products, rather than the number of complying manufacturers, and those products are coming in from all over the world.

Third, and finally, the challenges of making voluntary standards mandatory law is one of the most important lessons we learned in both CPSIA and the Virginia Graeme Baker Pool and Spa Safety Act. These voluntary standards are iterative. They evolved over years. And unless we know that the test methods can be replicated and are reliable, making them law prematurely can be very dangerous.

[The prepared statement of Ms. Falvey follows:]



**Statement of Cheryl A. Falvey
Co-Chair Advertising and Product Risk Management Group
Crowell & Moring LLP**

**Before the Subcommittee on Commerce, Manufacturing, and Trade
Committee on Energy and Commerce
U.S. House of Representatives
Hearing on
“Oversight of the Consumer Product Safety Commission”
May 19, 2015**

Chairman Burgess, Ranking Member Schakowsky, distinguished Members, thank you for providing the opportunity to discuss the statutory framework for rulemaking at the U.S. Consumer Product Safety Commission (CPSC) in connection with your hearing entitled “Oversight of the Consumer Product Safety Commission.”

I served as the general counsel of the CPSC during the implementation of both the Virginia Graeme Baker Pool and Spa Safety Act (VGBA) and the Consumer Product Safety Improvement Act (CPSIA). The VGBA addressed the risk of entrapment deaths in public pools and spas by mandating compliance with a voluntary safety standard for drain covers, among other things. Among the many improvements the CPSIA brought to consumer safety were provisions, such as the Danny Keysar Child Product Safety Notification Act, that required the CPSC to incorporate voluntary safety standards as mandatory law. The CPSIA also mandated that certain standards, such as the voluntary standard for toy safety, be considered consumer product safety standards by law. I have been asked to discuss the way the CPSC statutes interrelate to the voluntary standards process to inform the Committee’s consideration of H.R. 999.

My testimony will address with specificity the legal framework currently in place to protect consumers from risks of injuries on consumer products, such as recreational off-highway vehicles (ROVs), regulated by the Commission under the authority of the Consumer Product Safety Act (CPSA). *See* 15 U.S.C. 2052(a). Section 7 of the CPSA authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance requirements for a consumer product and also allows the CPSC to provide for product markings and clear and adequate warnings or instructions. In order to promulgate a rule under section 7, the Commission must find the rule reasonably necessary to prevent or reduce an unreasonable risk or injury. *Id.*

Section 9 of the CPSA specifies the process the CPSC follows to issue a consumer product safety standard under section 7. One of the significant changes in the CPSIA was section 204, which expedited rulemaking by eliminating the need to conduct rulemaking using an Advanced Notice of Proposed Rule (ANPR) and allowing the Commission to proceed directly to a Notice of Proposed Rule in the appropriate circumstances. Regardless of which path the Commission chooses, section 9(f)(1), requires that the Commission consider, and make appropriate findings to be included in the rule, concerning the following issues: (1) the degree and nature of the risk of injury that the rule is designed to eliminate or reduce; (2) the approximate number of consumer products subject to the rule; (3) the need of the public for the products subject to the rule and the probable effect the rule will have on utility, cost, or availability of such products; and (4) the means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices. *Id.* 2058(f)(1). To issue a final rule, the Commission must find that the rule is “reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product” and

that issuing the rule is in the public interest. *Id.* 2058(f)(3)(A)&(B). The Commission also must find that the expected benefits of the rule bear a reasonable relationship to its costs and that the rule imposes the least burdensome requirements that would adequately reduce the risk of injury. *Id.* 2058(f)(3)(E)&(F).

In addition, the ANPR rulemaking process, which was followed by the CPSC in connection with ROVs, invites stakeholders to submit existing voluntary standards or a statement to develop or modify a voluntary standard as part of the rulemaking process. The Commission can proceed to make the voluntary standard mandatory if it will eliminate or reduce the risk of injury. *Id.* 2058(b)(1). If a voluntary standard addressing the risk of injury has been “adopted and implemented,” to proceed with its own rulemaking on the same risk, the Commission must find that: (1) the voluntary standard is not likely to eliminate or adequately reduce the risk of injury, or (2) it is unlikely that there will be substantial compliance with the voluntary standard. *Id.* 2058(f)(3)(D). If those findings cannot be made, the rule cannot move forward. Under the CPSA and its implementing regulations, the Commission has “relied” on a voluntary product safety standard if, after commencing a consumer product safety standard rulemaking under section 9 of the CPSA by an ANPR, it terminates the rulemaking based on explicit findings that an existing voluntary consumer product safety standard will yield adequate reduction in the risk under consideration and that it is likely there will be substantial compliance with the voluntary standard. Alternatively, the Commission could terminate the rulemaking and simply defer to the voluntary standard, which is an option the Commission has used in response to petitions for rulemaking.

The legislative history of section 9 directs the CPSC, in considering whether a voluntary standard will eliminate or adequately reduce the risk in question, to study “whether the risk will

be reduced to a sufficient extent that there will no longer exist an unreasonable risk of injury.” House Conference Report No. 97-208, July 29, 1981 [to accompany H.R. 3982] at p. 873. The Commission uses a variety of experts in different directorates and disciplines to help provide the factual support for these findings. Among the more difficult issues for the CPSC to address is whether there will be substantial compliance with a voluntary standard, particularly in today’s economy when so many products are manufactured around the globe. The legislative history of section 9 is also instructive on the finding of substantial compliance and directs that the CPSC consider whether “there will be sufficient compliance to eliminate or adequately reduce an unreasonable risk of injury in a timely fashion.” *Id.* Moreover, compliance must be measured in terms of the number of complying products rather than in terms of the number of complying manufacturers. *Id.* All of the findings by the Commission staff are provided to the public during the notice and comment period for stakeholder input.

The challenges of making voluntary standards mandatory law is one of the most important lessons learned during the VGBA and CPSIA implementation processes. Voluntary standards are iterative. They evolve over the course of years and can be adapted as needed when issues arise. When made mandatory, aspects of the voluntary standard which may be subject to differing interpretations, such as test procedures and methods, can create compliance challenges. It can create new legal obligations and testing costs with respect to aspects of the standard that add very little to overall safety and risk reduction. And it can result in mandatory reporting requirements, agency enforcement action, and other legal ramifications, such as impacting the enforceability of indemnity provisions in a sales contract or insurance coverage in the event of an accident. Uncertainty in the industry as to the meaning of certain provisions in the VGBA test methodology resulted in a significant recall of drain covers several years after the law went into

effect and after significant expense had been incurred by good actors attempting to comply with the law and install new drain covers. A voluntary standard that becomes law requires much more scrutiny from whether test methods are replicable to whether the requirements are based in sound science and will act to reduce the risk of injury.

I hope these comments on the legal framework have been useful. Thank you again for the opportunity to testify today, and I will be happy to answer any questions.

Mr. BURGESS. Chair thanks the gentlelady. Chair recognizes Mr. Pritchard, 5 minutes for an opening statement, please.

STATEMENT OF ERIK PRITCHARD

Mr. PRITCHARD. Good afternoon, Mr. Chairman, Ranking Member, and members of the committee. Thank you for this opportunity to testify in support of H.R. 999, the ROV In-Depth Examination, or RIDE Act. My name is Erik Pritchard. I am the Executive Vice President and General Counsel of the Recreational Off-Highway Vehicle Association, known as ROHVA. ROHVA is a not-for-profit trade association sponsored by Arctic Cat, BRP, Honda, John Deere, Kawasaki, Polaris, Textron, and Yamaha. ROHVA was formed to promote the safe and responsible use of recreational off-highway vehicles, called ROVs, or side-by-sides, in North America.

Between 2011 and 2014 alone, ROV sales are conservatively estimated to total more than 750,000 in the U.S. These popular off-highway vehicles are used safely by families, emergency personnel, and the U.S. military in a variety of environments ranging from mud, to sand, to forest, to trails. This is a high growth industry, and a bright spot in the U.S. manufacturing economy. ROHVA is accredited by the American National Standards Institute to develop standards for ROVs, and has worked with numerous stakeholders for years to develop those standards, commencing in 2008, and culminating in voluntary standards approved in 2010, 2011, and most recently in September 2014. The CPSC has been involved throughout that process.

The newest ROV voluntary standard includes a new dynamic stability and handling test and requirement, as well as new alternative seat belt reminders that were proposed by the CPSC staff, and driver side speed limiting seat belt interlocks found in over 60 percent of the 2015 model year ROVs. Nonetheless, and essentially simultaneously with the approval of the new voluntary standard, the CPSC voted out the pending notice of proposed rulemaking regarding ROVs. The NPR largely ignores the new voluntary standard. Instead, the CPSC staff analyzed the prior 2011 version of the voluntary standard, and based it on testing of vehicles from model year 2010.

In a supplemental briefing submitted 3 weeks after the voluntary standard was approved, the CPSC staff summarily rejected the new standard because it did not match the rulemaking. The CPSC's proposals are not supported by science or real world application. One area of concern is the CPSC's application of on road vehicle dynamics to vehicles used in rugged off-highway environments. Meanwhile, the CPSC actually continues to conduct testing in support of the NPR it has already voted out.

While our review of the CPSC's data underlying the rulemaking is not yet complete, I can share a couple initial observations with you. According to the CPSC's data, where seat belt use is known, approximately 90 percent of riders suffering fatalities did not wear the seat belts that are provided in every ROV. Next, approximately 60 percent of the severe injury rolled sideways incidents in the data were reported by a Plaintiff's law firm. This is a representative example of the reporting relied on by the CPSC. A 46-year-old man was injured by the tip over of an ROV, whose unpadded roll

cage crushed his foot on June 16, 2006. While it has been a year since his accident, foot is still swollen, he finds it extremely difficult to walk, and is in considerable pain, end.

Putting aside the bias of a Plaintiff's lawyers reporting, this is not a scientifically sound approach to gathering data. It tells us nothing about how or why the alleged tip over occurred, and it is not possible to draw any statistical conclusions based on this limited information. These vehicles are significantly more complex than other products under the CPSC's jurisdiction. The ROV manufacturers and engineers have serious safety concerns about the effects of the CPSC's proposals. The RIDE Act will help resolve these matters by having these proposals examined by an independent agency, such as the National Academy of Sciences.

This commonsense approach, resolving technical issues before considering implementation, should be supported by everyone. Some, however, have attempted to characterize the RIDE Act as further delay in a long process. The record, however, does not support that criticism. The voluntary standard has been updated as technology has evolved. The fact that the CPSC spent years drafting a proposed rule based on vehicles from 2010 cannot be evidence that the rule should be pursued, nor is the quantity of pages in the briefing package relevant to their quality. And the NPR comment period has been extended only because the CPSC failed, until recently, to turn over the documents and data underlying the rule-making.

This morning an ROV industry group is meeting with CPSC staff to discuss voluntary standards. ROHVA members went with—met with the CPSC on May 5. The effort to establish a mutually agreeable voluntary standard is the best approach, a view, that I understand, is shared by the CPSC in light of this morning. But in the meantime, the NPR remains pending. It would be a mistake to proceed to a mandatory rule without first conducting the testing contemplated by the RIDE Act. It is imperative that we get this right for the families, emergency personnel, and the military who use these vehicles in a variety of off-highway terrains and conditions. Thank you for your time.

[The prepared statement of Mr. Pritchard follows:]

House Energy and Commerce Committee,
Subcommittee on Commerce, Manufacturing and Trade
United States House of Representatives
Oversight of the Consumer Product Safety Commission
May 19, 2015

Testimony of Erik Pritchard
Recreational Off-Highway Vehicle Association

Good morning Mr. Chairman, Ranking Member, and Members of the Committee. Thank you for this opportunity to testify in support of H.R. 999 – the ROV In-Depth Examination or RIDE Act.

My name is Erik Pritchard; I am the Executive Vice President and General Counsel of the Recreational Off-Highway Vehicle Association, commonly referred to as ROHVA. ROHVA is a not-for-profit trade association sponsored by Arctic Cat, BRP, Honda, John Deere, Kawasaki, Polaris, Textron, and Yamaha. ROHVA was formed to promote the safe and responsible use of recreational off-highway vehicles – called ROVs or side-by-sides – manufactured or distributed in North America.

Between 2011 and 2014 alone, ROV sales are *conservatively* estimated to total more than 750,000 in the United States. That does not include the hundreds of thousands of ROVs sold prior to 2011. These off-highway vehicles are used safely by families, emergency personnel, and the U.S. military in a variety of environments, ranging from mud to sand to forested trails. This is a vibrant, high-growth industry and a bright spot in the U.S. manufacturing economy.

ROHVA is accredited by the American National Standards Institute to develop standards for the equipment, configuration, and performance of ROVs. ROHVA has worked extensively with numerous stakeholders for almost seven years to develop voluntary standards for ROVs, commencing in 2008 and culminating in voluntary standards approved in 2010, 2011, and most recently in September 2014. The CPSC has been involved throughout that process.

The newest ROV voluntary standard features substantive changes directly relevant to the proposed rulemaking. These include, but are not limited to, a new dynamic stability and handling test/requirement, as well as new alternative seatbelt reminder requirements that were previously proposed by CPSC staff and driver-side speed-limiting seatbelt interlocks found in over 60% of the 2015 model year ROVs. As you can see in the attached September 30, 2014 Presentation to the CPSC Chairman at slides 6-8, the voluntary standard has evolved over the years and addresses many CPSC proposals, which also have evolved over the years.

Nonetheless and essentially simultaneously with the approval of the new voluntary standard, the CPSC staff prepared and the Commissioners approved a Notice of Proposed Rulemaking regarding ROVs. The NPR essentially ignores the new voluntary standard requirements. Instead the CPSC staff analyzed the prior 2011 voluntary standard and based its NPR on testing of vehicles from Model Year 2010. Of course, vehicle technology has advanced in the five to six model years since then. In a supplemental briefing submitted about three weeks after the voluntary standard was approved, the CPSC staff summarily rejected the new 2014 standard because it did not match their proposed rulemaking.

The CPSC's proposals are *not* supported by science or real-world application, a fact industry has repeatedly explained to the CPSC's Commissioners and staff. The disagreement is not merely theoretical because the CPSC's proposals raise significant safety concerns. One area of concern is the CPSC's application of on-road vehicle dynamics to rugged, off-highway environments. In the meantime, the CPSC continues to conduct testing in support of the NPR it already has voted out.

While our review of the CPSC's data underlying the rulemaking is not yet complete, I can share some initial observations with you:

- According to the CPSC's data, where seatbelt use was known, approximately 90% of riders suffering fatalities did not wear the seatbelts provided in every ROV.
- Approximately 60% of the severe-injury, rolled-sideways incidents contained in the CPSC's data were reported by a plaintiffs' law firm. This is a representative example of that reporting: "[Name redacted], a 46-year-old man from Indiana, was injured by the tipover of an [ROV] whose unpadded rollcage crushed his foot on June 16, 2006. While it has been a year since his accident, foot is still swollen, he finds it extremely difficult to walk, and [name redacted] is in considerable pain." There are approximately another 70 reports like this one. Putting aside the obvious bias of a plaintiff's lawyer's reporting, this is not a scientifically sound approach to gathering data, it tells us nothing about how or why the alleged tipover occurred, and it is not possible to draw any statistical conclusions based on this limited information.
- Based on the CPSC's data, only a small fraction of the side rollover incidents actually fall under the scenarios envisioned by the CPSC, and those incidents are skewed toward the old vehicles, not the newer ones.

This is an unusual situation that goes beyond a run-of-the-mill industry-regulator dispute. These vehicles are significantly more complex than other products under the CPSC's jurisdiction. The ROV manufacturers' engineers and technical staff have serious safety concerns about the effects of the CPSC's proposals. The RIDE Act will help resolve these matters by having the CPSC's proposals examined by an independent agency, such as the National Academy of Sciences, in consultation with the National Highway Traffic Safety Administration

and the Department of Defense. This common-sense approach – resolving technical issues before considering implementation – should be supported by everyone.

I know that some have attempted to characterize the RIDE Act as just further delay in a long process. The record, however, does not support that criticism. The industry has been working hard at updating the voluntary standard as technology evolves. Additionally, the fact that the CPSC spent several years drafting the proposed rule based on Model Year 2010 vehicles cannot be evidence that the rule should be pursued. Nor is the quantity of pages in the briefing package relevant to the quality of the rulemaking. And the comment period has been extended because the CPSC failed to turn over the documents and data underlying the rulemaking until recently, as the attached March 6, 2015 letter from the CPSC's General Counsel confirms.

This morning one of the industry groups is meeting with CPSC staff to discuss voluntary standards. ROHVA members met with the CPSC staff on May 5. The effort to establish a mutually agreeable voluntary standard is the best approach, a view that I understand is shared by the CPSC. I believe this impasse can be resolved through those discussions. But in the meantime, the NPR remains pending. It would be a mistake to proceed to a mandatory rule without first conducting the testing contemplated by the RIDE Act. It is imperative that we get this right for the families, emergency personnel, and U.S. military who use these vehicles in a variety of off-highway terrains and conditions.

Thank you and please support H.R. 999.

Mr. BURGESS. The Chair thanks the gentleman, gentleman yields back. The Chair is prepared to recognize Ms. Schakowsky. Five minutes for your questions, please.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I just have to begin by saying, as a consumer advocate pretty much all of my adult life, I have been around these conversations for a very long time, and, frankly, I think this panel is reflective of what happens to consumers, three to one, on not doing these kinds of mandatory standards.

You know, one example—I have been working on this rear visibility, and the number of children who are killed in—when—often their parent or grandparent drives their car over backwards on them. We had one in Chicago recently. And now we are going to have, by 2018, mandatory in every car there is going to be a camera. That bill was passed in 2008, and an average of two children die every week. Well, heck, that is not that many kids. 355 deaths from these vehicles since—between 2003 and 2013. And thank you, Ms. Crow-Michael, for reading some of those names, and bringing it home to us. And thank you for your courageous testimony today.

I would like to hear from the industry, instead of why it all ought to be voluntary—because you said 15—I guess that is under the voluntary standards. Fifteen people have died this year, is that right, already? Isn't that—200 and—2015?

Ms. CROW-MICHAEL. Yes, correct.

Ms. SCHAKOWSKY. Yes. So that is under voluntary standards, I take it. Well, maybe cost/benefit doesn't make that worthwhile to have mandatory standards. I disagree. And I think that, while you want to get it right, absolutely, I am sick of hearing, the fault is the trial lawyers, the fault is the user who doesn't put on the seat belt. And if we can do something to save another life, and I am with you, then we need to have mandatory standards.

So I am wondering if you had any feeling that you had any reason not to trust the vehicle that your son was using when you looked at that.

Ms. CROW-MICHAEL. In the beginning, I really feel like the vehicles give a perception of safety, but ROVs are not safe. And the fact that so many children have lost their lives has proven that, time and time again.

Ms. SCHAKOWSKY. And when your son was bucked into the vehicle, did you trust that the seat belt would keep him from being thrown from the vehicle, just like it would in a car?

Ms. CROW-MICHAEL. Of course. We think the products that we buy are safe.

Ms. SCHAKOWSKY. Did the vehicle your son was riding look like the kind of vehicle that would lead to more than 300 deaths? Or I guess you already said the vehicle—

Ms. CROW-MICHAEL. Absolutely not.

Ms. SCHAKOWSKY. Proponents of the CPSC rule, an activist like yourself, had said that the type of everyday use of the ROVs that lead to rollover deaths is not necessarily obvious to riders, particularly children. Do you agree?

Ms. CROW-MICHAEL. I agree.

Ms. SCHAKOWSKY. And based on your work advocating on behalf of other victims of ROV accidents, do you believe that children are particularly vulnerable?

Ms. CROW-MICHAEL. I do, and I believe waiting for more data is waiting for more deaths.

Ms. SCHAKOWSKY. So what I would like to see is, rather than saying we have to have perhaps years more of study, and years more of death, that the industry work with the advocates, and with the CPSC, and with their investigators, to—if you don't think the rule—the mandatory rule is proper, then figure out what a mandatory rule ought to look like. Didn't you say, Ms. Falvey, that there are imports, et cetera, and that, you know, we need to look at all of those?

Ms. FALVEY. The way the statute would work, the Commission would need to know that there is substantial compliance before they relied upon a voluntary standard. Or they could just decide, we don't have confidence in these foreign manufacturers, and that they will be compliant, and move forward with their final rule.

Ms. SCHAKOWSKY. So why don't we have a mandatory standard that would apply to all, including imports? I mean, I just feel so strongly that when we have an opportunity to do something that is going to save a life, and I know that there are complicated mathematics that figures out money spent, is it worth a life? I don't really abide by that, and it seems to me that 335 is enough, I think your son is enough, that we ought to move ahead. I support moving ahead as quickly as possible with the mandatory standards, and I yield back.

Mr. BURGESS. The Chair thanks the gentlelady, gentlelady yields back. I will recognize myself, 5 minutes for questions.

Ms. Falvey, let me just, first off, say thank you for your work on the Virginia Graeme Baker pool standards. I was on the subcommittee when that bill went through, and actually added the language for ornamental pools because, as you may recall, we lost a number of people at a Fort Worth water garden just shortly before that came through, which underscored to me the necessity of including ornamental pools, as well as backyard pools. But when you were doing the drain cover recall, did you go from a voluntary standard to a mandatory standard during that process?

Ms. FALVEY. Yes, we did.

Mr. BURGESS. And what were the advantages, or perhaps the disadvantages, in moving from the voluntary to the mandatory standard?

Ms. FALVEY. The advantage is always safety and stopping death. You are always tempted to move as quickly as possible in order to address an addressable risk. The disadvantage in that circumstance is—

Mr. BURGESS. Let me just interrupt you there for a second, if I could, because—which is the more expeditious path, the voluntary or the mandatory?

Ms. FALVEY. It depends, but it can be more expeditious to rely on the voluntary standard. You get industry and the CPSC staff working together on a standard that everyone can agree on.

The problem with doing it too quickly, and mandating it as law when it is not quite ready to be law is that, in that case, we didn't

make things safer fast enough, in that the drain covers were tested by different labs in different ways. We didn't know that the test results—exactly how to do the tests at the lab level, and there were different labs passing different drain covers, and we ended up with pools with brand new drain covers installed that weren't compliant. And we had to recall those, pull them out, and put them in, properly tested.

That works well in the voluntary world, where things can be iterative and change over time. When you make it mandatory law, it changes the equation. And so while it is helpful, from a safety perspective, to move as quickly as possible, and that is always the CPSC's goal, if you don't do it right, it can cost an enormous amount of money, and it doesn't save lives. And that is what we want to try to avoid.

Mr. BURGESS. Very well. Now, we—Mr. Pritchard, I guess I should ask this question of you. The list that Ms. Crow-Michael read is impressive, but it is also impressive because of the young age of so many of the people who were—who met their demise. Is there—do you placard these machines with an age restriction, or a recommendation for training under certain ages?

Mr. PRITCHARD. We do. The industry's recommendation is that, in order to drive an ROV, you need to be at least 16 years of age, and have a valid driver's license. These are not toys. These are not meant to be driven by children. This is on the machines, it is part of the free online training that is available to everyone. It is certainly part of the hands-on training that is available. Children don't belong behind the wheel of these vehicles.

We have covered a lot of ground here in sort of very short form. One thing I do want to clarify is that, when we talk about a voluntary standard, and the requirements under the voluntary standard, that is enforceable. That is enforceable by the CPSC. It is not voluntary in the sense of an opt-in and opt-out. It is the standard. And that is how the approximately 14 to 15,000 other products that are under the jurisdiction of the CPSC are handled. I mean, you could—you can imagine the CPSC trying to write 15,000 different standards for every product out there. So the voluntary standard is enforceable.

Mr. BURGESS. Yes. Let me just interrupt you for a minute, because I am going to run out of time, and I want to be respectful of the other members.

Now, Ms. Crow-Michael, on your—I think it is a Facebook page that is set up to the memory of your son, there is a list of I guess safety measures, for want of a better term. One mentions the age, another mentions a helmet. I mean, these are things that your organization recommends?

Ms. CROW-MICHAEL. First off, I don't have an organization, per se. But if we are talking about the fact that children shouldn't be on them, then I would have to say, what about Karen Harwood, 46, or Andrea Jones, who is 34?

Mr. BURGESS. And that is an excellent point, and I was going to ask Mr. Warfield, is there—you have studied this for a long time.

Mr. WARFIELD. Yes.

Mr. BURGESS. Does, you know, the age placarding may be one thing, but does there—I want to say this as nicely as I can, but

does body mass make a difference? That is, the lighter the driver—because most of the people older than age 16 that Ms. Crow-Michael mentioned on her list, most of those were women, so presumably of lighter body weight. Does that make a difference? Is that something that you have studied?

Mr. WARFIELD. Not the weight itself, sir. What I see time and time again with these machines, it is operator error. It has almost nothing to do with the design of the vehicle. Please let me carry it one step further here. I have been operating these machines since 1985. I currently have 13 ATVs. I have four ROVs. I have a brand-new one coming in today. I am on those ROVs every day, either maintenance or through training. I have never rolled an ROV over. I have never rolled an ATV over. I have operated these machines in every State in the United States, including Alaska and Hawaii, except for North Dakota. I don't know why I missed that on North Dakota.

But what I am getting at is I put these machines through their paces, through training, through an advocate of riding. I wear a helmet, I make sure the proper age person is operating the machine. I follow the guidelines. So what I am saying is, I have trusted this industry. I have trusted this industry that they have shown me—they have given me and my family a vehicle that is safe to operate. I am really concerned that now CPSC is saying, wait a minute, there is something wrong here.

And to answer your question, why wait? I have been operating a machine that was perfectly capable of doing everything I wanted. If we are going to make a change, let us make sure that change is not a negative change.

Mr. BURGESS. All right. I am going to ask you to hold that thought, and the Chair will recognize Ms. Clarke. Five minutes for questions, please.

Ms. CLARKE. Thank you, Mr. Chairman. I thank the Ranking Member, and I thank our witnesses for their testimony here today. It has been more than a half a decade since the Consumer Product Safety Commission issued the advance notice of proposed rule-making in 2009. Since then, CPSC has conducted thorough research to determine the appropriate mandatory standards for ROVs. CPSC staff reviewed more than 550 ROV related incidents, 335 of which resulted in the death of the driver, or passenger, or both. Each incident was reviewed by a multi-disciplinary team, including—including an economist, human factors engineer, a health scientist, and a statistician. The Commission also worked with FEA Limited, a CPSC contractor, to create a ROV rollover simulator from scratch. In addition to the agency's own data collection, this year the CPSC also held a 7-hour public meeting in which the Commission heard testimony from and asked questions of witnesses both for and against the proposal. By any traditional measure, internal research, hypothetical simulation, incident review, and public input, the Commission has conducted a thorough investigation and has more than enough information to issue appropriate standards.

Ms. Crow-Michael, your son was not the only person affected by weak safety standards that allowed Yamaha to continue selling defective versions of the Rhino ROV. In 2009 the Consumer Product

Safety Commission estimated that 59 people were killed riding the Rhino. In fact, the Rhino incident—accident epidemic was one of the primary drivers of the Commission's original rulemaking. But H.R. 999 would force the CPSC to contract with the National Academy of Sciences to conduct further research before implementing these reasonable and thoroughly tested standards. So my question to you, Ms. Crow-Michael, is do you think more data is needed to determine the ROVs that are currently on the market are unsafe?

Ms. CROW-MICHAEL. CPSC, I think they have worked hard to get the data that they have. They have spent money to gather and understand that data. More delay puts and all people at serious risk of injury [sic]—injury or death, I am sorry. But I don't think more data is needed. I think it has been enough time, and I—and, like I said before, waiting for more data is waiting for more death.

Ms. CLARKE. Then let me just follow up with that question. You have suffered an unspeakable loss because of an unsafe ROV. Do you think that the CPSC is rushing to judgment in proposing standards for a recreational activity responsible for more than 330 deaths in the last decade?

Ms. CROW-MICHAEL. No.

Ms. CLARKE. I thank you. Mr. Chairman, I yield back the balance of my time.

Mr. BURGESS. Chair thanks the gentlelady, gentlelady yields back. Chair recognize the gentleman from Kentucky, 5 minutes for questions, please.

Mr. GUTHRIE. Thank you, Mr. Chairman, and thank you all for being here to testify today. I have a question for Mr. Pritchard. I notice in your testimony you mention that the ROHVA is accredited by the American National Standards Institute to develop standards for the equipment, configuration, and performance of ROVs. Can you tell us more about this process, and how voluntary safety standards have been developed over the last few years, and does this process involve the CPC? I know you touched on it a little bit, but how that process of voluntary standards that are mandated, and is the CPSC involved?

Mr. PRITCHARD. Absolutely, and cut me off when you get tired of listening, because I could talk about this all day. ROHVA was formed in 2007. The work on a voluntary standard began in 2008, so essentially almost immediately. In 2010 a voluntary standard was developed and published, then another version in 2011, and another version in 2014 reflecting the evolving technology.

The way the process works is you get the process started through a procedure mandated by—it is ANSI [ph], that is the acronym, for this process. You put out a proposed draft standard to the canvas, and the canvas is made of a variety of stakeholders, and the stakeholders include—in every iteration has included the CPSC. It has included consumer groups. It has included industry. It has included user groups. It is a broad swath. And the way this works is people get the draft, the canvasees comment, and submit their comments back in. The comments are shared with everyone on the canvas, then ROHVA responds to those comments. Each one has to say, your suggestion for this area, say seat belts, here is our response.

Then the canvas gets all of those comments from ROHVA back to the canvasee, so everyone gets to see this full exchange of infor-

mation, and then a consensus is built around the voluntary standard. It is then sent to ANSI, here is how we did it, and ANSI checks that process and verifies that you followed the ANSI procedure. When ANSI approves it, then it becomes official, and ultimately a book, for lack of a better word, is published, and that becomes the standard by which all of the vehicles subject to that voluntary standard must conform.

Mr. GUTHRIE. So then it becomes mandatory?

Mr. PRITCHARD. It is voluntary—

Mr. GUTHRIE. So what is the difference between mandatory and voluntary, then?

Mr. PRITCHARD. Sure. It is voluntary in the sense of—it is developed by stakeholders, but it is enforceable. Mandatory means the CPSC imposes what it thinks is the best approach. And where we are now is at an impasse between a voluntary standard that is brand new, that just came out in September 2014, and a mandatory standard, or at least a proposal for a mandatory standard, based on the old standard, but a mandatory standard proposed by the CPSC. And the engineers and industry just think CPSC has got this wrong.

Mr. GUTHRIE. Well, was the voluntary standard better? What—was it more likely to protect life than the mandatory standard?

Mr. PRITCHARD. So—

Mr. GUTHRIE. What are the critical differences, and why is yours better?

Mr. PRITCHARD. So there are three—what I call three fundamental differences between the two. One is on vehicle handling. The CPSC wants to impose something called an understeer mandate. Every vehicle must understeer, and I can tell you about that. The next is testing lateral stability. The CPSC's test for lateral stability, frankly, suffers from problems with repeatability and reproducibility, which the CPSC is conducting testing to address right now. The final piece is seat belts. CPSC has proposed a seat belt interlock which would essentially prevent the vehicle from moving above 15 miles an hour if the seat belts aren't moved in both the driver and the passenger seat.

Now, in the driver seat, there is actually a lot of agreement, and the voluntary standard includes that as an approach. The dispute really is over the passenger seat. CPSC commissioned a study of the passenger seat interlock. They just got the results I think in February. They published them in March. So they got these after the voluntary standard was voted out. And the study confirmed what industry had been telling—that we have heard from our own consumers, which is no one wants this passenger side seat belt interlock because drivers don't want to lose control of their vehicle. You add on top of that the technical challenges, which would be if you put your dog in the seat, your toolbox in the seat—this is an area for which there is no answer.

And the final wrinkle on this is that even on the driver's side seat belt interlock, you—it doesn't work with a diesel or carbureted engine, because it has to be talking with a computer. Computer has to talk from the seat belt through the speed limited to tell it that we have a connection here. So that is one small example of what

is a, frankly, complex area. And the CPSC's engineers, while I believe well intentioned, don't have this right.

And I want to add, we didn't get—we went through this voluntary standard process last year, which I didn't think the CPSC was very engaged in. A better way to put that, though, is that they seem to be much more engaged with industry now. And there is a meeting taking place right now between industry and CPSC staff to discuss the voluntary standards. That is the path forward.

Mr. GUTHRIE. Thank you. And, before I yield back, if I could ask—I want to say, Ms. Crow-Michael, thank you for coming. Your advocacy is very important, and thoughts and prayers are with you. But thank you for taking this cause, and hopefully we can come to the right standard and do the right—and have the right thing as a result. Thank you.

Mr. BURGESS. Gentleman yields back. The Chair thanks the gentleman. Chair recognizes Ms. Schakowsky for the purpose of a unanimous consent request.

Ms. SCHAKOWSKY. I would like to put on the record the statement of G.K. Butterfield; the statement of John Sand, father of an ROV victim; letters from the American Academy of Pediatrics; letter from various consumer groups; testimony of Rachel Weintraub of the Consumer Federation of America before the CPSC; Citizens' Report that Ms. Crow-Michael referred to in her testimony. We will add that to the permanent record.

Mr. BURGESS. Without objection, so ordered.

Chair would just note I offered Ms. Schakowsky a follow-up question. She declined. I did have one follow-up question that I wanted to ask.

Ms. Crow-Michael, your son was injured on the Yamaha Rhino 450. Just ask the question of anyone on the panel, is that particular model still available? Is that something that is still sold on the market?

Mr. PRITCHARD. I can address it.

Mr. BURGESS. Please.

Mr. PRITCHARD. That vehicle is not sold. In fact, you are talking about a vehicle from 2007, if I recall your testimony correctly. We are now three voluntary standards past that, so the technology has evolved beyond that. I can add, there are tens of thousands of those Rhinos still in use that people enjoy, at this point have probably put on hundreds of thousands, if not more, hours of use. But, no, the technology for these vehicles has evolved, and we are now in a new standard.

Mr. BURGESS. But you could still buy one on Craigslist?

Mr. PRITCHARD. Yes, I would guess.

Mr. BURGESS. Yes. So it is going to be an informational challenge to get information to people who may be new purchasers of old machines.

Mr. PRITCHARD. But those vehicles—and, respectfully, are not defective, period—I think that these incidents are more complicated than what we have heard today. I don't think that is the focus of today. I think the focus of today is, can we get this right between industry and the CPSC, and if the CPSC just won't listen to industry, they won't listen to the folks who make these vehicles, maybe they will listen to the National Academy of Sciences.

Mr. BURGESS. Very well. Chair wishes to thank all members of the panel. Ms. Crow-Michael, I just echo what Mr. Guthrie said. I am sure every member of the subcommittee extends to you our condolences for your loss.

Seeing that there are no further members wishing to ask questions, before we conclude, I would like to submit the following documents for inclusion in the record by unanimous consent: statement for the record from Commissioner Marietta Robinson from the Consumer Product Safety Commission; a letter—we already did Mr. Olson's letter; a response letter from Chairman Elliot Kaye to Chairman Olson.

[The information appears at the conclusion of the hearing.]

Mr. BURGESS. Pursuant to committee rules, I remind members they have 10 business days to submit additional questions for the record. I ask the witnesses to submit their response within 10 business days upon receipt of the questions. Without objection, again, my thanks to the panel, and thank you for staying with us through a long morning. Without objection, the subcommittee is adjourned.

[Whereupon, at 12:45 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. FRED UPTON

As one of the smaller agencies that this committee oversees, the Consumer Product Safety Commission has a critically important mission: to protect consumers against unreasonable risks of injury from consumer products.

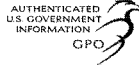
Over 15,000 different products fall within the Commission's jurisdiction—from toys and baby cribs to swimming pools and recreational off-highway vehicles. The Commission's work is critically important, but over the years there have been many issues raised with the Commission's implementation of its mission. When the Commission overreaches, it can jeopardize safety and erode Congress' trust. I have a responsibility to families in southwest Michigan to ensure the CPSC is focusing on its whole mission of safety, and not just on headlines or a few interest driven priorities.

Today, I am pleased to see Chairman Elliot Kaye, as well as Commissioners Ann Marie Buerkle and Joseph Mohorovic before the subcommittee for the first time in their new capacities. And Commissioner Adler, we welcome you back. I would also like to welcome the witnesses of the second panel here to talk about Mr. Pompeo's bipartisan legislation, H.R. 999.

Oversight of an agency with such broad jurisdiction is critical to ensuring unsafe products are either stopped from coming into the stream of commerce or are taken off the shelves in a seamless and timely manner. I look forward to hearing from the Commissioners about issues currently before them as well as their budget and regulatory priorities for the upcoming fiscal year. In particular, I would like an update on the progress being made on third party testing burdens that impact small businesses.

I would also like to hear more about how the Commission prioritizes consumer education initiatives for known hazards in specialized circumstances, such as the newly announced "Best for Kids" program for window coverings, and how working with industry has provided opportunities for additional outreach. We have seen an increase in company-driven safety initiatives, ranging from this year's Super Bowl ads to the self-directed recall of Fitbit activity bands last year. The potential for co-operation and partnerships should not be overlooked when consumer safety is at stake.

Everyone in this room shares the common goal of protecting consumers. Today's hearing is a positive step and I look forward to continuing to work with my colleagues on the off-road vehicles and other issues.



114TH CONGRESS
1ST SESSION

H. R. 999

To direct the Consumer Product Safety Commission and the National Academy of Sciences to study the vehicle handling requirements proposed by the Commission for recreational off-highway vehicles and to prohibit the adoption of any such requirements until the completion of the study.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2015

Mr. POMPEO (for himself, Mr. PETERSON, Mr. PAULSEN, Mr. HARPER, Mr. DUFFY, Mr. STEWART, Mr. KING of Iowa, Mr. SIMPSON, Mr. BENISHEK, Mr. KLINE, Mr. ZINKE, Mr. OLSON, Mrs. NOEM, Mr. AMODEI, and Mr. STIVERS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To direct the Consumer Product Safety Commission and the National Academy of Sciences to study the vehicle handling requirements proposed by the Commission for recreational off-highway vehicles and to prohibit the adoption of any such requirements until the completion of the study.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “ROV In-Depth Exam-
5 ination Act”.

1 **SEC. 2. RECREATIONAL OFF-HIGHWAY VEHICLE STAND-**
2 **ARDS STUDY.**

3 (a) NO MANDATORY STANDARDS REGARDING PER-
4 FORMANCE OR CONFIGURATION OF ROVs.—

5 (1) IN GENERAL.—The Consumer Product
6 Safety Commission shall have no authority to estab-
7 lish any standards concerning the performance or
8 configuration of recreational off-highway vehicles
9 until after the completion of the study required by
10 subsection (b). This prohibition includes a prohibi-
11 tion on the exercise of any authority pursuant to
12 section 27(e) of the Consumer Product Safety Act
13 (15 U.S.C. 2076(e)) to require ROV manufacturers
14 to provide performance and technical data to pro-
15 spective purchasers and to the first purchaser of an
16 ROV for purposes other than resale.

17 (2) VOLUNTARY STANDARDS.—Nothing in this
18 section shall be construed as suggesting that ROVs
19 shall not be manufactured in compliance with appli-
20 cable voluntary standards.

21 (b) STUDY.—

22 (1) IN GENERAL.—The Commission shall con-
23 tract with the National Academy of Sciences to de-
24 termine—

25 (A) the technical validity of the lateral sta-
26 bility and vehicle handling requirements pro-

1 posed by the Commission in a notice of pro-
2 posed rulemaking published in the Federal Reg-
3 ister November 19, 2014 (79 Fed. Reg. 68964),
4 for purposes of reducing the risk of ROV roll-
5 overs in the off-road environment, including the
6 repeatability and reproducibility of testing for
7 compliance with such requirements;

8 (B) the number of ROV rollovers that
9 would be prevented if the proposed require-
10 ments were adopted;

11 (C) whether there is a technical basis for
12 the proposal to provide information on a point-
13 of-sale hangtag about a vehicle's rollover resist-
14 ance on a progressive scale; and

15 (D) the effect on the utility of ROVs used
16 by the Armed Forces if the proposed require-
17 ments were adopted.

18 (2) CONSULTATION AND DEADLINE FOR RE-
19 PORT.—The National Academy of Sciences shall
20 consult with the National Highway Traffic Safety
21 Administration and the Department of Defense in
22 carrying out the study required by this subsection.
23 The National Academy of Sciences shall complete
24 and transmit to the Commission a report containing

1 the findings of the study not later than two years
2 after the date of enactment of this Act.

3 (3) REPORT TO CONGRESS.—Within five days
4 of receiving the report described in paragraph (2)
5 from the National Academy of Sciences, the Com-
6 mission shall transmit the report, along with any
7 comments of the Commission, to the Committee on
8 Energy and Commerce of the House of Representa-
9 tives and to the Committee on Commerce, Science
10 and Transportation of the Senate.

11 (4) CONSIDERATION.—The Commission shall
12 consider the results of the study in any subsequent
13 rulemaking regarding the performance or configura-
14 tion of ROVs, or the provision of point-of-sale infor-
15 mation regarding ROV performance.

16 (c) DEFINITIONS.—As used in this section:

17 (1) COMMISSION.—The term “Commission”
18 means the Consumer Product Safety Commission.

19 (2) RECREATIONAL OFF-HIGHWAY VEHICLE.—
20 The term “recreational off-highway vehicle” or
21 “ROV” means a motorized off-highway vehicle de-
22 signed to travel on four or more tires, intended by
23 the manufacturer for recreational use by one or
24 more persons and having the following characteris-
25 ties:

1 (A) A steering wheel for steering control.

2 (B) Foot controls for throttle and service
3 brake.

4 (C) Non-straddle seating.

5 (D) Maximum speed capability greater
6 than 30 miles per hour.

7 (E) Gross vehicle weight rating no greater
8 than 3,750 pounds.

9 (F) Less than 80 inches in overall width,
10 exclusive of accessories.

11 (G) Engine displacement equal to or less
12 than 61 cubic inches for gasoline fueled en-
13 gines.

14 (H) Identification by means of a 17-char-
15 acter personal or vehicle information number.

16 (3) EXCLUSION.—Such term does not include a
17 prototype of a motorized, off-highway, all-terrain ve-
18 hicle or other motorized, off-highway, all-terrain ve-
19 hicle that is intended exclusively for research and de-
20 velopment purposes unless the vehicle is offered for
21 sale.

○



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

COMMISSIONER MARIETTA S. ROBINSON

May 13, 2015

The Honorable Michael Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn Office Building
Washington, DC 20515

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Commerce,
Manufacturing, and Trade
Committee on Energy and Commerce
United States House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Burgess and Ranking Member Schakowsky:

Thank you for your invitation to appear on May 19, 2015 at the House of Representatives, Committee on Energy and Commerce, Subcommittee on Commerce, Manufacturing, and Trade hearing entitled "Oversight of the Consumer Product Safety Commission" (CPSC). Unfortunately, I have a long-standing commitment to attend the annual meeting of the International Women's Forum in South Africa, and regret that I will not be able to attend the hearing in person. I have attached a statement to this letter that I request be entered into the hearing record in lieu of my testifying in person.

I always enjoy appearing with my colleagues to discuss the CPSC and the incredible work that our dedicated staff performs every day protecting American consumers from the risks of unreasonable injury or death. It is my honor to serve as a Commissioner at this agency and I look forward to speaking with you about the CPSC in person in the future.

Thank you again for your letter and for your continued support of the Commission and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me by telephone at (301) 504-7982, or by e-mail at mrobinson@cpsc.gov.

Sincerely,

A black rectangular box redacting the signature of Marietta S. Robinson.

Marietta S. Robinson
Commissioner

Enclosure



Statement for the Record

**Marietta S. Robinson
Commissioner
U.S. Consumer Product Safety Commission**

**To the
U.S. House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade**

**“Oversight of the Consumer Product Safety Commission
and the FY 2016 Performance Budget Request”**

May 19, 2015

Commissioner Marietta S. Robinson Statement for the Record
To the Commerce, Manufacturing and Trade Subcommittee
May 19, 2015

Commissioner Marietta S. Robinson
Executive One-Page Summary - Statement for the Record
U.S. House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade

Chairman Burgess and Ranking Member Schakowsky, I appreciate the opportunity to submit this Statement for the Record in connection with the subcommittee's general oversight hearing on the Consumer Product Safety Commission. I regret that I could not appear in person as a result of preexisting international travel plans.

I have focused my statement on five key areas which I believe must be funded at the requested and appropriate levels identified in U.S. Consumer Product Safety Commission's ("CPSC") FY2016 Budget Request to Congress in order for the CPSC to carry out its critical public health and safety mission. I believe that the CPSC 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.

My statement explains these five areas in detail and provides an explanation as to why I believe it is imperative that these key areas be fully funded in the CPSC FY16 Budget. Moreover, the review of these critical areas also highlights the specific work my personal staff and I are doing to further support the CPSC's FY16 Budget and public health mission.

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**Commissioner Marietta S. Robinson
Statement for the Record
U.S. House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade**

I want to thank Chairman Burgess, Ranking Member Schakowsky and Members of the Subcommittee on Commerce, Manufacturing and Trade for providing the U.S. Consumer Product Safety Commission (CPSC) with this opportunity to appear at a public hearing and submit testimony.

The hearing now scheduled for May 19, 2015 was originally scheduled for March 5, 2015. At that time I had confirmed my appearance before the Subcommittee. Unexpectedly, the hearing on March 5, 2015 was cancelled due to serious weather conditions here in Washington, D.C. Unfortunately, I will be unable to appear in person at the rescheduled hearing date, because I have a preexisting commitment to travel to Johannesburg, South Africa to attend the International Women's Forum (IWF) Cornerstone Conference. IWF Cornerstone Conferences are held in regions and markets around the world that are critical to our global success and provide access to leaders with insight on topics impacting international progress, business, economics, ecology, enterprise, and the sustainability of human endeavor. I deeply regret being unable to attend the rescheduled hearing and greatly appreciate this opportunity to submit the following statement for the record prior to the hearing date.

* * *

The last time I was before Congress was for my Senate confirmation hearing in May 2012. I was confirmed 13 months later and, since July 2013, I have had the privilege of serving as Commissioner at the U.S. Consumer Product Safety Commission.

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I am delighted to have this opportunity to submit this statement for the record concerning the “Oversight of the CPSC and the CPSC Fiscal Year 2016 Performance Budget Request (FY16 budget)” 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 certainly could be making much more money elsewhere. 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 under our jurisdiction. 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!

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.

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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.

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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.

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 approximately 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

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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.

(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

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

² *Id.* at 9.

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

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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.

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 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 consumer products. However, it was very discouraging to read that "the majority of recalled children's products continue to remain in consumer hands (79.79%)."⁶ And that "[o]nly 14% 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 must also use those social media tools when they have a product recall. There is more and more research being

⁴ *Id.*

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

⁶ *Id.* at 2.

⁷ *Id.*

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

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done on the implications to companies using social media in publicizing recalls. One recent study showed that companies using certain types of social media in specific ways 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 intend 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 15 minutes, someone 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

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/>

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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

In FY15, the CPSC is dedicating \$400,000 to a media campaign “*Anchor It!*” 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. 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 imported approximately \$723 billion of consumer products under the CPSC’s jurisdiction.¹² That averages nearly \$2 billion per day in imports of consumer products under the CPSC’s jurisdiction.¹³ And, 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 products.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

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

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

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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 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.

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.

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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

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

¹⁸ *Id.*

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consumer products. However, due to the complexities of nanotechnology and the rapidly evolving technology of developing 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*, and 13579 *Regulation and Independent Regulatory Agencies*, 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

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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.

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.

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.

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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.

There are some discouraging things about this job such as the length of time it takes to get a mandatory standard passed when industry simply will not pass an appropriate voluntary standard that adequately reduces the risks of death or injury.

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

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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 this past year and a half. 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 Burgess, Ranking Member Schakowsky, and the Members of the Subcommittee on Commerce, Manufacturing and Trade, for this opportunity to submit this statement for the record.

I am happy to respond to any questions that you may have upon my return to the United States.

PETE OLSON
22ND DISTRICT, TEXAS
312 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5951

1650 HIGHWAY 6
SUITE 150
SUGAR LAND, TX 77478
(281) 494-2690

6302 WEST BROADWAY STREET
SUITE 220
PEARLAND, TX 77581
(281) 485-4855



Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEE ON
ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND POWER
SUBCOMMITTEE ON COMMERCE,
MANUFACTURING AND TRADE
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

February 25, 2015

The Honorable Elliot Kaye
Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

Dear Chairman Kaye:

On February 2, 2015 the Consumer Product Safety Commission (CPSC) submitted the Fiscal Year 2016 Performance Budget Request to Congress. The largest element of the budget request is five million dollars for a new nanotechnology research center.

As a student at Rice University in the 1980s, I had the pleasure of being a student in the Father of Nanotechnology, Dr. Richard Smalley's classroom. I am only one of many students that he has inspired and fueled an interest in nanotechnology that continues today. While I am supportive of growing the nanotechnology field, I am concerned about CPSC's budget request.

Nanotechnology is not a simple subject area that is discrete to one industry or product category. As defined by the National Nanotechnology Initiative, nanotechnology is "the understanding and control of matter...at dimensions between approximately 1 and 100 nanometers (one-billionth of a meter)." For example, a sheet of paper is 100,000 nanometers thick. This example illustrates that even though paper can be measured in nanometers, and matter manipulated at that level, there is not an inherent new risk associated with a sheet of paper. One of the exciting things about nanotechnology is the leadership role the United States has played in its development and its potential for job growth across a variety of industries.


The CPSC's budget request caught my attention because it accounts for almost 85% of the proposed budget increase for the agency and almost 4% of the entire CPSC budget. I believe strongly in the importance of clearly identifying measureable metrics of success for programs at the CPSC tied to reducing unreasonable risks of injury or death associated with consumer products when there are limited resources. The request for a major new nanotechnology center is lacking any of this specificity.

According to the budget request the Center for Consumer Product Applications and Safety Implications of Nanotechnology (CPASION) "will be an academically based consortium of scientists focused on supporting the CPSC's unique mission through research directed toward the development of robust methods to identify nanomaterials in consumer products and to understand human exposures to those materials. The research will target the development of methods for quantifying and characterizing the presence, release, and mechanisms of consumer exposure to nanomaterials from consumer products."

The prospect of starting an entire new nanotechnology center at the CPSC is a major undertaking that requires far more detail and examination than the CPSC has provided. Other than the paragraph description above and a comparison to a "similarly sized" Environmental Protection Agency research center, there are scant details in the request about the success metrics or originating research topics for the center outside of "developing test methods to quantify exposures and assess health risks." I am concerned about the Commission's processes to evaluate any work product from the proposed CPASION and what expertise depth exists at the agency around the science of nanotechnology. Any agency wading into a new area should have a strong scientific foundation and expertise for that area and nanotechnology is no exception. There is no indication in the performance budget request who at the Commission or how the Commission would process and evaluate the findings of CPASION. There is no indication of transparency and input from interested parties, either.

With the range of consumer risks in the marketplace, consumers deserve to know that the CPSC is prioritizing unreasonable risks, as mandated by its mission, and allocating staff and funding resources to where it can be most effective, and not in areas where its expertise is suspect. Anything else sends the wrong message and risks the bright future of nanotechnology across the U.S. economy. I would request that the CPSC share a full and detailed budget and operating plan for the CPASION along with a response to the concerns raised above by March 5, 2015.

Very respectfully,

A handwritten signature in dark ink, appearing to read "Pete Olson", written over the typed name.

Pete Olson
Member of Congress



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814
CHAIRMAN ELLIOT F. KAYE

March 30, 2015

The Honorable Pete Olson
United States House of Representatives
312 Cannon House Office Building
Washington, DC 20515

Dear Congressman Olson:

Thank you for your letter regarding the U.S. Consumer Product Safety Commission's (CPSC) Fiscal Year 2016 Performance Budget Request to Congress and our proposal for funding a consumer product nanotechnology research center. I greatly appreciate your interest in the CPSC and your familiarity with the topic of nanotechnology. Indeed, nanotechnology is an exciting field that appears to hold great promise for U.S. manufacturers and has the potential to become an even far greater economic boon for many sectors of the U.S. economy.

As the agency charged with protecting consumers from unreasonable risks of injuries from consumer products, CPSC knows that exciting scientific breakthroughs, such as nanotechnology, can also present challenges in anticipating and addressing newly-presented potential risks to consumers. This knowledge keeps us keenly aware of the need to address known hazards while at the same time endeavoring to prepare for the next potential emerging hazard. We believe that our Performance Budget Request allows us to accomplish these goals, particularly regarding nanotechnology and in a cost-effective manner.

As your letter notes, our request to create a nanocenter, based on a successful model used by the National Science Foundation (NSF) and the Environmental Protection Agency (EPA) to study and characterize human exposures to nanomaterials from consumer products is a significant project and one we take very seriously, which is why CPSC has been studying the issue since 2003. Currently, CPSC co-chairs the

The Honorable Pete Olson
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Nanotechnology Environmental and Health Implications (NEHI) working group within the National Nanotechnology Initiative (NNI), which focuses on environmental, health, and safety implications of nanomaterials. CPSC staff also served on the advisory board for the Rice University-based International Council on Nanotechnology (ICON), which was supported by funding from the National Science Foundation. Serving on ICON's advisory board presented an excellent opportunity for CPSC staff to be engaged in, and develop a greater understanding of, cost effective approaches for addressing the critical issues surrounding the applications and implications of nanotechnology. The ICON facilitated the staff's exchange of information with scientists and stakeholders participating in various ICON projects, and at the same time allowed staff to observe ICON's focus on promoting effective nanotechnology stewardship through hazard assessment, research and risk communication.

Since 2011, CPSC has spent less than \$10 million researching the implications of nanomaterials in consumer products, which is less than .0015% of what the federal government has committed to studying the potential environmental, health, and safety (EHS) impacts of this technology. Although \$22 billion has been allocated to nanotechnology research and development overall, the CPSC's relatively small expenditures has been the only dedicated examination of the technology in consumer products to this point. This work has provided for foundational research that has allowed us to understand some of the initial consumer applications of nanotechnology and the breadth of the type of products employing nanotechnology. In addition, it has made us aware of concerns that have been raised within the scientific community regarding possible health risks associated with exposure to certain nanomaterials and the pressing need for the development of robust test methods and exposure assessments needed to measure nanomaterial exposure from consumer products.

Simply put, our work has identified significant data gaps regarding exposure to nanomaterials from consumer products that CPSC must address to assist with the responsible development and commercialization of nanotechnology. Although almost \$1 billion has already been spent examining certain types of EHS risks, CPSC is the only agency specifically responsible for studying the issue of exposure to nanomaterials from consumer products. If, for example, a consumer product containing nanomaterials was alleged to have resulted in an illness or injury, CPSC's current funding levels do not allow for the development of robust test methodologies to answer questions regarding how exposure to that consumer product could be measured or how any potential identified risks can be addressed.

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Your letter asks about the metrics of success for CPSC's proposed nanotechnology centers. CPSC staff undertook this exact thought process before presenting its proposal to the Commission. Consistent with the President's Council of Advisors on Science and Technology (PCAST) guidance in the most recent Report to the President and Congress on the NNI, CPSC's proposal outlines broad goals for a center rather than a strict formula of requirements. As suggested by PCAST, this flexibility is intended to "allow for ideas to 'bubble up' from investigators and allow researchers to pivot from one project to another should an unexpected, promising discovery be made."¹ At the same time, there must be specific criteria to determine the success of such an important project, and I am pleased to share with you the four categories of success criteria that are the foundation of the request:

- First, the center will need to develop robust test methods to determine and characterize human exposure to nanomaterials from consumer products. During the past few years, the CPSC has executed a number of interagency agreements with the EPA, the Food and Drug Administration (FDA), the National Institute for Occupational Safety and Health (NIOSH), the National Institute of Standards and Technology (NIST), NSF, and academic institutions, including Virginia Tech, Rutgers University, Duke University, and Harvard University's School of Public Health. Although this work has resulted in useful reports and manuscripts for publication in peer-reviewed scientific journals, the work has also made clear that to develop robust test methods successfully, there must be a center dedicated specifically to this work, rather than focused on all manner of nanomaterials generally.
- Second, the center will work to characterize and understand consumer use of products containing nanomaterials. This will help identify factors affecting the release of the materials and exposure patterns, as well as identifying unique exposure factors for vulnerable populations (*e.g.*, children, seniors).
- Third, the center will provide support to manufacturers, especially small businesses, with approaches to testing their products for the release of, and potential exposure to nanomaterials. This work will facilitate creating guidance on best practices for implementing safety assessments into

¹ Report to the President and Congress on the Fifth Assessment of the National Nanotechnology Initiative, Executive Office of the President, President's Council of Advisors on Science and Technology, October 2014, pg. 57, at: https://www.whitehouse.gov/sites/default/files/microsites/ostp/PCAST/pcast_fifth_nni_review_oct2014_final.pdf

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 Page 4

future research and development, as well as allow manufacturers and other stakeholders to engage in test method validation.

- Fourth, the center will close data gaps identified in the 2011 NNI EHS research strategy, including developing exposure classifications for nanomaterials and processes, developing comprehensive predictive models for exposures to a broad range of engineered nanomaterials, and characterizing individual exposures. This work will lead to studies that examine emissions and human contact during normal use, after wear and tear have degraded a product, as well as during repeated exposures.

Unquestionably, these are ambitious goals and your letter requests more detail on how the size of the budget request for this major undertaking was derived. I am pleased to provide that information. Based on our decade-long work within the NNI, CPSC staff examined the types of centers that other health and safety agencies created and from there, crafted a list of needs for our agency to be able to successfully create a center focused on consumer products. Based on this research, we believe that the \$5 million request is appropriate because this level of funding would provide for:

- The use of an existing brick and mortar facility at a university that already possesses the equipment and technology to examine these materials based on previous work with nanotechnology. (Adopting the proven model of NSF and EPA, this approach would prevent CPSC from unnecessarily acquiring laboratory equipment used solely to develop a test method and then having no need for the equipment once the test method is developed);
- Staffing of approximately:
 - 12 Senior scientists
 - 15 Technicians
 - 10 Post-Doctoral students
 - 10 Graduate students.

To be clear, our needs analysis was validated against existing nanotechnology research centers, and included guidance from NSF, based on their experience in creating and managing similar centers.

Your letter also raises the question of how this work will support, and not unnecessarily hinder, the bright future of nanotechnology. This concerns CPSC as well, and underscores the need for this center. All walks of industry prefer clarity over

The Honorable Pete Olson
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uncertainty, as uncertainty often slows commercialization. This center would aim to provide manufacturers with information on voluntary standards and recommended testing approaches. In addition, we would seek to invite manufacturers to use the equipment in the center to test their products and provide instruction to manufacturers on the best methods available for quantifying release and exposure of nanomaterials. In other words, the center will be a resource for manufacturers and distributors of nano-enabled products and will develop approaches to providing information on the safe use of this technology in consumer products, thereby supporting commercialization efforts.

Finally, no other federal agency evaluates consumer product implications or nanomaterial exposure from the products under CPSC's jurisdiction. For example, EPA and NSF are making sizable investments addressing the exposure implications from nanomaterials released into the environment and ecosystem impacts to non-human receptors. NIOSH has an extensive research portfolio that addresses worker exposures, but does not address exposures to consumers, especially young children. If CPSC does not do the proposed work, another federal agency is not planning to fill the gap. Failure to undertake this work more robustly in the near future would be a disservice to all interested parties, especially the American consumer.

Thank you again for your letter and for your continued support of the Commission and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Jason K. Levine, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at JLevine@cpsc.gov.

Sincerely,



Elliot F. Kaye

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

August 19, 2015

The Honorable Elliot F. Kaye
Chairman
Consumer Product Safety Commission
4330 East West Highway, Suite 724
Bethesda, MD 20814

Dear Chairman Kaye,


Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Tuesday, May 19, 2015, to testify at the hearing entitled "Oversight of the Consumer Product Safety Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Wednesday, September 2, 2015. Your responses should be mailed to Kirby Howard, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Kirby.Howard@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,


Michael C. Burgess
Chairman
Subcommittee on Commerce, Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

[Mr. Kaye's answers to submitted questions have been retained in committee files and also are available at <http://docs.house.gov/meetings/IF/IF17/20150519/103481/HHRG-114-IF17-Wstate-KayeE-20150519-SD005.pdf>.]

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

August 19, 2015

The Honorable Joseph Mohorovic
Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway, Suite 722
Bethesda, MD 20814

Dear Commissioner Mohorovic,

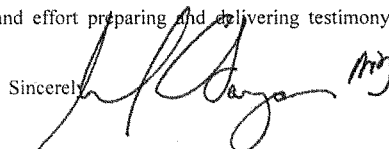
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To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, September 2, 2015. Your responses should be mailed to Kirby Howard, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Kirby.Howard@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,


Michael C. Burgess
Chairman
Subcommittee on Commerce, Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

**U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY &
COMMERCE
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, & TRADE
MAY 19, 2015**

**RESPONSES OF COMMISSIONER JOSEPH P. MOHOROVIC TO
QUESTIONS FOR THE RECORD**

CHAIRMAN MICHAEL C. BURGESS, M.D.

1. The Commission recently voted to seriously undertake “Retrospective Review” of its rules and regulations to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies. I know you are a strong proponent of this activity and can you explain why you believe this should be a priority for the agency?

I am a strong proponent of retrospective review because of its ability to improve both the quality and relevance of our regulations and our relationships with our stakeholders. The CPSC has been around for over 40 years, and some of our rules – inherited from FDA, FTC, and others – have been on the books even longer. Over that time, it is inevitable that some of our 900 pages in the Code of Federal Regulations have become obsolete in some way.

For example, most of our fireworks regulations predate both the agency and the development of methods to properly test things like explosive charge. As a result, in 2015, we are still using a test method that involves a CPSC staff member standing in a field, lighting a firework, and determining whether or not the resulting sound is loud enough to have been intentional. This test may have been the best available 45 years ago when it was developed, but we can do better today. This test and the universe of our fireworks regulations are currently under review by our staff, and we hope to have a revision within FY 2016, but, in the meantime, both effective regulation and the agency’s credibility suffer from having this antiquated, subjective test and the archaic rules that surround it still on our books.

Retrospective review has been recognized as a key component of the development of a regulatory state that achieves its public good aims with as little economic burden as possible. A government-wide retrospective review program in the United Kingdom saved more than £2 billion (over \$3 billion) in economic costs across four years and dramatically improved business’ perception of the British regulatory state. Right now, the American regulatory burden would be the 10th largest economy in the world, and CPSC certainly contributes to that. We owe it to American consumers – who ultimately pick up the tab for that burden – to ensure our costs come with safety benefits.

I am grateful to Chairman Kaye for his leadership in re-visiting this issue and helping to develop a meaningful retrospective review plan. I am optimistic that we will better fulfill our obligation in the coming years.

HON. PETE OLSON

1. Commissioner Mohorovic, during the Decisional Meeting to publish the NPR on section 108 of the CPSIA in the Federal Register you raised concerns about the potential deviation from the CPSC’s regulatory standards in favor of the European

precautionary approach for regulatory action. Do you believe the CPSC’s rulemaking on phthalates reflects the application of a precautionary approach? Can you share your concerns with the committee?

I do believe the spirit of the Precautionary Principle is animating some of the Commission’s choices, particularly in our CPSIA Section 108 phthalate rulemaking.

While it has been in use, in one form or another, in many countries for decades, perhaps the clearest example of the Principle – and the most relevant to the phthalate discussion – is in the European Union’s Regulation on the Registration, Evaluation, Authorisation, and Restriction of Chemicals, commonly known as REACH. Among other provisions, REACH requires pre-market registration and approval of new chemicals.

While the Precautionary Principle may sound like a formalization of the familiar aphorism that we should look before we leap, in practice it stifles choice and constrains innovation. It effectively increases the costs of creating something new, making creation a more difficult decision to justify. Contrary to its laudable public health and safety purpose, this anti-innovation tendency can in fact harm the public, discouraging companies from developing new technologies and solutions that could yield a cleaner environment or safer products. In fact, one review in the UK described stifling innovation as the Precautionary Principle’s “greatest achievement to date.”²⁰

2. Wouldn’t a more “precautionary approach” mean that we would and should continue to use a chemical for which there is no evidence of harm in its 50 years of use in products and which in itself has been shown to be safe in products, unless and until the alternatives can be proven to be safer?

While our information disclosure statute prevents me from addressing any particular chemical or brand, I do agree that, in general, the burgeoning CPSC version of the Precautionary Principle does differ from the traditional version and its preference for the status quo. In the more familiar Principle, the proponent of any deviation from the existing state of the relevant environment – whatever that state is – bears the burden of proving that it does not create additional risk of harm. Proponents of the CPSC variant seem to redefine status quo to mean a pre-chemical status quo. This improperly assumes that all chemicals are hazardous until proven benign, even those that have been in safe use for decades. CPSC is a data-driven agency, and we should rely on data to shape our policy choices, not unsupported fear.

²⁰ Joyce Tait & Joanna Chataway, Pros and Cons of the Precautionary Principle (PP): European Experience with the regulation of GM crops, 2 (2010), available at <http://www.innogen.ac.uk/downloads/AGLS-09-Pros-and-cons-of-Precautionary-Principle.pdf>.