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4 OVERSIGHT OF THE CONSUMER PRODUCT SAFETY COMMISSION

5 TUESDAY, MAY 19, 2015

6 House of Representatives,

7 Subcommittee on Commerce, Manufacturing, and Trade

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 10:18 a.m.,
11 in Room 2322 of the Rayburn House Office Building, Hon.
12 Michael C. Burgess [Chairman of the Subcommittee] presiding.

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

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17 Staff present: Leighton Brown, Press Assistant; James
18 Decker, Policy Coordinator, Commerce, Manufacturing, and
19 Trade; Graham Dufault, Counsel, Commerce, Manufacturing, and
20 Trade; Melissa Froelich, Counsel, Commerce, Manufacturing,
21 and Trade; Kirby Howard, Legislative Clerk; Paul Nagle, Chief
22 Counsel, Commerce, Manufacturing, and Trade; Olivia Trusty,
23 Professional Staff, Commerce, Manufacturing, and Trade;
24 Michelle Ash, Democratic Chief Counsel, Commerce,
25 Manufacturing, and Trade; Christine Brennan, Democratic Press
26 Secretary; Jeff Carroll, Democratic Staff Director; Lisa
27 Goldman, Democratic Counsel; Tiffany Guarascio, Democratic
28 Deputy Staff Director and Chief Health Advisor; Brendan
29 Hennessey, Democratic Policy and Research Advisor; and Adam
30 Lowenstein, Democratic Policy Analyst.

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31 Mr. {Burgess.} Subcommittee on Commerce, Manufacturing,
32 and Trade will now come to order. The Chair will recognize
33 himself 5 minutes for the purpose of an opening statement.

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

44 We will also hear from a second panel of witnesses about
45 Representative's--Pompeo's bipartisan legislation, H.R. 999,
46 the ROV In-Depth Examination Act, and the open ROV rulemaking
47 that has garnered substantial bipartisan concern from members
48 on both sides of the dais, and both sides of the Capital.
49 Consumer safety is a top priority for this Subcommittee, and
50 at a time where difficult budget decisions are being made

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51 across the government, it is critical that all agencies are
52 held accountable for their prioritization decisions,
53 particular concern about the role of sound scientific
54 principles at the Commission, the interaction between the
55 Commission and its regulated industries, the rulemaking
56 agenda, and the execution of Congressional mandates for third
57 part test burden reduction, and the Commission's continued
58 request for new authority to impose user fees. There is a
59 fundamental Constitutional issue with moving the power of the
60 purse from Congress to a regulatory agency with no experience
61 in disbursing fees.

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

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72 guidelines for peer review were ignored.

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

85 This is especially so where resources are always going
86 to dictate the Commission will need help from industry in
87 identifying problems. One open rulemaking fundamentally
88 changes the fast track voluntary recall process, an award
89 winning program established 20 years ago to address long
90 recall processes, which has produced tremendous results.
91 Under this program last year, 100 percent of fast track
92 recalls were initiated within 20 days. The positive impact

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93 for consumers is real when potentially dangerous products can
94 be taken off the shelves in days, instead of weeks or months.

95 Finally, there has been a bipartisan--there has been
96 bipartisan support to reduce third party testing burdens for
97 small businesses around the United States. In 2011 Congress
98 passed H.R. 2715, with explicit instructions to the
99 Commission to evaluate the testing burden relief in good
100 faith, but the Commission has struggled to carry out the
101 statutory requirement, even with additional funding. 3-1/2
102 years later small businesses are reporting they still have
103 not seen any real burden reductions, and are facing seemingly
104 endless comment rounds, but no real solutions.

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

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

123 [The prepared statement of Mr. Burgess follows:]

124 ***** COMMITTEE INSERT *****

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125 Mr. {Burgess.} The Chair will recognize the Ranking
126 Member of the Subcommittee, Ms. Schakowsky, for the purposes
127 of an opening statement.

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

138 In 2008 the landmark Consumer Product Safety Improvement
139 Act was signed into law by President Bush. The bill was the
140 product of broad bipartisan negotiation, and it marked the
141 most significant reform of the CPSC and its responsibilities
142 in decades. I also want to thank some of the advocates that
143 are here in this room, and appreciate their work. The bill
144 passed the Committee 51 to 0, and the House by a vote of 424

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145 to one. I was--it was slightly amended, again, on a
146 bipartisan basis, in 2011, and the legislation gave the CPSC
147 additional authority and resources so it could become the
148 consumer watchdog that Americans deserve, and, frankly,
149 expect.

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

157 The CPSC has been incredibly successful in its efforts
158 to improve consumer protection over the last few years.
159 There was a 34 percent reduction in children's product
160 recalls, just from 2013 to 2014. The 75 children's product
161 recalls in 2014 was the lowest number in more than a decade.
162 Thank you very much. We have seen enhanced proactive
163 outreach to provide consumers with information about the
164 dangers and best practices associated with everything from
165 window blinds, to electric generators, to lawnmowers. And we

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166 have seen rulemaking to reduce the likelihood of preventable
167 tragedies. I applaud the Commission on its important work.
168 While I am disappointed that we move forward with this
169 hearing on a day that Commissioner Robinson was unable to
170 appear, I look forward to hearing the perspectives of the
171 other commissioners about the CPSC's work, and its next
172 steps.

173 The second panel today will provide analysis of H.R.
174 999, the Ride Act. I am strongly opposed to this bill, which
175 would suspend CPSC's statutory authority to complete a
176 rulemaking affecting recreational off-highway vehicles, or
177 ROVs, until after a study is completed at the National
178 Academy of Science. It is not clear to me why this study is
179 needed. After all, the CPSC has gone through its regular
180 rulemaking process on this issue, taking into account the
181 input of technical experts, the private sector, and the
182 public.

183 I am also not sure why the National Academy of Sciences
184 would analyze the feasibility of, among other things,
185 providing consumers with safety information at the point of
186 sale. While the NAS has a highly skilled staff, market and

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187 consumer analysis is not its strong suit. It also makes no
188 sense that NAS would be required to consider the impact of a
189 rulemaking on ROVs used in the military. The CPSC is
190 responsible for consumer products, not military vehicles.
191 The proposed rule is irrelevant to military ROVs. I believe
192 this legislation is a delay tactic, pure and simple. It
193 would delay the implementation of the CPSC's common sense,
194 consumer-focused rule to reduce ROV rollovers, enhance
195 safety, and increase consumer information.

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

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

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208 [The prepared statement of Ms. Schakowsky follows:]

209 ***** COMMITTEE INSERT *****

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210 Mr. {Burgess.} Chair thanks the gentlelady. Gentlelady
211 yields back. The Chair recognizes the Vice-Chair of the full
212 Committee, Ms. Blackburn. 5 minutes for an opening
213 statement, please.

214 Mrs. {Blackburn.} Thank you, Mr. Chairman, and I want
215 to say thank you to our witnesses. We appreciate that you
216 are here. You know, 2008 was really the year of the recall,
217 and since that point in time we have been very interested in
218 the work that you are doing, and have looked at your
219 deliverables, and your outcomes.

220 Now, one of the things that is of tremendous concern to
221 us--and I have got to tell you, I heard a lot about this
222 during small business week, which was just a couple of weeks
223 ago. And I was out and about in my district, visiting with
224 small businesses, visiting with some retailers, and there are
225 a lot of complaints that are coming about the way you all are
226 going about your task, and some of the unnecessary burdens
227 that are being put on retailers, and on businesses, and
228 changes in reporting requirements. And I have got to tell
229 you, I think there is a lot of unhappiness with the American

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230 public in how you are doing your job. I would say too there
231 is probably some confusion as to what your mission statement
232 is, and you are meeting that.

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

247 Again--with that, Mr. Chairman, I am going to yield the
248 balance of my time to Mr. Pompeo for a statement.

249 [The prepared statement of Mrs. Blackburn follows:]

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

262 I was out last week too. I was actually on an ROV
263 vehicle, out in Kansas in the woods. Wore my helmet, did all
264 the things right, and I am here today to tell about it, which
265 is good. I hope we can get this right, and the legislation
266 that I have proposed isn't aimed at delaying. It is aimed at
267 getting to a good outcome. It may cause a little more time,
268 and a little more thoughtfulness, and a little more work to
269 be done, but I hope we can get that right, that we can get
270 the best science, and the best engineering associated with

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271 getting these rules in the right place, and get a voluntary
272 standard put that industry can do the right thing, and get
273 these vehicles in a safe place, to the right people. And I
274 hope--and look forward to working with you to see if we can't
275 achieve that. With that, I will yield back my time.

276 [The prepared statement of Mr. Pompeo follows:]

277 ***** COMMITTEE INSERT *****

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278 Mrs. {Blackburn.} I thank the gentleman, and does any
279 other member seek the balance of my time? None so doing, I
280 yield back, Mr. Chairman.

281 Mr. {Burgess.} Chair thanks the gentlelady. Gentlelady
282 yields back. Chair recognizes Democratic side for an opening
283 statement.

284 Ms. {Schakowsky.} If I--Mr. Chairman, if I could just
285 submit for the record Mr. Pallone's opening statement? And
286 also--no.

287 Mr. {Burgess.} Without objection, so ordered. That
288 concludes member opening statements. The Chair would like to
289 remind members that, pursuant to Committee rules, opening
290 statements will be made a part of the record.

291 We will now hear from our witnesses. I want to welcome
292 all of our witnesses, and thank you for taking time to
293 testify before the Subcommittee. Today's hearing will
294 consist of two panels. Each panel of witnesses will have the
295 opportunity to give an opening statement, followed by a round
296 of questions from members. Once we conclude questions with
297 the first panel, we will take a brief, underscore brief,

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298 recess to set up for the second panel.

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

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312 ^STATEMENTS OF ELLIOT F. KAY, CHAIRMAN, U.S. CONSUMER PRODUCT
313 SAFETY COMMISSION; ANN MARIE BUERKLE, COMMISSIONER, U.S.
314 CONSUMER PRODUCT SAFETY COMMISSION; ROBERT S. ADLER,
315 COMMISSIONER, U.S. CONSUMER PRODUCT SAFETY COMMISSION; AND
316 JOSEPH MOHOROVIC, COMMISSIONER, U.S. CONSUMER PRODUCT SAFETY
317 COMMISSION

|

318 ^STATEMENT OF ELLIOT F. KAYE

319 } Mr. {Kaye.} Good morning, Chairman and Dr. Burgess,
320 Ranking Member Schakowsky, and the members of the
321 Subcommittee. Thank you for the invitation to come speak
322 about the work of the United States Consumer Product Safety
323 Commission, and our proposed budget for fiscal year 2016. I
324 am pleased to be joined by my friends and colleagues from the
325 Commission, Commissioners Adler, Buerkle, and Mohorovic, and
326 I bring regrets from Commissioner Robinson.

327 CPSC's vital health and safety mission touches us all in
328 some way every day. From the parents of the baby, who gently
329 moves his or her child throughout the day from crib, to baby

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330 bouncer, to stroller, and back again to the crib, or the
331 self-employed millennial who, on a warm spring day, relies on
332 a room fan to stay cool, and an extension cord to power a
333 computer, to the baby boomer who purchased adult bed rails to
334 help care for an aging parent, the products in CPSC's
335 jurisdiction are inseparable from our lives.

336 We believe we provide an excellent return on investment
337 for the American people. We run a lean operation, and we
338 cover thousands of different kinds of consumer products, with
339 a budget in the millions, not the billions. We are very
340 appreciative of the continued bipartisan support for the
341 Commission and our work. We saw this support in the
342 overwhelming, nearly unanimous vote to pass the Consumer
343 Products Safety Improvement Act of 2008, and the near
344 unanimous passage of an update to CPSIA in 2011. Your
345 support has allowed our dedicated staff to drive standards
346 development, to make children's products safer, to increase
347 our enforcement effectiveness, and to better educate
348 consumers about product related hazards.

349 Our staff has also been hard at work trying to reduce
350 costs associated with third party testing, while also

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351 assuring compliance with the law. Congress's inclusion of
352 the \$1 million as part of our funding for the current fiscal
353 year has enhanced those efforts. I have emphasized priority-
354 -prioritizing those actions most likely to provide the
355 greatest amount of relief, especially to small businesses.
356 We are set to consider at least three different regulatory
357 changes to provide relief this fiscal year, with more in the
358 works.

359 While the burden reduction, assure compliance work
360 proceeds, our continuing efforts to carry out and enforce
361 CPSIA driven enhancements to consumer product safety are
362 reflected in our proposed budget. Unfortunately, not all of
363 those priorities and requirements are achievable at our
364 current levels. For that reason, we were pleased to see the
365 President include in his budget two important consumer
366 product safety initiatives. Both initiatives, if funded,
367 will advance consumer safety and provide real value to those
368 in industry making or importing safe products.

369 First, we are seeking a permanent funding mechanism to
370 allow the agency to comply with the Congressional charge in
371 Section 222 of the CPSIA. Section 222 called on the

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372 Commission to work with Customs and Border Protection and
373 develop a risk assessment methodology to identify the
374 consumer products likely to violate any of the Acts we
375 enforce out of all the consumer products imported into the
376 United States.

377 To meet our mandate, in 2011 we created a small scale
378 pilot that has been a success. However, a pilot alone does
379 not fulfill the direction of Congress, and without full
380 implementation, we will not be able to integrate CPSC into
381 the much larger U.S. Government-wide effort to create a
382 single window for import and export filing of all products.
383 If CPSC can be fully integrated into the single window, we
384 can transform Congress's vision of a national scope, risk
385 based, data driven screening at the ports into a reality, a
386 reality that would mean faster entry for importers of
387 compliant products, and safer products in the hands of
388 American consumers.

389 Our proposed budget also seeks to address critical
390 emerging and safety--emerging health and safety questions
391 associated with the rapidly growing use of nanomaterials in
392 consumer products. In light of the questions raised in the

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393 scientific community about the effects inhalation of certain
394 nanoparticles might have on human lungs, concerns that center
395 on identified similarities to asbestos exposure, we are
396 proposing to significantly advance the state of the science
397 as it relates to human exposure, especially to children, from
398 consumer products.

399 Finally, I would like to discuss an additional priority
400 of mine, one that is not reflected in dollars, but to me, at
401 least, makes a lot of sense. How we at the CPSC do what we
402 do is often just as important as what we do. Since day one
403 in this position, I have worked daily to try to establish a
404 certain culture among the five of us at the Commission level.
405 The Commission, and more importantly the American public, are
406 far better served by an agency where we operate at the
407 Commission level in a culture of civility, collaboration, and
408 constructive dialogue.

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

412 [The prepared statement of Mr. Kaye follows:]

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414 Mr. {Burgess.} Chair thanks the gentleman. The
415 gentleman yields back. The Chair recognizes the gentlelady,
416 Ms. Buerkle, for her question--her statement, please.

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417 ^STATEMENT OF ANN MARIE BUERKLE

418 } Ms. {Buerkle.} Thank you, Mr. Chairman, and good
419 morning, Mr. Chairman and Ranking Member Schakowsky, and
420 distinguished members of this Committee. Thank you for
421 holding today's hearing with regard to the Consumer Product
422 Safety Commission. I had the honor of serving alongside many
423 of the Subcommittee members in the 112th Congress, and I am
424 delighted to be back here on Capitol Hill in my capacity as a
425 Commissioner at the CPSC. And I do hope that today's hearing
426 strengthens our partnership to keep consumers safe from
427 unreasonable risks of injury.

428 I have been a Commissioner at the agency since July of
429 2013, and throughout this time what has continued to impress
430 me is the dedication of the CPSC staff. The mission of
431 safety is taken very seriously. The regulated community has
432 also impressed me, not only with their eagerness to
433 understand and comply with our regulations, but also with
434 their entrepreneurial drive to innovate and advance safety.
435 I am thankful too for the tone set by our Chairman, and

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436 joined by my colleagues. We offer--we often differ
437 significantly on policy issues, but those differences are
438 discussed in a mutually respectful manner.

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

454 Number two, education. It is crucial to our mission.
455 We need to make the regulated community aware of best
456 practices and be honest regarding what we are intending to

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457 achieve. More importantly, we also need to engage the
458 consumer, helping them to avoid hidden hazards and take
459 advantage of safer products that are already available to
460 them. A prime candidate for a comprehensive educational
461 campaign is the issue of window coverings. Increased
462 awareness and education will prevent many unfortunate
463 injuries and death.

464 And number three, while consumer safety is our top
465 priority, I believe that that safety can be achieved in a
466 balanced, reasonable way that does not unnecessarily burden
467 the regulated community, deprive consumers of products they
468 prefer, or insert government into the market where it does
469 not belong. Our statutes express a strong preference for
470 voluntary standards rather than mandatory standards. Where
471 mandatory standards are unavoidable, the CPSA instructs us to
472 find the least burdensome solution that adequately addresses
473 the risk.

474 Mandatory standards have unintended consequences. They
475 tend to stagnate, while the world of consumer products
476 evolves rapidly. It makes then--sense, therefore, to revisit
477 our rules periodically and make sure they are effective

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478 without stifling innovation. I am pleased that the
479 Commission voted unanimously last week for a retrospective
480 review of our rules, and I do hope it will become a more
481 regular activity of the Commission.

482 Regulation is a necessary function of the government,
483 and the Consumer Products Safety Improvement Act strengthened
484 our authority. It is clear, however, the CPSIA went too far
485 in some respects, forcing regulation without regard to risk,
486 let alone cost. This Subcommittee led the way in moderating
487 some of the untoward consequences of CPSIA through its work
488 on H.R. 2715, which passed into Public Law 112-28 while I was
489 a member of the House. Some objectives of that law remain
490 unfulfilled. Last year the House included \$1 million in our
491 2015 appropriations, thanks to Representative Blackburn, to
492 kick start our efforts on test burden reduction. There is
493 still much more we can do to remove unnecessary regulatory
494 burdens in this arena, and I do look forward to working with
495 this Committee on those unresolved CPSIA issues.

496 The common goal among all of us, Congress, CPSC,
497 industry, and consumers, is safety. We are all people who
498 have families for whom we want safe products. I have six

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499 children and 16 grandchildren. I do now want dangerous
500 products hurting them, or anyone, however, the United States
501 Government cannot, and should not, try to create a zero risk
502 society. The solutions we seek should be balanced, and
503 address actual problems. Consumers should be protected from
504 unreasonable risks, while the regulated community is
505 protected from an arbitrary government. Thank you for this
506 time today, and I do look forward to taking any questions you
507 might have. Thank you, Mr. Chair.

508 [The prepared statement of Ms. Buerkle follows:]

509 ***** INSERT B *****

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|

510 Mr. {Burgess.} The Chair thanks the gentlelady. The
511 Chair recognizes Commissioner Adler, 5 minutes, please, for
512 an opening statement, sir.

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|

513 ^STATEMENT OF ROBERT S. ADLER

514 } Mr. {Adler.} Good morning, Chairman Burgess, Ranking
515 Member Schakowsky, and the distinguished members of the
516 Subcommittee. Thank you for the opportunity to appear along
517 with my fellow CPSC Commissioners today. I am pleased to be
518 able to testify about an agency that I have been associated
519 with in some fashion since its establishment 40 years ago.
520 At the outset, I would point out that we are far and away the
521 smallest of the Federal Health and Safety agencies, with a
522 current funding level of 123 million, and a staff of roughly
523 560 FTEs. I want to put that in perspective. For fiscal
524 year 2016 we have asked for an appropriation of \$129 million,
525 which is an increase of roughly \$6 million. By way of
526 comparison, our sister agency, FDA, has asked for roughly
527 \$4.9 billion in fiscal year 2016, which is an increase of
528 roughly \$148 million. Or, to put it more succinctly, FDA has
529 asked for an increase that is larger than CPSC's entire
530 budget.

531 Notwithstanding our modest budget, our jurisdictional

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532 scope is extremely wide, encompassing roughly 15,000
533 categories of consumer products found in homes, stores,
534 school, and recreational settings. Given this broad
535 jurisdiction, the agency has adopted a thoughtful, data-based
536 approach, using its highly skilled technical staff to figure
537 out which products present the greatest risk, and we address
538 them using our regulatory and educational tools in a way
539 designed to minimize market disruption, while always making
540 consumer safety our top priority. We don't operate alone.
541 We have always sought to include our various stakeholder
542 partners in a quest to reduce or eliminate unreasonable
543 risks. Included in this group are our friends in the
544 business and the consumer communities, as well as the various
545 standards development bodies that work closely with the
546 agency.

547 And I want to note, looking from the perspective of 40
548 years, just how much good work has been done. There has been
549 an estimated 30 percent decline in the rate of deaths and
550 injuries associated with consumer products over this 40
551 years. And let me just cite a few statistics, particularly
552 pertaining to children. Over this period of time we have

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553 seen an 83 percent drop in childhood poisoning, a 73 percent
554 drop in crib death, an 86 percent reduction in baby walker
555 injuries, and almost complete elimination of childhood
556 suffocation in refrigerators.

557 I would also like to mention the tremendous strides the
558 agency has taken to implement the Consumer Products Safety
559 Improvement Act, which has been noted was approved by the
560 House by a vote of 424-1, signed by President Bush on August
561 4--14, 2008. And among the things we have done to implement
562 the law, we have enforced stringent limits on lead and
563 thiolates in children's products. We have promulgated the
564 strongest safety standard for cribs in the world. We have
565 made mandatory a comprehensive voluntary toy standard. We
566 have written, and continue to write, a series of standards
567 for durable infant products, like play yards and strollers,
568 and we have developed new approaches to catching dangerous
569 imported products, which we hope to expand.

570 Since I last appeared before this Committee, the
571 Commission has experienced a significant turnover in members.
572 In fact, I am the last one standing. Although I miss my
573 former colleagues, I am pleased to welcome as new colleagues

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574 Chairman Elliot Kaye and Commissioners Robinson, Buerkle, and
575 Mohorovic. Simply put, they are a joy to work with. They
576 have brought new perspectives and insights that have
577 freshened and sharpened my thinking on a host of issues, and
578 they have done so in a way that has brought a new era of
579 civility to the agency. We certainly disagree, vigorously
580 sometimes, on issues, but we listen to and we trust one
581 another in ways I have not seen at this agency in many, many
582 years.

583 A final point, Mr. Chairman, I would like to reiterate
584 my concern about a set of issues that surrounds a critical
585 demographic that I don't think has received enough attention
586 of the past number of years, and that is senior citizens, a
587 group of which I am a proud member. CPSC data show that the
588 second most vulnerable population after kids is adults over
589 65, and I note this is a rapidly growing group doing to--due
590 to the aging of baby boomers, and the greater longevity of
591 our citizens. An interesting statistic, there are more of us
592 in the over 65 age group in this country than there are
593 people in Canada.

594 But what is particularly troubling to me is that

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595 seniors, while comprising only 13 percent of the population,
596 account for 65 percent of our consumer product related
597 deaths, and by 2020 they, we, will be 20 percent of the U.S.
598 population. So, given my concerns while I was acting Chair,
599 I worked with staff to create a senior safety initiative,
600 which is ongoing, and which I hope to have the Congress
601 include, and hope to work with you.

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

604 [The prepared statement of Mr. Adler follows:]

605 ***** INSERT C *****

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|

606 Mr. {Burgess.} Gentleman yields back. Chair thanks the
607 gentleman. The Chair recognizes Commissioner Mohorovic. 5
608 minutes for your opening statement, please.

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|

609 ^STATEMENT OF JOSEPH MOHOROVIC

610 } Mr. {Mohorovic.} Thank you, Chairman Burgess, Ranking
611 Member Schakowsky, members of the Committee. I very much
612 appreciate the opportunity to be here today. I will keep my
613 opening remarks very, very brief, and focus on one--only one
614 element of evolving CPSC policy, and that is our import
615 surveillance. This is one area that I think we can
616 dramatically improve both our efficiencies and--as well as
617 our effectiveness.

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

627 But to earn CPSC's trust, traders would undergo intense

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628 scrutiny, including thorough reviews of their supply chain
629 competencies. They would have to empirically demonstrate a
630 culture of compliance reflecting the highest standards, and
631 membership would have its privileges. To attract applicants,
632 trusted trader status would offer fewer inspections and
633 faster, more predictable time to market. But should a trader
634 violate the trust we have placed in them, the government's
635 response would be swift and sure.

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

644 However, my potential support for that spending, whether
645 from user fees or from appropriations, is predicated on
646 implementation of a properly resourced trusted trader program
647 that is capable of attracting robust participation. If we
648 are going to ask for more money, particularly if it comes

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649 from the very importers whose shipments we are rooting around
650 in, we need to spend some of that money making life easier
651 for the good actors who voluntarily subject themselves to
652 intense scrutiny. If we can develop the confidence necessary
653 to take those good actors' shipments out of our haystack,
654 finding the needles will be that much easier. Thank you, Mr.
655 Chairman.

656 [The prepared statement of Mr. Mohorovic follows:]

657 ***** INSERT D *****

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|

658 Mr. {Burgess.} The Chair thanks the gentleman. The
659 Chair would note that it appears that the era of good
660 feelings is now settled upon the Consumer Products Safety
661 Commission. You all referenced how well you work together,
662 so that is--the Chair takes that as a good sign as we move
663 forward. And, again, I want to thank you all for being in
664 our hearing. We will now move into the question portion of
665 the hearing. You--each member will have 5 minutes for
666 questions.

667 And, Chairman Kaye, let me begin, and again, thank you
668 for your willingness to be here, and apologize about us
669 having to reschedule during the snow day. It--kind of an
670 unexpected snowfall in March that caught a lot of us by
671 surprise. But thank you for your flexibility in
672 rescheduling. The budget for Fiscal Year 2016 requests--the
673 Commission requests new Commission authority to impose
674 undefined user fees on importers.

675 I will just--I think I have already shared with you I
676 have some misgivings about that, and would really welcome
677 further discussion from the Commission as to how these user

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678 fees, not just how they are collected, but how they are
679 disbursed. Are these fees that are paid into the Treasury,
680 and then subject to appropriations by the Appropriations
681 Committee, or are they fees that are retained within the
682 agency for use within the agency? So I would like some
683 clarification about that. And I would just remind the
684 members the appropriation--we are in appropriations season.
685 The appropriations for the Consumer Products Safety
686 Commission I believes comes through the Financial Services
687 Appropriation bill, so we all will want to be vigilant about
688 that, and make certain that we do pay attention to the agency
689 during the appropriations.

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

698 Mr. {Kaye.} Thank you, Mr. Chairman. No, we are

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699 definitely not on the brink of nationalizing the program,
700 even though the government is on the brink of nationalizing
701 the single window requiring electronic filing, which is a big
702 reason why the CPSC is trying to do it--part. We want to
703 make sure that, as close as possible, by December of 2016,
704 when the system that Customs and Border Protection runs to
705 receive electronic filing is up and running, and there is
706 truly one single window, that we are not creating an
707 unnecessary disruption to the market by not being a part of
708 that.

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

719 Mr. {Burgess.} Yeah, it is actually some of the

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720 activities of those other agencies and departments that has
721 been the genesis for my concern about this. And, again, I--
722 we are coming into the appropriations time. I want us to be
723 careful about how we approach things. But on the single
724 window issue, and, Commissioner Mohorovic perhaps you can
725 address this as well, I was on the Committee in the 110th
726 Congress. That was the committee that actually did the
727 reauthorization of the CPSC, and the toy safety bill.

728 And I became very concerned--we did hearings--Chairman
729 Rush was sitting in this chair at the time, but the--that was
730 the year that so many things were imported into the country,
731 and then found to be problematic. So there didn't seem to be
732 a way to stop things before they came in, and then the
733 concern became what happens to all this stuff in warehouses
734 that is offloaded by longshoremen in Long Beach, California,
735 and then where is it going to end up? Nobody seemed to talk
736 about shipping it back to the point of origin and saying, you
737 deal with it, other country that shouldn't have sent this
738 stuff to us in the first place, because your attention was
739 lax. So are we any better off today than we were in 2007 and
740 2008, as far as containing things that come into the country

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741 that may be hazardous?

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

758 Of course, before us we have the potential to scale up
759 into a nationalized program a very significant program. Do I
760 believe that we have a proof of concept, and do we have
761 reason to move forward, based on the success of our pilot

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762 project, the RAM? And the question for--the answer for me is
763 absolutely. But, again, I think we do have to look at more
764 closely the significant IT spend so it will be able to yield
765 the kind of targets, and the targeting effectiveness, that we
766 hope to achieve, as well as the operationalization.

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

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

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

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

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

795 Ms. {Schakowsky.} What do you mean by mechanical
796 hazards?

797 Mr. {Adler.} Falls, sawings, cuts, lacerations, things
798 along those lines.

799 Ms. {Schakowsky.} Um-hum.

800 Mr. {Adler.} And so what the staff has done I think is
801 a very smart thing. They first look to see products that
802 present unique hazards, and they are intended for senior
803 citizens, such as bed rails, and these panic buttons that

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804 seniors wear if they fall. The next thing they have looked
805 at is products that present disproportionate risks to
806 seniors, but that also present unreasonable risks to the
807 public at large, and a product there I would say would be
808 table saws.

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

815 Ms. {Schakowsky.} Um-hum.

816 Mr. {Adler.} --that we are doing, and I am delighted
817 that the staff has taken to this with such enthusiasm.

818 Ms. {Schakowsky.} Well, as the co-Chair of the Senior
819 Citizens Task Force, let us stay in touch on that. I am
820 really interested.

821 I wanted to get to the issue of flammability standards.
822 The--I know the Consumer Products Safety Commission has the
823 authority, under the Flammable Fabrics Act, to issue
824 standards. And I know there are some promulgated

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825 flammability standards, and as a--including some children's
826 products that it is possible, and it looks likely, have
827 contributed to significant use of flame retardant chemicals
828 that pose health risks.

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

837 So I--my question really is if we, one, have any studies
838 or information demonstrating that flammability standards
839 promulgated by CPSC reduce instances of fire related
840 injuries, and, looking--and if you have any plans to revisit--
841 --to find out if the issue of the flame retardants themselves
842 is a danger?

843 Mr. {Kaye.} Thank you, Congresswoman. So, I don't know
844 if I can do justice to this topic in a minute 23, but I will
845 do my--

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846 Ms. {Schakowsky.} Yeah.

847 Mr. {Kaye.} --best. The--certainly the--Commissioner
848 Adler's point in the beginning, thanks in large part to the
849 fire community, and the CPSC staff, over time, and I believe
850 this is attributable to some of the flammability standards,
851 especially with clothing and children's pajamas, there has
852 been a reduction of fire related incidents. The issue you
853 are getting at, though, is flame retardants, and to what
854 extent those have had any impact on it.

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

864 Most people don't view a couch as a potential hazardous
865 product, but if it is true that the flame retardants that the
866 Trib pointed out, that have doused the foam in an attempt to

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867 deal with cigarette fires, have ended up getting in the dust,
868 and children, as we know, go under couches, they put their
869 hands in their mouth, if it is true that that has had a very
870 negative impact on the health of children, that is a
871 significant concern of ours.

872 Ms. {Schakowsky.} And uncertain usefulness in reducing-
873 -

874 Mr. {Kaye.} Correct.

875 Ms. {Schakowsky.} --flame--flammability.

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

882 Ms. {Schakowsky.} What are the other agencies?

883 Mr. {Kaye.} The EPA, the FDA, ATSDR with CDC, and the
884 National Toxicology Program as part of the National
885 Institutes of Health, and the National Institute of
886 Environmental Health Sciences.

887 Ms. {Schakowsky.} Thank you. I yield back.

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888 Mr. {Burgess.} Chair thanks the gentlelady, gentlelady
889 yields back. The Chair recognizes the gentlelady from
890 Tennessee. 5 minutes for questions, please.

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

899 Mr. {Kaye.} So thank you for the \$1 million,
900 Congresswoman. It has certainly made a big difference. As
901 soon as the \$1 million was appropriated, we moved, at the
902 Commission level, via an amendment to our operating plan, to
903 allocate that \$1 million to seven different projects that we
904 had identified, primarily based on stakeholder feedback, but
905 also with discussions at the Commission level, to try to get
906 to this issue. And so--

907 Mrs. {Blackburn.} Um-hum.

908 Mr. {Kaye.} --where we are now is there are three

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909 projects that staff is very close to sending up to the
910 Commission for us to vote on to try to provide some of that
911 relief. And as I mentioned in my opening statement, my
912 direction to staff has been to prioritize those actions that
913 will have the widest potential benefit to small businesses.

914 Mrs. {Blackburn.} Okay. Let me ask you this. In your
915 letter to Senator Thune you identified three areas for--the
916 determinations of lead content, finding international toy
917 standards, and then guidance allowing for third party testing
918 exemptions. So those are the three areas that you are--

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

923 Mrs. {Blackburn.} Okay. Commissioner Mohorovic, you
924 want to respond?

925 Mr. {Mohorovic.} I would love to, thank you. It is
926 perfectly logical to wonder why, with the full commitment of
927 the entire Commission behind reducing third party test
928 burden, why we have achieved very little in terms of results.
929 And that is because we are replying to these proposals an

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930 unreasonable interpretation of our statute, this language,
931 consistent with assuring compliance. And the problem is,
932 very quickly, it is inconsistent with established CPSC
933 policy. If you looked at the component part testing rule,
934 which was non-controversial--

935 Mrs. {Blackburn.} So you are in a bureaucratic--

936 Mr. {Mohorovic.} We are--

937 Mrs. {Blackburn.} --quagmire?

938 Mr. {Mohorovic.} Absolutely, yeah.

939 Mrs. {Blackburn.} Okay.

940 Mr. {Mohorovic.} Absolutely, Congresswoman.

941 Mrs. {Blackburn.} So you can't get to the outcome, the
942 deliverable, because you are still talking among yourselves?

943 Mr. {Mohorovic.} Not until we change that standard. I
944 wouldn't recommend--

945 Mrs. {Blackburn.} Okay. What is the timeline for
946 getting it finished? We want this finished, so when are you
947 going to have it finished by?

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

950 Mrs. {Blackburn.} Give me few months.

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951 Mr. {Mohorovic.} I--

952 Mrs. {Blackburn.} I mean, a month, 2 months, 3 months?

953 What do you mean by that?

954 Mr. {Mohorovic.} I think that within June we will have
955 the first up, and then two more by September.

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

963 And you say you want to be engaging the industry, and
964 you want to be collaborative, but what I--the feedback I am
965 getting, it is those are your words, but your actions are
966 much more heavy handed, that you have determined what you
967 want as the outcome, thereby--you are going to let people
968 think they are participating, but in the end, you are the
969 rulemaker, and you are going to get your way. So do you feel
970 like that is a collaborative atmosphere, and trying to work
971 with the industry? And how would you respond to those type

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972 of comments that are made about the way you all are
973 approaching rulemaking?

974 Mr. {Kaye.} Is that for me? I am happy to--

975 Mrs. {Blackburn.} Yes, sir.

976 Mr. {Kaye.} --answer that. And--

977 Mrs. {Blackburn.} You are the Chairman.

978 Mr. {Kaye.} And is that question specifically to 11/10
979 rule, or more general?

980 Mrs. {Blackburn.} It is specifically to 11/10, but in
981 general, when it comes to dealing with industry.

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

988 Mrs. {Blackburn.} Are you still advancing that?

989 Mr. {Kaye.} No. It is not moving right now. It is in
990 a--

991 Mrs. {Blackburn.} Okay.

992 Mr. {Kaye.} --pause mode.

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993 Mrs. {Blackburn.} You are going to put it completely in
994 pause?

995 Mr. {Kaye.} It is in pause mode. It is already--

996 Mrs. {Blackburn.} Okay.

997 Mr. {Kaye.} --completely paused, and what we have--

998 Mrs. {Blackburn.} Okay.

999 Mr. {Kaye.} --been doing is working with our
1000 stakeholder community, through an advisory panel, on the
1001 issue of the single window in our imports. We are running a
1002 pilot that is going to be coming out, the FR notice, in a few
1003 months, and we are trying to get it right. And so we are
1004 having--

1005 Mrs. {Blackburn.} Okay.

1006 Mr. {Kaye.} --those exact collaborations that you are
1007 talking about.

1008 Mrs. {Blackburn.} Okay. My time is out, and I will--I
1009 have got one other question, but I will submit that question
1010 to you in writing. And I thank you all, and I yield back.

1011 Mr. {Burgess.} Chair thanks the gentlelady. The Chair
1012 now recognizes the gentleman from Texas, Mr. Olson. 5
1013 minutes for questions, please.

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1014 Mr. {Olson.} I thank the Chair, and welcome to our
1015 witnesses. A special welcome to a former House colleague,
1016 Ann Marie Buerkle. Good to see you again, Ann Marie.

1017 I want to talk about nanotechnology. As a 1985 graduate
1018 of Rice University in Houston, Texas, we are proud that two
1019 of our professors, Robert Curl and Richard Smalley, won the
1020 Nobel Prize for nanotechnology. In fact, Dr. Smalley taught
1021 me Chemistry 102, so it is very special to me about
1022 nanotechnology.

1023 Chairman Kaye, I wrote you a letter on February 25 about
1024 this issue. The fact that your budget requests for five
1025 million more for nanotechnology--the research center is
1026 almost 85 percent of the proposed budget increase. That
1027 caught my eye. I appreciate your response by letter, and,
1028 Mr. Chairman, I ask unanimous consent to enter my letter, and
1029 Chairman Kaye's response, in the record.

1030 Mr. {Burgess.} Without objection, so ordered.

1031 Mr. {Olson.} Thank you. I only have a few questions to
1032 clarify issues from your letter. You stated that the reason
1033 that CPSC needs five million is--for a new research center is
1034 because your work has ``identified significant data gaps

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1035 regarding exposure to nanomaterials present in consumer
1036 products.'" Can you elaborate on what these data gaps are,
1037 more details on the data gaps, sir?

1038 Mr. {Kaye.} Absolutely, and it is not only that we have
1039 identified, Congressman, those data gaps, it is that the
1040 larger nanotechnology initiative, the NNI, that is the
1041 collaboration that I think that everyone would want to see
1042 from the Federal Government, where all the agencies that have
1043 a present on nano are working together, actually, the NNI
1044 working groups have identified this data gap. And it really
1045 goes to understanding the exposure from consumer products
1046 that have nanomaterials in them.

1047 And so there are plenty--there is a billion dollars--
1048 more than a billion dollars that have been--billions of
1049 dollars that has been spent by the Federal Government on
1050 advancing nanotechnology, but none of that, or very little of
1051 that money has gone to understanding the specifics of
1052 consumer product exposure, which is a unique exposure
1053 pathway.

1054 If you have a child that is out swinging a tennis
1055 racket, and every time that child hits that--hits a ball,

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1056 some nanoparticles fly off, and the child is breathing those
1057 nanoparticles in, and those nanoparticles in, and those
1058 nanoparticles supposedly mirror asbestos, these are the types
1059 of critical health and safety questions that we want to get
1060 at, and are behind our request.

1061 Mr. {Olson.} Also in your letter you listed four
1062 categories as criteria for success. The first one was to
1063 develop, and this is a quote, ``robust test methods to
1064 determine and characterize human exposure to nanomaterials.''
1065 What defines a robust testing method?

1066 Mr. {Kaye.} That is what I leave to our toxicologists.
1067 Certainly I think that is what this working group has been
1068 working on, with the money that Congress has been giving us,
1069 and that we, in conjunction with the National Science
1070 Foundation, as well as a number of manufacturers in other
1071 agencies, would hope to get to those answers.

1072 I can't--I am not a technical expert. I can't decide
1073 what reaches that threshold of robustness, but I think we
1074 have got the technical expertise at our staff level to be
1075 able to make that determination.

1076 Mr. {Olson.} In your letter you expect to staff this

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1077 research center with 12 senior scientists, 15 technicians, 10
1078 post-doctoral students, and 12 graduate students. These
1079 positions come from your current staff, or come from outside?

1080 Mr. {Kaye.} I think they would come from outside. It
1081 would be part of the funding.

1082 Mr. {Olson.} How much expertise does your current staff
1083 have on these nano-issues? Because they have been working
1084 this since 2011, I do believe.

1085 Mr. {Kaye.} We have some expertise. I think we--it is
1086 thin, though. We have a thin bench. We have a phenomenal
1087 toxicologist, who is our representative in this space with
1088 the other agencies on the NNI, but, admittedly, it is not a
1089 deep bench, and I think that is one of the reasons why we are
1090 not trying to go in the more costly way, and try to just hire
1091 internally and procure a bunch of expensive test materials
1092 that we might not end up needing. We are trying to do the
1093 more cost efficient way of building off a successful model,
1094 and pursue it through the NSF.

1095 Mr. {Olson.} How about stakeholders in nanospace? What
1096 kinds of interaction do you have with these stakeholders?

1097 Mr. {Kaye.} Through the NNI working groups, there is a

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1098 good amount of interaction our staff reports back.

1099 Mr. {Olson.} Anybody else--the NNI mean other agencies
1100 working on nano with yourselves, or just--that is pretty much
1101 the primary agency?

1102 Mr. {Kaye.} So there is--

1103 Mr. {Olson.} The EPA? Who else is working--what other
1104 agencies are--

1105 Mr. {Kaye.} Department of Defense, Homeland Security.
1106 There is--there are many, many agencies as part of NNI.

1107 Mr. {Olson.} Okay, that is my questions. Yield back by
1108 saying go Rockets.

1109 Mr. {Burgess.} Chair thanks the gentleman, the
1110 gentleman yields back. The Chair now recognizes Mr. Guthrie
1111 from Kentucky. 5 minutes for your questions, please.

1112 Mr. {Guthrie.} Thank you, Mr. Chair. And I was
1113 preparing for the hearing today, and I talked about
1114 Commissioner Buerkle, and showed up, and it is you. I am
1115 glad to have you back. I didn't realize that you are in this
1116 row, and always--and really enjoyed serving with you, as Mr.
1117 Pompeo and I spent 4 years of our life in the State of New
1118 York. It was always fun to talk about what was going on with

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1119 you back there.

1120 So I do have a question, it is--in table saws. Back--I
1121 guess when we were serving together, I had table saw
1122 manufacturers in my district, and I understand that the CPSC
1123 has begun a special study of National Electronic Injury
1124 Surveillance System data to obtain information about the type
1125 of table saws involved in incidents, along with other
1126 information about incidents.

1127 And this study began on July 2014, and it concerns me,
1128 because it seems to me, and I am not sure, but it seems to me
1129 that no outreach has--to members of the industry by the CPSC
1130 was--for this study. And for years the industry has tried to
1131 work cooperatively with CPSC, and the industry's input could
1132 have been of value. So, Commissioner Buerkle, was there any
1133 outreach to the industry representatives or manufacturers
1134 regarding this special study?

1135 Ms. {Buerkle.} Thank you, and it is good to be back
1136 here on Capitol Hill. To--in fact, a specific request was
1137 made that would--we would reach out to industry and allow
1138 them to participate and be a part of that survey, and it did
1139 not happen. So, you know, I think that is--goes to the point

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1140 I made earlier about collaboration and outreach. I think it
1141 is--

1142 Mr. {Guthrie.} Um-hum.

1143 Ms. {Buerkle.} --incumbent upon the agency to make sure
1144 we have these conversations with industry beforehand.
1145 Whether it is before a survey, or before it is a proposed
1146 rule, that we engage with them so that we go forward, and we
1147 get the right information.

1148 I will say that NICE is one of the--it is a data
1149 collection system that we use, and it avails us of a lot of
1150 very helpful information. And--so, to that end, that is an
1151 important project. But having stakeholder engagement before
1152 the survey goes out, I think, is crucial.

1153 Mr. {Guthrie.} You know, a lot of them are concerned
1154 about mandating certain technologies, particularly patent
1155 questions that are mandating a specific technology in a
1156 Federal standard. And there are patent concerns that have
1157 been raised throughout the table saw petition discussions
1158 over the years. And is the Commission aware that there are
1159 140 patents related to the proposed technology held by the
1160 petitioner to mandate this technology on all table saws?

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1161 Ms. {Buerkle.} Are you referring that question to me?

1162 Mr. {Guthrie.} Yes, ma'am.

1163 Ms. {Buerkle.} Well, let me say this. Quite frankly,
1164 and quite honestly, my colleague, Commissioner Adler, this is
1165 his pet project.

1166 Mr. {Guthrie.} Um-hum.

1167 Ms. {Buerkle.} And I don't mean to pass the buck,
1168 because this is not a priority of mine, nor do I think it
1169 should be a priority of the agency. But to your point about
1170 the patents, and the concerns about that, I have tremendous
1171 concerns about that. But it is not a project, quite frankly,
1172 that I think should be a priority of the agency right now.

1173 Mr. {Guthrie.} Okay. I have one more question for you
1174 before we--

1175 Ms. {Buerkle.} Thank you. Okay.

1176 Mr. {Guthrie.} --you recently stated--I am sorry, I
1177 couldn't see you through Mr. Pompeo there. You recently
1178 stated that the sole basis for CHAP's recommendation to the
1179 ban of most widely used chemicals was a cumulative risk
1180 assessment which found that the majority--I guess Citizens'
1181 Health Advisory Panel's what--recommendation, which found

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1182 that the majority of the risk associated with these chemicals
1183 was from another chemical, DEHP. Can you explain your
1184 concerns for using cumulative risk assessment as a basis for
1185 such regulatory determination?

1186 Ms. {Buerkle.} Thank you. The CHAP, of course, is a--
1187 and then thiolate proposed rule is of great concern to me.
1188 It has been of concern to me since the CHAP issued its
1189 report, because I believe the CHAP report should have been a
1190 public--should have been subject to a public peer review at
1191 that point. So from that point on, to me, the system, and
1192 the whole process, has been flawed.

1193 The cumulative risk assessment that you are talking
1194 about is one of my concerns, and that--it--the process that
1195 is used, that is not well accepted in the scientific
1196 community, cumulative risk assessment. So I think that goes
1197 to the process, and the validity, and the integrity of the
1198 CHAP report. More importantly, though, I think--and
1199 certainly another grave concern I have is when the CHAP did
1200 their review, they used very old data, that was--data that
1201 was before CPSIA, and before the ban of those thiolates. So
1202 that study, to me, and the CHAP report, is almost--it is, it

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1203 is irrelevant because it doesn't use timely data.

1204 So the Commission has taken on analyzing the more recent
1205 data, and I have constantly and consistently said, and
1206 advocated that we put that, the findings and the analysis of
1207 the staff on the more current data out for public comment.
1208 It should be put out for at least 60 days, and the staff
1209 should comment on how they are going to use that analysis
1210 relative to the proposed rule. Because, in order to get
1211 comments from the public, we have to include that information
1212 in the proposed--in that opportunity for them to comment.

1213 Mr. {Guthrie.} Okay. Chairman Kaye, are you concerned
1214 about cumulative data, and do you believe it should be out
1215 for public comment?

1216 Mr. {Kaye.} I agree with Commissioner Buerkle that the
1217 staff's analysis should go out for public comment, and I was
1218 the one who directed staff, at the beginning of the process,
1219 to even undertake that analysis. And my hope is that we will
1220 reach an agreement in the coming days, when the staff is
1221 ready to put that out for analysis, for it to go out.

1222 As far as the cumulative risk assessment, I have to
1223 respect the work of the CHAP, because that is the statutory

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1224 regimen that was set up by Congress in Section 108 of the
1225 Consumer Products Safety Improvement Act. That was the
1226 scientific direction, or the policy direction, to the CHAP
1227 members, which, by the way, were picked through the National
1228 Academy of Sciences as the leading experts around the world
1229 on this issue. And so, considering that that is what the
1230 statute told them to look at, and that is what they looked
1231 at, I respect that decision on their part.

1232 Mr. {Guthrie.} Thank you, my time has expired.

1233 Mr. {Burgess.} Gentleman yields back. The Chair thanks
1234 the gentleman. Chair recognizes the gentleman from Kansas,
1235 Mr. Pompeo. 5 minutes for your questions, please.

1236 Mr. {Pompeo.} Thank you, Mr. Chairman. Mr. Kaye, I
1237 want to talk about the ROV rulemaking. You testified before
1238 the Appropriations Committee. You described the hearing as
1239 the longest in--the hearing that was held as the longest in
1240 the CPSC's history. Went late into the night, many panels,
1241 many witnesses. I appreciate you all taking the time to do
1242 that. Now I want to make sure that we don't cut short this
1243 process, that we get the data right, the science, and the
1244 engineering, and technology right. That is why I have

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1245 introduced a piece of legislation. Have you had a chance to
1246 take a look at that--

1247 Mr. {Kaye.} I have.

1248 Mr. {Pompeo.} --99?

1249 Mr. {Kaye.} I have.

1250 Mr. {Kaye.} And I didn't see your name as a co-
1251 endorser, but I am looking forward to hearing you today say
1252 that you think it is something that wouldn't make sense to
1253 make sure that industry can work alongside you, and get a
1254 chance to get a set of voluntary standards that make sense.

1255 Mr. {Kaye.} So, thank you, Congressman, and I know that
1256 you have been particularly interested, and I appreciate that,
1257 since the time you have been in office in the work of the
1258 CPSC, and I think that is a good thing. I think it is
1259 important to have this continued dialogue.

1260 The ROV issue is one of great significance to the
1261 Commission. We are taking it very seriously. Similar to the
1262 work on directing staff to do an analysis on the thiolates
1263 issue, I directed staff to redouble their efforts to engage
1264 with the voluntary standards effort to try to reach a
1265 solution. I think that that is the preferred solution many

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1266 of us would like to see, if they can adequately address the
1267 hazard, and it can be substantially complied with.

1268 As far as the bill is concerned, unfortunately, I am not
1269 going to be able to tell you what you want to hear. I don't
1270 have the ability to co-endorse, even if I wanted to.

1271 Mr. {Pompeo.} You can just say it here this--

1272 Mr. {Kaye.} Yeah. I--sounds like I could say it, but
1273 on--based on where we are, and our discussions, I think it is
1274 well intended, but, unfortunately, it would have a negative
1275 impact for three reasons. One, I don't want to call it a
1276 delay, but it looks like a delay, even if it is not intended
1277 to be, and those delays cost lives. Every year we are
1278 looking at getting close to now 80 dates per year, many of
1279 them children, associated with ROVs. So every year that this
1280 issue is not addressed, whether it is through a robust
1281 voluntary standard, or a mandatory standard, is more deaths,
1282 and I think that that is something we should all be concerned
1283 about.

1284 Second of all, there are real costs. Every time that
1285 there is a death, you are talking about, from an impact the
1286 community and society, about \$8 million, as our staff

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1287 estimates it, from an economic standpoint. So with 100 and--
1288 if it is a 2 year study, and you are talking about 150
1289 deaths, that is upward near a billion dollars in cost to
1290 society that would result from this.

1291 And probably in the area, from a timing perspective, and
1292 I just had a conversation with Mr. Pritchard, who you will
1293 hear on the second panel, before we came here, the staff and
1294 the voluntary standards body, meaning industry, are really at
1295 a position that I don't think they have been at for many,
1296 many years, where they are finally engaging in a substantive
1297 technical discussion to try to resolve these issues. If this
1298 bill were to pass, it puts out for question for 2 years one
1299 of the key areas that both industry and the staff are driving
1300 to try to solve now. I just don't think that that is going
1301 to help the timing of it.

1302 Mr. {Pompeo.} I appreciate that. No one wants more
1303 deaths. I mean, no one is advocating for delay in order to
1304 achieve that result. I know I am not, no one on this
1305 Committee would either. Party--it is a bipartisan piece of
1306 legislation. I know industry would want that either. I
1307 don't think it--because of that, I think it is required. I

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1308 think you have to get the data.

1309 I am not going to go through it, but there--but I have
1310 seen testimony from staff that says that we don't have the
1311 engineering and technology, right? The--Bob Franklin on your
1312 staff said we would have to look at the data, looking at
1313 exposure over time to the different ROVs. It might be
1314 possible to do something like that, but we have not done it.

1315 I am thrilled to hear that you are having these
1316 discussions with industry, and that you are making progress.
1317 That is absolutely a preferred solution, I think, for the
1318 CPSC, and from my perspective as well, it would be a great
1319 outcome. But I would hope that you would be prepared to at
1320 least suspend the rulemaking for a period of time. Put it on
1321 hold, keep it out there as something that might happen in the
1322 event that the discussions don't move forward in the way
1323 that--sounds like you have at least some optimism, as do I.
1324 I would love to see you at least consider suspending the
1325 rulemaking, or put it on hold while those discussions were
1326 happening. If they fall apart, industry and you can't get
1327 together, then so be it, you can continue to proceed. Would
1328 you at least consider that?

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1329 Mr. {Kaye.} Well, one, I can't--I don't have the power
1330 unilaterally to suspend the rulemaking, so that would have to
1331 be a Commission decision. And I would say that, from my
1332 perspective, I do think, whether industry likes it or not,
1333 one of the reasons that we have reached this situation, where
1334 we are at a position where everybody is trying to finally
1335 reach a solution, I think that everyone has proper
1336 incentives. And, from my perspective, the fact that the CPSC
1337 has taken it seriously to this point, and is prepared to move
1338 toward a mandatory standard, has provided the types of
1339 conditions that have created this environment. And I so I
1340 think that it is incumbent upon us to keep moving forward.
1341 As I mentioned, the deaths, they do certainly weigh on me,
1342 and so that is not something, at this point, that I think
1343 would be a positive.

1344 Mr. {Pompeo.} Well, I hope you will reconsider that. I
1345 may or may not be the incentive structure that has been
1346 achieved, but we have a June 19 deadline now for comments to
1347 come in. Those comments, I know, will be critical of the
1348 rule from many in the industry. I hope that doesn't put--I
1349 want to keep it in a constructive way, and I hope that this

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1350 deadline won't artificially create animosity where I think
1351 there is a chance to really get it right, save lives, and get
1352 the rule right. So, with that, Mr. Chairman, I yield back.

1353 Mr. {Burgess.} Chair thanks the gentlemen, gentleman
1354 yields back. The Chair recognizes the gentlelady from
1355 Indiana. 5 minutes for questions, please.

1356 Mrs. {Brooks.} Thank you, Mr. Chairman. Indiana has a
1357 large presence of juvenile product manufacturers in the state
1358 that make everything from strollers to car seats, and I have
1359 heard firsthand about the challenges that they face with
1360 regards to redundant testing requirements that might do
1361 nothing to advance safety, while siphoning away money that
1362 could have been spent on R and D in these companies,
1363 innovation and resources like additional employment.

1364 And one Hoosier manufacturer told me recently the
1365 Consumer Product Safety Improvement Act was passed--since it
1366 is passed, they have spent \$12-1/2 million in testing costs
1367 alone. And that is not--that is because they not only have
1368 to test every platform that the products are on, but every
1369 SKU as well. So not only do they spend an average of \$8,900
1370 to test every new stroller or cradle design, but they have to

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1371 spend an extra \$1,000 to test every paint, every new paint
1372 color as well.

1373 And so I think we all agree that the safety of our
1374 children is of utmost importance, and shouldn't be
1375 compromised, however, I think we have to draw the right
1376 balance, and--to ensure that the companies have the needed
1377 resources to do further R and D to ensure their products are
1378 safer. And so, Mr. Chairman, I have a question to you that--
1379 with this in mind, what actions have you taken in the past
1380 year to provide relief to companies with respect to these--
1381 cost of these third party testing requirements?

1382 Mr. {Kaye.} Thank you, Congresswoman. One of the areas
1383 that we found really interesting, and this has been
1384 discovered by our small business ombudsman, and I don't want
1385 to get Commissioner Mohorovic upset, since it involves his
1386 prior occupation, but we have found that a lot of the third
1387 party labs are testing for services that are not required.

1388 And so our small business ombudsman and his office
1389 provide phenomenal support and assistance working with small
1390 businesses, and I would encourage any of the members who have
1391 small businesses in particular that have issues to reach out

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1392 to Neal Cohen of the CPSC because he can work with companies
1393 to go through their testing reports and to find out whether
1394 or not they really need certain testing.

1395 Now, he doesn't actually go line by line, but what he
1396 says is, here are some general guidances, and here are some
1397 questions that you should be asked. He really does a
1398 phenomenal job of empowering a lot of companies, and I think
1399 that has gone a huge way to addressing some of these issues.

1400 Mrs. {Brooks.} Thank you. Commissioner Mohorovic?

1401 Mr. {Mohorovic.} Thank you, Congresswoman. I think
1402 what you will get is a lot of the dodging tactics from the
1403 agency to try to explain why we haven't achieved much in
1404 terms of measurable outcomes in reducing the cost and burden
1405 of third party testing. We have all of the resources we
1406 need. We have the legal authority. We just lack the will to
1407 be able to enact very many of the policies and suggestions
1408 that have come before the agency.

1409 So we can blame the testing labs, we can blame retailers
1410 for retail protocols, we can dodge and weave on this as long
1411 as we want, but, as I said earlier, it is frustrating for me
1412 particularly because it is so--it lacks alignment. It is so

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1413 inconsistent with established CPSC policy. If we applied the
1414 same appreciation for risk tolerance that we did in the
1415 promulgation of the Component Part Testing Rule, we would
1416 have all of the emphasis, and staff would be able to
1417 recommend countless means to reduce the cost and burden
1418 without any adverse health or safety impact.

1419 Mrs. {Brooks.} Thank you. I--Chairman Kaye, it is my
1420 understanding that a million dollars of your 2015 budget was
1421 to be allocated to reducing the needless and duplicative
1422 testing burdens. Can you explain what actions you have
1423 actually taken in leading the Commission to fulfill that
1424 role? What--how have you reached out, what do companies
1425 expect to see from this relief if we have, you know, mandated
1426 that in your budget?

1427 Mr. {Kaye.} Sure. And one of the limitations in--on--I
1428 agree with Commissioner Mohorovic that we do have a lot of
1429 what we need, but we don't have everything that we need. But
1430 one of the areas is that it is a one-time appropriation,
1431 which means we cannot staff up from it. We can't count on--
1432 it is not prudent to hire a bunch of people without knowing
1433 how you are going to pay for them in the following fiscal

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1434 year, so most of this money has gone through contracting. So
1435 we contract out with organizations who can do a lot of the
1436 technical work to figure out if there is possibility for
1437 relief. But ultimately our staff has to take that work.
1438 There has to be resources internally to be able to turn that
1439 work around, and to try to make it something actionable.

1440 And so the three areas that I mentioned in response to
1441 Congresswoman Blackburn's questions have to do with providing
1442 this exact type of relief. Looking, for instance, at natural
1443 wood, and whether or not, if you use natural wood alone, you
1444 have to test for certain heavy metals that are required by
1445 law. We keep trying to check off lists of materials and
1446 types of products that you don't actually have to test to to
1447 avoid these costs. And that has been the theme, both in
1448 terms of stakeholder engagement and internal deliberations,
1449 that we are trying to pursue to provide--to make it worth the
1450 while.

1451 Mrs. {Brooks.} Thank you. My time is up. I yield
1452 back.

1453 Mr. {Burgess.} Chair thanks the gentlelady. The Chair
1454 recognizes the Ranking Member of the full Committee, Mr.

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1455 Pallone. 5 minutes for your questions, please.

1456 Mr. {Pallone.} Thank you, Mr. Chairman. My question is
1457 of Chairman Kaye. There have been concerning reports of
1458 young athletes that have non-Hodgkin lymphoma and other blood
1459 cancers, and who also have been playing sports on athletic
1460 fields that are filled with crumb rubber coming from tires,
1461 which often contains cancer causing chemicals. This past
1462 October I wrote to the Agency for Toxic Substances and
1463 Disease Registry explaining that I believe additional
1464 research is needed into whether synthetic turf athletic
1465 fields increase the risk of lymphoma, leukemia, and other
1466 blood cancers. In the agency's reply, they stated that they
1467 are supporting efforts by the Commission in this area.

1468 Yet in 2008 the Commission released a statement saying
1469 that field filled with crumb rubber are ``okay to install,
1470 okay to play on'', and I was pleased to hear more recently
1471 that a spokesperson explained that the 2008 statement does
1472 not reflect your current views. So I just wanted to ask, is
1473 it correct that your views are not reflected in that 2008
1474 report, and do you agree that additional research and study
1475 is necessary to determine whether crumb rubber used in

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1476 synthetic turf athletic fields presents any public health
1477 dangers? And also, is the Commission committed to working
1478 with other Federal agencies to obtain this information, and
1479 to ensure young athletes playing on these fields are
1480 protected? Just ask you, Mr. Chairman.

1481 Mr. {Kaye.} Thank you, Congressman, and thank you for
1482 your leadership on this area. I think you have three
1483 questions embedded in there, so I am going to try to address
1484 all three-

1485 Mr. {Pallone.} Sure.

1486 Mr. {Kaye.} --in turn. The first is you are absolutely
1487 correct that that 2008 release does not reflect my views of
1488 the state of play, and I think it is important to note that
1489 that 2008 didn't--release didn't even reflect, as far as I
1490 understand it, the technical staff's views at the time, that
1491 there was a political effort at the time at the Commission to
1492 say something in the headline of the release that may not
1493 actually reflect the state of play, which is basically that
1494 those products are safe.

1495 I think there is a big difference in looking at the lead
1496 exposure that might exist from the blades of the grass and

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1497 determining that, based on a small sample size, the staff was
1498 not able to say that there are--were disconcerting levels of
1499 lead in those fields in that particular aspect. That is very
1500 different from saying these things are safe to play on. Safe
1501 to play on means something to parents that I don't think we
1502 intended to convey, and I don't think we should have
1503 conveyed. So that is the answer to the first question.

1504 The answer to the second question is, absolutely we are
1505 working with our Federal partners to try to figure out a
1506 better and faster way, working together, to see if an issue
1507 such as crumb rubber can be resolved more quickly. As I
1508 mentioned to the Ranking Member earlier, we are working with
1509 EPA, we are working with NIH, through their center down in
1510 Research Triangle Park, North Carolina, the National Institute
1511 of Environmental Health Sciences and the National Toxicology
1512 Program, CDC, ATSDR, and then also the FDA. We are trying to
1513 figure out a way for the government to come together, use our
1514 existing resources and authorities to address these issues.
1515 Parents don't care which acronym name government agency is
1516 supposed to do what. They just want answers, and they want
1517 this uncertainty resolved.

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1518 And the third question--I apologize, I can't even
1519 remember what the third one was. If you could--if you
1520 wouldn't mind asking me again?

1521 Mr. {Pallone.} Well, I am just--I think you are, you
1522 know, just really basically trying to find out what your view
1523 is, and what the Commission is doing, and whether you are
1524 working with other Federal agencies--

1525 Mr. {Kaye.} Absolutely.

1526 Mr. {Pallone.} --on the issue.

1527 Mr. {Kaye.} Absolutely.

1528 Mr. {Pallone.} All right. Thank you very much.

1529 Mr. {Kaye.} Thank you.

1530 Mr. {Pallone.} Thank you.

1531 Mr. {Burgess.} Gentleman yields back. The Chair thanks
1532 the gentleman. The gentleman from Illinois, Mr. Kinzinger,
1533 recognized 5 minutes for your questions.

1534 Mr. {Kinzinger.} Thank you, Mr. Chairman. Thank you
1535 all for being here today, and it is nice to have you in front
1536 of the Committee.

1537 Mr. Chairman--Chairman Kaye, it seems that banning a
1538 chemical that has been deemed safe by other government

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1539 agencies opens the door to the use of substitutes that have
1540 been far less studied, and with far fewer scientific and
1541 performance data available. Is the agency prepared to deal
1542 with the market and potential safety repercussions of
1543 transitioning from well tested thiolates to the uncertainty
1544 associated with any potential substitutes?

1545 Mr. {Kaye.} Well, this gets into, Congressman, some of
1546 the answers to Congressman Pallone. There is a larger issue
1547 going on from a public policy matter, where, unfortunately--
1548 and the concept that you are getting to is regrettable
1549 substitution, where one chemical is banned, and we don't
1550 really have a full sense, from a scientific and safety
1551 perspective, what the substituting chemical will be. I think
1552 that is a failed public policy, I have to admit.

1553 I think the better approach, and this can be done
1554 working with industry, and this would be something that I
1555 would like to see happen, is for the government and industry
1556 to come together to not only focus on which chemicals
1557 shouldn't be used, but to try to get to a faster way to
1558 figure out which chemicals should be used. So, as a public
1559 policy matter, that is my preference. Unfortunately, neither

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1560 the resources or the authorities and the directions that
1561 agencies have been going in for a long time are moving in
1562 that direction.

1563 But, again, as part of these collaborative efforts that
1564 I am trying to undertake, and that we are trying to undertake
1565 from CPSC with these other agencies, that is one of the key
1566 goals that we are looking at.

1567 Mr. {Kinzinger.} Yeah, and I think, you know, until we
1568 get to that point, where we can have that perfect system, we--
1569 -I think we ought to be very careful when we look at banning
1570 substances. Because if we don't have a situation in place
1571 where we can do all the studying of alternatives, I think,
1572 you know, we ought to be very careful.

1573 Let me--following the thiolate rulemaking, Commissioner
1574 Buerkle noted in--her concern on banning chemicals that have
1575 been in use for many years, and there is risk even studying
1576 what little is known about the substitutes. So you said you
1577 agree with that. I want to see--Commissioner Buerkle, what
1578 are your thoughts on the idea of banning something with
1579 unknown substitutes to follow?

1580 Ms. {Buerkle.} Thank you for your question. As you

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1581 note, that was one of my concerns when the MPR came out, that
1582 we are not proposing substitutes be used that we know little-
1583 -less about than we know about the chemicals that are already
1584 banned. My more general concern, with regards to the CHAP,
1585 and I have, both in comment and--here today, and also in
1586 statements--previous statements was the whole process for how
1587 the CHAP report was done, and now this proposed rule. And I
1588 think we really need to take a step back.

1589 Whether it is regarding chemicals, or whether it is
1590 regarding any of the things we do, we are a data driven
1591 agency. And so to make sure that we have the data correct,
1592 and to make sure that the processes we follow are correct,
1593 and that the CHAP followed a process that the entire
1594 scientific community can accept as credible is very key to
1595 our agency, and the credibility of our agency. It has been
1596 noted the American people rely on information coming from us,
1597 so it is important that we get it right. And so if it takes
1598 a little more time, if it requires a request to Congress that
1599 we can't promulgate that rule within 180 days after the CHAP
1600 report was issued, so be it. We have to make that request,
1601 because it is incumbent upon our agency to get it right, to

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1602 take the time that we need to do.

1603 Mr. {Kinzinger.} Yeah, and, you know, I want to add to
1604 that especially--I guess maybe to reiterate what you said.
1605 You know, I understand that there is, in many cases, a need
1606 for 180 days. Going past deadlines isn't fun, it is nothing
1607 that any of us like to do. But I think at the risk of maybe
1608 getting something wrong, versus getting something right, even
1609 if we have to go past a little bit of a deadline, I think,
1610 frankly, Republicans, Democrats, Americans, Independents, far
1611 right, far left would all agree that that is probably a
1612 preferable way to go. And so that is, you know, some of the
1613 concerns we have there.

1614 Chairman Kaye, I want to go to a bit of a different
1615 subject just real quick. In the preamble for the proposed
1616 rule on voluntary recalls, the CPSC indicated that it has
1617 encountered firms that have deliberately and unnecessarily
1618 delayed the timely implementation of the provisions of their
1619 correction action plans. How many firms have deliberately
1620 and unnecessarily delayed the implementation of provisions of
1621 their corrective action plans?

1622 Mr. {Kaye.} Congressman, I will have to follow up and

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1623 give you an answer to that. I don't know the answer to that
1624 question. The voluntary recall rule, as my colleagues know
1625 very well, at this point, from our continued reiterations of
1626 our positions on it, is not something that has been a high
1627 priority for me. I have had higher priorities that go to
1628 saving lives. I am not saying the rule is without merit. I
1629 think it has some value, but it has not been something that I
1630 have spent a lot of time on. I thought that early--

1631 Mr. {Kinzinger.} Well, can you give me, like, an
1632 example maybe of--

1633 Mr. {Kaye.} I can certainly give you anecdotal examples
1634 of where we have reached a situation--the agreements are
1635 voluntary. So we have reached a voluntary corrective action
1636 plan with a company, and we notice, when they file their
1637 quarterly reports, that they are not doing what they said
1638 they were going to do. They are either not engaging on
1639 social media, or they are not attempting to reach out and put
1640 forth the amount of resources and effort that they said they
1641 would. I--one, I wouldn't name a company, even if I could--

1642 Mr. {Kinzinger.} I understand.

1643 Mr. {Kaye.} --but I can't name a company at this point.

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1644 But I thought Commissioner Adler, last week, during a public
1645 meeting that we had, when this topic came up, had a
1646 phenomenal suggestion, where he asked our staff to spend a
1647 few months collecting this data, and reporting back to the
1648 Commission to see whether or not this is a real issue. And,
1649 to Commissioner Buerkle's point, we are data driven, and I
1650 think that will be a useful exercise, and we will all be
1651 curious to see that.

1652 Mr. {Kinzinger.} Good. Well, yeah, I would be
1653 interested too, and I just want to point out, let us make
1654 sure, if you are going to throw out the entire system, that
1655 it is very data driven. So, with that, thank you all for
1656 being here, and I will yield back.

1657 Mr. {Burgess.} Chair thanks the gentleman, gentleman
1658 yields back. The Chair recognizes the gentleman from
1659 Oklahoma, Mr. Mullin. 5 minutes for questions, please.

1660 Mr. {Mullin.} Thank you, Mr. Chairman, and thank you to
1661 the Commissioners for taking the time to be here. I know you
1662 guys have a very busy schedule too, and anytime you've got to
1663 come to the Hill, you have got to be thrilled about that,
1664 right?

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1665 But, you know, we are all held accountable for
1666 statements that are made, and sometimes, when you are sitting
1667 in a position, Chairman, that you sit in, your agency carries
1668 a pretty big stick, and your statements can be devastating to
1669 people that are producing a product that depend on retail
1670 sales. Would you agree with that?

1671 Mr. {Kaye.} Absolutely, and I think about that all the
1672 time. There is a lot of thought that goes into what I say,
1673 whether I end up saying something like that or not.

1674 Mr. {Mullin.} Well, I am holding in my hand right here
1675 a story that was published by an Indianapolis news agency,
1676 and it says, ``If a consumer was to see a gas can at a retail
1677 that contained a flame arrester, we would encourage them to
1678 select such a model, as it provides a vital layer of fire
1679 protection.'' That was made by your agency. Are you
1680 familiar with that news story?

1681 Mr. {Kaye.} I am.

1682 Mr. {Mullin.} Do you agree with that statement?

1683 Mr. {Kaye.} I don't understand enough about the
1684 technical aspects of flame arresters, I am sorry. That is
1685 just not--on gas cans. I can't comment one way or another.

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1686 Mr. {Mullin.} Well--but your statements have an impact,
1687 and a--the flame arresters that we are talking about, they
1688 are only sold on commercial cans. They are not in retail
1689 stores. Are you familiar with that?

1690 Mr. {Kaye.} No, I am not familiar with that. I don't
1691 have any familiarity with gas cans, other than talking to our
1692 staff, and knowing that the issue that you are talking
1693 about--

1694 Mr. {Mullin.} But someone on your staff made this
1695 statement. And the reason why I say this is because, in my
1696 district, I had a manufacturer that produced retail gas cans,
1697 and your agency came out and made a statement referring to
1698 retail gas cans, and--has nothing to do with retail gas cans.
1699 They are only regulated by OSHA and the EPA with the flame
1700 arresters. Once again, we are held accountable for what we
1701 said, and your agency made a statement that could have
1702 possibly cost real people their jobs. So does the CPSC
1703 regulate commercial safety cans?

1704 Mr. {Kaye.} We do not, but the statement that you are
1705 talking about, I am not sure that it is inconsistent with the
1706 position that our staff has taken in the voluntary standards

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1707 capacity.

1708 Mr. {Mullin.} Well--okay. Well, then let us talk about
1709 that. Are you aware that the commercial safety--a commercial
1710 safety can with the flame arrester failed an ASTM protocol?

1711 Mr. {Kaye.} I am not.

1712 Mr. {Mullin.} But you made the statement. Your agency
1713 made the statement encouraging people to go out and buy a gas
1714 can from a retail store that doesn't even exist, and the
1715 purpose of it is to keep children from being burned. But you
1716 guys made a statement that failed that exact test, but yet
1717 the consumer can does. It met those ASTM standards. You
1718 don't see a problem with this?

1719 Mr. {Kaye.} I see a problem with it if what you are
1720 saying is 100 percent accurate, and I am not--

1721 Mr. {Mullin.} Well, I am holding the news story.

1722 Mr. {Kaye.} No, I understand--

1723 Mr. {Mullin.} You guys sent the press release.

1724 Mr. {Kaye.} I am not doubting--

1725 Mr. {Mullin.} And this is coming from ASTM, their
1726 testing protocol, that said it failed.

1727 Mr. {Kaye.} I understand that, but what I am--my point

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1728 is that I am not familiar enough with the area that you are
1729 talking about where I can give you the type of answer you are
1730 looking for.

1731 Mr. {Mullin.} Then how about we do this? Why don't you
1732 get back with my office--

1733 Mr. {Kaye.} Absolutely.

1734 Mr. {Mullin.} --since you guys are making those
1735 statements, and since they affect real jobs in my district?
1736 Why don't you get back with me and give me that information
1737 so you can be spun up to it, so the next time that your
1738 agency opens its mouth and gives a statement like that, maybe
1739 they are informed about what they are saying.

1740 Mr. {Kaye.} Would you be willing to have a meeting with
1741 my staff and me on it?

1742 Mr. {Mullin.} Without question. We would--

1743 Mr. {Kaye.} Okay.

1744 Mr. {Mullin.} --love to, because we would--

1745 Mr. {Kaye.} Okay.

1746 Mr. {Mullin.} --like to get to the problem of this too,
1747 because statements like that hurt real people.

1748 Mr. {Kaye.} Excellent. So my hope is that you would be

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1749 willing to come out to our testing center, where we have the
1750 technical expertise, and we can walk through the gas cans,
1751 and we can look at the issue together. Would you be willing
1752 to do that?

1753 Mr. {Mullin.} Absolutely I would.

1754 Mr. {Kaye.} That would be great.

1755 Mr. {Mullin.} But then we have got to come back and--if
1756 I am going to be willing to do that--

1757 Mr. {Kaye.} Yeah.

1758 Mr. {Mullin.} --if what I am saying is accurate, I
1759 would like you guys to make another statement publicly--

1760 Mr. {Kaye.} You got it.

1761 Mr. {Mullin.} --backing that up.

1762 Mr. {Kaye.} Yeah. Let us get to the answers together,
1763 and then we will figure out where we go from there. And you
1764 have my commitment that if it turns out that we said
1765 something that we both believe--

1766 Mr. {Mullin.} Well, it is not if. I--the statement
1767 says it, and you guys--

1768 Mr. {Kaye.} No, the rest of it--

1769 Mr. {Mullin.} We checked it.

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1770 Mr. {Kaye.} If we said something that is not accurate,
1771 you have my commitment that I will say something that is
1772 accurate. I am not going to leave it to anybody else. I
1773 will say it.

1774 Mr. {Mullin.} Good enough. Mr. Chairman, I yield back.
1775 Thank you.

1776 Mr. {Kaye.} You are welcome.

1777 Mr. {Burgess.} Chair thanks the gentleman. The
1778 gentleman brings up an excellent point. Several years ago I
1779 actually took a field trip up to the CPSC testing facility,
1780 and it was a very illuminating day. My understanding is you
1781 are in new headquarters now, and I think the gentleman is
1782 quite right. A field trip of the Subcommittee out to the
1783 CPSC would be both informative and instructive, and probably
1784 help the Commission, as well as the Subcommittee members, and
1785 we will see about putting that in the process.

1786 I would just also observe that I am, in addition to
1787 being Chairman of this Subcommittee, I am the Chairman of the
1788 House Motorcycle Caucus. I know that is kind of a
1789 disconnect, but I am. And going over to talk to that group
1790 one day after we passed the CPSIA here in the Subcommittee in

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1791 2007 or 2008, there was a young man, very young man, probably
1792 12 or 13 years old, who stood up in front of the group and
1793 said, Mr. Congressman, if you promise to give me my
1794 motorcycle back, I promise I won't eat the battery anymore.
1795 Apparently youth motorcycles had been--the sale had been
1796 prohibited during the bill that we passed, and until those
1797 technical corrections were enacted, it made it very, very
1798 difficult for the people who sold youth motorcycles and their
1799 parts. So we do have to be careful about the unintended
1800 consequences.

1801 Seeing no other members--did you have a follow up
1802 question, Ms.--

1803 Ms. {Schakowsky.} No.

1804 Mr. {Burgess.} --Schakowsky? Seeing no further members
1805 wishing to ask questions for this panel, I do want to thank
1806 you all for being here today. This will conclude our first
1807 panel, and we will take an underscore brief recess to set up
1808 for the second panel. And thank you all very much for your
1809 time today.

1810 [Recess]

1811 Mr. {Burgess.} The Subcommittee will come back to

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1812 order, and I will thank everyone for their patience and
1813 taking time to be here today. We are ready to move into our
1814 second panel for today's hearing, and we will follow the same
1815 format as during the first panel. Each witness will be given
1816 5 minutes for an opening statement, followed by a round of
1817 questions from members.

1818 For our second panel, we have the following witnesses.
1819 Mr. Ronald Warfield--I have here Buck, is that correct? CEO
1820 of ATV/ROV/UTV Safety Consulting. Ms. Heidi Crow-Michael
1821 from Winnsboro, Texas. Thank you for being here today. Ms.
1822 Cheryl Falvey? Did I--Falvey, beg your pardon--co-Chair of
1823 the Advertising and Product Risk Management Group at Crowell,
1824 Moring, and Mr. Erik Pritchard, Executive Vice President and
1825 General Counsel for the Recreational Off Vehicle--Off-Highway
1826 Vehicle Association.

1827 We will begin our second panel with Mr. Warfield. You
1828 are recognized for 5 minutes for the purpose of an opening
1829 statement, please.

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1830 ^STATEMENTS OF RONALD WARFIELD, CHIEF EXECUTIVE OFFICER,
1831 ATV/ROV/UTV SAFETY CONSULTING; HEIDI CROW-MICHAEL, WINNSBORO,
1832 TEXAS; CHERYL FALVEY, CO-CHAIR, ADVERTISING AND PRODUCT RISK
1833 MANAGEMENT, CROWELL & MORING, LLP; AND ERIK PRITCHARD,
1834 EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, RECREATIONAL
1835 OFF-HIGHWAY VEHICLE ASSOCIATION

|

1836 ^STATEMENT OF RONALD WARFIELD

1837 } Mr. {Warfield.} Thank you, Mr. Chairman, Ranking
1838 Members, and members of the Committee. Thank you for this
1839 opportunity to testify in support of H.R. 999, the ROV In-
1840 Depth Examination, or the RIDE Act. My name is Buck
1841 Warfield, and I have extensive experience in dealing with
1842 safe and appropriate use of off-highway vehicles. First a
1843 bit of background. I was employed by the Maryland State
1844 Police as a police officer, or a trooper, for over 23 years,
1845 and I retired in 1993. With regard to off-highway vehicle
1846 experience, in 1985 I was trained and certified by the
1847 Specialty Vehicle Institute of America, SVIA, as an ATV

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1848 instructor. In 1989 I became an ATV Safety Institute, or
1849 ASI, licensed chief instructor, and I continued to be
1850 contracted by ASI to train, license, and monitor other ATV
1851 instructor staff.

1852 With respect to recreational off-highway vehicles, known
1853 as ROVs, or side by sides, I have assisted several agencies,
1854 including military and government groups, in developing
1855 primary ROV training programs, and combining the Recreational
1856 Off-Highway Vehicle Association, or ROHVA, approved training
1857 program in December of 2010. I currently serve as chief ROV
1858 driver coach/trainer, and I have a training facility at my
1859 farm in Sikesville, Maryland which has been designated by
1860 ROHVA as a driver/coach training center, and that is one of
1861 only three in the entire United States. On a personal note,
1862 I have logged over 900 hours as an operator of my personal
1863 ROV since 2006. I currently own two ROVs, utilized primarily
1864 for ROV training, and two more utilized for daily facility
1865 maintenance at my training center and farm.

1866 I participated in the development of the ROV basic
1867 driver course curriculum, which is designated for current and
1868 prospective recreational off-highway vehicle drivers. The

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1869 basic driver course is a training opportunity that provides
1870 current and experienced ROV drivers the chance to learn and
1871 practice basic skills and techniques. It addresses basic
1872 operation, and emphasizes safety awareness related to
1873 specific--related specifically to ROV operation. The overall
1874 aim of the driver/coach course is to provide for drivers'
1875 development in the area of skill and risk management
1876 strategies. This includes learning to foster driver gains in
1877 basic knowledge, skill, attitude, values, and habits.

1878 I am here to support H.R. 999. The legislation would
1879 only pause the Consumer Product Safety Commissions ongoing
1880 ROV rulemaking until the National Academy of Science, in
1881 cooperation with the Department of Defense, and the National
1882 Highway Traffic Safety Administration, perform a study of the
1883 vehicle handling and requirements proposed by CPSC. I do not
1884 claim to be an engineer, or to fully understand the complex
1885 engineering issues, but I do understand that these are some
1886 basic disagreements on a select few issues between engineers
1887 at CPSC and the engineers who work for major manufacturers.
1888 I appreciate the CPSC is well intended. I also know that the
1889 manufacturers develop safe, capable vehicles for me, my

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1890 family, my friends, and the students that I train to use--
1891 with power sport vehicles, including training countless
1892 people who have no prior experience with ATVs or ROVs show me
1893 that these vehicles are safe, with amazing capabilities when
1894 operated as intended.

1895 H.R. 999 is a narrowly tarrowed--tailored--is narrowly
1896 tailored to examine, first of all, the technical validity of
1897 CPSC's proposed lateral stability and vehicle handling
1898 requirements. Also, the number of ROV rollovers that would
1899 be prevented if the rule were adopted, and whether there is a
1900 technical basis for the proposal to provide information on a
1901 point of sale hang tag about a vehicle's rollover resistance
1902 on a progressive scale. And, lastly, the effects on the
1903 utility of ROVs used by the U.S. military if the rule were
1904 adopted.

1905 So, in conclusion, I think the best way to--forward
1906 would be for the industry and CPSC to work together to find a
1907 voluntary solution that works for all the parties, and
1908 protects the safety of ROV drivers and passengers. Barring a
1909 cooperative solution, the best and safest way forward is for
1910 independent third party experts to make sure that we get it

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1911 right. Thank you, sir.

1912 [The prepared statement of Mr. Warfield follows:]

1913 ***** INSERT E *****

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|

1914 Mr. {Burgess.} Gentleman yields back, the Chair thanks
1915 the gentleman. Ms. Crow-Michael, you are recognized for 5
1916 minutes for the purpose of an opening statement, please.

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|

1917 ^STATEMENT OF HEIDI CROW-MICHAEL

1918 } Ms. {Crow-Michael.} Thank you. My name is Heidi Crow-
1919 Michael, and I would like to thank you all for allowing me to
1920 speak today on behalf of my son, J.T. Crow.

1921 I play many roles in life. I am a homemaker, and an
1922 advocate, but most importantly a mother to five children.
1923 J.T. Crow is my second child, and firstborn son. He was a
1924 happy and extraordinary 9-year-old boy. At school he was a
1925 straight A student with perfect attendance. He loved
1926 science, and learning about birds and butterflies. J.T. also
1927 loved being outside and playing sports like soccer and
1928 football.

1929 J.T.'s life was cut short when he went for a ride in a
1930 2007 Yamaha Rhino 450. While riding at a slow speed around a
1931 slight curve, the ROV suddenly and inexplicably rolled over.
1932 Through J.T. was wearing a safety belt, he was thrown from
1933 the Rhino ROV, and then crushed by the half ton vehicle as it
1934 rolled over. Paramedics rushed J.T. to the emergency room,
1935 but he had sustained more injuries than his young body could

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1936 handle. My son died that day, when he was 9 years old, and
1937 my life was forever changed. On a daily basis I live with
1938 the pain of the tragedy that struck my family, and the fear
1939 of knowing that it could happen to other families. This fear
1940 has led me to become an advocate for ROV safety and industry
1941 reform. I have been given the opportunity to use my son's
1942 life to make a difference, a difference that can save lives.

1943 As we sit here this morning, the ROV industry is one
1944 that sets its own safety standards and makes its own rules,
1945 and innocent people are paying the price. I am not against
1946 ROVs. I just want safe ROVs. Many consumers buy ROVs
1947 because they have four wheels, and sometimes seat belts, roll
1948 bars and roofs, and they look safer than ATVs, but ROVs are
1949 not safe. And it has been many years, and every year, every
1950 day that there is not a better solution implemented for ROV
1951 safety is a day that more people, more children, our
1952 children, are put at risk.

1953 When we wrote the Citizens' Report on Utility Trained
1954 Vehicle Hazards and Urgent Need to Improve Safety and
1955 Performance Standards in February of 2009, asking for safety
1956 and performance standards, including minimum occupant

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1957 containment stability and seat belt standards, we were
1958 hopeful our recommendations for safer ROVs would become
1959 standard. We asked for action. Nothing happened. An
1960 already unacceptably high casualty rate will continue unless
1961 action is taken.

1962 In 2014 ROV use resulted in at least 61 deaths, and
1963 eight more in 2015. While less stringent than the
1964 recommended safety measures in the Citizens' Report, the CPSC
1965 has proposed standards that would significantly improve ROV
1966 safety. If the ROV industry really wants to protect their
1967 consumers, why wouldn't they want to make the safest product
1968 possible? Why wouldn't they want to do all they could do to
1969 protect the people who purchase their vehicles? I have been
1970 given the opportunity to speak to many families, and we all
1971 share a common bond. We have lost someone we love in an ROV
1972 rollover accident. Perhaps the most painful part of my role
1973 as an advocate for this cause is hearing the heart wrenching
1974 stories from those families.

1975 I know I am not alone in asking this Committee to allow
1976 the CPSC to move forward with its rulemaking to issue ROV
1977 safety standards and stop the senseless death of our loved

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1978 ones. In my journey over the last 8 years, I have collected
1979 the names and stories of those who shared a fate similar to
1980 J.T.'s, and it is for them that I speak today. For Ellie
1981 Sand, age 10, Kristin Lake, 11, Dusty Lockabey, 14, Ashlyn
1982 Vargas, 12, Dani Bernard, 18, Stephanie Katin, 26, Whitney
1983 Bland, 13, Sydney Anderson, 10, and Abbey West, age 13.

1984 Our stories do not begin and end on the day our loved
1985 ones were killed or injured. The battle is ongoing for all
1986 of us. We will miss soccer games, dance recitals,
1987 graduations, birthdays, weddings, and holiday celebrations.
1988 We will live with the consequences forever. Today you have
1989 the opportunity, and I think the obligation, to help me honor
1990 these young lives, their families, and the life of my son,
1991 J.T. Crow, but it is more than that. You have an opportunity
1992 to become a part of their story, the part that offers hope
1993 for the future by bringing about change. Our request is
1994 simply common sense. It is unimaginable that anyone would
1995 feel differently. If you don't do something about it, can
1996 you live with yourself?

1997 Delay is a problem. Delay puts our children at risk.
1998 It has been too many years and too many tragedies already.

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1999 We urge you not to contribute to any further delay. Thank

2000 you for your time.

2001 [The prepared statement of Ms. Crow-Michael follows:]

2002 ***** INSERT F *****

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|

2003 Mr. {Burgess.} Chair thanks the gentlelady, gentlelady
2004 yields back. Ms. Falvey, you are recognized. 5 minutes for
2005 opening statement, please.

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|

2006 ^STATEMENT OF CHERYL FALVEY

2007 } Ms. {Falvey.} Thank you, Chairman Burgess, Ranking
2008 Member Schakowsky, distinguished members. Thank you for
2009 providing the opportunity to discuss the statutory framework
2010 that the Consumer Product Safety Commission will use to
2011 address the kind of risk we have just heard about. I have
2012 served as the General Counsel of the Consumer Products Safety
2013 Commission from 2008 to 2012, during the implementation of
2014 both the Virginia Graeme Baker Pool and Spa Safety Act, as
2015 well as the Consumer Product Safety Improvement Act. Both of
2016 those statutes made voluntary standards mandatory. I have
2017 been asked to discuss the way the CPSC statutes interrelate
2018 to the voluntary standards process to inform the Committee's
2019 consideration of H.R. 999.

2020 My oral remarks will focus on three important aspects of
2021 the interrelationship between the voluntary standards process
2022 and mandatory law. First, safety standards developed by the
2023 CPSC require time and effort to develop in order to meet the
2024 statutory requirements. It is not easy. Section 7 of the

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2025 CPSC provides the CPSC with the authority to promulgate rules
2026 that set forth performance standards and require warnings and
2027 instructions, but only when the CPSC finds such a standard
2028 reasonably necessary to prevent or reduce an unreasonable
2029 risk of injury, and that the benefits of such regulation bear
2030 reasonable relationship to the costs of the regulation. The
2031 Commission must consider and make appropriate findings on a
2032 variety of issues, including the degree and nature of the
2033 risk, along with the utility of the product, and the costs
2034 and means to achieve the objective.

2035 To issue a final rule, the Commission must find that the
2036 rule is necessary to reasonably eliminate or reduce the
2037 unreasonable risk of injury, and that issuing that rule is in
2038 the public interest. Must also find that the rule imposes
2039 the least burdensome requirement that would adequately reduce
2040 the risk of injury. Congress recognized just how difficult
2041 it is for CPSC to do that when it enacted the CPSIA, and made
2042 it easier to make voluntary standards mandatory law in the
2043 Danny Keysar Child Safety Notification Act, due in part to
2044 resolute efforts by Ranking Member Schakowsky, which
2045 streamlined the process of making voluntary standards

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2046 mandatory law.

2047 Second, the CPSC statute favors voluntary standards when
2048 they eliminate the risk of injury, and are complied with by
2049 manufacturers. If a voluntary standard addressing the same
2050 risk of injury is adopted and implemented, the Commission
2051 cannot proceed with a final rule unless it finds that the
2052 voluntary standard is not likely to eliminate the risk of
2053 injury, and that--and/or that it is unlikely that there will
2054 be substantial compliance with the voluntary standard. These
2055 can be very difficult findings for the Commission to make.
2056 As a data driven agency, the CPSC staff has to look for hard
2057 science to demonstrate the intended safety benefits of both
2058 its standards and consensus driven voluntary standards, but
2059 the CPSC must still attempt to extrapolate from current data
2060 the likely future effects of its proposed rulemaking.

2061 The legislative history of the CPSA sets a high bar,
2062 directing the CPSC to consider whether the voluntary standard
2063 will reduce to a sufficient extent, such that there will no
2064 longer exist an unreasonable risk of injury. Predicting that
2065 there is an unreasonable risk in certain circumstances is
2066 easy. It can be extremely difficult when you are dealing

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2067 with the highly technical issues of vehicle rollover. And
2068 that is why it takes staff time to develop the rulemaking
2069 packages, and why it is over 500 pages long. Determining
2070 whether there is substantial compliance is also a challenge
2071 when so many products come into the country now from
2072 overseas. The legislative history of the CPSC--CPSA directs
2073 that the Commission look at the number of complying products,
2074 rather than the number of complying manufacturers, and those
2075 products are coming in from all over the world.

2076 Third, and finally, the challenges of making voluntary
2077 standards mandatory law is one of the most important lessons
2078 we learned in both CPSIA and the Virginia Graeme Baker Pool
2079 and Spa Safety Act. These voluntary standards are iterative.
2080 They evolved over years. And unless we know that the test
2081 methods can be replicated and are reliable, making them law
2082 prematurely can be very dangerous.

2083 [The prepared statement of Ms. Falvey follows:]

2084 ***** INSERT G *****

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|

2085 Mr. {Burgess.} Chair thanks the gentlelady. Chair
2086 recognizes Mr. Pritchard. Five minutes for an opening
2087 statement, please.

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|

2088 ^STATEMENT OF ERIK PRITCHARD

2089 } Mr. {Pritchard.} Good afternoon, Mr. Chairman, Ranking
2090 Member, and members of the Committee. Thank you for this
2091 opportunity to testify in support of H.R. 999, the ROV In-
2092 Depth Examination, or RIDE Act. My name is Erik Pritchard.
2093 I am the Executive Vice President and General Counsel of the
2094 Recreational Off-Highway Vehicle Association, known as ROHVA.
2095 ROHVA is a not-for-profit trade association sponsored by
2096 Arctic Cat, BRP, Honda, John Deere, Kawasaki, Polaris,
2097 Textron, and Yamaha. ROHVA was formed to promote the safe
2098 and responsible use of recreational off-highway vehicles,
2099 called ROVs, or side-by-sides, in North America.

2100 Between 2011 and 2014 alone, ROV sales are
2101 conservatively estimated to total more than 750,000 in the
2102 U.S. These popular off-highway vehicles are used safely by
2103 families, emergency personnel, and the U.S. military in a
2104 variety of environments ranging from mud, to sand, to forest,
2105 to trails. This is a high growth industry, and a bright spot
2106 in the U.S. manufacturing economy. ROHVA is accredited by

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2107 the American National Standards Institute to develop
2108 standards for ROVs, and has worked with numerous stakeholders
2109 for years to develop those standards, commencing in 2008, and
2110 culminating in voluntary standards approved in 2010, 2011,
2111 and most recently in September 2014. The CPSC has been
2112 involved throughout that process.

2113 The newest ROV voluntary standard includes a new dynamic
2114 stability and handling test and requirement, as well as new
2115 alternative seat belt reminders that were proposed by the
2116 CPSC staff, and driver side speed limiting seat belt
2117 interlocks found in over 60 percent of the 2015 model year
2118 ROVs. Nonetheless, and essentially simultaneously with the
2119 approval of the new voluntary standard, the CPSC voted out
2120 the pending notice of proposed rulemaking regarding ROVs.
2121 The NPR largely ignores the new voluntary standard. Instead,
2122 the CPSC staff analyzed the prior 2011 version of the
2123 voluntary standard, and based it on testing of vehicles from
2124 model year 2010.

2125 In a supplemental briefing submitted 3 weeks after the
2126 voluntary standard was approved, the CPSC staff summarily
2127 rejected the new standard because it did not match the

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2128 rulemaking. The CPSC's proposals are not supported by
2129 science or real world application. One area of concern is
2130 the CPSC's application of on road vehicle dynamics to
2131 vehicles used in rugged off-highway environments. Meanwhile,
2132 the CPSC actually continues to conduct testing in support of
2133 the NPR it has already voted out.

2134 While our review of the CPSC's data underlying the
2135 rulemaking is not yet complete, I can share a couple initial
2136 observations with you. According to the CPSC's data, where
2137 seat belt use is known, approximately 90 percent of riders
2138 suffering fatalities did not wear the seat belts that are
2139 provided in every ROV. Next, approximately 60 percent of the
2140 severe injury rolled sideways incidents in the data were
2141 reported by a Plaintiff's law firm. This is a representative
2142 example of the reporting relied on by the CPSC. A 46-year-
2143 old man was injured by the tip over of an ROV, whose unpadded
2144 roll cage crushed his foot on June 16, 2006. While it has
2145 been a year since his accident, foot is still swollen, he
2146 finds it extremely difficult to walk, and is in considerable
2147 pain, end.

2148 Putting aside the bias of a Plaintiff's lawyers

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2149 reporting, this is not a scientifically sound approach to
2150 gathering data. It tells us nothing about how or why the
2151 alleged tip over occurred, and it is not possible to draw any
2152 statistical conclusions based on this limited information.
2153 These vehicles are significantly more complex than other
2154 products under the CPSC's jurisdiction. The ROV
2155 manufacturers and engineers have serious safety concerns
2156 about the effects of the CPSC's proposals. The RIDE Act will
2157 help resolve these matters by having these proposals examined
2158 by an independent agency, such as the National Academy of
2159 Sciences.

2160 This common sense approach, resolving technical issues
2161 before considering implementation, should be supported by
2162 everyone. Some, however, have attempted to characterize the
2163 RIDE Act as further delay in a long process. The record,
2164 however, does not support that criticism. The voluntary
2165 standard has been updated as technology has evolved. The
2166 fact that the CPSC spent years drafting a proposed rule based
2167 on vehicles from 2010 cannot be evidence that the rule should
2168 be pursued, nor is the quantity of pages in the briefing
2169 package relevant to their quality. And the NPR comment

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2170 period has been extended only because the CPSC failed, until
2171 recently, to turn over the documents and data underlying the
2172 rulemaking.

2173 This morning an ROV industry group is meeting with CPSC
2174 staff to discuss voluntary standards. ROHVA members went
2175 with--met with the CPSC on May 5. The effort to establish a
2176 mutually agreeable voluntary standard is the best approach, a
2177 view, that I understand, is shared by the CPSC in light of
2178 this morning. But in the meantime, the NPR remains pending.
2179 It would be a mistake to proceed to a mandatory rule without
2180 first conducting the testing contemplated by the RIDE Act.
2181 It is imperative that we get this right for the families,
2182 emergency personnel, and the military who use these vehicles
2183 in a variety of off-highway terrains and conditions. Thank
2184 you for your time.

2185 [The prepared statement of Mr. Pritchard follows:]

2186 ***** INSERT H *****

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|

2187 Mr. {Burgess.} The Chair thanks the gentleman,
2188 gentleman yields back. The Chair is prepared to recognize
2189 Ms. Schakowsky. Five minutes for your questions, please.

2190 Ms. {Schakowsky.} Thank you, Mr. Chairman. I just have
2191 to begin by saying, as a consumer advocate pretty much all of
2192 my adult life, I have been around these conversations for a
2193 very long time, and, frankly, I think this panel is
2194 reflective of what happens to consumers, three to one, on not
2195 doing these kinds of mandatory standards.

2196 You know, one example--I have been working on this rear
2197 visibility, and the number of children who are killed in--
2198 when--often their parent or grandparent drives their car over
2199 backwards on them. We had one in Chicago recently. And now
2200 we are going to have, by 2018, mandatory in every car there
2201 is going to be a camera. That bill was passed in 2008, and
2202 an average of two children die every week. Well, heck, that
2203 is not that many kids. 355 deaths from these vehicles since--
2204 --between 2003 and 2013. And thank you, Ms. Crow-Michael, for
2205 reading some of those names, and bringing it home to us. And
2206 thank you for your courageous testimony today.

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2207 I would like to hear from the industry, instead of why
2208 it all ought to be voluntary--because you said 15--I guess
2209 that is under the voluntary standards. 15 people have died
2210 this year, is that right, already? Isn't that--200 and--
2211 2015?

2212 Ms. {Crow-Michael.} Yes, correct.

2213 Ms. {Schakowsky.} Yeah. So that is under voluntary
2214 standards, I take it. Well, maybe cost/benefit doesn't make
2215 that worthwhile to have mandatory standards. I disagree.
2216 And I think that, while you want to get it right, absolutely,
2217 I am sick of hearing, the fault is the trial lawyers, the
2218 fault is the user who doesn't put on the seat belt. And if
2219 we can do something to save another life, and I am with you,
2220 then we need to have mandatory standards.

2221 So I am wondering if you had any feeling that you had
2222 any reason not to trust the vehicle that your son was using
2223 when you looked at that.

2224 Ms. {Crow-Michael.} In the beginning, I really feel
2225 like the vehicles give a perception of safety, but ROVs are
2226 not safe. And the fact that so many children have lost their
2227 lives has proven that, time and time again.

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2228 Ms. {Schakowsky.} And when your son was bucked into the
2229 vehicle, did you trust that the seat belt would keep him from
2230 being thrown from the vehicle, just like it would in a car?

2231 Ms. {Crow-Michael.} Of course. We think the products
2232 that we buy are safe.

2233 Ms. {Schakowsky.} Did the vehicle your son was riding
2234 look like the kind of vehicle that would lead to more than
2235 300 deaths? Or I guess you already said the vehicle--

2236 Ms. {Crow-Michael.} Absolutely not.

2237 Ms. {Schakowsky.} Proponents of the CPSC rule, an
2238 activist like yourself, had said that the type of everyday
2239 use of the ROVs that lead to rollover deaths is not
2240 necessarily obvious to riders, particularly children. Do you
2241 agree?

2242 Ms. {Crow-Michael.} I agree.

2243 Ms. {Schakowsky.} And based on your work advocating on
2244 behalf of other victims of ROV accidents, do you believe that
2245 children are particularly vulnerable?

2246 Ms. {Crow-Michael.} I do, and I believe waiting for
2247 more data is waiting for more deaths.

2248 Ms. {Schakowsky.} So what I would like to see is,

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2249 rather than saying we have to have perhaps years more of
2250 study, and years more of death, that the industry work with
2251 the advocates, and with the CPSC, and with their
2252 investigators, to--if you don't think the rule--the mandatory
2253 rule is proper, then figure out what a mandatory rule ought
2254 to look like. Didn't you say, Ms. Falvey, that there are
2255 imports, et cetera, and that, you know, we need to look at
2256 all of those?

2257 Ms. {Falvey.} The way the statute would work, the
2258 Commission would need to know that there is substantial
2259 compliance before they relied upon a voluntary standard. Or
2260 they could just decide, we don't have confidence in these
2261 foreign manufacturers, and that they will be compliant, and
2262 move forward with their final rule.

2263 Ms. {Schakowsky.} So why don't we have a mandatory
2264 standard that would apply to all, including imports? I mean,
2265 I just feel so strongly that when we have an opportunity to
2266 do something that is going to save a life, and I know that
2267 there are complicated mathematics that figures out money
2268 spent, is it worth a life? I don't really abide by that, and
2269 it seems to me that 335 is enough, I think your son is

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2270 enough, that we ought to move ahead. I support moving ahead
2271 as quickly as possible with the mandatory standards, and I
2272 yield back.

2273 Mr. {Burgess.} The Chair thanks the gentlelady,
2274 gentlelady yields back. I will recognize myself, 5 minutes
2275 for questions.

2276 Ms. Falvey, let me just, first off, say thank you for
2277 your work on the Virginia Graeme Baker pool standards. I was
2278 on the Subcommittee when that bill went through, and actually
2279 added the language for ornamental pools because, as you may
2280 recall, we lost a number of people at a Fort Worth water
2281 garden just shortly before that came through, which
2282 underscored to me the necessity of including ornamental
2283 pools, as well as backyard pools. But when you were doing
2284 the drain cover recall, did you go from a voluntary standard
2285 to a mandatory standard during that process?

2286 Ms. {Falvey.} Yes, we did.

2287 Mr. {Burgess.} And what were the advantages, or perhaps
2288 the disadvantages, in moving from the voluntary to the
2289 mandatory standard?

2290 Ms. {Falvey.} The advantage is always safety and

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2291 stopping death. You are always tempted to move as quickly as
2292 possible in order to address an addressable risk. The
2293 disadvantage in that circumstance is--

2294 Mr. {Burgess.} Let me just interrupt you there for a
2295 second, if I could, because--which is the more expeditious
2296 path, the voluntary or the mandatory?

2297 Ms. {Falvey.} It depends, but it can be more
2298 expeditious to rely on the voluntary standard. You get
2299 industry and the CPSC staff working together on a standard
2300 that everyone can agree on.

2301 The problem with doing it too quickly, and mandating it
2302 as law when it is not quite ready to be law is that, in that
2303 case, we didn't make things safer fast enough, in that the
2304 drain covers were tested by different labs in different ways.
2305 We didn't know that the test results--exactly how to do the
2306 tests at the lab level, and there were different labs passing
2307 different drain covers, and we ended up with pools with brand
2308 new drain covers installed that weren't compliant. And we
2309 had to recall those, pull them out, and put them in, properly
2310 tested.

2311 That works well in the voluntary world, where things can

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2312 be iterative and change over time. When you make it
2313 mandatory law, it changes the equation. And so while it is
2314 helpful, from a safety perspective, to move as quickly as
2315 possible, and that is always the CPSC's goal, if you don't do
2316 it right, it can cost an enormous amount of money, and it
2317 doesn't save lives. And that is what we want to try to
2318 avoid.

2319 Mr. {Burgess.} Very well. Now, we--Mr. Pritchard, I
2320 guess I should ask this question of you. The list that Ms.
2321 Crow-Michael read is impressive, but it is also impressive
2322 because of the young age of so many of the people who were--
2323 who met their demise. Is there--do you placard these
2324 machines with an age restriction, or a recommendation for
2325 training under certain ages?

2326 Mr. {Pritchard.} We do. The industry's recommendation
2327 is that, in order to drive an ROV, you need to be at least 16
2328 years of age, and have a valid driver's license. These are
2329 not toys. These are not meant to be driven by children.
2330 This is on the machines, it is part of the free online
2331 training that is available to everyone. It is certainly part
2332 of the hands-on training that is available. Children don't

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2333 belong behind the wheel of these vehicles.

2334 We have covered a lot of ground here in sort of very
2335 short form. One thing I do want to clarify is that, when we
2336 talk about a voluntary standard, and the requirements under
2337 the voluntary standard, that is enforceable. That is
2338 enforceable by the CPSC. It is not voluntary in the sense of
2339 an opt-in and opt-out. It is the standard. And that is how
2340 the approximately 14 to 15,000 other products that are under
2341 the jurisdiction of the CPSC are handled. I mean, you could-
2342 -you can imagine the CPSC trying to write 15,000 different
2343 standards for every product out there. So the voluntary
2344 standard is enforceable.

2345 Mr. {Burgess.} Yeah. Let me just interrupt you for a
2346 minute, because I am going to run out of time, and I want to
2347 be respectful of the other members.

2348 Now, Ms. Crow-Michael, on your--I think it is a Facebook
2349 page that is set up to the memory of your son, there is a
2350 list of I guess safety measures, for want of a better term.
2351 One mentions the age, another mentions a helmet. I mean,
2352 these are things that your organization recommends?

2353 Ms. {Crow-Michael.} First off, I don't have an

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2354 organization, per se. But if we are talking about the fact
2355 that children shouldn't be on them, then we would have to--I
2356 would have to say, what about Karen Harwood, 46, or Andrea
2357 Jones, who is 34?

2358 Mr. {Burgess.} And that is an excellent point, and I
2359 was going to ask Mr. Warfield, is there--you have studied
2360 this for a long time.

2361 Mr. {Warfield.} Yes.

2362 Mr. {Burgess.} Does, you know, the age placarding may
2363 be one thing, but does there--I want to say this as nicely as
2364 I can, but does body mass make a difference? That is, the
2365 lighter the driver--because most of the people older the--
2366 than age 16 that are--that Ms. Crow-Michael mentioned on her
2367 list, most of those were women, so presumably of lighter body
2368 weight. Does that make a difference? Is that something that
2369 you have studied?

2370 Mr. {Warfield.} Not the weight itself, sir. What I see
2371 time and time again with these machines, it is operator
2372 error. It has almost nothing to do with the design of the
2373 vehicle. Please let me carry it one step further here. I
2374 have been operating these machines since 1985. I currently

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2375 have 13 ATVs. I have four ROVs. I have a brand new one
2376 coming in today. I am on those ROVs every day, either
2377 maintenance or through training. I have never rolled an ROV
2378 over. I have never rolled an ATV over. I have operated
2379 these machines in every state in the United States, including
2380 Alaska and Hawaii, except for North Dakota. I don't know why
2381 I missed that on North Dakota.

2382 But what I am getting at is I put these machines through
2383 their paces, through training, through an advocate of riding.
2384 I wear a helmet, I make sure the proper age person is
2385 operating the machine. I follow the guidelines. So what I
2386 am saying is, I have trusted this industry. I have trusted
2387 this industry that they have shown me--they have given me and
2388 my family a vehicle that is safe to operate. I am really
2389 concerned that now CPSC is saying, wait a minute, there is
2390 something wrong here.

2391 And to answer your question, what--why wait? I have
2392 been operating a machine that was perfectly capable of doing
2393 everything I wanted. If we are going to make a change, let
2394 us make sure that change is not a negative change.

2395 Mr. {Burgess.} All right. I am going to ask you to

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2396 hold that thought, and the Chair will recognize Ms. Clarke.

2397 Five minutes for questions, please.

2398 Ms. {Clarke.} Thank you, Mr. Chairman. I thank the
2399 Ranking Member, and I thank our witnesses for their testimony
2400 here today. It has been more than a half a decade since the
2401 Consumer Product Safety Commission issued the advance notice
2402 of proposed rulemaking in 2009. Since then, CPSC has
2403 conducted thorough research to determine the appropriate
2404 mandatory standards for ROVs. CPSC staff reviewed more than
2405 550 ROV related incidents, 335 of which resulted in the death
2406 of the driver, or passenger, or both. Each incident was
2407 reviewed by a multi-disciplinary team, included--including an
2408 economist, human factors engineer, a health scientist, and a
2409 statistician. The Commission also worked with FEA Limited, a
2410 CPSC contractor, to create a ROV rollover simulator from
2411 scratch. In addition to the agency's own data collection,
2412 this year the CPSC also held a 7 hour public meeting, in
2413 which the Commission heard testimony from, and asked
2414 questions of witnesses both for and against the proposal. By
2415 any traditional measure, internal research, hypothetical
2416 simulation, incident review, and public input, the Commission

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2417 has conducted a thorough investigation and has more than
2418 enough information to issue appropriate standards.

2419 Ms. Crow-Michael, your son was not the only person
2420 affected by weak safety standards that allowed Yamaha to
2421 continue selling defective versions of the Rhino ROV. In
2422 2009 the Consumer Product Safety Commission estimated that 59
2423 people were killed riding the Rhino. In fact, the Rhino
2424 incident--accident epidemic was one of the primary drivers of
2425 the Commission's original rulemaking. But H.R. 999 would
2426 force the CPSC to contract with the National Academy of
2427 Sciences to conduct further research before implementing
2428 these reasonable and thoroughly tested standards. So my
2429 question to you, Ms. Crow-Michael, is do you think more data
2430 is needed to determine the ROVs that are currently on the
2431 market are unsafe?

2432 Ms. {Crow-Michael.} CPSC, I think they have worked hard
2433 to get the data that they have. They have spent money to
2434 gather and understand that data. More delay puts and all
2435 people at serious risk of injurly [sic]--injury or death, I
2436 am sorry. But I don't think more data is needed. I think it
2437 has been enough time, and I--and, like I said before, waiting

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2438 for more data is waiting for more death.

2439 Ms. {Clarke.} Then let me just follow up with that
2440 question. You have suffered an unspeakable loss because of
2441 an unsafe ROV. Do you think that the CPSC is rushing to
2442 judgment in proposing standards for a recreational activity
2443 responsible for more than 330 deaths in the last decade?

2444 Ms. {Crow-Michael.} No.

2445 Ms. {Clarke.} I thank you. Mr. Chairman, I yield back
2446 the balance of my time.

2447 Mr. {Burgess.} Chair thanks the gentlelady, gentlelady
2448 yields back. Chair recognize the gentleman from Kentucky. 5
2449 minutes for questions, please.

2450 Mr. {Guthrie.} Thank you, Mr. Chairman, and thank you
2451 all for being here to testify today. I have a question for
2452 Mr. Pritchard. I notice in your testimony you mention that
2453 the ROHVA is accredited by the American National Standards
2454 Institute to develop standards for the equipment,
2455 configuration, and performance of ROVs. Can you tell us more
2456 about this process, and how voluntary safety standards have
2457 been developed over the last few years, and does this process
2458 involve the CPC? I know you touched on it a little bit, but

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2459 how that process of voluntary standards that are mandated,
2460 and is the CPSC involved?

2461 Mr. {Pritchard.} Absolutely, and cut me off when you
2462 get tired of listening, because I could talk about this all
2463 day. ROHVA was formed in 2007. The work on a voluntary
2464 standard began in 2008, so essentially almost immediately.
2465 In 2010 a voluntary standard was developed and published,
2466 then another version in 2011, and another version in 2014
2467 reflecting the evolving technology.

2468 The way the process works is you get the process started
2469 through a procedure mandated by--it is ANSI [ph], that is the
2470 acronym, for this process. You put out a proposed draft
2471 standard to the canvas, and the canvas is made of a variety
2472 of stakeholders, and the stakeholders include--in every
2473 iteration has included the CPSC. It has included consumer
2474 groups. It has included industry. It has included user
2475 groups. It is a broad swath. And the way this works is
2476 people get the draft, the canvasees comment, and submit their
2477 comments back in. The comments are shared with everyone on
2478 the canvas, then ROHVA responds to those comments. Each one
2479 has to say, your suggestion for this area, say seat belts,

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2480 here is our response.

2481 Then the canvas gets all of those comments from ROHVA
2482 back to the canvasee, so everyone gets to see this full
2483 exchange of information, and then a consensus is built around
2484 the voluntary standard. It is then sent to ANSI, here is how
2485 we did it, and ANSI checks that process and verifies that you
2486 followed the ANSI procedure. When ANSI approves it, then it
2487 becomes official, and ultimately a book, for lack of a better
2488 word, is published, and that becomes the standard by which
2489 all of the vehicles subject to that voluntary standard must
2490 conform.

2491 Mr. {Guthrie.} So then it becomes mandatory?

2492 Mr. {Pritchard.} It is voluntary--

2493 Mr. {Guthrie.} So what is the difference between
2494 mandatory and voluntary, then?

2495 Mr. {Pritchard.} Sure. It is voluntary in the sense
2496 of--it is developed by stakeholders, but it is enforceable.
2497 Mandatory means the CPSC imposes what it thinks is the best
2498 approach. And where we are now is at an impasse between a
2499 voluntary standard that is brand new, that just came out in
2500 September 2014, and a mandatory standard, or at least a

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2501 proposal for a mandatory standard, based on the old standard,
2502 but a mandatory standard proposed by the CPSC. And the
2503 engineers and industry just think CPSC has got this wrong.

2504 Mr. {Guthrie.} Well, was the voluntary standard better?
2505 What--was it more likely to protect life than the mandatory
2506 standard?

2507 Mr. {Pritchard.} So--

2508 Mr. {Guthrie.} What are the critical differences, and
2509 why is yours more--better?

2510 Mr. {Pritchard.} So there are three--what I call three
2511 fundamental differences between the two. One is on vehicle
2512 handling. The CPSC wants to impose something called an
2513 understeer mandate. Every vehicle must understeer, and I can
2514 tell you about that. The next is testing lateral stability.
2515 The CPSC's test for lateral stability, frankly, suffers from
2516 problems with repeatability and reproducibility, which the
2517 CPSC is conducting testing to address right now. The final
2518 piece is seat belts. CPSC has proposed a seat belt interlock
2519 which would essentially prevent the vehicle from moving above
2520 15 miles an hour if the seat belts aren't moved in both the
2521 driver and the passenger seat.

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2522 Now, in the driver seat, there is actually a lot of
2523 agreement, and the voluntary standard includes that as an
2524 approach. The dispute really is over the passenger seat.
2525 CPSC commissioned a study of the passenger seat interlock.
2526 They just got the results I think in February. They
2527 published them in March. So they got these after the
2528 voluntary standard was voted out. And the study confirmed
2529 what industry had been telling--that we have heard from our
2530 own consumers, which is no one wants this passenger side seat
2531 belt interlock because drivers don't want to lose control of
2532 their vehicle. You add on top of that the technical
2533 challenges, which would be if you put your dog in the seat,
2534 your toolbox in the seat--this is an area for which there is
2535 no answer.

2536 And the final wrinkle on this is that even on the
2537 driver's side seat belt interlock, you--it doesn't work with
2538 a diesel or carbureted engine, because it has to be talking
2539 with a computer. Computer has to talk from the seat belt
2540 through the speed limited to tell it that we have a
2541 connection here. So that is one small example of what is a,
2542 frankly, complex area. And the CPSC's engineers, while I

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2543 believe well intentioned, don't have this right.

2544 And I want to add, we didn't get--we went through this
2545 voluntary standard process last year, which I didn't think
2546 the CPSC was very engaged in. A better way to put that,
2547 though, is that they seem to be much more engaged with
2548 industry now. And there is a meeting taking place right now
2549 between industry and CPSC staff to discuss the voluntary
2550 standards. That is the path forward.

2551 Mr. {Guthrie.} Thank you. And, before I yield back, if
2552 I could ask--I want to say, Ms. Crow-Michael, thank you for
2553 coming. Your advocacy is very important, and thoughts and
2554 prayers are with you. But thank you for taking this cause,
2555 and hopefully we can come to the right standard and do the
2556 right--and have the right thing as a result. Thank you.

2557 Mr. {Burgess.} Gentleman yields back. The Chair thanks
2558 the gentleman. Chair recognizes Ms. Schakowsky for the
2559 purpose of a unanimous consent request.

2560 Ms. {Schakowsky.} I would like to put on the record
2561 statement of G.K. Butterfield, opening statement of--the
2562 statement of John Sand, father of an ROV victim, letters from
2563 the American Academy of Pediatrics, letter from various

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2564 consumer groups, testimony of Rachel Weintraub of the
2565 Consumer Federation of America before the CPSC, Citizens'
2566 Report that Ms. Crow-Michael referred to in her testimony.
2567 We will add that to the permanent record.

2568 Mr. {Burgess.} Without objection, so ordered.

2569 [The information follows:]

2570 ***** COMMITTEE INSERT *****

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2571 Mr. {Burgess.} Chair would just note I offered Ms.
2572 Schakowsky a follow-up question. She declined. I did have
2573 one follow up question that I wanted to ask.

2574 Ms. Crow-Michael, your son was injured on the Yamaha
2575 Rhino 450. Just ask the question of anyone on the panel, is
2576 that particular model still available? Is that something
2577 that is still sold on the market?

2578 Mr. {Pritchard.} I can address it.

2579 Mr. {Burgess.} Please.

2580 Mr. {Pritchard.} That vehicle is not sold. In fact, it
2581 is--you are talking about a vehicle from 2007, if I recall
2582 your testimony correctly. We are now three voluntary
2583 standards past that, so the technology has evolved beyond
2584 that. I can add, there are tens of thousands of those Rhinos
2585 still in use that people enjoy, at this point have probably
2586 put on hundreds of thousands, if not more, hours of use.
2587 But, no, we are--the technology for these vehicles has
2588 evolved, and we are now in a new standard.

2589 Mr. {Burgess.} But you could still buy one on
2590 Craigslist?

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2591 Mr. {Pritchard.} Yeah, I would guess.

2592 Mr. {Burgess.} Yeah. So it is going to be an
2593 informational challenge to get information to people who may
2594 be new purchasers of old machines.

2595 Mr. {Pritchard.} But those vehicles--and--respectfully,
2596 are not defective, period. I think that this--that this--I
2597 think these incidents are more complicated than what we have
2598 heard today. I don't think that is the focus of today. I
2599 think the focus of today is, can we get this right between
2600 industry and the CPSC, and if the CPSC just won't listen to
2601 industry, they won't listen to the folks who make these
2602 vehicles, maybe they will listen to the National Academy of
2603 Sciences.

2604 Mr. {Burgess.} Very well. Chair wishes to thank all
2605 members of the panel. Ms. Crow-Michael, I just echo what Mr.
2606 Guthrie said. I am sure every member of the Subcommittee
2607 extends to you our condolences for your loss.

2608 Seeing that there are no further members wishing to ask
2609 questions, before we conclude, I would like to submit the
2610 following documents for inclusion in the record by unanimous
2611 consent. Statement for the record from Commissioner Marietta

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2612 Robinson from the Consumer Product Safety Commission, a
2613 letter--we already did Mr. Olson's letter. A response letter
2614 from Chairman Elliot Kaye to Chairman Olson.

2615 [The information follows:]

2616 ***** COMMITTEE INSERT *****

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2617 Mr. {Burgess.} Pursuant to Committee rules, I remind
2618 members they have 10 business days to submit additional
2619 questions for the record. I ask the witnesses to submit
2620 their response within 10 business days upon receipt of the
2621 questions. Without objection, again, my thanks to the panel,
2622 and thank you for staying with us through a long morning.
2623 Without objection, the Subcommittee is adjourned.
2624 [Whereupon, at 12:45 p.m., the Subcommittee was
2625 adjourned.]