

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

**RESPONSES OF CHAIRMAN ELLIOT F. KAYE TO
ADDITIONAL QUESTIONS FOR THE RECORD**

The Honorable Michael C. Burgess

Voluntary Recall Rulemaking & Recall Effectiveness

The Commission's proposed rulemaking regarding "voluntary remedial actions and guidelines for voluntary recall notices" poses a significant risk to the entire voluntary recall process and the Commission's successful, and award winning, Fast Track recall process.¹ The cooperative nature of negotiations between private entities and the Commission is critical to the Fast Track program's success.

There is an extensive record of issues with the proposed rule. The comments received by the Commission during the notice and comment period raised serious concerns about the proposed rule, from making corrective action plans (CAPs) "legally binding" to the imposition of internal compliance programs based on a history of multiple voluntary recalls.²

- 1. There are a number of open rulemakings included in the Commission's (sic) Where does the voluntary recall rulemaking fall within the list of Commission priorities for Fiscal Year 2015 and Fiscal Year 2016?**

Response: I can speak only for myself, not for my fellow Commissioners. I believe the Commission should continue to make its top priority addressing consumer products that seriously harm consumers, especially children.

- 2. Former Chairman Ann Brown has been extremely critical of the proposed rule on voluntary recalls. She said that it would devastate the agency's successful Fast Track recall program. Do you agree or disagree? Please explain**

Response: At this time, I do not have sufficient information to agree or disagree with the opinion that the proposed rule would impact our Fast Track

¹ CPSC Docket No. CPSC-2013-0040.

² <http://www.regulations.gov/#!documentDetail;D=CPSC-2013-0040-0003>.

program. Should the Commission move to consider a final voluntary recall rule, I plan to carefully consider all comments as well as the effects any changes may have on the Commission's standing programs.

- 3. For the last twelve months, how many Fast Track recalls have been completed? What was the average time between initial reporting to final CAP? In the last twelve months, how many instances has the Commission encountered where a company failed to meet its obligations under a CAP entered into through the Fast Track process? In the last twelve months, how many recalls has the Commission initiated under its Section 15 authority? In the last twelve months, how many times has the Commission utilized 16 C.F.R. §111520(b) to obtain a binding consent order agreement with a recalling firm?**

Response: In the last 12 months (August 2014 to July 2015), CPSC completed 196 Fast-Track recalls. We consider a Fast-Track recall "completed" when CPSC staff formally accepts a firm's Corrective Action Plan ("CAP").

The average time from initial reporting to final CAP for the 196 Fast-Track recalls is 37 business days. This includes the time from when CPSC staff receives a firm's "Full Report" to the announcement of the recall. Often a firm's Initial Report does not contain enough information to determine whether the recall will qualify under the Fast-Track program. CPSC sends an acknowledgement letter to the firm with a request for "Full Report" information no later than 10 business days from receipt of the Initial Report. The firm must initiate an acceptable CAP within 20 business days of submission of the Initial Report to continue under the Fast-Track program. The Recall Press Release is one of the last items negotiated. Accordingly, we consider the announcement of the Press Release to be the "final CAP." It may take a few days to process and formally accept the CAP.

CPSC staff indicates there have been two instances of a firm not fulfilling their agreed-upon CAP during the last 12 months. In one case, the firm did not stop-sale as they agreed. The issue was resolved within 1 week of learning that the firm continued to sell the product; the case was referred to CPSC's Office of the General Counsel. The second case involved a firm that did not follow their agreed-upon return procedure; this issue was resolved within three days. In 20 recalls, firms failed to submit their monthly Progress Reports, as negotiated in the CAP. CPSC is reviewing these recalls for future follow-up.

Eighty-eight recalls resulted from the CPSC Office of Compliance's action under Section 15 authority in the last 12 months.

In the last 12 months, no binding consent order agreements have been executed pursuant to 1115.20(b).

Chronic Hazard Advisory Panel (CHAP) Report on Phthalates

Concerns have been raised about the process utilized in the development of the Chronic Hazard Advisory Panel on Phthalates (CHAP) and the report released this July. Due to the fact that the CHAP report is likely to be the basis for promulgating a major rule on the use of phthalates and phthalate alternatives, it is important that the CHAP's findings and recommendations have been thoroughly reviewed.

The Office of Management and Budget (OMB) has guidelines in place for "highly influential scientific assessments."³ We are concerned that the process for developing the CHAP report did not abide by the OMB's guidelines which include a public comment period for draft scientific assessments.⁴ Peer review is a critical component of scientific review and the OMB guidelines were released as part of an effort to "improve the quality of the scientific information upon which policy decisions are based."

In developing its report, the CHAP used National Health and Nutrition Examination Survey (NHANES) data available from the Centers for Disease Control and Prevention (CDC) from 2006. However, additional CDC NHANES data was released in 2008, 2010, and 2012 prior to the release of the CHAP's findings. We are concerned that the CHAP did not utilize the most current data in its development of the report as well as understanding what impact old data has on the findings.

Finally, the potential precedent-setting cumulative risk assessment utilized by the CHAP is a novel methodology that remains in its formative stages and has

³ http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-03.pdf?j=63887477&e=robert_flagg@americanchemistry.com&l=1012442_HTML&u=1415662833&mid=10088079&jb=0

⁴ See Information Quality Act, Sec. 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, P.L. 106-554.

not been utilized by any other federal agency as the basis for a major rulemaking. Given the Commission's obligations under the Information Quality Act and the process issues outlined here, I remain gravely concerned about the results of the CHAP report being utilized without further scrutiny by the Commission.

- 1. At the March 19, 2015 hearing, you testified that you support a public review and comment period of the staff analysis of the CHAP Report with respect to the pending phthalates rulemaking proceeding. What is the time frame for this new public review and comment period? Please explain the time frame, how this activity will impact the pending rulemaking proceeding, and how the Commission will respond to commenters concerns with the staff analysis package.**

Response: At my request, CPSC staff evaluated the most recent NHANES biomonitoring data. The Commission voted to publish in the *Federal Register* a Notice of Availability of a document containing staff's evaluation of this data titled "Estimated Phthalate Exposure and Risk to Pregnant Women and Women of Reproductive Age as Assessed Using Four NHANES Biomonitoring Data Sets (2005/2006, 2007/2008, 2009/2010, 2011/2012)." In the Notice of Availability, which published on June 23, 2015 (80 FR 120), the Commission invited the public to review and comment on staff's document. That 45-day comment period ended on August 7, 2015, and CPSC received 13 substantive comments. Staff will include responses to these comments in the draft final rule.

- 2. I understand the Commission staff is analyzing newer exposure data on phthalates, but there is not much data on recent exposures of pregnant women or infants. Is there reason to believe that these groups have significantly different exposures than women or children generally? Is there reason to believe that these two groups would not see the same downward trend in exposure to DEHP, the phthalate that dominates the hazard analysis?**

Response: CPSC staff analyzed the NHANES biomonitoring data on phthalates for pregnant women (2005-2006 NHANES data cycle) and women of reproductive age (15-45 years old; 2005-2006, 2007-2008, 2009-2010, 2011-2012 NHANES data cycles). As the CHAP report indicated, infants and children tend to have greater exposures than their parents. Overall, CPSC staff

concludes that a downward trend in DEHP exposures has occurred in all populations, while exposures to other phthalates, such as DINP, are increasing.

- 3. In its previous work on phthalates, the Commission conducted its own exposure study. If data gaps exist within the universe of available data, has the Commission considered conducting its own exposure study? What was the result of that consideration?**

Response: The staff did not consider conducting its own human biomonitoring study because it would require an extraordinary commitment of resources, which the Commission does not possess. Staff devoted considerable effort to finding additional sources of recent biomonitoring data on infants, but there was no additional recent data on infant exposures available to them.

Window Coverings

In October 2014, the Commission voted unanimously to begin the rulemaking process leading to a mandatory safety standard for new window coverings. Currently, two American National Standards Institute (ANSI) standards have been developed with industry partners regarding corded window covering products and corded horizontal louver blinds with metal slat. For products already installed in homes and businesses, the Window Covering Safety Council provides free retrofit devices for consumer with bottom-up top-down style window covering; roman shade window coverings; roll up type shades/roller blinds; mini blinds, horizontal blinds and pleated shades (purchased before 1995); mini blinds, horizontal blinds and pleated shades (purchased after 1995); and vertical blinds and traverse-rod draperies.

The Commission has been working with industry for two decades on this issue.⁵ To address this serious issue, it is important to ensure that the Commission's activities are directed at addressing issues that pose the highest risk.

- 1. The statute governing the Commission clearly states that the Commission must rely on the voluntary standard process whenever possible. For the past two years there has also been report language from Congress urging the Commission to work cooperatively with the industry to address the**

⁵ <http://www.cpsc.gov/en/Recalls/2001/CPSC-Window-Covering-Industry-Announce-Recall-to-Repair-Window-Blinds-/>

window covering issue. The initiation of rulemaking with an Advanced Notice of Proposed Rulemaking (ANPR) seems to contradict the direct (sic) from Congress and indicates an abandonment of the voluntary standards process. How many full-time equivalent (FTE) hours have been spent by the Commission on this issue in the last five years? How many FTE hours have been spent by the Commission on this issue from the development stages of the current ANPR?

Response: Staff has repeatedly urged the Window Coverings Manufacturers Association (WCMA) to reopen the ANSI/WCMA voluntary standard since the last standard was published in 2012. In a letter to staff on August 29, 2014, the WCMA Executive Director stated he had begun "... the process of opening the ANSI/WCMA window covering standard with the goal of further minimizing the risk from cords that can form a hazardous loop."⁶ However, to date, staff is unaware of any meetings or activities related to revising the voluntary standard. Meanwhile, as they have for decades, these products continue to kill children.

Staff estimates that during the last five years, approximately 14,000 staff hours⁷ have been spent on window coverings, including voluntary standards activities related to the ANSI/WCMA A100.1-2012 development, compliance investigations, and international cooperative work as part of the Pilot Alignment Initiative, and evaluation of the window coverings petition.

Approximately 1,400 staff hours have been spent on mandatory standards activities by staff from the development stages of the current ANPR, which was published in the *Federal Register* on January 16, 2015.

- 2. Will the ANPR, a result of the Commission's recent approval of petition C 13-2 (requesting a mandatory standard for corded window coverings), analyze the risk associated with existing window coverings installed in homes and businesses across the country as compared to the risk presented by newly manufactured window covering products?**

⁶ http://www.cpsc.gov/PageFiles/170642/WCMALettertoGBorlase8_29.pdf

⁷ This estimate of staff hours was formulated by surveying staff that work on the related projects and asking them to estimate their time spent on this issue over the last five years. The CPSC captures labor hours and financial execution data at the program level; data is not collected for smaller, sub-projects (such as work on window coverings) within a program.

Response: In the ANPR, staff assessed the 2014 version of the ANSI/WCMA standard and concluded that approximately 57 percent of the incidents that were investigated by CPSC would not be effectively addressed by the existing voluntary standard. The 2014 standard would address the hazards in approximately 25percent of the investigated incidents. For the remaining 17 percent, there was insufficient information to draw any conclusions. Staff attributed only 25percent of the investigated incidents (from older window coverings) to hazard patterns that are addressed by the current voluntary standard for newly manufactured window covings.

3. Are there voluntary industry standards that the Commission staff will examine in preparing the ANPR? If so, please explain.

Response: In the petition briefing package⁸ and in the ANPR⁹, CPSC engineering staff examined the current ANSI/WCMA standard, as well as three international window covering safety standards (Australia, Canada and European Union).

4. In a letter dated July 22, 2014, your staff has asked the window covering industry to include in the voluntary standard an operating cord of no more than 8 inches. If the Commission decides a mandatory standard is warranted are you required by statute to set performance standards instead of a prescriptive standard? Please explain how the requested 8 inch operating cord is a performance standard and not a prescriptive standard? Have there been any discussions between the Commission staff and industry engineers to discuss the technical issues presented by staff's request for an 8 inch cord?

Response: The 8-inch long operating cord length is based on the neck circumference of a child at risk of strangulation. Staff believes that the resting length (*i.e.*, inactive length) of an accessible operating cord should be at a length that minimizes the strangulation risk. Similar cord length requirements are common practice and are stated in numerous ASTM standards (*e.g.*, ASTM F1169– 13 Standard Consumer Safety Specification for Full-Size Baby Cribs, ASTM F833 –13 Standard Consumer Safety Performance Specification for

⁸<http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/PetitionRequestingMandatoryStandardforCordedWindowCoverings.pdf>

⁹<http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/Corded-Window-Coverings-Advance-Notice-of-Proposed-Rulemaking.pdf>

Carriages and Strollers). The 8-inch length is not intended for cords under tension (*e.g.*, while the user is pulling the cord to operate the window covering). Staff proposed the 8-inch standard as a prescriptive one for the voluntary standards process, but if the Commission decided that a mandatory standard was warranted, the standard would be “expressed in terms of performance requirements” as required under the CPSA. 15 U.S.C. 2056(a)(1). Staff and industry engineers discussed the technical issues at a public meeting held at CPSC’s National Product Test and Evaluation Center on May 28, 2015.

5. Please explain how the Commission, and Commission staff, has evaluated concerns about the 8 inch cord length request from staff on vulnerable populations including the elderly and handicapped.

Response: Commission staff will evaluate concerns regarding the accessibility of operating cords by the elderly and handicapped population as part of the development of a notice of proposed rulemaking.

6. I understand 80 percent of incidences are occurring on non-compliant products. What role do you think education plays in addressing this hazard? Please detail all consumer outreach programs initiated by, and participated in by, the Commission in the last five years. What cooperation has occurred between the Commission and industry in conducting consumer outreach? How much did the Commission spend during the last fiscal year on consumer outreach efforts to address this issue?

Response: CPSC has a long history of collaborating with the Window Covering Safety Council (WCSC) to recognize Window Covering Safety Month, each October. For more than a decade, CPSC has joined with the WCSC in issuing press releases, contributing to an educational video and collaborating on Twitter chats. In addition to CPSC’s comprehensive Window Covering Safety Information Center on our website,¹⁰ CPSC has also produced a video to inform consumers that cordless solutions are available in certain major retail stores, produced a video news release regarding the strangulation hazard posed by accessible window blind cords, posted *OnSafety* blogs, disseminated safety alerts and Neighborhood Safety network posters, and announced product recalls. In addition, I personally have conducted local and national press interviews to educate parents, grandparents, and caregivers about this deadly

¹⁰ www.cpsc.gov/en/Safety-Education/Safety-Education-Centers/Window-Covering/

hazard; informed the public about the steps CPSC is taking to address the hazard; and called upon industry to manufacture and sell only cordless products or products with inaccessible cords for homes and settings where young children live and play.

Most of the agency's budget related to window covering safety education is based on salaries for staff in the Office of Communications (approximately \$143,000 in FY 15), however there is no full time person dedicated to this safety campaign. In FY 2014, CPSC allocated less than \$10,000 in contract services on public education, but a significant amount of leadership and staff time was dedicated to public outreach.

While education has a role to play, I do not believe it is sufficient in this instance to address the hazard and stop the killing of children by these products.

Flame Retardant Petition

- 1. Should the Commission consider the flame retardant petition, how will it coordinate with the U.S. Environmental Protection Agency (EPA) and the other government agencies that the Chairman mentioned during the hearing? Furthermore, how will it take into account previous and ongoing assessment of specific flame retardant chemicals by EPA and other national jurisdictions?**

Response: The CPSC Office of the General Counsel docketed the flame retardant request as a petition, and on August 19, 2015, the Commission published a request for comments on the petition. Staff will evaluate currently available information and forward a briefing package to the Commission for consideration. Should the Commission vote to grant the petition, the staff will execute the Commission's direction, based on the Record of Commission action and consistent with the resources approved by the Commission in the Operating Plan.

The CPSC staff has coordinated their work on flame retardant chemicals ("FRs") with the US Environmental Protection Agency (EPA) and other federal agencies for many years. If the Commission decides to grant the petition on flame retardants, the staff will continue to coordinate as appropriate and necessary its activities with other agencies to share resources and avoid duplication of effort.

- 2. Should the Commission consider the petition, how will it take into account ongoing work by the Commission and other government and standard setting bodies to assess flammability standards?**

Response: If the Commission votes to grant the petition on flame retardants, staff will continue to coordinate its activities with other agencies and standards development organizations on flammability standards development, as directed in the Record of Commission action and within resources allotted by the Commission in the Operating Plan.

- 3. Should the Commission consider the petition, how will it take into account information from the National Fire Protection Association that indicates upholstered furniture can be a major source contributing to fires even if not the first thing ignited? Specifically, application of new methodologies for analyzing fire statistics of upholstered furniture demonstrated that one-quarter of upholstered furniture fires, civilian injuries, and direct damages, and one-fifth (21%) of associated civilian deaths are associated with fires in which upholstered furniture is the primary item contributing to fire or flame spread but not the item first ignited. Please explain.**

Response: Staff will evaluate the petition based upon existing data, including NFPA data as appropriate, as directed by the Commission in the FY 2016 Operating Plan. Most of CPSC's residential fire data are categorized by the product first ignited. Staff also has data on "Item Contributing Most to Flame Spread," but the analysis of this factor's contribution to fire growth or spread beyond the item first ignited is difficult to determine from national fire data. CPSC does conduct In-Depth Investigations on fires when the data provide sufficient information about the fire progression from item to item. These investigations are product- and incident-specific and cannot be applied to product categories. CPSC staff continues to work closely with NFPA and other safety organizations to develop strategies and approaches for fire data analysis of fires involving furniture.

Fireworks

- 1. As we near the 4th of July weekend, I note that consumer fireworks are one of the most important product categories under the jurisdiction of the**

Commission. The agency estimates that there are about 12,000 consumer injuries per year associated with the use of consumer fireworks, about 2/3 of which require medical treatment. Despite this fact, and despite the fact that there continue to be significant changes in the variety and types of consumer fireworks, the Commission has not updated its mandatory fireworks standards in many years. Moreover, the agency has had an open rulemaking on fireworks for about eight years with no apparent result to date in terms of modernizing some of the more badly outdated provisions of those regulations. And most recently, the Commission voted as part of its FY 2015 Operating Plan to direct staff to start over and provide the Commission with a list of regulatory options by the end of the fiscal year. When is the Commission going to revise the fireworks regulations, and specifically what staff or other resource commitments will be made to update these regulations?

Response: Staff plans to submit a briefing package to the Commission by the end of 2015. The briefing package will recommend a path forward for updating the fireworks regulations, based on direction from the Commission in the FY 2015 Operating Plan approved in December 2014. The Commission will then review the briefing package and provide direction to staff regarding revising, maintaining, or updating the current rules and also provide resource allocation as part of the FY 2016 Operating Plan.

- 2. The “ear test” has been used for decades by the Commission to listen to the sound of the break charge of an aerial fireworks device to see if it sounds too loud, in violation of the Commission’s prohibition on such fireworks that are “intended to produce an audible effect,” which in turn is intended to avoid the potential hazard of these devices creating too much pressure when they go off. My understanding is that the agency staff worked for three years to develop a more objective test method, the “cage” or “pressure box” test, but that as part of the FY 2015 Operating Plan, the Commission does not appear to have a plan to move forward with the new test method. What is the status of the “cage” or “pressure box” test at the Commission? Please explain.**

Response: CPSC staff worked on the “cage” or “pressure box” test, which they ultimately determined was overly complex and highly variable, particularly in the field. Although this testing methodology has been abandoned, staff is

evaluating simpler testing methods using the fireworks industry's internationally recognized consensus standards. The potential changes to our testing methods and the fireworks regulations will be included in the fireworks briefing package, which is scheduled to be delivered to the Commission by the end of 2015.

Import Surveillance & Sec. 1110 Rulemaking

- 1. The Commission wants to improve its targeting at the ports. What information would be the most valuable to you for that purpose and why? Do you need additional authority to obtain the data you need?**

Response: Based on years of CPSC and U.S. Customs and Border Protection (CBP) staff law enforcement experience, CPSC has identified at this time the bare minimum highest priority data elements staff considers crucial for targeting noncompliant products before they enter commerce. Those elements are set forth in an August 21, 2015 *Federal Register* notice announcing the Commission's electronic filing pilot program.¹¹

However, CPSC staff plan to evaluate data collected for its targeting value to further improve targeting of noncompliant goods while facilitating compliant trade. The pilot referenced in the *Federal Register* notice above is a first step in the implementation of electronic filing (eFiling) of necessary data elements, by testing the system with volunteers in the trade. Future work will evaluate these elements and possibly other data for their targeting value.

At this time, I do not believe that the Commission needs additional authority from Congress to obtain the data that we need. The *Federal Register* notice outlines the legal authority of the Commission to collect these data for products under its jurisdiction.

- 2. Many agencies, including the Commission, are working with Customs and Border Protection (CBP) to develop a "single window" system for imports. At the same time, I understand that the Commission is building a separate "registry" for companies to send electronic certificate information. How is that consistent with the "Single Window" approach?**

¹¹<https://www.federalregister.gov/articles/2015/08/21/2015-20707/electronic-filing-of-targetingenforcement-data-announcement-of-pga-message-set-test-and-request-for>

Response: CPSC staff developed the registry concept as a result of feedback from industry. The registry is a voluntary, CPSC-maintained database that allows an importer or manufacturer to enter data elements set forth in the eFiling pilot in advance of filing entry with CBP. Should a filer choose to use the registry, at the time of filing, that importer or manufacturer would be required to file only a reference number related to that data. This option saves the importer or manufacturer time and money, making it unnecessary to enter repetitive data if using the same import data for multiple shipments. This option has the potential to be particularly helpful to small business users who do not have the resources to maintain a system for managing required importation data. For higher volume importers, the registry allows for batch upload of data that may internally be stored with large importers.

CPSC is not the only agency that uses this concept; the EPA has a similar program for importers of some products under their jurisdiction. This effort aligns with the single-window concept because the importer has the flexibility to file multiple data elements directly into the Automated Commercial Environment (ACE) or use the CPSC registry, filing only one reference number, instead of multiple data elements, at the time of filing an entry.

3. In the Commission's FY 2015 appropriation, the agency received \$4 million for import safety. In terms of co-located CPSC staff, how many additional ports are you able to cover as a result of that increase?

Response: A portion of the \$4 million appropriation enabled the Commission to add 16 additional full time personnel to support the import surveillance program. By analyzing import entries across all ports, the CPSC was able to prioritize and strategically place additional personnel to enhance our coverage of imported consumer products, assigning additional personnel to high-volume ports and staffing three new ports of entry. By adding additional staff, the CPSC is now located at the ports whose entries comprise approximately 60 percent of all consumer product lines entering the United States, a 13 percent increase from the prior year when staff was located at ports receiving only 47 percent of all consumer product entries. The CPSC also used a portion of the \$4 million to increase personnel at the National Product Testing and Evaluation Center to analyze the product samples collected by port inspectors, and added personnel to our compliance team to work additional compliance actions for

violations identified by the port inspectors. Lastly, the CPSC used a portion of the \$4 million to refine the system requirements for the eventual full-functionality Risk Assessment Methodology (RAM) computer system, and that refined cost estimate will inform future budget request

- 4. Commissioner Mohorovic has testified that imported products make up 80 percent of our recalls not because they are more dangerous but because there are so many imports. Do you agree? Does your market surveillance show the same rates of compliance for domestic and imported products?**

Response: I agree. The noncompliance rate of domestic samples collected within the past 5 years is around 62 percent; and for import products, the noncompliance rate is 72 percent. Imported products are not significantly more dangerous, there are just fewer products that are manufactured domestically.

Import Fee Authority

The Commission's request for authority to impose user fees on importers is a novel area for the agency. The fee request does not include a plan for implementation or detailed calculation of the program's costs. When user fees exceed programmatic costs, or when they are not clearly and closely tied to funding the program alone, the user fee is no longer a fee but a tax.

Import surveillance is an important point in the supply chain where U.S. jurisdiction and pre-market review can be completed on products. However, there is little public information available regarding the pilot risk assessment methodology (RAM) surveillance system. Further, fundamentally altering the process for filing certificates of compliance, a critical component of the import surveillance process, remains in flux. The Commission held a public workshop this fall in response to overwhelming concerns expressed during the notice and comment period. I have serious reservations about expanding a program to a nationwide endeavor without a coordinated strategy that is based on objective evidence and experience born out through a fully vetted and examined pilot process.

- 1. Please provide an explanation of the status of the RAM pilot program including information about scope, participants, goals and performance metrics, and discussions with other agencies whose cooperation has been necessary for implementation.**

Response: CPSC currently has two pilots related to the import surveillance program running concurrently. In 2008, CPSIA directed the Commission to create a RAM to identify shipments of consumer products that are likely to include those in violation of consumer product safety rules, are not accompanied by a required certificate, that have been determined to be imminently hazardous or that have a defect which constitutes a substantial product hazard. As a part of this effort, a pilot RAM targeting system was implemented in October of 2011. The pilot system uses certain existing data collected by U.S. Customs and Border Protection (CBP) and then integrates that data with CPSC surveillance systems to allow CPSC to target certain high-risk products. We continue to run the RAM pilot while we seek a permanent and sufficient funding mechanism to turn the RAM into the national-scope, risk-based, data-driven screening that Congress envisioned and that consumers deserve.

The other pilot is our eFiling pilot for which the Commission's proposal is contained in the Federal Register notice on the Electronic filing of Targeting and Enforcement Data: Announcement of PGA Message Set Test and Request for Participants.¹² CPSC is running this pilot as a part of the larger U.S. Government-wide effort related to the "single window." In 2014, President Obama issued Executive Order 13659 (EO) to streamline the import and export process for America's businesses and better enforce laws related to the safety and compliance of imported products. The EO directed government agencies to create a "single window" through which all required trade data will pass. While the CPSC as an independent agency is not bound by the EO, we are doing our part in this government-wide effort by taking steps to facilitate the eFiling of targeting and enforcement data elements for imported consumer products.

Potential participants to the eFiling pilot have until October 5, 2015 to notify the Commission of their interest in participating. In the meantime, the Trade Support Network (TSN) of CBP sent notice to the trade and requested participants for the TSN workgroup that will begin review of the technical aspects of CPSC's supplemental Customs and Trade Automated Interface Requirements (CATAIR) document. The comment period for that notice ended

¹²<https://www.federalregister.gov/articles/2015/08/21/2015-20707/electronic-filing-of-targetingenforcement-data-announcement-of-pga-message-set-test-and-request-for>

September 4, 2015 and 75 participants expressed interest. The participants were comprised of importers, brokers, software developers, associations, International Trade Data Systems (ITDS) Co-Chairs, U.S. Customs Support and CPSC support. Those meetings are scheduled to start on September 16, 2105 and will run weekly for approximately 4 weeks, depending on schedules.

The goal of the initial pilot is simply to test the feasibility of both proposed methods for eFiling and to evaluate those methods. This pilot includes products that are currently regulated by the Commission and the addition of those products subject to a 15(j) rule (*e.g.*, hairdryers, holiday lights).

This eFiling pilot project will work in conjunction with the RAM pilot system and performance will be evaluated.

2. Please provide a detailed basis for the Commission's cost estimates for the user fee and how will those fees be applied to the import surveillance program? What accountability metrics will be in place?

Response: The cost basis for the CPSC product safety user fee is estimated at approximately \$36 million annually beginning in FY 2017. The CPSC envisions user fee collections of approximately \$36 million per year to offset the entire annual program cost of the Import Surveillance Spend Plan. A recently updated and detailed cost estimate for the CPSC import surveillance program expansion described in the FY 2016 President's Budget Request is provided below. The estimate includes: (1) developing the full functionality RAM system; (2) adding additional personnel to staff ports of entry, to process product samples at the CPSC research laboratory and to take compliance actions, as necessary; and (3) the associated increase in operating costs to the agency for the added employees (*e.g.*, rent, computers, equipment). The requirements and the cost estimates for the RAM computer system were first developed in 2011, and were refined earlier this year. The CPSC is, again, updating the requirements and cost estimates for the RAM pilot computer system, and will revise the spend plan next year when that work is completed.

The user fee is envisioned to collect \$36 million annually, and this would be sufficient to recoup the currently-envisioned full program cost of the agency's import surveillance activities described in the table below. The agency will account for the costs attributable to the import surveillance program and has

proposed establishing a schedule of fees through rulemaking to recover those costs.

The agency will formally establish accountability metrics once the rulemaking process defines the fee structure. Key attributes of the accountability metrics envisioned are: (1) user fee collection being aligned with the full program cost structure (*i.e.*, avoid unnecessary over/under collections); and (2) import surveillance program costs being accurately calculated as the basis of the user fee.

Import Surveillance Program Spend Plan

Risk Assessment Methodology -- Technology Acquisition	FY 2016		FY 2017		FY 2018	
	(Request)	FTE	(Estimate)*	FTE	(Estimate)*	FTE
RAM Pilot	\$ -		\$ -		\$ -	
Development (Testing, Design, Architecture)	\$ 1,200,000		\$ 14,250,000		\$ 12,889,750	
RAM O&M (Security and Analytics Support)	\$ 2,020,000		\$ 2,020,000		\$ 2,830,250	
Software (Licensing and Support)	\$ 180,000		\$ 1,730,000		\$ 680,000	
Hardware (Server & Equipment Maintenance)	\$ -		\$ 500,000		\$ 100,000	
Subtotal - IT Costs	\$ 3,400,000		\$ 18,500,000		\$ 16,500,000	
Federal Personnel	FY 2016		FY 2017		FY 2018	
	(Request)	FTE	(Estimate)	FTE	(Estimate)	FTE
Import Salary and Expenses	\$ 5,099,000	37	\$ 6,219,000	45	\$ 7,059,000	51
Laboratory Salary and Expenses	\$ 3,300,000	24	\$ 4,000,000	29	\$ 4,560,000	33
Compliance Salary and Expenses	\$ 1,650,000	12	\$ 2,070,000	15	\$ 2,350,000	17
Administrative Salary and Expenses (Financial Management, Human Resources, Information Technology)	\$ 557,000	4	\$ 1,117,000	8	\$ 1,117,000	8
Subtotal - Federal Personnel	\$ 10,606,000	77	\$ 13,406,000	97	\$ 15,086,000	109
Operations	FY 2016		FY 2017		FY 2018	
	(Request)	FTE	(Estimate)	FTE	(Estimate)	FTE
Import Operations (Equipment, Vehicles, Supplies)	\$ 524,031		\$ 823,529		\$ 826,736	
Laboratory Operations (Equipment, Supplies)	\$ 191,112		\$ 235,177		\$ 256,529	
Compliance Operations (Vehicles, Travel, Supplies)	\$ 20,556		\$ 36,195		\$ 36,121	
Administrative Operations (Information Technology, Human Resources, Procurement Support)	\$ 1,131,964		\$ 1,886,726		\$ 2,062,931	
Rent and Facilities (Rent, Sample Storage)	\$ 823,690		\$ 908,320		\$ 910,000	
Subtotal - Operations	\$ 2,691,353		\$ 3,889,948		\$ 4,092,316	
Total Program Budget w/o Miscellaneous	\$ 16,697,353	77	\$ 35,795,948	97	\$ 35,678,316	109
CBP User Fee Collection	\$ -		\$ 547,680		\$ 1,080,000	
Subtotal - Miscellaneous	\$ -		\$ 547,680		\$ 1,080,000	
Grand Total	\$ 16,697,353	77	\$ 36,343,628	97	\$ 36,758,316	109

*FY 2017-18 data are estimates only and the CPSC has not yet requested appropriations or other funding for these amounts.

- The Commission's 2016 Performance Budget Request states that the "CPSC has the necessary financial reporting and transactional capabilities to record import surveillance program costs correctly and fund only those costs using the product safety user fee." Please detail both the financial**

reporting capabilities and transactional capabilities discussed in the request.

Response: The CPSC has studied other agencies' user fee programs and reviewed GAO reports on the same. Based on this comprehensive review, CPSC has spent considerable time planning for the proper accounting of import surveillance program costs before submitting the user fee proposal. The CPSC has two critical components to account for and calculate the import surveillance program costs: (1) an accounting code structure to segregate costs properly across all agency programs; and (2) an Oracle Financial System (through a federal shared service provider) capable of accounting for multiple programs and projects with different funding sources.

Accounting Code Structure: The CPSC has a well-organized accounting code structure, consisting of approximately 140 management information system codes, including specific codes for the major activities that comprise the import surveillance program. These codes enable the agency to directly account for agency costs at the program level for the majority of agency expenses, which are salary, contracts, and associated operating expenses (e.g., equipment, travel, and training).

Oracle Financial System: The CPSC receives "full service" accounting through a federal shared service provider; the U.S. Department of Transportation's Enterprise Service Center (ESC). The ESC uses a release 12, Oracle Federal Financial System. The Oracle Financial System is capable of recording 87 digits in the line of accounting to segregate costs at the appropriation, account, program, project, activity and object class levels, and can be expanded for any future coding requirements. The data are available on demand and refreshed in real time.

CBP already has the systems and necessary authority to collect user fees on behalf of other agencies. The transfer of user fee receipts from one federal agency to another is accomplished by Intra-Governmental Payment and Collection (IPAC) with standardized descriptive data through the Treasury Department.

Test Burden Reduction

In August 2011, P.L. 112-28 was enacted with a clear emphasis on reducing third party testing burdens “consistent with assuring compliance with any applicable consumer product safety rule, ban, standard or regulation.” Over three years later, the Commission has requested public comment and held a stakeholder workshop on April 3, 2014 but projects to achieve test burden reduction are not prioritized in the Commission’s budget or operating plan. This is particularly concerning with respect to the determinations list of product exempt from lead testing, the phthalates rule, or heavy metal requirements in ASTM F963. On October 1, 2013, several Members of Congress sent a letter to the Commission raising concerns about the prioritization of third-party testing burdens in the Commission’s agenda. I am interested in an update since the FY 2015 budget was approved with additional funds directed to testing burden reduction.

I am concerned by the fact that the Commission cites a lack of resources to complete the actions it voted to pursue in October 2012 when there have been several other activities initiated by the Commission since then that diverted resources away from this congressionally-prioritized issue. Please provide budget details necessary to complete any items detailed in your responses to the above questions that are on hold or have not been considered due to resource limitations.

1. Please provide an update on the status of the nine cost-reduction opportunities the Commission voted to pursue in October 2012. Please include a discussion of how the \$1 million directed to these efforts in the FY 2015 budget have been allocated.

Response: The status of the nine cost-reduction opportunities is as follows:

- With respect to international standards equivalency, my staff, which includes a nationally-recognized expert in toy safety and standards, has spent many hours on the issue to determine whether compiling an alternative standard composed of the most rigorous test methods from each alternative standard might allow multinational marketing of toys with a single test protocol. In discussions with the regulated community about this strategy, several challenges have been identified, making the likelihood that this strategy could actually provide meaningful benefits questionable. In addition to this effort, agency staff considered whether the statutory framework for certification might permit broader application

of testing among standards and concluded that allowing certification to foreign standards would run counter to the intent of the law. My staff and I have repeatedly put out a call to industry to provide us with their thoughts on how to best address this issue in furtherance of consumer product safety. To date, we have received no responses. We will eagerly pursue any promising information or leads we receive.

- A Direct Final Rule/Notice of Proposed Rulemaking (DFR/NPR) determining that wood from tree trunks does not require third party testing to assure compliance with the ASTM element solubility limits was published in the *Federal Register* on July 16, 2015. After receiving adverse comment, the Commission voted to withdraw the direct final rule on September 1, 2015 and proceed with the notice of proposed rulemaking (NPR).
- Two contract task orders have been awarded to study the potential presence of phthalates in specified plastics and classes of plastics. The first of these contractor reports is due in late FY 2015, and the other is due in FY 2016.
- CPSC is soliciting proposals to develop Fourier transform infrared spectroscopy (FTIR) technology capable of detecting the prohibited phthalates at 1,000 ppm, as an alternative testing/screening technology to the wet chemistry methods currently used. CPSC expects to award Phase I contracts in FY 2015, and Phase 2 contracts in FY 2016, with commercial deployment by FY 2017-2018.
- CPSC awarded a contract task order to study the presence of phthalates in manufactured woods. The contractor's report is due in FY 2016.
- No additional actions have been taken yet regarding determinations relating to synthetic food additives.
- CPSC published the guidance regarding periodic testing and periodic testing plans on July 18, 2015, on the CPSC website.¹³
- No further action has been taken regarding using certification bodies for children's product testing and certification purposes; and
- No further action has been taken regarding periodic testing of low-volume children's products.

¹³ <http://www.cpsc.gov/en/Business--Manufacturing/Testing-Certification/Third-Party-Testing/Periodic-Testing/>

Staff has allocated the \$1 million in burden reduction funds as follows:

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

2. What is the Commission's current plan regarding reducing testing burdens for third parties as contemplated by P.L. 112-28?

Response: First, CPSC published a DFR/NPR in the *Federal Register* determining that component parts of toys made from unfinished wood are not required to be third party tested for the solubility of the eight elements listed in the toy standard ASTM F963-11, Consumer Safety Specifications for Toy

Safety. After receiving adverse comment, the Commission voted to withdraw the direct final rule on September 1, 2015 and proceed with the NPR.

Second, a briefing package and draft notice of proposed rulemaking is due in FY 2015, with two items: (1) a clarification of the lead (“Pb”) determinations, 16 C.F.R. § 1500.91, regarding printing; and (2) a clarification of the component part testing rule, 16 C.F.R. part 1109, in which testing for the eight elements listed in ASTM F963-11 is allowable at the component part level.

Third, the Commission approved in the FY 2015 Mid-Year Plan additional third party testing burden reduction/assure compliance work, subject to the availability of funds to research whether manufactured fibers (*e.g.*, polyester, nylon, rayon) can be determined not to require third party testing for the presence of phthalates, while assuring compliance. A contractor has started work on researching whether manufactured woods can be determined not to require third party testing for lead, phthalates, or the ASTM elements, while assuring compliance. The contractor report is due in FY 2016.

Fourth, a contractor has started work on researching whether additional plastics can be determined not to require third party testing for the presence of phthalates, while assuring compliance. The contractor report is due in FY 2016.

Finally, CPSC is soliciting proposals to develop FTIR technology capable of detecting the prohibited phthalates at 1,000 ppm, as an alternative testing/screening technology to the wet chemistry methods currently used. CPSC expects to award Phase I contracts in FY 2015; Phase 2 contracts, resources permitting, in FY 2016, with commercial deployment by FY 2017-FY 2018.

Staff will execute rulemaking activities in FY 2016 based on Commission direction in the FY 2016 Operating Plan.

3. What specific steps will be taken to implement each element of the Commission’s plan in the next six months? The next year?

Response: Specific steps staff will take to implement the Commission’s plan over the next year include:

- Executing rulemaking activities in FY 2016, based on Commission direction in the FY 2016 Operating Plan;

- Assessing a contractor's report on the presence of lead, phthalates, and the eight elements in ASTM F963-11 in manufactured woods;
- Assessing a contractor's report on the presence of lead, phthalates, and the eight elements in manufactured fibers;
- Assessing a contractor's report on the presence of phthalates in additional specified plastics; and
- Soliciting Phase 2 proposals to continue developing FTIR technology capable of detecting the prohibited phthalates at 1,000 ppm, as an alternative testing/screening technology to the wet chemistry methods currently used.

4. The mandatory ASTM F963-11 toy standard specifies limits on the concentration of eight heavy elements in paints and accessible substrate materials for children's toys. By regulation, the Commission has made the determination that certain materials will never contain levels of lead above the lead content limit. There are seven outstanding heavy metals currently regulated by ASTM F963-11. Has the Commission evaluated the seven outstanding heavy elements to make a similar determination to limit unnecessary testing? Please provide a status update for determinations of each of the seven elements and if no action has been taken for any of the outstanding heavy elements please explain why not.

Response: The Commission's determinations are based on whether certain materials comply with the solubility requirements/limits of the eight heavy metals included in the toy standard. We do not make determinations on materials based on the seven elements individually because there is no burden reduction due to the testing protocol (all elements are tested at the same time). The only meaningful burden reduction results from not having to test for any of the ASTM F963-11 elements.

The Commission published a DFR/NPR in the *Federal Register*, determining that component parts of toys made from unfinished wood are not required to be third party tested for the solubility of the eight elements listed in the toy standard ASTM F963-11, *Consumer Safety Specifications for Toy Safety*. The proposed rule was based on a contractor report that researched unfinished wood and other natural materials (cotton, wool, linen, silk, bamboo, and beeswax) for the presence of the seven elements. Only unfinished and untreated wood had enough literature to make a determination and showed no indication that the

ASTM elements would be present in levels above those set by law. The Commission voted on September 1, 2015 to withdraw the direct final rule based on the submission of adverse comment. A draft final rule will be completed, based on Commission direction in the FY 2016 Operating Plan.

5. What is the status of efforts to reduce the current duplicative testing requirements for the ASTM F963-11 toy standard, ISO 8124, and EN-71?

Response: As explained above, my office reviewed the main toy standards having a global influence (ASTM F963, EN 71, and ISO 8124), intending to identify commonalities and differences. In discussions with the regulated community about this strategy on burden reduction consistent with assuring compliance, several challenges have been identified, making the likelihood that this strategy could actually provide meaningful benefits questionable. My staff and I have repeatedly put out a call to industry to provide us with their thoughts on how to best address this issue in furtherance of consumer product safety. To date, we have received no responses. We will eagerly pursue any promising information or leads we receive.

6. Last September, you and Commissioner Mohorovic sent Sen. Thune a letter describing your plan for test burden reduction. One of the items you mentioned was the idea of exempting testing for “de minimis” amounts of prohibited substances. In the staff’s report to the Appropriations Committee earlier this year there was no mention of this project. Please provide a detailed status update for this plan and a timeline of execution for the next six months and one (sic)

Response: The Commission has not yet determined a timeline for any additional “*de minimis*” determinations work. Importantly, I am aware of no qualified and independent public health expert who has indicated there are acceptable exposure levels from these substances. Having this kind of input from the public health and medical communities has been a central part of my analysis of this proposal. In the absence of such input, I am not comfortable risking children being harmed.

Recreational Off-Highway Vehicles

1. Will the Commission issue a final mandatory rule concerning recreational off-highway vehicles (ROVs) in 2015?

Response: As part of the FY 2015 Mid-Year Plan, the Commission voted to delay until FY 2016 a final mandatory rule concerning recreational off-highway vehicles. In the meantime, the Outdoor Power Equipment Institute (“OPEI”) and Recreational Off-Highway Vehicle Association (“ROHVA”) voluntary standards committees, in conjunction with Commission staff, have been making progress on updating their respective voluntary standards. OPEI and ROHVA are considering new voluntary standards requirements that address:

- Occupant ejection, including requirements to limit the speed of ROVs if the driver’s seatbelt is unbuckled;
- A dynamic test to address vehicle handling issues; and
- A point of sale hangtag that provides consumers information on ROV stability characteristics.

Most recently, CPSC hosted an OPEI meeting on July 8, 2015,¹⁴ to discuss the pre-canvass draft of ANSI/OPEI B71.9-201X, which was shared with CPSC staff on June 4, 2015. Staff has followed up with OPEI and ROHVA, providing a letter on August 21, 2015.¹⁵ Staff has offered to host another meeting with ROHVA and/or OPEI and hopes to do so in late September.

The Honorable Mike Pompeo

1. Chairman Kaye, I have some concerns that the CHAP report recommendations rely on novel scientific assessment methodologies that have not been used as a basis for regulating. As I understand it, your charge was to “evaluate” the Report to determine whether any children’s product containing phthalates should be banned under Section 8 of the Consumer Product Safety Act. If the CHAP report is non-responsive to making a finding under Section 8, I would understand that the CPSC

¹⁴The meeting log can be found at:

<http://www.cpsc.gov/Global/Newsroom/FOIA/Meeting%20Logs/2015/070815MeetingLogOPEIB719publicmtgdiscussCPSCcommentsrevised.pdf>

¹⁵ <http://www.cpsc.gov/Global/Regulations-Laws-and-Standards/Voluntary-Standards/ROHVA/082115CPSClettertoOPEIsuggestedlinefitmethodandlatestyawratedata.pdf>

should exercise independent judgment to act independent of the recommendations of the CHAP report, is this correct?

Response: We believe that the CHAP report was responsive to the direction Congress gave in section 108 of the Consumer Product Safety Improvement Act (“CPSIA”) and provided the Commission with a sufficient basis for promulgating a rule as required by section 108(b)(3) of the CPSIA. The Commission will follow the statutory direction and promulgate a final rule that: (1) determines, based on the CHAP report, whether to continue the interim prohibition; and (2) evaluates the CHAP report to determine whether to extend the prohibitions to other children’s products containing any phthalates.

- 2. Mr. Chairman, I am concerned about some of the recommendations made in the CHAP report and the basis for the CHAP recommendations, at the hearing you seemed to indicate you intended to accept all of the conclusions of the CHAP report without independently evaluating the basis for the conclusions in the report, and considering your charge to make recommendations to ban consumer products under Section 8 of the Consumer Product Safety Act, can you please clarify yourself on this issue?**

Response: As discussed at the hearing, I directed staff to review the most recent NHANES biomonitoring data. I also said at the hearing that I would respect the CHAP’s performance of a cumulative risk assessment since the CPSIA explicitly directed the CHAP to “consider the potential health effects of each of these [specified] phthalates both in isolation and in combination with other phthalates,” and to “consider the cumulative effect of total exposure to phthalates, both from children’s products and from other sources, such as personal care products.” CPSIA, § 108(b)(2)(B)(ii) and (iv). I stand by that statement and remain open-minded when it comes to considering the draft final proposed by the CPSC staff.

The Honorable Brett Guthrie

- 1. Mr. Chairman, I was pleased to hear of your commitment to evaluate the most recent data available on phthalate exposure and to provide the public with the ability to comment on any subsequent evaluation. I believe that it is critical to ensure that any evaluation of phthalate safety does not include as part of the evaluation phthalate exposure levels that include phthalates that were banned by the Consumer Product Safety Improvement Act.**

Would you please provide me specific information related to the process you intend to follow regarding allowing public review and comment on any subsequent evaluation of phthalate exposure?

Response: At my request, CPSC staff has evaluated the most recent NHANES biomonitoring data. The Commission published a notice of availability in the *Federal Register* on June 23, 2015 (80 FR 120), requesting comments on the staff's document titled, "Estimated Phthalate Exposure and Risk to Pregnant Women and Women of Reproductive Age as Assessed Using Four NHANES Biomonitoring Data Sets (2005/2006, 2007/2008, 2009/2010, 2011/2012)." The Commission invited the public to review and comment on this document. The 45-day comment period was open until August 7, 2015. Staff's responses to these comments will be included with the draft final rule.

The Honorable Markwayne Mullin

In a statement provided to WISH TV for their November 13, 2014, story titled "Could small change stop gas can explosions?" (<http://wishtv.com/2014/11/13/could-small-change-stop-gas-can-explosions/>), we understand that the CPSC's Communications Director provided the following statement:

"If a consumer was to see a gas can at retail that contained a flame arrestor system, we would encourage them to select such a model, as it provides a vital layer of fire protection."

- 1. Please provide a copy of the statement and all drafts thereof, and all records relating to the statement.**

Response: These documents are located at Appendix A. Certain documents have been redacted because they are subject to the deliberative process privilege.

- 2. Who approved this statement?**

Response: I believe that statement as reported was taken out of context. As I understand the comment, the CPSC Director of Communications was indicating that if an individual manufacturer or ASTM International were to include the potentially life-saving incorporation of flame-arrestor technology in consumer

models of portable gas cans, then that would be a product that CPSC staff would encourage consumers to buy.

3. What information, studies, or other relevant scientific research or testing data was relied upon by the CPSC to conclude that consumers should purchase a model containing “a flame arrestor system”?

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

In addition, CPSC staff has identified another hazard pattern associated with gas cans. Worcester Polytechnic Institute engineers have shown that flammable mixtures of air and gasoline vapors can exist inside portable gasoline containers, especially when there are small amounts of liquid gasoline in a large container. Under certain circumstances, the gasoline vapors can ignite, causing the container to explode in the presence of a flame or heat source outside of the container. This research was published in the Fire Science Journal in May 2013.¹⁶ The purpose of flame arrestors is to keep flames that are external to the gasoline container from passing into the container and preventing the cans from exploding or expelling flames.

CPSC staff has experience with flame arrestor technology. They encouraged the residential gas water heater industry to develop a consensus safety standard that incorporated flame arrestor technology into their products and safety standard. Residential gas water heaters sold in stores today have built-in flame arrestors that prevent flashback fires, and CPSC staff believes that this technology also should be included in gasoline containers. CPSC staff continues to call on the industry and voluntary standards organizations to incorporate a flame-arrestor system into their designs and applicable safety standards for gas cans.

¹⁶ <http://www.sciencedirect.com/science/article/pii/S0379711213000143>

4. **Is the CPSC aware of any testing or research in which a consumer or industrial gas can purporting to contain a “flame arrestor system,” failed to prevent an internal combustion in the can?**

Response: CPSC staff is actively participating with ASTM F15.10 in developing a performance test method for flame mitigation devices on portable gasoline containers. Staff believes the development and addition of a performance test method for flame arrestor systems is important because staff is aware of death and serious injury reports where gas cans appear to have exploded when near an open flame. Staff is aware of tests with flame arrestor devices that have failed. However, staff is also aware of ASTM F15 efforts to develop a standard to provide an accurate test of flame arresting capabilities on gas cans, and staff is aware that Factory Mutual Engineering Corp (a Nationally Recognized Testing Lab for OSHA) may be revising their flame arrestor test for metal safety cans.

Staff is aware that OSHA requires a safety can to have a “flash arresting screen.” OSHA defines in 29 C.F.R. 1926.155(l) a “safety can” as an approved closed container, of not more than 5 gallons capacity, having a flash arresting screen, spring-closing lid and spout cover and so designed that it will safely relieve internal pressure when subjected to fire exposure.

5. **Please provide the exact description (make and model) of portable consumer gas can that fit the description of the statement provided to WISH TV?**

Response: At this time, I am not aware that there is a make and model of a portable consumer gas can currently on the market that contains a flame arrestor. CPSC staff still maintains that if an individual manufacturer or ASTM International were to support the potentially life-saving incorporation of flame-arrestor technology in consumer models of portable gas cans, then that would be a product that they would encourage consumers to buy.

6. **Please provide all testing data relating to those portable consumer gas cans identified in response to question 5 that prove that the “flame arrestor” system is both safe and effective.**

Response: There are no portable consumer gas cans identified in response to question 5. Therefore, staff does not have testing data.

- 7. In its statement to NBC News Regarding Gas Can Safety, the CPSC noted that “all portable gas cans must include a child resistant cap” and “to meet EPA and California carbon emissions rules, gas cans must also be sealed automatically.” Do the portable consumer gas cans identified in response to question 5 comply with these rules?**

Response: There are no portable consumer gas cans identified in response to question 5. Therefore, the question of compliance is not applicable.

- 8. Please provide all documents and information, including drafts and emails, referring or relating to the “Statement From the U.S. Consumer Product Safety Commission For NBC News Regarding Gas Can Safety.”**

Response: These documents are located at Appendix B. Certain documents have been redacted because they are subject to the deliberative process privilege.

- 9. Please provide all documents and information, including drafts and emails, referring or relating to the December 4, 2013, NBC News article, entitled “Consumer panel calls for flame arresters on gas cans after NBC report.”**

Response: These documents are located at Appendix C. Certain documents have been redacted because they are subject to the deliberative process privilege.

- 10. Given that the CPSC believe that flame arrestor systems should be included in portable consumer fuel container, please explain why the CPSC has not undertaken to promulgate a consumer safety rule mandating the inclusion of such technology in gas cans?**

Response: CPSC staff has focused its efforts at this time on actively participating in the ASTM Subcommittee F15.10 on flame arrestors for gas cans by working with ASTM members who represent industry, consumer groups, and other stakeholders to improve the safety of portable consumer fuel containers.

11. **If fuel containers are offered for sale at retail to consumers, must they comply with the Children’s Gasoline Burn Prevention Act? If fuel containers are sold at retail and are not in compliance with the CBPA or other federal consumer standard, what tools are available to the CPSC to address that issue?**

Response: Portable fuel containers manufactured on or after the effective date of the rule (December 17, 2008) that are commonly recognized as consumer products must comply with the Children’s Gasoline Burn Prevention Act (“CGBPA”). If a portable gasoline container were offered for sale to consumers and, upon evaluation, found to be noncompliant with the CGBPA, as appropriate, CPSC staff could seek a halt to the distribution of the product, correct production of the product, or recall the product or seek a civil penalty when appropriate.

The Honorable Jan Schakowsky

1. The Consumer Product Safety Commission has issued a proposed rule to establish safety standards for Recreational Off-Highway vehicles (ROV). This proposed rule came in reaction to 335 ROV-related deaths and 506 ROV-related injuries that occurred between 2003 and 2013.
 - a. **Given that the Commission has been collecting information about ROV-related deaths and injuries since at least 2003, please explain why it has taken the Commission so long to propose safety standards?**

Response: The Commission has been collecting data on ROVs since 2003. The data collected is used to determine hazard patterns associated with ROVs for rulemaking and voluntary standards activities and to determine whether compliance actions are necessary. For example, in March 2009, the Office of Compliance used the data collected to work with Yamaha to publish a repair notice for the Yamaha Rhino ROV to correct safety issues related to stability and steering. Later that year, in October 2009, the Commission reviewed the data and voted to publish an ANPR for ROV safety.

The ANPR identified the need to address roll-over stability, vehicle handling, and occupant protection of ROVs. In order to propose a

performance standard, the Commission had to dedicate adequate time and resources to explore complex mechanical issues. Commission staff and contractors have conducted hundreds of hours of vehicle testing to evaluate ROVs, published reports of all ROV test data, performed numerous studies of ROV users, published reports of ROV study results, performed hazard and regulatory analyses, engaged stakeholders, and developed performance requirements to increase ROV safety. Upon completion of this work, the Commission voted to publish the NPR for ROVs in November 2014. The primary causes of delays in our safety rulemaking efforts are (1) the unnecessary and onerous requirements of Sections 7 and 9 of the Consumer Product Safety Act, and (2) the agency not receiving sufficient funds to protect consumers in a timely manner.

b. Are you confident that you now have the research and information you need to promulgate an informed rule?

Response: Yes, staff is confident that they will have the research and information necessary to inform the development of a draft final rule, including addressing all public comments submitted and evaluating the effectiveness of current applicable voluntary standards.

Staff has also been actively engaged with ROHVA and OPEI on the development of voluntary standards for ROVs. Staff has offered to host another meeting with ROHVA and/or OPEI and hopes to do so in late September. Should updated versions of the ANSI/OPEI and ANSI/ROHVA voluntary standards be approved and published, staff will evaluate the updated voluntary standard's effectiveness in reducing deaths and injuries, as part of the development of the final mandatory rule.

c. Do you have a sense of when the safety standards in the rule would become effective if the ROV In-Depth Examination Act, H.R. 999, became law?

Response: If the bill passes, it would be years before any standard could take effect. If passed, the bill states that CPSC shall have no authority to establish any performance or configuration standards for ROVs until a National Academy of Sciences (NAS) study is completed. A NAS study would review the technical reports and comment letters previously generated by CPSC staff on lateral stability, vehicle handling requirements, and the repeatability and reproducibility of testing for compliance on such

requirements. CPSC staff efforts, through contract work with SEA Limited, represent the most complete engineering data on ROVs and expertise that has been developed. H.R. 999 would allow NAS two years after the date of its enactment to review this previously generated information and complete its study. Based on the progress that has been made studying the process with industry this year, we feel that the NAS study may be unnecessary and a waste of federal funds. I would hope Congress would choose not to require an agency to spend taxpayer dollars in a wasteful manner, especially when the attendant delay in action will, without a doubt, lead to more deaths, including of children.

2. The ROV In-Depth Examination Act, H.R. 999, would require the Commission to pay for a National Academy of Sciences study of the proposed ROV rule including requirements like having safe handling and a hangtag with safety information at the time of purchase. National Academy of Sciences studies can take a long time and it is not unusual for such a study to cost about a million dollars.

- a. **How expensive do you believe this study will be for the Commission?**

Response: While the exact scope of the study has not been established with NAS, staff's preliminary cost estimate is approximately \$1 million.

- b. **Where would the funds to pay for it come from?**

Response: The Commission would need additional funds appropriated in order to pay for this study. In the absence of such, funding for core safety work would need to be diverted to cover these costs.

3. **The ROV In-Depth Examination Act requires the National Academy of Sciences to study (1) the technical validity of the lateral stability and vehicle handling requirements for purposes of reducing the risk of ROV rollovers in the off-road environment, including the repeatability and reproducibility of testing for compliance with such requirements; (2) the number of ROV rollovers that would be prevented if the proposed requirements were adopted; and (3) whether there is a technical basis for the proposal to provide information on a point-of-sale hangtag about a vehicle's rollover resistance on a progressive scale. Have you or will you**

complete these three items prior to issuing a final rule, and do you have the technical and engineering expertise available to complete these reviews?

Response: Yes, the Commission has already addressed each of these points in the NPR, and staff will evaluate these items in the development of a draft final rule. Moreover, the CPSC certainly does have the relevant technical and engineering expertise for this work.

4. The ROV In-Depth Examination Act also requires the National Academy of Sciences to evaluate the effect that the rule will have on the Armed Services. The Consumer Product Safety Act – the authority under which the Commission is proposing to regulate ROVs – gives the Commission the authority to regulate “consumer products.” The Act defines consumer products as an article produced or distributed for sale to a consumer or for personal use, consumption or enjoyment of a consumer.
 - a. **Do you agree that the Commission does not have the authority to set safety standards for the production of military equipment since it is not meant for consumers?**

Response: The Commission’s authority under the CPSA covers “consumer products” as the term is defined in section 3 of the CPSA, *i.e.*, articles produced or distributed for sale to, or use by, consumers. 15 U.S.C. § 2052(a)(5). Equipment that is produced and distributed specifically for use by military personnel, rather than consumers, would not be under the Commission’s authority.

- b. **If the Commission does not have that authority, do you agree that the rule does not reach regulating equipment produced for military use?**

Response: If the Commission were to finalize a rule on ROVs, the rule could not cover ROVs that are produced specifically for military use (and are not also distributed for consumer use).

5. Some have argued that a mandatory rule on ROVs is unnecessary because voluntary standards developed by the industry groups are adequate. Some have also argued that ROV injuries and deaths are the result of operator error and not the design of the vehicle. Others suggest responsibility for the deaths and

injuries among children lies with consumers because ROVs should only be driven by those 16 or older.

- a. Why are the standards in the proposed rule necessary when there are these voluntary standards? In other words, what is missing in the voluntary standards that is necessary to protect consumers, reduce injuries and deaths, and ensure compliance?**

Response: The current published voluntary standards lack adequate requirements to increase the lateral stability of ROVs and to eliminate divergent instability in the vehicle's handling; both requirements are necessary to reduce ROV rollover events. The current published voluntary standards also lack adequate requirements to limit the speed of ROVs if front seat belts are not buckled; this requirement is necessary to increase occupant protection when ROVs do roll over.

During the last 6 months, staff and the OPEI and ROHVA voluntary standards committees have been making progress. OPEI and ROHVA are considering new voluntary standards requirements that address:

- Occupant ejection, including requirements to limit the speed of ROVs if the driver's seatbelt is unbuckled;
- Dynamic test to address vehicle handling issues; and
- A point of sale hangtag, which provides consumers information on ROV stability characteristics.

Staff believes that these voluntary standards activities have been progressing very well this year; and we hope that both OPEI and ROHVA continue to pursue updates to their respective voluntary standards that will be effective in reducing deaths and injuries associated with ROVs.

- b. If deaths and injuries result only from operator error, I assume CPSC would focus its resources on consumer education. Do you agree that all steering, handling, and rollover problems cannot be attributed solely to operator error? What ROV vehicle design issues have led to injuries and deaths?**

Response: Staff agrees that all steering, handling, and rollover problems cannot be attributed solely to operator error. The Yamaha Rhino ROV is an example of a vehicle where design issues contributed to injuries and

deaths. Early testing by CPSC staff exposed the low lateral stability and severe oversteer handling of the vehicle, which led Yamaha to issue a repair notice to increase the stability and correct the vehicle handling.¹⁷ Recent tests that have been developed to specifically characterize the dangerous divergent instability that is possible with oversteer vehicles (yaw rate ratio test proposed in the latest revision to the voluntary standards for ROVs), quantify how badly the unrepaired Yamaha Rhino vehicle exhibits divergent instability. ROV manufacturers and CPSC technical staff all agree that an unrepaired Yamaha Rhino is a dangerous vehicle, due to its extremely poor handling characteristics.

- c. While some have suggested that drivers of ROVs should be over 15 years old, no one has suggested that passengers in ROVs should be over 15. Is it foreseeable that someone under 16 could drive an ROV? Is it foreseeable that someone under 16 is a passenger in an ROV?**

Response: Yes, CPSC data show that ROV incidents involve both drivers and passengers under 16 years of age. Of 428 ROV-related incidents reviewed by CPSC staff in the ROV NPR, 18 percent of victims were ROV drivers under 16 years of age; 33 percent of the fatalities were children younger than 16 years of age; and 24 percent of injuries classified as severe involved children younger than 16 years of age.

- d. At the hearing, you said that there are about 80 deaths a year attributed to ROV accidents and many more injuries. How many of those are children?**

Response: Of the 231 reported fatalities in the 428 ROV-related incidents reviewed by CPSC staff, 77 (or 33 percent) were children younger than 16 years of age.¹⁸

- 6. In a discussion of the Yamaha Rhino during the second panel of the hearing, one individual suggested that those vehicles were not defective. In**

¹⁷ Record of Commission Action on Recreational Off-Highway Vehicles Proposed Rule at <http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforRecreationalOff-HighwayVehicles-ProposedRule.pdf>

¹⁸ Record of Commission Action on Recreational Off-Highway Vehicles Proposed Rule at <http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforRecreationalOff-HighwayVehicles-ProposedRule.pdf>

the Notice of Proposed Rulemaking on ROV safety standards, there was a discussion of CPSC’s investigation of ROVs in the wake of reports of injuries and deaths associated with the Yamaha Rhino and the Rhino Repair Program through which the manufacturer agreed to make design changes to address stability and handling issues with the Rhino vehicles. Please discuss why CPSC found that the original design of the Rhino was not safe.

Response: In 2008 and early 2009, CPSC staff worked with vehicle dynamics experts from the U.S. Army at the Automotive Test Center at Aberdeen Proving Grounds. Dynamic tests of the 2009 Yamaha Rhino ROV documented the low lateral stability and severe oversteer handling of the vehicle, which led Yamaha to issue a repair notice to increase the stability and correct the vehicle handling. Recent tests that have been developed to specifically characterize the dangerous divergent instability that is possible with oversteer vehicles (yaw rate ratio test proposed in the latest revision to the voluntary standards for ROVs) quantify how badly the unrepaired Yamaha Rhino vehicle exhibits divergent instability. Currently, ROV manufacturers and CPSC technical staff all agree that the unrepaired Yamaha Rhino exhibits divergent instability and that this is an undesirable characteristic. CPSC technical staff believes that this is a dangerous vehicle due to its extremely poor handling characteristics.

7. CPSC rulemaking, first initiated in 2006, on All-Terrain Vehicles (ATVs) titled “Standards for All Terrain Vehicles and Ban of Three-wheeled All-Terrain Vehicles,” which proposed important safety requirements for ATVs, has yet to be finalized, despite congressional direction to do so in the Consumer Product Safety Improvement Act (CPSIA) in 2008. Three years later, in 2011, Congress revisited its direction to the Commission, and passed a law requiring that the 2006 rulemaking be completed within one year.

Now here we are in 2015 and this rulemaking—which began in 2006, was directed to be completed by Congress on two occasions, finally with a 2012 deadline—has yet to be finalized. Meanwhile, in 2012 and 2013 alone, there were 939 deaths related to the use of ATVs.

- a. **Are you committed to finalizing the 2006 ATV rulemaking and, if so, when can we expect a final rule to be issued?**

Response: I am committed to a rule that effectively addresses the hazards posed by these machines, especially to children. Unfortunately, I am not aware of any proposed technical change to the standard that will conclusively achieve this goal. At the direction of the Commission, CPSC staff is continuing to explore ATV hazards and possibilities for regulatory action. In the 2014 mid-year plan, the Commission voted to approve approximately \$1 million in contract funds to conduct ATV research in the areas of stability, passenger behavior and the impact of passenger weight and position on vehicle dynamics, and youth on adult ATVs. The Commission voted in the FY 16 performance budget request to instruct staff to prepare an NPR in 2016. When staff has enough data to create an actionable performance standard the rulemaking can proceed, similar to our action on ROVs. Were Congress to appropriate significantly more funds to the agency, our safety work in areas such as ATVs would be accelerated.

b. What, if anything, does the Commission need from Congress to speed up this process?

Response: The process would speed up if (1) Congress were to appropriate significantly more funds to the agency, and (2) Congress were to provide legal authority for the agency to move under the rulemaking procedures of Section 553 of the Administrative Procedure Act, as Congress has on numerous occasions when it wished the Commission to proceed more quickly.

8. As you are aware, the Chronic Hazard Advisory Panel (CHAP) released their final report on phthalates in July of last year, confirming that uses of these chemicals in children's toys and child-care articles pose serious risks.

a. What are some of the health risks the CHAP identified from phthalate exposures?

Response: The principal phthalate-induced health risks identified by the CHAP include effects on reproductive development in males, which include: hypospadias, cryptorchidism, poor semen quality, reduced fertility, and reduced anogenital distance. According to the CHAP report other kinds of reproductive effects and effects on the liver and kidney may also occur.

b. What is CPSC doing to address phthalate exposures from children's toys and child care articles?

Response: In December 2014, the Commission issued an NPR that would put in place most of the CHAP's recommendations. The Commission proposed to prohibit permanently the sale of certain children's toys and child care articles containing more than 0.1 percent DINP. Currently, DINP is prohibited on an interim basis in toys that can be placed in a child's mouth and child care articles. The Commission also proposed to prohibit children's toys and child care articles containing more than 0.1% of diisobutyl, di-n-pentyl, di-n-hexyl, and dicyclohexyl phthalates. Finally, the Commission proposed to remove DNOP and DIDP from the current interim prohibition. The Commission did not act on the CHAP's recommendation for an interim prohibition of diisooctyl phthalate, due to a lack of toxicity data. Staff is working to present a final rule for consideration by the Commission.

CPSC staff is also actively enforcing the existing phthalates requirements of the Consumer Product Safety Improvement Act of 2008. Staff is also continuing to discuss with counterparts at sister federal health and safety agencies additional research related to phthalates and phthalate alternatives.

c. The CHAP found that phthalate exposures from foods, food packaging and drugs constituted some of the highest exposures across all subpopulations, and recommended that these sources be further assessed for risks to human health. How is CPSC coordinating with FDA to address those risks?

Response: The CHAP concluded that phthalate exposures from food and beverages are major sources of phthalate exposure. Personal care products (*i.e.*, "cosmetics," as defined by the U.S. Food and Drug Administration (FDA)) and drugs may also contribute to exposure. The CHAP recommended that the U.S. agencies with jurisdictional responsibility for these products conduct the necessary hazard, exposure, or risk studies with a view to supporting risk management activities.

Immediately after Congress signed the CPSIA into law, CPSC staff met with representatives of FDA, including staff from the Office of the Director, Center for Food Safety and Applied Nutrition, Center for Drug Evaluation and Research, and the Center for Devices and Radiological Health. Staff also met with representatives from other federal agencies, including, the EPA, National Institute of Environmental Health, the National Toxicology Program, and the Centers for Disease Control and Prevention. Staff organized an interagency workgroup to foster collaboration and share information and expertise. FDA staff made presentations to the CHAP, along with other agencies, and provided data on phthalate use in cosmetics and prescription drugs to the CHAP. Many federal agency representatives attended the CHAP meetings, either in person or via the Internet. On the date the CHAP report was released, CPSC staff gave briefings on the CHAP report to the phthalates interagency group and the President's Task Force on Children's Environmental Health, which included representatives from FDA and other agencies. Staff continues to coordinate with FDA and other agencies through personal contacts and interagency committees.

9. In October 2014, the Commission took an important step toward issuing a mandatory window coverings standard by voting unanimously to grant a petition for rulemaking. As you know, voluntary standards have not been effective in eliminating the strangulation and asphyxiation risk that cords from window blinds pose to infants and children.

a. What is the next step for the Commission in developing a mandatory standard for window coverings and when do you expect to have it completed?

Response: The Commission received extensive public comment on the ANPR. Staff is working to address the comments, as well as develop additional data to answer questions raised by CPSC in the ANPR. Staff expects to evaluate the comments received from the ANPR and continue the development of a draft NPR, subject to the direction and resource allocation by the Commission in the FY 2016 Operating Plan.

b. Why did voluntary standards fail to remedy the problem in the case of window coverings?

Response: Staff attributed only about 25 percent of the investigated incidents to hazard patterns that are addressed by the current voluntary standard for newly manufactured window coverings.

- c. **To what degree, if at all, does the experience with this product affect the Commission’s stated intention of making voluntary standards a top priority?**

Response: The Commission remains committed to developing effective voluntary standards for all products, including window coverings. CPSC staff held a public meeting at the CPSC National Product Testing and Evaluation Center with members of the WCMA on May 27, 2015. Among the items discussed were: what technologies are currently available; what alternatives are achievable; and what impacts these alternatives would have on end-users. CPSC will continue to actively participate in the development of effective voluntary standards and rely on mandatory rulemaking where voluntary standards do not adequately protect against unreasonable risks or where there is not substantial compliance with the voluntary standards.

- d. **It is estimated that these accidents could be prevented for less than \$1 per window covering. Do you believe that this somehow represents an onerous requirement on manufacturers?**

Response: CPSC staff has not yet estimated the costs of a potential rule because no rule has been proposed yet. Staff is currently working to develop information that could inform the costs of a potential rule.

10. The current process by which the trading community submits information to the federal government is fragmented and inefficient, with required trade-related data being sent to multiple agencies multiple times through processes that are largely paper-based and manual.

In the budget proposal you ask for no additional funds for import surveillance in FY 2016, but you recommend Congress adopt a user fee to pay for the Risk Assessment Methodology (RAM) targeting system.

- a. How does the RAM targeting system work and how can it save the Commission time and money once fully implemented? What other agencies currently use the same system?**

Response: CPSC’s authority to regulate the importation of consumer products is derived from section 17(h)(1), which requires the Commission to “establish and maintain a permanent product surveillance program, in cooperation with other appropriate Federal agencies, for the purpose of carrying out the Commission’s responsibilities under this CPSC Act and the other Acts administered by the Commission and preventing the entry of unsafe consumer products into the commerce of the United States” 15 U.S.C. 2066(h)(1). Additionally, under section 222 of the CPSIA, the CPSC is required to develop a risk assessment methodology for the identification of shipments of consumer products that are intended for import into the United States, and are likely to violate consumer product safety statutes and regulations.

The CPSC RAM pilot system allows the agency to apply certain risk-based health and safety scores calculated using limited data currently collected by CBP. This scoring allows staff to refine the targets of certain high-risk cargo under CPSC’s jurisdiction. The pilot system further allows for the expedited release of highly compliant cargo.

Many agencies, including FDA and the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS), use a similar risk-based approach to evaluate risk associated with the products that they regulate.

- b. How will the “Single Window,” as required by the President’s Executive Order, be beneficial to traders and participating government agencies? What is the Commission’s progress in implementing this system?**

Response: The intention of the “single window” is to provide one location for the trade to enter required data electronically, thereby streamlining the import and export process. Currently, an importer may have to file electronic information to CBP and then a paper form to another agency. The Single Window should improve targeting efficiency and save time and

money for the trade and federal agencies by providing real-time data to be analyzed for risk, thereby decreasing unnecessary holds on compliant cargo and more accurate targeting of noncompliant cargo.

CPSC has identified at this time the bare minimum, highest priority data elements staff considers crucial for targeting noncompliant products before they enter commerce. Those elements are set forth in an August 21, 2015 *Federal Register* notice announcing the Commission's electronic filing pilot program.¹⁹

- c. According to CPSC staff, 28,000 examinations of imported products suspected of violations took place in 2014. Out of that number, 2,000 actual violations were discovered. Do you expect the fully-implemented RAM system to improve the rate of success in examining products suspected to be noncompliant?**

Response: Yes. With full implementation of the RAM, staff expects to improve the rate of identification of violations by focusing their attention on products most likely to be noncompliant.

11. Back in 2011, the Commission voted unanimously to begin a rulemaking to address the horrendous injuries that occur on table saws every year. According to the CPSC's own statistics, there are over 60,000 of these injuries every year in the U.S., including approximately 10 amputations every day. Each amputation costs \$35,000 in health care costs and a lifetime of pain. I understand there is already technology on the market that would virtually eliminate these injuries.

- a. Is the Commission looking into the possibility of issuing a safety standard for table saws?**

Response: Yes. In October 2011, the Commission published an ANPR for table saw safety to address blade contact injuries. Since then, CPSC staff has participated in voluntary standards efforts to adopt performance requirements to address blade contact injuries and conducted studies and gathered information to prepare an NPR package for table saw safety.

¹⁹<https://www.federalregister.gov/articles/2015/08/21/2015-20707/electronic-filing-of-targetingenforcement-data-announcement-of-pga-message-set-test-and-request-for>

b. When do you expect that a proposed table saw safety standard will be published?

Response: The Commission voted in the FY 2016 Performance Budget Request to direct staff to prepare an NPR on table saws in FY 2016.

12. Recalled products pose a risk to consumers for months, even years, after they are taken off the market. Last year, several news investigations showed that recalled products may still find a market online through websites such as Craigslist. In these cases, the seller of a product may not be aware that a recall has been issued, placing the potential buyer at risk.

a. Are online platforms for commerce are (sic) doing enough to keep recalled products off their sites?

Response: CPSC has a close working relationship with some of the larger sites. Many of those sites have staff specifically focused on website safety; several have also developed sophisticated software programs to quickly identify and remove recalled products.

While some of the larger websites put significant resources into identifying and removing offers to sell recalled or banned products, many sites take the position that they are not responsible for their site content, and they do not have the personnel or resources to adequately police their site.

One of the actions that we would recommend sites take to ensure that recalled products are not offered for sale is automatically prohibiting a list of banned or recalled products, including requiring specific product details to be included in an offer to sell.

We also believe that recalling firms must be held accountable for the retrieval of their product. The public announcement of a recall should be just the beginning of the recall process; the firms must also be held responsible for removing the dangerous products they introduced to the consumer marketplace. This includes conducting their own marketplace surveillance, contacting websites, and communicating with individual sellers directly.

b. What would you recommend these websites do to better inform consumers that they might be purchasing a dangerous product?

Response: CPSC suggests websites implement a combination of approaches:

1. Improving global site user education efforts, to include publicizing new or high-profile consumer product recalls. This is best accomplished by pushing targeted, real-time notifications to specific visitors, based on what product the online sellers wish to list for sale.
2. Requiring an affirmative statement that the seller has checked the CPSC recalls website at CPSC.gov and confirmed that the product being offered has not been recalled. This can be as simple as a check box acknowledgement, coupled with a statement that site management will cooperate with the CPSC to remove prohibited items if the sales offer involves a recalled consumer product. The sites could also encourage sellers to include the make and model number of the product in the sales offer.
3. Providing point of purchase informational pop-up messaging similar to (1) above, but focusing on the potential buyer.
4. Posting periodic banners or other types of messaging emphasizing safe use of the site, and linking to well-placed “prohibited acts” website policies (with the resale of recalled products at or near the top of that list).

c. How can recalls be more effective in general? How can consumers be reached more effectively?

Response: Recall effectiveness is a priority of the agency. Accordingly, we have taken numerous steps to improve the effectiveness of the product safety recalls we announce. These critical measures include: (1) initiating discussions with other federal agencies that also have recall authority (*e.g.*, FDA/NHTSA) to develop best practices on how to most effectively reach consumers; (2) working with individual recalling firms to ensure monthly progress reports provided to the Commission accurately reflect the steps taken by the recalling company and ensuring the accuracy of the data being

provided; (3) identifying priority recalls so that broader monitoring of these critical recalls takes place by assigned Compliance staff; (4) working on various technology improvements to ease the regulatory burden on recalling firms in providing recall progress report information to the staff through a one stop business portal; (5) expanding the use of social media by CPSC to reach targeted audiences; and (6) urging recalling firms to use social media and search engine optimization to broaden notice of safety recalls and reach as many owners of recalled products as possible. Discussions continue with internal CPSC communications staff and the regulated industry to achieve the greatest results possible and continue to prevent serious injuries and deaths with our recall notices.

13. The Commission has been actively engaged in preventing tip-over incidents involving televisions, furniture, and appliances. The “Anchor It” campaign, launched in 2011, involved a data-driven study, a social media effort, and, most recently, a video that demonstrated how consumers can take simple steps to prevent a tip-over incident.

a. Has this campaign been successful in achieving its goals?

Response: The AnchorIt! campaign was initiated at the start of fiscal year 2015, and in less than one year’s time, the campaign has achieved the following results:

- 225,000 media impression for our Public Service Announcements.
- Nearly 450 million media impressions from more than 250 news stories about the campaign.
- More than 2 million views of our YouTube video showing the devastating effects of television and furniture tip-overs.
- More than 11,000 page views on www.AnchorIt.gov.

In addition, the campaign has established agreements with several organizations that have posted our materials on social media and their own websites, and disseminated our prevention information to their constituents.

CPSC has dedicated resources on staff and under contract to extend the campaign into fiscal year 2016.

b. What more can be done on consumer education campaigns such as “Anchor It?”

Response: The agency would need significantly more funds to not only build out these campaigns but also to attempt to create improved metrics to gauge their impact.

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

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

CHAIRMAN MICHAEL C. BURGESS, M.D.

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

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

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

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

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

HON. PETE OLSON

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

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

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

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

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

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

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

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