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6 PROTECTING AMERICANS FROM

7 DANGEROUS PRODUCTS: IS THE CONSUMER PRODUCT

8 SAFETY COMMISSION FULFILLING ITS MISSION?

9 TUESDAY, APRIL 9, 2019

10 House of Representatives

11 Subcommittee on Consumer Protection and

12 Commerce

13 Committee on Energy and Commerce

14 Washington, D.C.

15

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18 The subcommittee met, pursuant to call, at 10:15 a.m.,

19 in Room 2322 Rayburn House Office Building, Hon. Janice

20 Schakowsky [chairwoman of the subcommittee] presiding.

21 Members present: Representatives Schakowsky, Castor,

22 Veasey, Kelly, O'Halleran, Cardenas, Blunt Rochester, Rush,

23 Matsui, McNerney, Dingell, Pallone (ex officio), Rodgers,

24 Upton, Burgess, Latta, Guthrie, Bucshon, Hudson, Carter, and

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25 Walden (ex officio).

26 Staff present: Jeff Carroll, Staff Director; Alex
27 Chasick, Counsel; Evan Gilbert, Press Assistant; Lisa
28 Goldman, Counsel; Waverly Gordon, Deputy Chief Counsel;
29 Tiffany Guarascio, Deputy Staff Director; Alex Hoehn-Saric,
30 Chief Counsel, C&T; Meghan Mullon, Staff Assistant; Kaitlyn
31 Peel, Digital Director; Alivia Roberts, Press Assistant;
32 Chloe Rodriguez, Policy Analyst; Ben Rossen, FTC Detailee;
33 Mike Bloomquist, Minority Staff Director; Adam Buckalew,
34 Minority Director of Coalitions and Deputy Chief Counsel,
35 Health; Melissa Froelich, Minority Chief Counsel, CPAC;
36 Theresa Gambo, Minority Human Resources/Office Administrator;
37 Peter Kielty, Minority General Counsel; Bijan Koohmaraie,
38 Minority Counsel, CPAC; Brannon Rains, Minority Staff
39 Assistant; and Nate Wilkins, Minority Fellow.

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40 Ms. Schakowsky. The hearing of the Consumer Protection
41 and Commerce Subcommittee will come to order.

42 The chair will now recognize herself for five minutes
43 for an opening statement. I want to thank our panel so much
44 for being here, both of our panels, and for our members for
45 being here.

46 I want to tell you that consumer protection is my
47 passion and what really first drew me to public life. As
48 many members will recall, I like to call our subcommittee the
49 nation's legislative help line and nowhere is there more
50 evidence of this in the -- its oversight of the Consumer
51 Product Safety Commission.

52 The fundamental questions that we must answer today is
53 found in the hearing's title: is the Consumer Product Safety
54 Commission fulfilling its mission to protect consumers?

55 Unfortunately for consumers, the data doesn't suggest
56 that the CPSC is doing all it can to fulfill its mission.
57 CPSC's ability to protect consumers from unsafe products
58 relies on its ability to conduct effective and efficient
59 investigations and issue recalls.

60 However, over the last three years, the CPSC recall
61 actions have slowed dramatically. In 2016, when Commissioner
62 Kaye was serving as chairman, the Commission issued 332
63 recalls.

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64 Since then, that number has sunk pretty precipitously as
65 last year there were only 258 recalls issued.

66 Now, don't misunderstand me. I would love to believe
67 that the decrease in the recalls was the result of more
68 effective regulation and higher quality, safer products being
69 brought to the market.

70 The reality is, however, a survey conducted by Kids in
71 Danger revealed that the number of incident reports in
72 children's products actually increased over that time, which
73 suggests that the CPSC is moving slowly to open cases and
74 recall unsafe products, or worse, not moving much at all.

75 All of this comes as many of these products are becoming
76 more and more complex with new challenges for the agency to
77 tackle. For example, last year, every Christmas we have a
78 unsafe toys demonstration and for the first time we talked
79 about connected toys -- those that may track our children
80 wherever they go.

81 I commend Chairwoman Buerkle for making statements in
82 support of increased resources for the Commission, in
83 particular, a proposed initiative to gather information from
84 urgent care centers in addition to emergency rooms and
85 including e-commerce platforms in its marketplace analysis.

86 However, in its budget request the Consumer Products
87 Safety Commission did not seek an increase, meaning that this

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88 and other plans and initiatives would remain pipe dreams.

89 I look forward to hearing from Chairwoman Buerkle and
90 the other commissioners. I thank you all for being here. It
91 means so much to us as we discuss these and other important
92 issues facing consumers.

93 I am also delighted to hear from consumer groups in our
94 second panel. Their voice is so very important and it has
95 been missing, I think, unfortunately, in the last few years
96 on this subcommittee.

97 I look forward to working with each of you on the
98 important issues that the Commission deals with. My
99 preference will always be to be able to work in collaboration
100 with the CPSC and all the members of the subcommittee on both
101 sides of the aisle.

102 I hope the commissioners will stay for the second panel
103 -- I really want to invite you to do that -- where we will
104 hear from advocates about how furniture tip-overs kill one
105 child every two weeks, how bed rails can kill senior
106 citizens, and how -- and the need for flame mitigation
107 devices on portable fuel containers.

108 There are so many things that we can be doing to make
109 the marketplace safer and this is the subcommittee that
110 actually can do that.

111 We look forward to working in collaboration.

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112 And now I yield to Ranking Member Cathy McMorris Rodgers
113 for five minutes.

114 Mrs. McMorris Rodgers. Good morning, and I thank the
115 chair for yielding. Welcome to the Consumer Protection and
116 Commerce Subcommittee hearing with the Consumer Product
117 Safety Commission. It is great to see everyone.

118 Thank you to Acting Chair Ann Marie Buerkle, my former
119 colleague -- our former colleague -- as well as the
120 Commissioners Baiocco, Feldman, Kaye, and Adler all for being
121 here today to discuss the Commission's mission and important
122 work.

123 Even though it has only been six months with all five of
124 you at the Commission, I am looking forward to hearing
125 directly from you.

126 I will begin by congratulating my good friend and former
127 colleague, Chair Buerkle, for advancing through the Senate
128 Commerce Committee last week. My hope is the Senate will ask
129 swiftly to confirm you as chair of the Commission.

130 Constitutional concerns with agency action prior to your
131 nomination and the delays with your nomination clearly
132 demonstrate why your confirmation and leadership are so
133 needed at the agency.

134 Chair Buerkle, you have been steadfast in your efforts
135 to advance the safety mission of the agency, even when you

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136 spent the majority of the last two years in the minority at
137 the Commission.

138 I would like to ensure you have time this morning to
139 address some recent questioning of your motives and your
140 leadership at the Commission. As a nurse, lawyer, mother,
141 and grandmother, I know how important safety is to you in
142 your career in public service.

143 It is apparent that some are still trying to delay or
144 halt your confirmation in the Senate because, by law, you are
145 required to leave the Commission in October if you have not
146 been confirmed.

147 That would leave the Commission at a deadlock -- 2-2 --
148 only increasing uncertainty. Why that would be anyone's goal
149 with an agency as important as the CPSC is beyond me.

150 I urge the Senate to advance your confirmation as soon
151 as possible. I want you to know your hard work and
152 dedication to protect Americans has not gone unnoticed.

153 The Consumer Product Safety Commission, or CPSC, was
154 established in 1972. The Commission is charged with
155 protecting the public against unreasonable risk of injuries
156 and deaths associated with consumer products.

157 The CPSC's jurisdiction covers over 15,000 products that
158 are sold to and used every day in our homes, our schools,
159 businesses, and elsewhere.

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160 However, the CPSC does not have jurisdiction over
161 tobacco products, motor vehicles, aircrafts, boats, food,
162 drugs, and the like.

163 CPSC's primary functions are to develop voluntary
164 standards with industry or create mandatory standards where
165 no adequate voluntary standard exists, to organize recalls of
166 dangerous products that pose a risk to people, and to
167 investigate potentially hazardous products.

168 The structure of the statute is critical. It recognizes
169 the important of the agency having open lines of
170 communication with the sectors of our economy that they
171 regulate.

172 When something does go wrong, there are processes in
173 place that products off the shelves or websites as quickly as
174 possible. This is why members of this committee have been
175 such strong supporters of the fast track recall program, as
176 one example.

177 The work you have done and your staff do is so
178 important. I look forward to our discussion here today and I
179 thank you all for being here.

180 I yield back.

181 Ms. Schakowsky. And now I am proud to yield five
182 minutes to the chair of the full committee, Frank Pallone.

183 Chairman Pallone. Thank you, Madam Chair.

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184 Few people have heard of the Consumer Product Safety
185 Commission but it serves a critical role in protecting
186 consumers from dangerous products. It is the agency that
187 makes sure your coffee maker does not burn down your house,
188 your baby does not die from a defective crib, your power
189 drill doesn't electrocute you, your hot water heater does not
190 poison you, your child's toy is not made of lead, et cetera,
191 and these are all real examples of defective products that
192 have been recalled, and they demonstrate the important role
193 the Commission should play in protecting consumers.

194 In order to be fully effective, CPSC needs to be a
195 proactive agency, not a reactive one. But, unfortunately, I
196 am concerned that CPSC has become an inactive agency. The
197 fact is that CPSC is issuing fewer recalls than in years
198 past.

199 It is issuing fewer safety standards and it is imposing
200 fewer and smaller penalties. The marketplace hasn't suddenly
201 become safer, as our second panel will attest.

202 Instead, CPSC's inaction comes from the top and it
203 leaves me wondering how many more dangerous products are out
204 there and what, if anything, is being done by the Commission
205 to prevent further deaths and injuries.

206 Inaction is simply not acceptable, but Acting Chairman
207 Buerkle seems to be pushing just that after stating that one

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208 of her top priorities was, I quote, "reducing regulatory
209 burdens" and she voted against imposing safety standards for
210 infant slings, table saws, magnet sets, and portable
211 generators and she also voiced her opposition to civil
212 penalties and her hope that CPSC would not impose them.

213 So this is not a record that puts consumers' safety
214 first, in my opinion, but again, it seems that is not the
215 priority of the acting chairman.

216 She has been true to her word to reduce regulatory
217 burdens. Under Acting Chairman Buerkle, CPSC has also failed
218 to hold corporations accountable for selling hazardous
219 products, at times even working with industry to, in my
220 opinion, sabotage the agency's own efforts to save lives.

221 Under previous leadership, the CPSC began a rulemaking
222 on portable generator safety, including standards for carbon
223 monoxide emissions that result in an average of 73 deaths per
224 year.

225 But after industry lobbyists convinced former EPA
226 Administrator Scott Pruitt to assert jurisdiction over carbon
227 monoxide emissions, the Acting Chairman Buerkle sided with
228 the EPA and industry to stop the rulemaking and as of today,
229 the EPA has taken no action, and people continue to die.

230 Now, when consumers complained that a defective wheel in
231 Britax strollers was causing serious injuries, CPSC sued,

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232 seeking a recall over the objections of then Commissioner
233 Buerkle.

234 After two Republican commissioners joined CPSC, they
235 voted to settle the litigation on terms favorable to the
236 company, not to consumers, and the settlement did not even
237 call the needed repair a recall, leaving parents confused and
238 children at risk.

239 The trend of favoring industry over consumers is
240 troubling and I want to hear from the commissioners and
241 consumer advocates about the direction that the Commission is
242 headed.

243 I also want to hear about CPSC's actions on an array of
244 specific hazards. Three years ago, I helped pass the Child
245 Nicotine Poisoning Prevention Act, requiring child-proof
246 packaging for liquid nicotine containers.

247 Those can kill children if ingested, and I am hearing
248 that CPSC is not doing enough to keep these deadly products
249 out of children's hands. I am also disappointed that the
250 Commission voted against beginning a rulemaking on children's
251 dressers last month and I would like to know what CPSC is
252 doing to prevent deadly furniture tip-overs, which Chairman
253 Schakowsky has been calling attention to for years.

254 I also want to know about CPSC's efforts to ensure the
255 safety of sleeping infants and how it is incorporating

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256 pediatricians' advice into its evaluation of inclined
257 sleepers and crib bumpers.

258 Consumer advocates have argued that these products are
259 inherently dangerous and should be banned, yet they are still
260 for sale at baby stores and online. And despite several
261 deaths associated with inclined sleepers, CPSC wouldn't name
262 the specific product until days before this hearing.

263 So it shouldn't take a congressional hearing to get CPSC
264 to do its job and prevent babies from dying and I continue to
265 have concerns about e-commerce sites letting unsafe
266 counterfeit products be shipped directly to consumers' front
267 doors. These products have no testing or quality control and
268 are a growing danger.

269 So as you can see, there is a long list of dangerous
270 products that remain on the market because CPSC has failed to
271 do its job. It is long past time this committee conduct
272 oversight of the CPSC and bring attention to these many
273 product safety concerns.

274 So I want to thank the chairwoman for having this
275 hearing and, you know, we have talking about these for long
276 before you were the chair and now, finally, have an
277 opportunity to do some good oversight and I appreciate that.

278 Thank you.

279 Ms. Schakowsky. The gentleman yields back. I

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280 appreciate the comment.

281 And now I would like to recognize Mr. Walden, the
282 ranking member, of the full committee for five minutes for
283 his opening statement.

284 Mr. Walden. Well, good morning, Madam Chair, and thanks
285 for having the hearing today with the Consumer Product Safety
286 Commission.

287 I especially want to extend a warm welcome to our former
288 colleague and friend, current Acting Chair of the CPSC, Ann
289 Marie Buerkle. It is good to see you again.

290 Hopefully, your recent third vote of confidence by the
291 Senate Commerce Committee will be the charm and your
292 confirmation will move swiftly through the United States
293 Senate.

294 In her short time as acting chair, Ms. Buerkle has put
295 consumer safety first. Under her leadership, the Commission
296 has, among other items, implemented or revised more than 12
297 safety standards, helped improve window covering safety,
298 pushed industry to utilize flow restrictions on liquid
299 nicotine packaging to improve safety and reduce risk to
300 children, and has secured tens of millions of dollars in
301 civil penalties against bad actors.

302 I want to thank you for your work and I look forward to
303 your continued commitment to safety as you continue on as our

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304 confirmed chair. The CPSC is a critical safety agency that
305 must have clear leadership.

306 There are significant constitutional questions with
307 respect to actions taken by the CPSC and the absence of such
308 leadership from President Trump's inauguration through the
309 fall of 2017.

310 During the time, the agency consisted of only one
311 Republican commission, Acting Chair Buerkle, to three
312 Democrat commissioners, and such questions may require the
313 agency to divert resources needed to fulfil its safety
314 mission to deal with potential legal challenges.

315 It's imperative that the CPSC's process actually works
316 to protect consumers and not lead to expensive and unneeded
317 litigation. CPSC must rely on up to date scientifically
318 sound data to base its decisions and not prejudge or litigate
319 in the court of public opinion.

320 I am encouraged the agency is turning the corner with
321 respect to these issues under Acting Chair Buerkle's
322 leadership. CPSC protects consumers from unreasonable risks,
323 and we know there are a lot of them out there, and against
324 hazards from consumer products by working with industry to
325 establish in many cases voluntary or industry -- based
326 standards by developing mandatory standards where industry-
327 based standards are not sufficient and through recalls.

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328 Given the size of the CSPC and the breadth of your
329 jurisdiction, Congress had the foresight to encourage the
330 CSPC to engage industry to carry out its mission in a
331 bipartisan effort, I might add.

332 However, some are attempting to discredit the open lines
333 of communication between the agency and regulated industries.

334 But shouldn't our goal be to protect consumers in the most
335 efficient manner possible?

336 Having an open dialogue and an open line of
337 communication with industry actually helps the CPSC solve
338 problems earlier and protect consumers better.

339 We must continue encouraging the CPSC to engage industry
340 and in-the -- field experts on complex issues, with consumer
341 products industry can provide unique expertise and insights
342 into what's happening in the marketplace and can help
343 identify potential harms.

344 So it is no secret that bureaucratic government agencies
345 do not move fast. Yet, because of industry's willingness to
346 work with CSPC, programs like the fast track recall program,
347 retailer reporting program, and the small business Regulatory
348 Robot are now up and running.

349 Cutting industry completely out of the process would
350 benefit no one and would just increase the risk of keeping
351 dangerous products potentially in the market longer.

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352 The bottom line is that the CPSC does important work to
353 help protect children and consumers by working with all
354 stakeholders and safety remains the commission's priority, as
355 it should.

356 So I thank you all for being here. I thank you all for
357 your service in this capacity. I know there's a lot on your
358 plate, and you heard a few more items from up here on the
359 dais.

360 So I look forward to hearing more about CPSC's agenda
361 and its efforts to protect consumers.

362 If anyone else wants the remainder of my time, I would
363 yield to the ranking member of the Health Subcommittee, Dr.
364 Burgess.

365 Mr. Burgess. Thank you, Mr. Walden, and I just also
366 wanted to welcome our former colleague. Ms. Buerkle, you
367 have been good enough to come and talk to me on several of
368 the issues that have occurred when I was chairman of this
369 subcommittee several years ago.

370 And Commissioner Kaye, I certainly appreciate the time
371 you invested in making the fireworks demonstration available
372 to members of the subcommittee and staff.

373 I don't remember exactly where it was but it was way out
374 in the sticks and you did a great job with demonstrating the
375 rigors that you go through to ensure that fireworks products

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376 are indeed safe.

377 So thanks all to the commissioners for being here and I
378 will yield back to the ranking member.

379 Ms. Schakowsky. The gentleman yields back.

380 The chair would like to remind members that pursuant to
381 committee rules all members' written opening statements shall
382 be made part of the record.

383 And now it is my pleasure to introduce our first panel
384 of witnesses for today's hearing from the Consumer Product
385 Safety Commission.

386 Again, it is such an honor that all of you would show up
387 to this morning. Thank you.

388 I will go through all of them -- all of you first.
389 Commissioner Robert Adler, Commissioner Dana Baiocco -- am I
390 saying it right? Baiocco. Okay, Baiocco. Acting Chairwoman
391 Ann Marie Buerkle, Commissioner Peter Feldman, and
392 Commissioner Elliot Kaye.

393 We want to thank all the witnesses for joining us today.
394 We look forward to your testimony. At this time, the chair
395 will now recognize each witness for five minutes -- you have
396 all had experience, I think, with the lights -- to provide an
397 opening statement.

398 So we are actually going to move in alphabetical order
399 and we will begin with a statement from Commissioner Adler,

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and you are recognized for five minutes.

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401 STATEMENTS OF THE HONORABLE ROBERT S. ADLER, COMMISSIONER,
402 CONSUMER PRODUCT SAFETY COMMISSION; THE HONORABLE DANA
403 BAIOTTO, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION;
404 THE HONORABLE ANN MARIE BUERKLE, ACTING CHAIRMAN, CONSUMER
405 PRODUCT SAFETY COMMISSION; THE HONORABLE PETER A. FELDMAN,
406 COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION; THE
407 HONORABLE ELLIOT F. KAYE, COMMISSIONER, CONSUMER PRODUCT
408 SAFETY COMMISSION

409

410 STATEMENT OF MR. ADLER

411 Mr. Adler. Good morning, Chairman Schakowsky -- is this
412 on -- and Ranking Member Rodgers and the members of the
413 Subcommittee on Consumer Protection and Commerce. Thank you
414 for the opportunity to testify.

415 I am pleased to be here to discuss an agency that I have
416 been associated with in some fashion since it opened in 1973
417 and where I have been a commissioner since August 2009.

418 At the outset, I would point out that CPSC is far and
419 away the smallest of the federal health and safety agencies
420 with the current funding level of \$127 million and a staff of
421 539 FTEs and I want to put our budget in perspective.

422 I note that we have a sister agency, FDA. They recently
423 asked for an increase in their budget -- an increase in their
424 budget that is five times the size of our entire budget.

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425 Notwithstanding our modest budget, our jurisdictional
426 scope is extremely wide, encompassing, roughly, 15,000
427 categories of consumer products found in homes, stores,
428 schools, and recreational settings.

429 This October is going to mark the 47th anniversary of
430 the passage of this landmark piece of legislation. Looking
431 back, I think Congress and the agency should take great pride
432 in what the agency has accomplished.

433 I can't go through all the accomplishments but I did
434 want to focus at least for a moment on the dramatic drop in
435 death and injuries to children.

436 Here are just a few statistics. There has been an over
437 -- over an 80 percent drop in childhood fatal poisonings, 70
438 percent drop in crib deaths, almost 90 percent reduction in
439 baby walker injuries, and an almost complete elimination of
440 childhood suffocations in abandoned refrigerators.

441 We have also seen dramatic drops in fatal
442 electrocutions, residential fire deaths, and traumatic
443 injuries from lawnmowers. In short, I think we offer an
444 excellent return on investment.

445 I would also like to mention the tremendous strides
446 we've taken to enforce and implement the Consumer Product
447 Safety Improvement Act of 2008 since its passage about 10
448 years ago, and here I have to pause and thank Chairman

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449 Schakowsky for the critical role she played in the passage of
450 that piece of legislation.

451 Among the actions we have taken, enforcing stringent
452 limits on lead and phthalates in children's products,
453 promulgating the strongest safety standard in the world for
454 cribs, writing and continuing to write a series of standards
455 -- I believe the count is now 20 -- for durable infant
456 products such as play yards and strollers. I am thrilled
457 with our implementation of the Consumer Product Safety
458 Improvement Act.

459 I wish I could share that same degree of pride when it
460 comes to our other pieces of legislation. But I think
461 there's a broad disconnect between the effectiveness of our
462 rulemaking under CPSIA and under the other acts we enforce,
463 and I am going to briefly explain.

464 When we were first established in 1973, we promulgated
465 numerous critical safety rules dealing with hazards such as
466 flammable children's sleepwear, dangerously shattering glass
467 panes, and unsafe toys under the traditional rulemaking
468 procedures in the Administrative Procedure Act.

469 I did a count. By my count, the agency wrote 24 safety
470 rules in its first eight years. That is about three a year.

471 In 1981, however, Congress imposed a cumbersome of
472 procedures on the agency that have hampered our rulemaking in

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473 the years since, and I did another count.

474 It has been 38 years since 1981. We have managed to eke
475 out 10 safety rules under these revised procedures. So that
476 is only about one every three and a half years.

477 What is even greater concern to me is we have only
478 written one safety standard under these procedures in the
479 past 10 years. To be blunt, I have little doubt that lives
480 have been lost and injuries incurred unnecessarily because of
481 these delays in our rulemaking and with no particular
482 improvement in the quality of the standards we write.

483 While I am discussing features of the Consumer Product
484 Safety Act that I would like to see reformed, I must also
485 mention an onerous restriction on information disclosure
486 under which CPSC alone among all federal agencies must
487 operate and I refer to the provisions of Section 60 of the
488 Consumer Product Safety Act.

489 Unlike any other health and safety act agency, when we
490 receive a request for information in our files under the
491 Freedom of Information Act, we can't simply disclose that if
492 it would allow the public to determine the name of a
493 manufacturer.

494 In that case, we must send the information to the
495 manufacturer, wait for comments from the manufacturer,
496 process the manufacturer's comments, and then and only then

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497 make a decision about whether we would release that
498 information, all of this done, I might add, with the looming
499 prospect of being sued if the company doesn't like what we
500 are about to disclose.

501 And here is what is particularly frustrating about this
502 provision. It applies to information where we are simply a
503 repository -- we are simply acting as a library. We didn't
504 generate the information ourselves.

505 So if we got a request for a list of 50 names of
506 manufacturers of widgets, in order to release that list we
507 would have to send out 50 separate notices with 49 names
508 redacted before we could proceed to release that information.

509 That is costly both in terms of time and in resources at the
510 agency.

511 One quick final point. I would like to share a concern
512 that I have with an often vulnerable group -- vulnerable
513 group of which I am proud member -- senior citizens.

514 We are one of the fastest growing demographics in the
515 country. In fact, by 2030 one in five people in this country
516 will be age 65 or older.

517 We are living healthier and we need to make sure we are
518 living safer. Have I gone over my time?

519 Well, I apologize for that and I will -- just a few
520 additional words about senior citizens, but I can withhold.

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521 Thank you.

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

523

524 *****INSERT 1*****

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525 Ms. Schakowsky. And next, Commissioner, if you could
526 move your name tag in front so we could see that. There we
527 go.

528 So Commissioner Baiocco, you are recognized for five
529 minutes. Thank you.

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530 STATEMENT OF MS. BAIOTTO

531

532 Ms. Baiotto. Thank you, and good morning, Chairman
533 Schakowsky, Ranking Member McMorris Rodgers, and members of
534 the House Subcommittee on Consumer Protection and Commerce.

535 Thank you for inviting me here today and for providing
536 all of the commissioners the opportunity to testify before
537 you today. This is the first time I have appeared before
538 Congress and I believe that it is essential and it is a great
539 responsibility that we discuss the status of the agency and
540 also I would like to share with you my individual
541 perspectives, goals, and ideas for making the agency
542 successful.

543 While I have only been at the agency for about 10
544 months, it has been an honor to work with my fellow
545 commissioners to facilitate our statutory directives and to
546 also explore ways to keep the agency current as possible with
547 all of the different types of products and the ever evolving
548 issues that are associated with the consumer product safety
549 world.

550 The enormity of the agency's charge cannot be
551 overstated. In the title to this hearing, you ask is the
552 Commissioner -- is the Consumer Product Safety Commission
553 fulfilling its mission.

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554 The answer is yes. In fact, during my short tenure, the
555 agency has taken several safety-related actions including the
556 vigorous enforcement of the Child Nicotine Poisoning
557 Prevention Act of 2015.

558 We have finalized safety rules for high chairs, baby
559 changing products, booster seats, portable hook-on chairs.
560 We have voted to ensure that a mandatory standard to address
561 furniture tip-overs is finalized and we have developed and
562 released a CPSC recall act to better inform consumers about
563 recalled products.

564 We have expanded our safety collaboration with retail
565 outlets, trade organizations, and consumer advocacy groups as
566 it pertains to toys and the agency's new and progressive
567 social media campaign is extremely well received.

568 However, given the great mission before us, I believe
569 that the agency can and must do more. First, we must enhance
570 the agency as a whole to better serve consumers.

571 To do this, the agency must commit to forward-looking
572 investments that will make the agency more efficient, more
573 nimble, and more effective.

574 For example, the agency should invest smartly in three
575 basic upgrades. Improved equipment is one, additional and
576 specialized personnel to revamp and oversee the agency's
577 technology data capabilities and hazard identification

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578 systems, and third, a more robust plan for testing and
579 studying new trends, products, and impending issues.

580 Merely redecorating an outdated system does not now and
581 will not in the future allow the agency to serve the American
582 public in the manner in which they deserve.

583 Given the speed with which new products enter the
584 marketplace every day, the ease with which they get directly
585 into a consumer's home, and the complexity of the global
586 supply chain, which includes products that do not comply with
587 our safety rules and standards, real action must be taken to
588 keep the agency relevant.

589 We must end the cyclical exercise of patching an already
590 obsolete system that becomes more antiquated every day. We
591 must ensure that a generous portion of the agency's budget,
592 whatever it may be, is dedicated to transitioning the CPSC
593 into a forward-looking agency rather than a reactive one.

594 We must provide our engineers with reliable and sound
595 data to address and solve product hazards.

596 Second, the agency must be purposeful in its regulatory
597 activities. Rulemaking, of course, is a key charge of the
598 CPSC's mission and there are strict statutory directives that
599 we must follow.

600 However, the agency must do a better job with this
601 authority. For example, when an agency is promulgating a

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602 safety rule, it should do so swiftly and decisively. It must
603 be legally sound and there must be a scientific reason to do
604 so.

605 It serves no purpose to force a rule that does not solve
606 the hazard or that leaves room for legal challenge because
607 the rule lacks basis in data, science, or proper procedure.

608 All agency legal actions must be credible, rationally
609 related to the hazard before it, and consistent with the rule
610 of law.

611 Third, the CPSC should be the gold standard in
612 engineering, testing, and problem solving. We must allow our
613 engineers to be independent and solution oriented.

614 Our entire team must be in power to solve product
615 hazards affirmatively when appropriate rather than be
616 encouraged to merely opine on a proposed solution offered by
617 interested stakeholders.

618 Finally, I think it's imperative that the agency
619 implement programs to allow it to move ahead of the curve on
620 emerging trends and impending issues.

621 To illustrate, the marketplace is currently demanding
622 the production of more sustainable products, however that
623 word is defined. To the extent sustainable means recycled
624 reusable products, the agency must ensure that the market
625 demand does not indirectly undue safety advancements that the

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626 agency has worked long and hard to accomplish.

627 The agency should be studying now, not reacting later,
628 to any of these potential pitfalls.

629 Since joining the CPSC, I have been working on some
630 individual initiatives to contribute to the agency's mission.

631 One of those focuses on counterfeit products that is a deep
632 pool of noncompliant products.

633 I am impressed -- I am very impressed with the work that
634 the agency's import surveillance team is doing on this
635 initiative. They have developed excellent relationships with
636 their custom and border control colleagues.

637 Ms. Schakowsky. Commissioner, you are going to have to
638 wrap it up.

639 Ms. Baiocco. Oh, I am sorry.

640 My overarching goal as a commissioner is to ensure that
641 the CPSC is employing the best practices in all that we do.
642 I have requested that the Commission conduct an internal
643 review of the agency staff directives and procedures to
644 identify and enhance areas that need improvement.

645 That review, in my opinion, is critical to the integrity
646 of the agency. If we have additional questions beyond today,
647 I am available any time to answer them.

648 Thank you for the extra time.

649 [The prepared statement of Ms. Baiocco follows:]

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651

*****INSERT 2*****

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652 Ms. Schakowsky. I thank you.

653 And Acting Chairwoman Buerkle, it is yours for five
654 minutes.

655

656 STATEMENT OF MS. BUERKLE

657

658 Ms. Buerkle. Thank you very much.

659 Good morning, Chairman Schakowsky, Ranking Member
660 McMorris Rodgers, and distinguished members of this
661 committee.

662 Thank you for holding today's hearing on the Consumer
663 Product Safety Commission. I had the honor of serving
664 alongside the chairwoman and the ranking member and some of
665 the subcommittee's members during my time in the House of
666 Representatives and I am so very glad to be back on Capitol
667 Hill to discuss the very important work of the Consumer
668 Product Safety Commission.

669 I also appreciate the productive meetings with the
670 chairwoman and the ranking member earlier this year. I hope
671 today's hearing is another step towards a collaborative
672 relationship with the committee.

673 I am so pleased to be joined by all of my colleagues
674 today. We are a different composition of commissioners since
675 the last time we sat before this subcommittee. But we have

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676 the very same mission of keeping consumers safe.

677 Additionally, I want to highlight CPSC's dedicated
678 staff. CPSC consists of an elite group of professionals who
679 work hard every day and are committed to keeping consumers
680 safe and it is humbling to work alongside such devoted and
681 talented people.

682 Having the opportunity to lead CPSC is the culmination
683 of many aspects of my life. I joined the Commission in 2013
684 after being nominated by then President Barack Obama. I was
685 confirmed by voice vote by the Senate.

686 In February of 2017, I assumed the duties of the acting
687 chairwoman. Prior joining the Commission and serving in
688 Congress, I have spent my career in health care, first as a
689 registered nurse and later as a New York State assistant
690 attorney general representing a teaching hospital.

691 I have spent my life in advocacy and now it is truly an
692 honor to lead the Consumer Product Safety Commission.

693 For our agency, 2019 got off to a challenging start with
694 the government shutdown. During the shutdown, CPSC operated
695 with a skeleton crew of accepted employees.

696 These dedicated individuals reviewed more than 10,000
697 incident reports analysing information from a variety of
698 sources including NEISS, our National Electronic Injury
699 Surveillance System, the CPSC hotline, and SaferProducts.gov.

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700 Operating according to the procedures specified in our
701 shutdown directives, staff sought to identify any incidents
702 that rose to the level of imminent hazard threat to human
703 safety.

704 Once the government reopened, all CPSC staff began
705 working tirelessly to clear the backlog and return to normal
706 operations. Specifically, they have opened and completed all
707 investigations into incidents warranting an in-depth
708 investigation, processed and reanalyzed the over 10,000
709 incident -- other incidents, reviewed and assessed all
710 Section 15(b) reports in our processing potential cases,
711 evaluated all SaferProducts.gov reports received and
712 published that were eligible, and announced multiple recalls
713 that occurred during the shutdown.

714 Beyond the valiant efforts of what the staff did and
715 coping with the shutdown, I do want to talk this morning to
716 the committee about our funding.

717 Certainty is critical to our agency and knowing that we
718 are funded through the remainder of fiscal year 2019 is a
719 relief.

720 However, additional funding in the coming fiscal year is
721 essential to help us move more efficiently and effectively to
722 execute our mission.

723 On March 28th, CPSC submitted its budget request to

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724 Congress at the level of \$127 million for fiscal year 2020, a
725 mark set by OMB and the president.

726 I am grateful for the level the president funded us, as
727 it is higher than in years past, but our agency faces
728 challenges in executing our mandate with such a limited level
729 budget.

730 This morning, I am imploring each and every member of
731 this subcommittee to advocate on behalf of the CPSC for a
732 higher budget. To provide the CPSC more flexibility to
733 accumulate larger balances needed for major investments,
734 especially in information technology, I continue to advocate
735 support to move a part of the CPSC budget to a no-year
736 appropriation that would be available until expended.

737 This no-cost would give us the needed flexibility to use
738 money across fiscal years for larger investments to deal with
739 unexpected shortfalls and generally to make higher return
740 uses of year-end balances.

741 CPSC not only needs to maintain the capabilities it
742 currently has but, as discussed this morning, also to expand
743 our effectiveness and our efficiency.

744 Each year we do not keep pace with inflation, more and
745 more mission funding is redirected to offset cumulative
746 inflation costs.

747 In addition, programmatically we need a more robust

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748 budget to ensure we are fully equipped to deal with the
749 rapidly changing global marketplace where the types of
750 products and how consumers buy and interact with those
751 products is constantly evolving.

752 All of this requires consistent, adequate, and
753 additional funding. CPSC's mission is a critical one. As a
754 mother of six and a grandmother of 18, I know that nothing is
755 more important than the safety of our children and our
756 families.

757 The role of the chairman is a critical one and I do not
758 take this responsibility lightly. I am committed to keeping
759 our positive working relationship with Congress so together
760 we can work to keep the consumers safe.

761 Thank you very much, and I look forward to answering
762 your questions.

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

764

765 *****INSERT 3*****

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766 Ms. Schakowsky. Thank you. I appreciate your comments.

767 And now Commissioner Feldman, you are welcome to speak
768 for five minutes.

769

770 STATEMENT OF MR. FELDMAN

771

772 Mr. Feldman. Good morning. I want to begin by thanking
773 Chairwoman Schakowsky, Ranking Member McMorris Rodgers,
774 members of the Subcommittee on Consumer Protection and
775 Commerce for providing me this opportunity to appear before
776 you today.

777 It has been a privilege to serve under the leadership of
778 Acting Chairman Buerkle as a CPSC commissioner since my
779 confirmation last October. I am relatively new to the agency
780 and I previously served as senior counsel to Chairman Thune
781 on the Senate Committee on Commerce, Science, and
782 Transportation.

783 As a Senate staffer, I worked directly on CPSC oversight
784 matters and, therefore, I understand the important function
785 that hearings like this serve.

786 I also come to the agency with a deep understanding of
787 the congressional intent behind the statutes government the
788 agency, its duties, and its limits under the law.

789 The title of this hearing asks an important question:

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790 is the Consumer Product Safety Commission fulfilling its
791 mission.

792 My view is that the Commission is doing many things
793 well, that there are areas in which we are making progress,
794 and others in which we could be doing more to protect
795 American consumers from dangerous products.

796 As a commissioner, my priority is to advance the
797 agency's safety mission through inclusiveness and compromise.

798 In the short time I have been at the agency I am most proud
799 of the opportunities that I have had to collaborate with my
800 fellow commissioners on bipartisan solutions.

801 These include bipartisan support to increase agency
802 transparency in the form of an open meeting to approve the
803 agency's budget request -- the first such meeting in recent
804 memory and a tradition I hope we will continue.

805 Along with Commissioner Baiocco, we have advanced the
806 number of amendments with bipartisan support including
807 efforts to strengthen the agency's data science expertise, to
808 prioritize enforcement of the Child Nicotine Poison
809 Prevention Act, and to accelerate a mandatory standard to
810 protect children from furniture tip-overs.

811 More work needs to be done but I am encouraged by this
812 forward progress.

813 During my confirmation hearing in June of last year, I

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814 laid out a number of priorities I felt would achieve the
815 Commission's goals of protecting American consumers from
816 unreasonable risks of danger.

817 These include modernizing the Commission's data
818 collection and processing capabilities to identify emerging
819 hazards and to support its enforcement, standards, and
820 regulatory work.

821 I testified that the Commission must rethink its market
822 surveillance capabilities including with respect to e-
823 commerce and new and emerging distribution models, and as a
824 general matter, that the CPSC must advance safety through
825 engagement with safety groups and the regulated community
826 alike.

827 It must do so with transparency and clarity about its
828 expectations, and these remain critical priorities necessary
829 to advance CPSC's mission. Again, our work remains ongoing.

830 To further the goal of modernizing the Commission, I am
831 excited that the agency is leading the creation of an
832 interagency working group along with the Federal
833 Communications Commission, the Federal Trade Commission, FDA,
834 DOT, and NIST to tackle issues pertaining to the Internet of
835 Things and connected devices.

836 More can be done to close the agency's skills gap with
837 respect to new and emerging technologies and consumer

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838 products, and you mentioned this in your opening statement.

839 While I am pleased that the agency voted to accept our
840 proposal to hire a chief data officer, more work remains to
841 be done to ensure that this position is funded and
842 implemented appropriately.

843 I also believe that the Commission should explore the
844 creation of a chief technologist to expand staff expertise,
845 as many of our sister agencies have done.

846 To further the goal of transparency, I maintain an open
847 door and encourage all stakeholders to share their concerns
848 with me. This invitation applies to consumer groups, trade
849 associations, legislators, companies, individual consumers,
850 and their families.

851 I have also worked to stress the importance of the
852 Commission's independent inspector general and to highlight
853 the numerous important recommendations that remain
854 outstanding.

855 I have urged staff and the Commission to work to
856 implement these recommendations expeditiously and will
857 continue to do so.

858 In closing, I look forward to continuing our efforts to
859 keep American consumers safe through a bipartisan,
860 collaborative, and forward-looking agency.

861 Thank you, again, Madame Chairwoman, for holding this

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862 important and for your work to protect consumers. I look
863 forward to this important discussion and to responding to
864 members' questions.

865 Thank you.

866 [The prepared statement of Mr. Feldman follows:]

867

868 *****INSERT 4*****

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869 Ms. Schakowsky. Thank you.

870 And now I would like to yield five minutes to
871 Commissioner Kaye for his opening statement.

872

873 STATEMENT OF MR. KAYE

874

875 Mr. Kaye. Thank you, Madam Chair.

876 Good morning, Chairman Schakowsky, Ranking Member
877 McMorris Rodgers, and the members of the subcommittee. Thank
878 you for holding this critical oversight hearing. I am
879 pleased to be here with my friends and colleagues -- Acting
880 Chairman Buerkle and Commissioners Adler, Baiocco, and
881 Feldman.

882 Today, we are representing the work of approximately 550
883 dedicated career staff at the Consumer Product Safety
884 Commission. I am truly honored to work with them and my
885 fellow commissioners in furtherance of the CPSC's mission to
886 save lives and protect the public from unreasonable risks of
887 harm associated with consumer products.

888 Every day, our actions affect the lives of all Americans
889 whether they realize it or not. We take very seriously our
890 jurisdiction and its accompanying responsibility to keep
891 consumers safe.

892 When the CPSC is at our best, we are using our limited

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893 resources and full authorities to make products safer through
894 strong consumer protection standards.

895 When the CPSC is at our best we are leading the charge
896 to end persistent hazards such as furniture tipping over and
897 killing young children or toddlers strangling on dangerous
898 window blind cords.

899 When the CPSC is at our best, we are actively seeking
900 recalls of dangerous products with comprehensive and
901 consumer-friendly recalls using our litigation authority when
902 it is necessary.

903 We are assessing and pursuing real civil penalties as
904 appropriate to deter bad actors from selling recalled goods
905 and failing to report to us as they are required to do so
906 under the law.

907 When the CPSC is at our best, we are funding innovative
908 safety research, writing effective testing protocols, and
909 driving much safer product designs to market. We are
910 anticipating safety problems with emerging technological
911 innovations such as the Internet of Things or electronic ride
912 share scooters.

913 I believe that the CPSC and our outstanding staff can do
914 many of these things. I have seen them do it. But even at
915 our best, we still need help from Congress. While this is
916 not an exhaustive list, we need revisions to our statutes to

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917 eliminate unnecessary hurdles to developing mandatory safety
918 standards.

919 We need enhanced authorities to get dangerous products
920 recalled and off the market quickly. We need additional
921 authorities to assess fines at our ports to discourage repeat
922 offenders from trying to bring violative and defective
923 products into our country, and we need the anti-consumer
924 safety and anti-transparency requirement of Section 6(b) of
925 the Consumer Product Safety Act to be eliminated so we can
926 provide the public with vital product safety information in a
927 timely manner.

928 People die because of 6(b). It is as simple as that.
929 We also desperately need more resources. I know this is not
930 an appropriations hearing but our current budget of \$127
931 million is just not enough.

932 It is truly amazing to me how underfunded consumer
933 product safety is. It is kind of sad, really. It is also
934 totally unnecessary.

935 With Congress's support for additional authorities,
936 adequate funding, and continued robust oversight, we can stay
937 true to our safety mission.

938 Thank you again for the invitation to speak with you
939 about the CPSC and, of course, I look forward to answering
940 all of your questions.

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

942

943 *****INSERT 5*****

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944 Ms. Schakowsky. Thank you. And now we will begin
945 questioning from the members of the committee -- of the
946 subcommittee and I will -- I will begin.

947 So I want to talk a bit about furniture tip-overs and I
948 hear you talking about a final -- about a -- not a -- a
949 mandatory standard being developed. But in the meantime, I
950 think that -- I have been really disappointed in the speed of
951 which we've seen these dangerous products being taken off the
952 market.

953 Every 14 days a child dies from a tip-over and,
954 Commissioner Adler and Kaye, at the CPSC March meeting you
955 pushed for a more streamlined process for getting stronger
956 standards for the children's furniture but you were outvoted
957 at that -- at that meeting and I wonder if each of you can
958 explain what you were trying to do and how it would have
959 helped save lives.

960 Let us start with Commissioner Adler.

961 Mr. Adler. Thank you very much for that question.

962 I think when Commissioner Kaye and I proposed our
963 amendment we understood that it would apply just to
964 children's clothing storage units but on the philosophy that
965 even if you can't protect everyone that doesn't mean you
966 shouldn't protect anyone.

967 The big advantage of moving under this special

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968 streamlined provision of the Consumer Product Safety Act is
969 speed. We could have a clothing storage unit rule for
970 children probably within months whereas I guarantee it is
971 going to take us years under the more slow and cumbersome
972 procedures in the Consumer Product Safety Act before we can
973 enact a standard.

974 And I just want to make one quick point. The standard
975 for clothing storage units is probably, if we were to do it,
976 word for word what we would do under these more cumbersome
977 procedures.

978 It will just be a little bit broader in scope than doing
979 a children's clothing storage unit. So I regret that our
980 colleagues did not agree with us on that point.

981 Ms. Schakowsky. Commissioner Kaye?

982 Mr. Kaye. Thank you, Madam Chair.

983 I think Commissioner Adler certainly summed up all the
984 important points on why we proposed the amendment. I would
985 also just add, and this goes to the topic of this hearing --
986 is the agency doing enough -- in my mind, this is one of
987 those issues where we should be pursuing every authority we
988 have.

989 Whatever is tools available to us, we should be doing
990 that with regard to this hazard. And so I think while we
991 both looked at moving under 104, as Commissioner Adler

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992 mentioned, is not maybe a perfect solution, it certainly is a
993 tool that is available to us.

994 It would make a difference in the marketplace. It would
995 accelerate rule making and would send a signal, which I think
996 is important. It would send a signal to industry that we are
997 not leaving any tool unused and that is the larger piece of
998 the theme that you are looking at and I think is so critical
999 in your question.

1000 Ms. Schakowsky. Thank you.

1001 Let me -- also, one of the problems with voluntary
1002 standards is that they are really hard to enforce and I hope
1003 and expect that if the CPSC is deferring to a voluntary
1004 standard for now that it is monitoring compliance adherence
1005 to that standard.

1006 So Acting Chairman Buerkle, how is the CPSC ensuring
1007 that furniture is meeting the voluntary standard and how soon
1008 do you think that we can have a more robust final mandatory
1009 standard to make sure that these kids are safe?

1010 Ms. Buerkle. Thank you very much, Chairwoman
1011 Schakowsky.

1012 And let me just reiterate how significant this issue is
1013 and one of the top priorities of the agency where we have
1014 invested a lot of funding into doing testing to inform the
1015 agency.

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1016 With regards to the 104 process, the concern was that it
1017 was just addressing too narrow a slice of dressers and just a
1018 small -- too small of the number of dressers.

1019 There are millions and millions of dressers out there.
1020 This past February at ICPHSO I addressed to the public that
1021 the agency would begin, and our compliance deputy director
1022 sent out a letter to industry advising them that we will now
1023 be enforcing the voluntary standard and to make sure their
1024 dressers are compliance with the voluntary standard that is
1025 currently in place.

1026 However, I also sent a letter to the ASTM Committee
1027 advising them to go to 60 pounds and to broaden the scope of
1028 dressers to 27 inches and above because that has been a
1029 topic, as you know, as we have discussed, a topic that was --
1030 has just been languishing in the ASTM Committee and,
1031 hopefully, that right now, as we speak, is being balloted.

1032 Ms. Schakowsky. Let me just say that I have a piece of
1033 legislation called the STURDY Act that I hope all of you will
1034 look at. Just like the Consumer Product Safety Improvement
1035 Act, I think that this is an issue that could use some
1036 legislation. I am hoping that the Commission will support
1037 it.

1038 I now yield to the ranking member for five minutes of
1039 questions.

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1040 Mrs. McMorris Rodgers. Thank you, Madam Chair.

1041 To Acting Chair Buerkle, I just wanted to give you a
1042 chance here at the beginning of today's hearing if you wanted
1043 to respond to any of the recent attacks that we've seen
1044 recently on your record of public service and especially
1045 safety-focused public service.

1046 Ms. Buerkle. Thank you very much.

1047 As I mentioned in my opening statement, there is nothing
1048 more important to me than safety and I have said from the
1049 outset safety is not political nor should it be political in
1050 how we keep consumers safe and we enforce our statute.

1051 The recent story, and I will speak to that and take the
1052 opportunity and then I want to very quickly segue into the
1053 good things the agency has done, but it is important to
1054 understand one of the narratives was that I don't -- I am not
1055 in favor of recalls.

1056 But I think it's also import to note that we already had
1057 a recall with Britax in 2017 just after I became the acting
1058 chairman. There was also an allegation that I kept my fellow
1059 commissioners in the dark.

1060 I think it is really important to understand that the
1061 commissioners, all of us, were informed about this very issue
1062 in June of 2016, before I ever became chairman, in September
1063 of 2016 before I ever became chairman, and then subsequently

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1064 in April of 2017.

1065 So there was never any attempt to keep my colleagues in
1066 the dark. Two of those reports I wasn't even in the
1067 chairman's office. And, additionally, commissioners have the
1068 opportunity to meet with senior staff on a regular basis and
1069 are informed about what's going on at the Commission.

1070 And then I think, most importantly, the issue of the why
1071 settle -- why should we settle with Britax instead of
1072 allowing that to go the course throughout litigation -- and I
1073 think it's very important when we make decisions as an agency
1074 and as commissioners, which we are the decision-making body,
1075 we take all of these factors into account.

1076 And when I thought about the Britax and the opportunity
1077 to settle that issue rather than prolonged litigation, I
1078 compared it to a recent situation that we had at the CPSC
1079 where, again, a firm did not want to do a recall.

1080 So we sued them to do the recall, which is precisely
1081 what happened in the Britax matter. That complaint was filed
1082 in the former case in 2012.

1083 In 2019, seven years later, the district court opinion
1084 on reconsideration held that requirement and that trying to
1085 force the recall as unlawful and they vacated it.

1086 So in a seven-year period, we used valuable resources of
1087 the agency and the consumer never got the safety information,

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1088 never had a remedy for the recall.

1089 And so in the case of Britax, it seemed to me, let us
1090 get that information to the consumer. Let us make sure that
1091 consumer understands how to get that stroller to work
1092 correctly. Let us settle this. It is what our staff advised
1093 us to do, and that is what happened.

1094 And so in the case of Britax the complaint was filed in
1095 2018 and in November of 2018 there was a settlement
1096 agreement, and now we will monitor that plan very closely and
1097 we will also make sure they issue -- they will send us
1098 reports about the recall and we will monitor those very
1099 closely that they have complied with the settlement
1100 agreement.

1101 I just -- if I could take a minute, I think it is really
1102 important to talk about the good work of the agency. We
1103 heard it from my colleague, Commissioner Baiocco.

1104 But we -- in the last two years since I have been
1105 chairman, we have passed six mandatory standards. We revised
1106 eight mandatory standards. We have NPRs out for two durable
1107 nursery products.

1108 We have an ANPR for a clothing storage unit tip-over,
1109 three critically voluntary standards -- three critically
1110 important voluntary standards have been enacted and are in
1111 effect.

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1112 One is window coverings that went into effect 2018 --
1113 critically important; second is, I mentioned, with the tip-
1114 overs -- they are balloting those to 60 pounds and under 27
1115 inches -- 27 inches and above -- as we speak today; and
1116 portable generators.

1117 Two voluntary standards are in place that will keep the
1118 consumers safe now. They are in the market. Those are three
1119 critically important voluntary standards of the agency
1120 through the hard work of our staff has accomplished.

1121 Furniture tip-overs we've talked about. I think one of
1122 the important issues to this committee is SaferProducts.gov.

1123 It is a way for the consumer to access information and we
1124 are in the process of -- we had a public hearing on it.

1125 We did an RFI. The staff will collect all of that
1126 information, come back to the Commission, and help us to
1127 understand what can we accomplish quickly, what will take
1128 more funding and, again, that is one of the projects that I
1129 would really appreciate additional funding for to make
1130 SaferProducts.gov more robust.

1131 We have continued coordination with other government
1132 agencies, making sure that we are -- there are no gaps
1133 between our safety work. Recall effective -- this has become
1134 a priority of the agency.

1135 We had a workshop, an RFI follow-up, and as Commissioner

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1136 Baiocco pointed out, safer products -- excuse me, the new
1137 Recall App has been launched, thanks in part to her hard work
1138 on that issue.

1139 And, most importantly, we have stopped millions of
1140 unsafe products at the ports and that is something I would
1141 like to talk about when we get to recall effectiveness.

1142 So thank you.

1143 Mrs. McMorris Rodgers. Okay. Thank you. My time has
1144 expired. I do have further questions. I will submit them to
1145 the record.

1146 Ms. Schakowsky. And now let me yield to the chairman of
1147 the full committee, Mr. Pallone, for five minutes.

1148 Chairman Pallone. Thank you, Madam Chair.

1149 I mentioned in my opening that Congress passed the Child
1150 Nicotine Poisoning Prevention Act in 2016 that requires
1151 liquid nicotine containers to meet special packaging
1152 requirements of the Poison Prevention Packaging Act,
1153 including child proofing and flow restrictions.

1154 The letters CPSC issued on implementation and
1155 enforcement requirements have been confusing, in my opinion.

1156 One letter failed to advise companies of the flow restrict
1157 or requirements.

1158 Another mentioned them but indicated that CPSC would be
1159 issuing future guidance, raising questions of whether

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1160 companies must comply with the flow restriction requirements
1161 in the meantime.

1162 And I think that flow restriction is a serious concern
1163 and was included in the law for a reason. Now, I have here a
1164 product called the Milkman, which was purchased online, and
1165 this is with vaping, right.

1166 It's a bottle of liquid nicotine that has no flow
1167 restrictor at all and if you open it up -- if you want to,
1168 you can, but at your own risk -- if you open it you can see
1169 that it could be simply dumped out in an amount that could
1170 easily kill a child and these kinds of containers are still
1171 readily available in stores and online. This one was
1172 purchased online.

1173 So when I asked you, Chairwoman Buerkle, what is CPSC
1174 doing to ensure that it enforces the law -- because this is
1175 illegal -- and including, you know, surveillance of stores,
1176 websites, you know, that makes its expectations clear to
1177 companies so they don't -- I mean, they are not allowed to
1178 sell this.

1179 Ms. Buerkle. Thank you very much, Chairman Pallone.
1180 Thank you for the question.

1181 I would reiterate your concern with regards to liquid
1182 nicotine. In 2016 when the statute was passed and my
1183 colleague, Mr. Feldman, at the time was in the Senate and was

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1184 very active in his work on that issue -- in 2016 the agency
1185 immediately issued letters, putting companies on notice,
1186 putting firms on notice that we would now begin enforcing the
1187 Child Nicotine Poison Prevention --

1188 Chairman Pallone. Are they still for sale?

1189 Ms. Buerkle. Subsequent to that, we have sent out
1190 additional letters on the exact issue you speak of -- the
1191 flow restrictors.

1192 Chairman Pallone. Are those the ones that came from
1193 Commissioners Feldman and Baiocco? I have -- I said after
1194 the -- after the letters I mentioned they sent out letters, I
1195 guess in February, that indicated CPSC would be issuing
1196 guidance and you issued a joint statement expressing concern
1197 about the confusion it may cause and reiterating CPSC's duty
1198 to immediately enforce the law.

1199 Is that subsequent? Is that what you're talking about
1200 now?

1201 Ms. Buerkle. Yes. Subsequent to the letters that were
1202 sent out advising of the Child Nicotine Poison Prevention Act
1203 -- subsequent to that, the agency developed a testing
1204 methodology in addition to what was already in the statute
1205 and they are now enforcing that. And again, that gets back
1206 to the limitations we have in terms of funding.

1207 This e-commerce situation that you are calling to our

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1208 attention is critical and additional funding for just e-
1209 commerce --

1210 Chairman Pallone. All right. Well, I appreciate that.

1211 But you say that they're enforcing it now. But how? What
1212 are they doing to enforce it?

1213 Ms. Buerkle. They have put together a plan. They will
1214 go -- they'll physically go into a brick and mortar store
1215 where there is these products -- where these products are
1216 sold. But in addition to, as with other issues, we also do
1217 online surveillance to see whether or not these products are
1218 safe, are available, and if they are available then they will
1219 go --

1220 Chairman Pallone. All right. Well, take a look at this
1221 one because this one is still for sale, all right? I
1222 appreciate it. And I will give you -- our staff will get
1223 back to you.

1224 But, I mean, I just hope that we are going to see more
1225 enforcement action because, clearly, it is not enough at this
1226 point.

1227 Now, I just wanted to mention one thing about -- yes, I
1228 don't suggest everyone take a -- let's put it away for now.

1229 So let's talk about counterfeit products for a minute.
1230 Last year, I sent letters to five major e-commerce retailers
1231 asking what they're doing to stop dangerous counterfeit

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1232 products from being sold on their platforms and these fake
1233 products may be made from shoddy materials or little or no
1234 quality control.

1235 I am still concerned that sites like Amazon are not
1236 doing enough to police the sellers. Can I just ask either --
1237 well, Commissioner Feldman, you have previously spoken of the
1238 need for CPSC to be more engaged in this area. Can you tell
1239 me what CPSC is doing to protect consumers from these
1240 counterfeit products and what more should be done?

1241 I know we are running out of time, but if you would try
1242 to answer it for me I would appreciate it.

1243 Mr. Feldman. The issue of counterfeit products runs
1244 much broader than our jurisdiction has to do specifically
1245 with safety. But where you have a counterfeit product, where
1246 IP considerations are being ignored, there is a high degree
1247 of correlation that in fact the necessary safety and
1248 certification testing that goes along with that is also being
1249 ignored.

1250 I see that this light is blinking red. But I do think
1251 that we have a lot more that we can be doing to engage online
1252 platforms and to expand our market monitoring capabilities to
1253 take a look at direct-to-consumer shipments.

1254 In many ways, the counterfeit issue is not exclusively
1255 but it is predominantly an e-commerce issue and I agree that

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1256 some additional resources and efficiencies with respect to
1257 our existing resources can be better leveraged to make
1258 progress in this area. But I thank you for raising the
1259 question. Thank you.

1260 Chairman Pallone. Thank you.

1261 Thank you, Madame Chair.

1262 Ms. Schakowsky. And now I recognize Mr. Latta for five
1263 minutes.

1264 Mr. Latta. Thank you, Madame Chair, and to our
1265 commissioners, thanks very much for being with us today. I
1266 really appreciate it.

1267 And the Internet of Things is an issue I've been focused
1268 on in my time in Congress and especially in the last Congress
1269 I introduced the Smart IoT Act, which directed the Department
1270 of Commerce to create a compendium of essentially who is
1271 doing what at both the federal level and at industry.

1272 And I also formed the Internet of Things Working Group
1273 with my friend, Representative Welch from Vermont, and we
1274 should focus on minimizing agency overlap and duplicative
1275 burdens that hamper innovation.

1276 If I could start, Chairman, with you, if I may. What
1277 interagency efforts have you been able to undertake at the
1278 CPSC on the issue of the Internet of Things?

1279 Ms. Buerkle. Thank you very much for the question,

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1280 Congressman Latta.

1281 We, first of all, have taken this issue very seriously
1282 and understand the implications it can have for safe
1283 products. We had a public hearing on IoT and had many
1284 stakeholders come in and testify as to what they saw our role
1285 as the agency and very -- it was a very robust discussion.

1286 Subsequent to that, as my colleague, Commissioner
1287 Feldman alluded to, we have and we are taking the lead. As a
1288 small agency, we are taking the lead in the Internet of
1289 Things.

1290 We have a person who is detailed to my office who is
1291 running the IoT initiatives and, again, what Commissioner
1292 Feldman said that we will be having, in April, a
1293 intergovernmental discussion and meeting just to discuss the
1294 very issues that you have raised -- who is doing what, what
1295 do we consider our jurisdiction to be, and how will we
1296 address making sure these products are safe.

1297 And that as was, again, Commissioner Feldman mentioned,
1298 our jurisdiction isn't the privacy but when that hack or that
1299 breach or that malfunction of the software occurs how it
1300 affects the safety of the product, that is our concern.

1301 And so we all need to be talking to each other as
1302 government agencies, making sure that we have all of the
1303 bases covered, making sure we are not crossing over and

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1304 getting in each other's way but also having a mechanism to
1305 discuss this once a hazard is identified.

1306 Mr. Latta. Well, thank you. And if I could maybe
1307 continue on.

1308 Commissioner Feldman, because, again, in your testimony
1309 you talk about the working group that you put together with
1310 the FCC, FTC, FDA, DOT and NIST, and I am interested because,
1311 again, we want to make sure that, you know, we are protecting
1312 the consumer out there, especially when you see what's
1313 happening in hacking and all, especially when you see with
1314 the working group you're putting together.

1315 What do you envision that you will be doing with the --
1316 with the Commission with the other agencies and departments?

1317 Mr. Feldman. Yes, sir, and thank you again for you work
1318 on the Smart IoT Act. That's a piece of legislation that I
1319 think advances goals similar to what is currently underway at
1320 CPSC.

1321 The purpose of the working group is interagency
1322 coordination, not regulation. I think it's important at this
1323 stage in the game with the nascent technology that agencies
1324 are aware of the respective efforts on connected devices
1325 across the federal government.

1326 CPSC is a safety regulator. We are not a security
1327 regulator. I see -- or a privacy regulator, as the acting

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1328 chairman mentioned. That's a set of responsibilities that
1329 falls to agencies like the Federal Trade Commission and the
1330 Secret Service.

1331 But that said, there are situations that are likely to
1332 arise where a security vulnerability and a safety risk share
1333 a common nexus. When those situations arise where there is a
1334 problem that is a crisis that emerges that implicates a
1335 number of agencies' jurisdictions, at this stage I think
1336 having agency staff speaking to one another so that in those
1337 critical 24 hours of a crisis CPSC staff isn't calling
1338 somebody at NIST or FTC or Secret Service to introduce
1339 themselves and have a question about jurisdiction when those
1340 critical minutes are ticking away.

1341 So in that respect, I think taking these steps at this
1342 stage is a worthwhile effort.

1343 Mr. Latta. Thank you.

1344 Chairman Buerkle, in the CPSC 2020 budget request, you
1345 state that the CPSC will prioritize its resources on the
1346 products with the highest consumer product safety risk.

1347 Can you elaborate on how you accomplish this and will
1348 your decision about also be guided by scientific, solid, and
1349 reliable data?

1350 Ms. Buerkle. Thank you. Yes. Thank you for that
1351 question.

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1352 CPSC is a data-driven agency and it is critical to us
1353 that we have access to robust data. It is also critical that
1354 we have the ability to analyse that data to make sure we have
1355 a good understanding of the issues and the incidents that are
1356 out there.

1357 It has only been compounded now with e-commerce and some
1358 developments, and so in our budget those initiatives which
1359 don't deal with our day-to-day initiatives and efforts or
1360 more traditional models will go by the wayside because we
1361 don't have the capabilities because of the lack of funding,
1362 because of our budget essentially hasn't kept current with
1363 inflation. Our contracts go up, wages go up, and then that
1364 takes away from our critical mission budget.

1365 So it's important and why we all -- I think all of us
1366 would agree the agency needs additional funding.

1367 Mr. Latta. Well, thank you very much. My time has
1368 expired.

1369 Ms. Buerkle. Thank you very much.

1370 Ms. Schakowsky. And now I yield to Congresswoman Castor
1371 for five minutes.

1372 Ms. Castor. Well, thank you, Chairwoman Schakowsky, for
1373 holding this important hearing. It has been too long since
1374 this committee held a proper oversight hearing.

1375 For example, our colleagues on the other side of the

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1376 aisle have not had the Consumer Product Safety Commission
1377 here since May of 2015. So I am pleased that you and
1378 Democratic majority are reclaiming our vital oversight
1379 duties.

1380 Over the past two years, a number of major hurricanes
1381 made landfall in the United States -- Harvey, Maria, Irma,
1382 Michael. Devastated communities across the country and
1383 coming from Florida I am particularly sensitive to this.

1384 After hurricanes sweep through, many Americans are left
1385 without power for days or weeks and, in some cases months.
1386 After Hurricane Maria, Puerto Rico was without power for 11
1387 months.

1388 In the aftermath, portable generators can supply
1389 emergency power to those in desperate need. However,
1390 portable generators can be deadly. They emit 450 times the
1391 amount of carbon monoxide as an idling car.

1392 On average, 73 people die each year from carbon monoxide
1393 exposure from generator exhaust. After Hurricane Irma, at
1394 least 12 Floridians lost their lives because of portable
1395 generators and according to the CPSC's own data, generators
1396 killed 849 people or caused brain damage or sickness in many
1397 more from 2005 to 2016.

1398 In 2016, the Commission recognized that something needed
1399 to be done and the commissioners voted four to one to go

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1400 forward with a notice of proposed rulemaking for a mandatory
1401 portable generator safety rule. That rule, which could
1402 prevent numerous deaths, has still not gone into effect.

1403 Acting Chair Buerkle, in 2016 you were the lone
1404 commissioner who opposed moving forward with a mandatory
1405 portable generator safety rule. That means out of the five
1406 commissioners, you were the only one to oppose such rule and
1407 you stated that you favored a voluntary standard over a
1408 mandatory standard.

1409 How many preventable deaths need to occur before the
1410 Commission under your leadership issues a mandatory safety
1411 standard?

1412 In other words, do you foresee any circumstance where
1413 you would support a mandatory rule?

1414 Ms. Buerkle. Thank you very much, Congresswoman Castor,
1415 for that question.

1416 First, let me just tell you how important and seriously
1417 the CPSC takes the issue of carbon monoxide poisoning. It is
1418 one that we have spent a tremendous amount of resources on in
1419 trying to address the hazard.

1420 I would tell you that the ANPR for the mandatory
1421 standard began in 2006. The NPR was published in 2016. So
1422 10 years elapsed before we ever did anything to get an NPR.

1423 Apparently, there was difficulties in developing the

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1424 technology. We waited for a study to come from the
1425 University of Alabama, which was a low-emission technology.

1426 In the meantime, industry -- and there is actually, at
1427 the end of the day, two voluntary standards with shut-off
1428 technology that really make the consumers safe and they have
1429 addressed the hazard, so we hope.

1430 Ms. Castor. A lot of manufacturers even didn't want to
1431 adopt longer cords. I mean, that's not something that takes
1432 a lot of research and time. But they wouldn't go along with
1433 that.

1434 And why wouldn't you sign a letter to retailers that was
1435 circulated by the other commissioners urging retailers to
1436 stop generators with new safety features?

1437 Ms. Buerkle. I think, first and foremost, because the
1438 generators weren't available and the letter was going to
1439 cause confusion. The letter -- the generators that had the
1440 new technology that was compliant with the voluntary
1441 standards was not available until approximately a year and a
1442 half later.

1443 And so sending out a letter --

1444 Ms. Castor. You were in the minority on that, though.
1445 Why did you provide that draft letter to industry
1446 representatives and note that you intended to discourage the
1447 other Consumer Product Safety commissioners from sending that

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1448 letter?

1449 Ms. Buerkle. I disagree on the first premise that I
1450 provided the letter because no letter was ever provided to
1451 PGMA and that's very important, and I never would have
1452 provided it until --

1453 Ms. Castor. Commissioner Kaye, you thought that it was
1454 important for the Commission to adopt a mandatory portable
1455 generator safety rule. Is that right? Could you tell us
1456 why?

1457 Mr. Kaye. That is correct, and if the chairman would
1458 indulge me for a moment on the answer. This goes back to
1459 what I said in my opening when the --

1460 Ms. Schakowsky. Quickly, because she's out of time. Go
1461 ahead.

1462 Mr. Kaye. When the CPSC is at its best it's driving
1463 research and the staff led to the breakthrough that caused us
1464 to move forward with that mandatory standard and even if the
1465 voluntary standard is perfect there is a good part of the
1466 market that would never comply with the standard and so we
1467 need a mandatory standard to enforce it anyway.

1468 Ms. Castor. Thank you.

1469 Ms. Schakowsky. Thank you. The gentlewoman yields back
1470 and now let me recognize Mr. Bucshon for five minutes.

1471 Mr. Bucshon. Thank you, Madam Chairwoman, and Chair

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1472 Buerkle, good to see you. You were elected with me in 2010
1473 and part of the doctors -- the nurse caucus. So it's good to
1474 see you.

1475 I want to ask you, there's been some conversation this
1476 morning about additional funding for the agency. In the
1477 previous budget increases the agency spent a significant
1478 amount of money on a new logo, for example.

1479 So my guess -- that spurs a question. How would you
1480 approach the calls for additional funding for the agency in
1481 an environment of limited resources?

1482 And I guess I am asking what are the critical funding
1483 priorities that would be addressed with everyone's request
1484 for more funding which, by the way, I am not against, based
1485 on what you have said.

1486 Ms. Buerkle. Thank you very much for the question.

1487 Because since I have been at the agency and I find
1488 myself in a peculiar position as a conservative in the House
1489 of Representatives, always talking about spending, once I got
1490 to the agency and realized what the agency needed to function
1491 properly and to function well, I began to ask for increased
1492 funding since I've been at the agency.

1493 We need -- the agency is a data-driven agency. We need
1494 to improve our sources of data and we need to improve our
1495 capability of looking at data and analyzing that data.

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1496 And so those kinds of system improvements require
1497 substantial amount of money. In addition, we heard from my
1498 colleague, Commissioner Baiocco, about in terms of the system
1499 itself.

1500 We have heard from the agency from our IT person our
1501 system is old. It's got some issues with it, and rather than
1502 just cobbling together and making it worse, we need to really
1503 look at our systems to make sure across sectors of the
1504 agency. Various areas can communicate.

1505 There's a lot of modernization that needs to occur at
1506 the agency in addition to just improving our ability to
1507 collect data and then analyze that data.

1508 Mr. Bucshon. So I am assuming -- I haven't read your
1509 budget request but I am assuming that is outlined -- that
1510 type of information is outlined to Congress?

1511 Ms. Buerkle. It is. It is in an appendix.

1512 Mr. Bucshon. Because I have always found it helpful,
1513 you know, when agencies come and request more money that it's
1514 helpful to Congress to outline specific priorities because as
1515 I kind of half jokingly said the new logo thing, you know, I
1516 have found, since my time in Congress and I am in my fifth
1517 term, that although I don't necessarily agree with Congress
1518 line by line telling you how to spend you money, it is
1519 helpful when we are making decisions on increasing funding to

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1520 have those priorities in front of us. So I would encourage
1521 that.

1522 Ms. Buerkle. And if I could just add one more thing and
1523 that is what we are dealing with at the agency is that the
1524 traditional brick and mortar scenario that we are all used to
1525 that so much of our work is geared towards, now we shift with
1526 e-commerce, IoT. We've talked about these issues this
1527 morning.

1528 Mr. Bucshon. Yes.

1529 Ms. Buerkle. And to be able to look at the
1530 modernization, to look at the way consumers are accessing and
1531 buying goods is critically important as well.

1532 Mr. Bucshon. Okay.

1533 Commissioner Feldman, I understand that some recall
1534 completion rates are very low while others are 100 percent.
1535 Can you explain why relying solely on the recall completion
1536 rate of products could be misleading?

1537 Mr. Feldman. Thank you for the question.

1538 I previously served on the Senate Commerce Committee
1539 where that particular subcommittee had jurisdiction not only
1540 over CPSC that deals with consumer products but also over the
1541 National Highway Transportation Safety Administration that
1542 deals with automotive recalls.

1543 In the automotive recall scenario, you are talking about

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1544 in most households the largest family asset short of real
1545 property, and even in that context where automotive safety
1546 defects are extremely likely to result in death and injury,
1547 those recall completion rates are low.

1548 In the consumer product context, you're dealing with
1549 consumer products that are at a lower price point that tend
1550 to be disposable, and there are issues that we find in terms
1551 of getting the recall numbers to a level that are acceptable
1552 in terms of the agency's ability to affect direct notice. I
1553 think that that's a perennial challenge that we are facing.
1554 But I think you're asking the right questions.

1555 Mr. Bucshon. Okay. Thank you. I yield back.

1556 Ms. Castor. [Presiding.] The gentleman from Texas, Mr.
1557 Veasey, is recognized for five minutes.

1558 Mr. Veasey. Thank you, Madam Chair. I wanted to ask
1559 Ms. Buerkle a question, and I know that because of your work
1560 there that you understand how important this commission is,
1561 particularly for consumers that have confidence in the
1562 products that they use on a daily basis.

1563 You know, there is a recall now out on a child's seat
1564 because of some turnovers and some deaths that have occurred
1565 with this particular child seat. Even toasters -- like
1566 everyday appliances like toasters that we use sometimes can
1567 occur and deaths.

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1568 Sometimes it doesn't have anything to do with the
1569 product itself but just the consumer use. But sometimes it
1570 can be because of a faulty product and we've seen recalls in
1571 those.

1572 And I think that Representative Castor, talking about
1573 the generators and some of the concern with carbon monoxide
1574 poisoning and deaths is something that is really real and I
1575 think that you would agree that those are real consumer
1576 safety issues, correct?

1577 Ms. Buerkle. I would certainly agree with that.

1578 Mr. Veasey. So could you clarify what you meant
1579 earlier? Because I didn't -- I wanted to give you a chance
1580 when you said that you didn't believe in recalls.

1581 Because, obviously, and with -- if there are faulty
1582 generators or toasters or child seats, you would -- if those
1583 products were faulty I am assuming you would want them
1584 recalled. So what did you mean earlier when you said you
1585 didn't believe in recalls?

1586 Ms. Buerkle. What I was explaining to the Ranking
1587 Member McMorris Rodgers, there was a narrative out there that
1588 I am not in favor of recalls and in fact that is not true and
1589 that was my opportunity to explain of course I am in favor of
1590 recalls.

1591 If there is -- and 99.9 percent of our recalls are

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1592 voluntary. Firms come to us, they report, and they work
1593 closely with our staff to not only make sure that the recall
1594 is effective and it is done properly but to share in the
1595 message and the media -- accessing the media.

1596 And then beyond that, our staff works very closely with
1597 the firm to make sure they are doing what they said they
1598 would do in terms of the recall.

1599 So yes, recalls are very important to me. It's a
1600 critical part of our mission.

1601 Mr. Veasey. Thank you very much. I appreciate that.

1602 I wanted to ask also a question to Mr. Adler,
1603 particularly as it relates to consumers over the age of 65.

1604 As you know, we have about 10,000 Baby Boomers a day
1605 turning 65 years old and I am really concerned specifically
1606 about product safety as it relates to, you know, older
1607 Americans, Baby Boomers that are aging very rapidly,
1608 particularly the Baby Boom generation, because their intent
1609 is to be more active than the generation before them as it
1610 relates to living independently, being able to go and
1611 continue to travel and do all sorts of things and we,
1612 obviously, want to keep them safe.

1613 And I was just wanting to know if you could talk about
1614 some of the work that the Commission is doing to address some
1615 of the issues regarding senior citizens because this, I

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1616 think, is going to continue to be a big issue as this large
1617 group of our population grows.

1618 Mr. Adler. Thank you so much, and as I said, I am a
1619 proud member of the senior citizen population. So it is an
1620 issue of great concern to me.

1621 And I didn't make one point that I really did want to
1622 stress here. Right now, seniors constitute about 13 percent
1623 of the population. We constitute 65 percent of consumer
1624 product-related deaths.

1625 The majority of those are from falls on things like
1626 stairs and flooring, which can be improved. There is a
1627 substantial number that occur with respect to fires.

1628 Seniors die at a much higher rate when it comes to fire
1629 hazards. Just think of somebody walking around in robe and
1630 pajamas and getting their arms too near to an open flame, or
1631 sometimes leaving an open flame on when they go to sleep.

1632 So in addition to being a healthier group we need to be
1633 a safer group, and things that I think the Commission can do
1634 -- and I put these into three categories.

1635 The first is sometimes there are products that are just
1636 exclusively for seniors. Those are products like adult bed
1637 rails and products like emergency medical alerts, and those
1638 are things that we can focus on the same way we focus on
1639 products especially made for children.

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1640 In addition, there are a lot of products that harm all
1641 consumers but they disproportionately affect seniors. My own
1642 view is that where we find something that is truly
1643 disproportionately harming and killing seniors we ought to
1644 have a streamlined procedure for writing safety standards
1645 that address senior hazards in the same way we have specific
1646 104 procedures for addressing risks that apply to children.

1647 In addition, even if we are not going to regulate a
1648 product I do think we need to encourage manufacturers to note
1649 that their products are harming seniors in disproportionate
1650 ways and at least to encourage them to take safety steps and
1651 I will give you one quick example.

1652 Climbing a ladder -- I don't think anybody over the age
1653 of 75 should climb ladders higher than their waist. But if
1654 they are going to do that, I would hope manufacturers would
1655 put railings on the ladders so they would be safer.

1656 So there are many things that I think the Commission
1657 ought to be doing.

1658 Mr. Veasey. Thank you.

1659 Ms. Schakowsky. [Presiding.] I thank the gentleman for
1660 his question because I was going to ask for extra time to let
1661 you finish your thought that you had started in your opening
1662 statement.

1663 And now I yield to Mr. Griffin for five --

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1664 [Side comments.]

1665 Ms. Schakowsky. Okay. So now I yield to Ms. Matsui for
1666 five minutes.

1667 Ms. Matsui. Thank you, Madam Chair.

1668 In 2013, California amended TB 117, the state's
1669 technical bulletin on fire safety standards for furniture
1670 flammability to significantly reduce the presence of
1671 potentially dangerous flame retardant chemicals in furniture.

1672 As you are aware, commonly used flame retardants in
1673 furniture have been found to be associated with adverse
1674 health effects including fertility complications, certain
1675 types of cancer, heart defects, and hormone disruption.

1676 Commissioner Adler, is CPSC currently examining a
1677 national flammability standard that would reduce the need for
1678 potentially hazardous flame retardants?

1679 Mr. Adler. Thank you for that question, and I would
1680 like to answer it in two ways. First of all, the Commission
1681 has directly addressed the issue of chemical hazards because
1682 one of the things that we are investigating is the
1683 possibility of addressing organohalogens, which are the flame
1684 retardants that are found in many, many children's products,
1685 and that is something that we are working vigorously on in
1686 particular to address them as a class of hazard, not one by
1687 one.

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1688 Ms. Matsui. Right.

1689 Mr. Adler. With respect to the California standard,
1690 which is TB 117, this is a fascinating exercise to me because
1691 the chairman supports adoption of TB 117. The industry
1692 supports it. A lot of public health groups do.

1693 But there is one group that doesn't and that is CPSC
1694 staff and they have raised a number of very, very strong
1695 technical objections to the adoption of TB 117.

1696 But I would like to go back to a point that I had raised
1697 earlier. We can't just adopt a California safety standard as
1698 -- in a very simple process the way we can use under our 104
1699 rulemaking. We would have to go through these elaborate
1700 procedures that are very cumbersome in order to adopt
1701 something like TB 117.

1702 So I know the Commission is working -- the Commission
1703 staff are working --

1704 Ms. Matsui. Well, I do hope that we do proceed as
1705 quickly as possible on this.

1706 Mr. Adler. And I am sure that --

1707 Ms. Matsui. I know there might be some disputes. But
1708 let us try to move forward with this.

1709 I think this is such an important issue. I really do.
1710 I mean, this has been out there for quite a while and we
1711 really need to deal with this.

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1712 We should study this further and adopt uniform standards
1713 that will reduce the need for dangerous chemicals and
1714 furniture, and it's time we acted upon this.

1715 In 2015 -- this is another issue -- the Office of
1716 Management and Budget issued a memoranda requiring all
1717 publicly accessible federal websites to provide service only
1718 through a https connection by the end of 2016.

1719 Https protocol ensures that a consumer's connection is
1720 encrypted from the devices all the way to the federal
1721 government's systems. Regular http connections sent in plain
1722 text can be intercepted and exploited by anybody or anything
1723 between a user and the website including someone using public
1724 wifi.

1725 The website created by the federal government to monitor
1726 https deployment stated that 78 percent of federal government
1727 domains are compliant with CPSC at 88 percent.

1728 Ms. Buerkle or entire panel, are you aware of this work,
1729 if any what needs to be -- remains to be done?

1730 Ms. Buerkle. Thank you for your question,
1731 Congresswoman.

1732 I would appreciate the opportunity to get back to you
1733 and get the current status of the agency and then we will
1734 report back to you as to what is happening and where we are
1735 with compliance.

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1736 Ms. Matsui. Okay. I am anxious to receive that.

1737 The Internet of Things has the potential to transform
1738 the services around us. For instance, connected devices can
1739 remotely monitor a diabetic's glucose levels or a patient in
1740 the ICU's vital signs, which in turn can help provide data to
1741 better treat patients and address issues potentially before
1742 they become symptomatic.

1743 And many consumers already have connected devices to
1744 their homes and on the go when tracking personal fitness
1745 information to intelligence speakers and connected
1746 transportation services.

1747 But I am concerned if we do not do more we risk becoming
1748 overly reliant on technologies developed by foreign actors or
1749 standards that provide an unfair advantage to technologies
1750 developed in foreign markets.

1751 That is why I am working on legislation to ensure we
1752 support a multi stakeholder approach to this issue that
1753 promotes U.S. leadership on this process.

1754 The entire panel -- as CPSC continues to grapple with
1755 IoT devices, do you see over reliance on foreign technologies
1756 as a potential issue facing consumer product safety?

1757 Mr. Feldman. I will answer that.

1758 Yes, I think you are raising a valid concern. You
1759 mentioned that you're working to develop legislation in this

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1760 area. I would want to commend your leadership in that
1761 respect and welcome an opportunity to review a draft of your
1762 legislation if and when that's available.

1763 I think IoT makes all sorts of connectivity possible and
1764 there have been some exciting developments in this area, as
1765 you cited in your question.

1766 CPSC has a role to play with respect to connected
1767 devices that present an unreasonable risk of injury to
1768 consumers. I am aware that CPSC is -- that our staff is in
1769 communication with standard-setting organizations like
1770 Underwriters Laboratory and other to develop our own
1771 standards with respect to connectivity and safety of IoT
1772 devices. I am eager to watch how this standards activity
1773 progresses. I see my time has expired.

1774 Ms. Matsui. Yes, it has, and thank you. My time has
1775 expired too. I yield back.

1776 Ms. Schakowsky. Next, I yield to Mr. McNerney for five
1777 minutes of questions.

1778 Mr. McNerney. I thank the chairman -- the chairwoman --
1779 and I thank the commission for your testimony. I was here
1780 for it.

1781 So, Chairwoman Buerkle, I am the co-chair of the
1782 congressional Artificial Intelligence Caucus. One of the
1783 things I am trying to understand is how federal agencies are

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1784 using artificial intelligence to improve their operations and
1785 how they can serve the American public.

1786 Do you have any examples of how the Commission is using
1787 AI today?

1788 Ms. Buerkle. Thank you for your question, and let me
1789 begin by saying mostly what initiatives are happening now are
1790 machine learning and training machines to -- the technology
1791 to recognize incidents and recognize patterns of hazards and
1792 incidents.

1793 We do not use any AI currently. But, again, that would
1794 be something that if Congress increased our appropriations
1795 that would be something that would give us the flexibility to
1796 look at AI and make sure we understand, first of all, to
1797 increase the amount of data coming to the agency and then,
1798 most importantly, to have the capability to analyse it.

1799 Mr. McNerney. That is kind of a recurring theme, that
1800 you need more resources.

1801 Ms. Buerkle. Indeed.

1802 Mr. McNerney. Is the agency considering how it might
1803 use artificial intelligence in the future?

1804 Ms. Buerkle. Yes, we are, and I welcome any of my
1805 colleagues to comment on that. But we certainly are looking
1806 at ways to make our jobs easier and help us to identify the
1807 issues that are before us.

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1808 Ms. Baiocco. One of the ways that I believe that that
1809 would help the agency immensely is in hazard identification
1810 prior to the injury or hazard occurring.

1811 If you just watch on a Sunday afternoon on NFL, there
1812 are opportunities and you see them, say -- the announcers put
1813 up the AI and say, there is a 50 chance of this happening or
1814 a 60 chance of this linebacker taking the ball this way.

1815 We should be doing that with the same type of
1816 technology, the same type of software, to identify what
1817 hazards are coming down the pike and what the percentage of
1818 it is. I think that's the first place we would start.

1819 Mr. McNerney. Any other commissioners?

1820 Mr. Feldman. And to that end, I thought it was a good
1821 idea, and I mentioned this in my opening statement, that the
1822 Commission explore the hiring or identification of a chief
1823 technologist at the agency.

1824 I know that the Federal Trade Commission, the Department
1825 of Transportation, FCC, our sister agencies, have all done
1826 this with good results.

1827 Having somebody on staff to expand our technological
1828 expertise and identify how exactly the agency can leverage
1829 technologies like AI to help better identify emerging
1830 hazards, et cetera, would be useful.

1831 I was disappointed that our amendment to include that in

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1832 this year's budget request was ultimately not accepted. But
1833 I think there is opportunities and I would love to continue a
1834 dialogue with you to explore how we may make that come to a
1835 head.

1836 Mr. McNerney. Very good.

1837 Yes, there is a significant difference between the
1838 administration's budget request and what actually got
1839 appropriated.

1840 Commissioner Kaye, you have previously spoken about the
1841 need for civil penalties to deter bad conduct. Would you
1842 elaborate on that?

1843 Mr. Kaye. Yes. Obviously, Congressman, it is one of
1844 the important tools that Congress gave the agency to try to
1845 deter companies from not engaging in certain misconduct.

1846 And so during the time that I was chair I recognized
1847 that the agency was not pursuing civil penalties consistent
1848 with the direction that Congress had given in the Consumer
1849 Product Safety Improvement Act, which called for higher civil
1850 penalties when warranted.

1851 We were basically taking the same fact patterns and
1852 applying the same pre-CPSIA levels to our evaluation. So my
1853 direction to staff was to heed the word of Congress and to
1854 vastly increase as required what we were seeking.

1855 And thanks to the leadership of our then general counsel

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1856 and her staff, we were very successful in doing that.

1857 Mr. McNerney. So do you have any data?

1858 Mr. Kaye. We do have data and I am sure the agency can
1859 provide it and the numbers and the cases that were pursued
1860 and what those penalties look like.

1861 Mr. McNerney. Okay. I have about a three-minute
1862 question so I am going to just yield back at this point.

1863 Ms. Schakowsky. Mr. Guthrie, you're recognized for five
1864 minutes.

1865 Mr. Guthrie. Thank you, Madam Chair. I appreciate that
1866 very much and, sorry, there was another hearing going on so
1867 I've been back and forth. So I didn't get quite the full
1868 discussion, but I was going to ask a question of Chair
1869 Buerkle and it kind of relates, I think, to what was going
1870 on. I didn't get the whole context of that.

1871 But it's civil penalties. I know during your time on
1872 the Commission you voted against civil penalties and you have
1873 also overseen the largest civil penalty ever imposed by the
1874 Commission. So could you just explain your philosophy in
1875 respect to civil penalties and when imposing -- when you
1876 voted against them and why you were there when the largest
1877 one was moved forward? Just give your philosophy on civil
1878 penalties.

1879 Ms. Buerkle. Thank you. My problem, and one of the

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1880 reasons I don't always vote for a civil penalty is process
1881 wise I find -- and if I could just opine one minute on the
1882 fact that when you are in the chairman's office versus when
1883 you are a commissioner in the minority I think you have a
1884 little more leeway.

1885 But once you are in the leadership role you have a
1886 different role to play that is to keep the agency running, to
1887 send a message to those who may not reported timely or to
1888 deter others from doing likewise.

1889 So to your point, we did enact the largest civil
1890 penalties. But my concern is we are transparent and that the
1891 factors that we use in order to reach the amount of a civil
1892 penalty are consistent and transparent and that, to me, is
1893 the most important thing about civil penalties.

1894 How did we get to that number? Sometimes I will
1895 disagree with my colleagues on the amount of the civil
1896 penalty. I will say that we also, not only for failure to
1897 report timely, but we also will enact a civil penalty for
1898 sale of recalled goods, which we have also done.

1899 Mr. Guthrie. Okay. Thanks. And I know I had a
1900 manufacturer of table saws and -- well, was in my district.
1901 After redistricting they moved forward, and I know you issued
1902 a statement on April 27, 2017, of the publication for
1903 proposed standard for table saws and you found the proposal

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1904 deficient you said in two counts.

1905 And the big concern of the manufacturing, I mean, wasn't
1906 the safety of the table at all -- matter of fact, quite the
1907 opposite -- was a mandated technology they felt that was
1908 patented and they felt like it was going to be a mandated
1909 monopoly in that technology.

1910 That was their concern with that. Could you just talk
1911 about -- I know you found that proposal to be deficient --
1912 and talk about that?

1913 Ms. Buerkle. Thank you. Yes. That is my concern as
1914 well. There is no question about making table saws safer and
1915 that certainly is -- that would be a goal of the Commission
1916 for sure and the agency.

1917 But right now, I have concerns about whether or not any
1918 rule that we would promulgate would create a monopoly for one
1919 person and I don't think that's the role of government.

1920 I will say, though, that the agency has been aggressive.
1921 We did a 2016 study but, more importantly, a 2017 study to
1922 try to link the injuries to the type of saw so we can be more
1923 informed in our decision making.

1924 The staff is preparing a package -- a briefing package
1925 to all the commissioners to let us know what was -- what they
1926 discovered in not only the surveys but then the survey went
1927 out for comment. That comment period is closed and that will

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1928 all be coming to the Commission to understand the status
1929 right now of table saws.

1930 Mr. Guthrie. All right.

1931 Commissioner Feldman, I saw you shaking your head. So
1932 if you want to add into --

1933 Mr. Feldman. With respect to table saws, I agree with
1934 the competition issues that were raised. I think I addressed
1935 the question from a more basic level.

1936 There have been some updates to the existing standard --
1937 voluntary standard with respect to new guards and safety add-
1938 ons. That sort of -- under the statute dictates our posture
1939 with respect to how, if at all, we are able to proceed with
1940 the mandatory standard.

1941 I am not -- I want to be careful in what I say because I
1942 would like an opportunity to confer with agency staff about
1943 the effectiveness of the existing standard and whether it
1944 adequately eliminates or reduces the risk and now that that
1945 standard has been out there for some time whether or not
1946 there is substantial compliance from industry.

1947 Those are the two factors that we need to get to in
1948 order to move to a mandatory standard but --

1949 Mr. Guthrie. Okay. Thanks.

1950 Mr. Feldman. Thank you.

1951 Mr. Guthrie. And I am getting short on time for my next

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1952 question. So welcome back to Capitol Hill. It is always
1953 great to see you.

1954 Ms. Buerkle. Thank you very much.

1955 Mr. Guthrie. I enjoyed serving with you. So thank you
1956 very much, and I yield back.

1957 Ms. Schakowsky. The gentleman yields back and now I
1958 call on Mr. Rush for five minutes to ask your questions.

1959 Mr. Rush. I want to thank you, Madam Chairlady, and I
1960 certainly appreciate you and the ranking member bringing --
1961 having this hearing this morning and I appreciate your
1962 longstanding leadership on all issues related to consumer
1963 protection.

1964 In 2008, I served as the chairman of this subcommittee.

1965 At that time, it was known as the Subcommittee on Commerce,
1966 Trade, and Consumer Protection, and I was proud to author the
1967 Consumer Product Safety Improvement Act -- CPSIA -- back in
1968 2008.

1969 So I am familiar with the issues that the CPSC faces,
1970 and while I am very pleased that we are here today and
1971 discussing how far the CPSC has come, I know you and I would
1972 agree that there is much work that remains to be done by this
1973 agency.

1974 And I want to ask the Acting Chairman Buerkle, the
1975 CPSC's notice of proposed rulemaking to amend Section 6(b)

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1976 that removes some of the self-imposed burdens being added in
1977 2014, a long time ago, and but we made little progress since
1978 then.

1979 And maybe you can tell me, Chairman Buerkle, what's the
1980 status of the proposed rulemaking? And what are -- maybe you
1981 can also tell me -- tell the committee what accounts for the
1982 delay and when can we expect the Commission -- when can we
1983 expect the Commission to move this process forward?

1984 Ms. Buerkle. Thank you very much, Congressman, and
1985 thank you for all of your work on CPSA and improvements --
1986 all of the work you have done to keep consumers safe.

1987 With regards to 6(b) and the proposed rule, if I have
1988 your permission I am interested -- my colleague, Elliot Kaye
1989 --

1990 [Side comments.]

1991 Ms. Buerkle. He indicated to me that I can blame him
1992 for the delay. When 6(b) -- I think that's very gracious of
1993 you -- the NPR came out, there was just a tremendous amount
1994 of concern about the issues and what 6(b) protects and
1995 doesn't protect.

1996 And so the entire NPR was tabled and at this time, quite
1997 honestly, there is no work being done on that issue.

1998 Mr. Rush. So are you saying then that we are still at a
1999 point where you all are not moving forward at all? You can't

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2000 tell me when you are going to break this logjam up?

2001 Ms. Buerkle. All I can say is there is no work being
2002 done on 6(b). It is an NPR. I think at this point if we
2003 were to bring the NPR back up it would have to be a new
2004 package because it is so old.

2005 Mr. Rush. Well, Commissioner Kaye, you stated that
2006 people are dying because of Section 6(b). Those are your
2007 statements. Am I quoting you correctly?

2008 Mr. Kaye. That is correct, and --

2009 Mr. Rush. What rationale is there for maintaining
2010 Section 6(b) then?

2011 Mr. Kaye. If I may distinguish, Congressman Rush,
2012 between the statutory provision of 6(\b) which exists because
2013 of Congress and the regulatory burden we added upon
2014 ourselves.

2015 When I became chair in 2014, I had to make a calculated
2016 decision with the limited resources we had. I had inherited
2017 the proposed rule from my predecessor and at that point I
2018 made the judgment because we had so many persistent hazards
2019 that were pending -- window blind cords, portable generators,
2020 ROVs -- that it was better -- the time was better spent on
2021 addressing those hazards that continue to kill people as
2022 opposed to something that I felt Congress ultimately could
2023 take care of very easily, which is repeal of the statutory

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2024 provision, and that is really what I am urging.

2025 I think that if we were to pass the NPR it would fiddle
2026 around the edges of 6(b) but it's not going to change the
2027 fundamental issue that I mentioned in my opening statement.
2028 Only Congress repealing 6(b) would do that.

2029 Mr. Rush. I want to thank you, Madam Chair. I yield
2030 back.

2031 Ms. Schakowsky. I now yield to Mr. Cardenas for five
2032 minutes.

2033 Mr. Cardenas. Thank you very much, Madam Chairwoman,
2034 and thank you for having this important hearing.

2035 As a grandparent of two children, trust me, this
2036 Commission that was started in 1972 hopefully will protect my
2037 grandchildren much better than it protected me.

2038 I was a toddler before 1972. I won't say what years but
2039 just say that the purpose of it is, I think, what makes this
2040 country so respected around the world is that we care about
2041 human life.

2042 We care about what can be done better. We care about
2043 making sure that we -- there are sometimes winners and losers
2044 in the jobs that we do.

2045 But at the same time, the big winner is, especially when
2046 it comes to public safety, is every person, whether the child
2047 is newborn or they are somebody who decides that they want to

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2048 still work in the sawmill at the age of 80 or 90 because
2049 that's what they love to do they should be able to do it
2050 safely.

2051 I want to go to the -- in 2018, CPSC published a
2052 consumer alert stating that it was aware of infant deaths
2053 associated with inclined sleep products and alerting
2054 consumers to be aware of the hazards.

2055 Unfortunately, CPSC at that time didn't specify which
2056 products had resulted in infants deaths. So I am not sure
2057 how helpful this alert was for parents and grandparents who
2058 were trying to avoid dangerous products.

2059 Coincidentally timed with this hearing, CPSC released
2060 another alert this past Friday to warn consumers about the
2061 Fisher-Price Rock 'N Play, noting that CPSC is aware of 10
2062 deaths in the Rock 'N Play since 2015.

2063 I am curious as to what changed between the consumer
2064 alert in 2018 and just last Friday. Section 6(b) of the
2065 Consumer Product Safety Act requires CPSC to notify the
2066 manufacturer before public disclosure of certain information
2067 and that the information disclosed is accurate and reasonably
2068 related to the effectuating the purposes of the Consumer
2069 Product Safety Act.

2070 The main purpose of that act is, quote, "to protect the
2071 public against unreasonable risks of injury associated with

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2072 consumer products," end quote.

2073 So to you, Chairman Buerkle, when did you notify Fisher-
2074 Price of the alert issued this past Friday?

2075 Ms. Buerkle. We have been working with Fisher-Price
2076 over the last several, I will say -- at least the last year
2077 and even more so, and I have provided to the chairwoman a
2078 time line with regards to what the agency has been doing and
2079 how seriously we are taking this issue because it is a grave
2080 concern.

2081 What occurred between the generic notice and this last
2082 notice was one death and so we went specifically out with
2083 that more specific information.

2084 Mr. Cardenas. So communicating with the corporation
2085 involved it's part of your rules. I get that. But how
2086 comfortable are you with how long it took between the initial
2087 warning and then the specific warning?

2088 Ms. Buerkle. Well, it -- that is a very important
2089 question. It isn't as if nothing happened and our staff --
2090 our staff does all of the engagement and our staff is engaged
2091 with any firm that we are trying to get someone to do a
2092 recall with.

2093 But they -- and we have other -- several other
2094 initiatives that, again, I hesitate to publicly state here
2095 but Chairwoman Schakowsky has an entire time line of all the

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2096 activities that we are doing because this is a serious issue
2097 for the agency.

2098 Mr. Cardenas. Okay. That is fine. With my limited
2099 time, I just want to make sure that the public is aware that
2100 even with these incredibly responsible corporations, in my
2101 opinion, unfortunately what happens is sometimes the
2102 corporation themselves look at certain things as a cost of
2103 doing business, and let me tell you, when it comes to the
2104 cost of doing business versus the life of a child, no
2105 comparison, in my opinion. Absolutely none.

2106 So when it comes to working with a corporation to try to
2107 get it right, and I understand the responsibility that you
2108 have to have. You certainly don't want to find yourselves in
2109 a litigation situation where a corporation will have one over
2110 on you and besides the situation -- hopefully, it gets
2111 corrected -- and then on top of that, they walk away with a
2112 few million dollars because they were unduly damaged because
2113 we were way too aggressive and we didn't mind our Ps and Qs.

2114 So but the thing is I would hope that you are fortified
2115 with enough staff and team members to do the job as
2116 efficiently and quickly as possible.

2117 My last question is how comfortable are you with the
2118 funding level for your organization to be able to do its job
2119 efficiently and effectively?

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2120 Ms. Buerkle. As I mentioned several times here this
2121 morning, I think that we do need to have increased funding in
2122 order to -- even just to keep pace with inflation but beyond
2123 that to be able to look at emerging hazards, increase our
2124 data capabilities, increase our technology.

2125 Mr. Cardenas. Thank you, Madam Chair. I will be more
2126 blunt. It sounds like you are way underfunded.

2127 Thank you. In my opinion.

2128 Ms. Buerkle. That is correct. Thank you.

2129 Ms. Schakowsky. I yield now for five minutes to
2130 Congresswoman Dingell.

2131 Mrs. Dingell. Thank you, Madam Chair.

2132 It is great to see you all. I am sorry we are running
2133 between two hearings because both of you are really, really
2134 important.

2135 News reports indicate that several companies determined
2136 they needed to issue recalls during the government shutdown,
2137 and with most of the CPSC shut down and most staff furloughed
2138 no one knew how to proceed or help guide companies through
2139 the process.

2140 Some companies held off. Some companies posted recall
2141 notices on their websites. And then you later announced some
2142 of these recalls yourself on your own website but not others.

2143 So I guess I will start with Acting Chairman Buerkle.

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2144 How is it that no one knew how to handle a recall during the
2145 shutdown and how did CPSC inform companies how they were to
2146 address recalls during the shutdown?

2147 Ms. Buerkle. Thank you very much for your question.

2148 So I think, if I can speculate why they didn't know how
2149 to handle a recall is because 99.99 percent of our recalls
2150 are voluntary recalls and a reporting agency works so very
2151 closely with staff, and staff determines and works with them
2152 to determine what the terms of the corrective action plan
2153 will be -- what the press release will say.

2154 And so I think for a recalling firm there was confusion
2155 as to how do we do this without CPSC. What was made clear
2156 during the shutdown was that duties -- the duty to report if
2157 a product could present a substantial product hazard, that
2158 duty did not go away and I am very pleased to say that
2159 industry reported during the shutdown to the same level they
2160 do when we are not shut down.

2161 But as soon as the government was back opened, our
2162 agency worked very closely with any of those firms that had a
2163 recall during the shutdown to make sure that we issued
2164 another press release, we put out the notice, and we followed
2165 our ordinary course.

2166 Mrs. Dingell. So I have heard from some -- we have all
2167 heard that there were companies that they didn't know how to

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2168 alert you if there was a dangerous product and consumers
2169 didn't know what to do.

2170 Were they able to report an incident on
2171 SaferProducts.gov so other consumers could see it?

2172 Ms. Buerkle. The good news is that the
2173 SaferProducts.gov website was under contract. It was not
2174 affected by the shutdown and consumers could report there
2175 and, again, that was one of the data sources that was
2176 reviewed by our accepted staff during the shutdown to make
2177 sure none of those reports in SaferProducts.gov rose to the
2178 level of imminent hazard to health and safety.

2179 Mrs. Dingell. According to your shutdown procedures,
2180 only 20 of your 550 employees were expected to work during
2181 the shutdown. How were you conducting import surveillance at
2182 U.S. ports with only a handful of staff?

2183 Ms. Buerkle. The risk assessment methodology -- the
2184 RAM, as we call it -- continued to run. But we were limited,
2185 quite frankly, and --

2186 Mrs. Dingell. So there were holes?

2187 Ms. Buerkle. As I mentioned in my opening statement,
2188 the shutdown was a difficult way for our agency to begin 2019
2189 and I am very proud of what staff has done to catch up. But
2190 the ports were a problem and a challenging one.

2191 Mrs. Dingell. One of my -- I am going to switch

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2192 subjects -- one of my colleagues called me because he didn't
2193 know that you were here -- French Hill, actually a Republican
2194 -- occasionally, you know, we do work in a very bipartisan
2195 way -- and had a child from his district killed by an
2196 elevator -- a tragic accident -- and asked me to raise what
2197 is a concerned product -- what is the Commission doing about
2198 ensuring these home-installed elevators are safe and children
2199 aren't dying?

2200 I don't -- whichever one of you, but probably --
2201 Mr. Feldman. Mrs. Dingell, thank you for the question.

2202 You are raising a serious issue. Just recently we had
2203 an opportunity to meet with families and are aware of
2204 fatalities that have occurred with respect to the elevators.

2205 I would hesitate to comment more about what is going on
2206 with respect to agency and potential enforcement in this
2207 area. I would like an opportunity to confer with staff and
2208 get back to you with a more fulsome answer.

2209 Mrs. Dingell. But you are addressing it now it's a
2210 serious problem?

2211 Mr. Feldman. I am aware of the issue and I am aware and
2212 understand very, very fully that it is a serious issue.

2213 Mrs. Dingell. So I think all of us here care and I
2214 would ask that French Hill from Arkansas also be included
2215 because it was his constituent -- someone he knew -- that

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2216 died.

2217 Thank you.

2218 Mr. Feldman. Yes, ma'am.

2219 Ms. Schakowsky. Thank you. The gentlewoman yields
2220 back, and now I yield to Mr. Carter.

2221 Mr. Carter. Thank you, Madam Chair, and thank all of
2222 you for being here. This is an extremely important subject
2223 and we appreciate all of your efforts in this -- in this
2224 area.

2225 I have the honor and privilege of representing the coast
2226 of Georgia and we have two major seaports -- the port of
2227 Savannah and the port of Brunswick. So this is of importance
2228 to us.

2229 And I wanted to start with you, Ms. Buerkle, and ask you
2230 if you could just help me to understand how CPSC works with -
2231 - it is my understanding you have worked with CBP to
2232 intercept potentially harmful shipments that are coming
2233 through our ports.

2234 I am a little bit uneducated in this area. If you could
2235 just help me.

2236 Ms. Buerkle. Thank you very much for your question,
2237 Congressman Carter.

2238 The CPSC is very engaged and we have a very robust
2239 relationship with CBP. We are co-located at about 26 ports -

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2240 - major ports throughout the country and we also work with
2241 them at Sea-Tac along with some other government agencies as
2242 well -- any government agency that has an interest in
2243 products coming into the country.

2244 And so in that process we have what I referred to
2245 earlier was a risk assessment methodology. That is a system
2246 we have set up on algorithms to look at products coming into
2247 the country to see if they rise to a certain level, if it's a
2248 new importer, if they have a previous history, and that is
2249 how we identify products coming into the port.

2250 So our compliance officers who are at the various ports
2251 we do not have the authority to seize the product but CBP
2252 does. But then we will conduct any inspection. We do a lot
2253 of on-site testing.

2254 We do a lot of XRF technologies and identifying whether
2255 or not there's violative products coming in, and many of
2256 those products then will go to our lab in Rockville, Maryland
2257 for further testing.

2258 Mr. Carter. One of the ports that we have in our
2259 district is the port of Savannah, which is the second largest
2260 container port on the Eastern seaboard, so this is extremely
2261 important to us.

2262 And as I understand, you have had some success, I
2263 believe, in 2017 in the port of Charleston that there were

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2264 some -- a shipment of toy scooters that were found to have
2265 high levels of lead contamination. So that would be an
2266 example of something you're talking about?

2267 Ms. Buerkle. That would be a very good example of it
2268 and there are multiple other examples, and I am hopeful that
2269 all of the efforts at the ports where products are coming in
2270 may be one of the reasons why our recall numbers could be --
2271 I am just speculating here but I think we should really
2272 understand when we stop products from coming into the country
2273 that are dangerous, they never get into the consumers' hands.

2274 Therefore, a recall isn't necessary, and that, to me,
2275 prevention is the most important part of that.

2276 Mr. Carter. Okay. Yes, ma'am?

2277 Ms. Baiocco. Yes. I would like to add to that because
2278 this deals with the port of Savannah. I worked with a small
2279 business in Georgia who had a product that they identified as
2280 being counterfeit and was coming in only at the port of
2281 Savannah.

2282 So they gave me a description and a sheet of paper that
2283 showed the product, what color it comes in and what it
2284 doesn't, and how it's packaged, and anything else was not the
2285 product -- should not be coming in.

2286 So I was able to take that down to our -- to the people
2287 who work at the port. They were able to talk with their co-

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2288 workers at CBP and when they opened a box and saw this
2289 particular product was pink and not red, it's a noncompliant
2290 product and they were able to stop it.

2291 So not all of the things that we are doing are high tech
2292 but they do work. But I thought that would be a good
2293 example, particularly in your jurisdiction.

2294 Mr. Carter. Well, thank you. I appreciate that.

2295 This past weekend I had the opportunity to travel with
2296 the Port Caucus here in Congress to Antwerp, Belgium, and
2297 they were showing us some of the products.

2298 In fact, he had one that was somewhat comical. It was
2299 Adidas that had been spelled Abibas. So I hope that you all
2300 catch something like that.

2301 But, nevertheless, just -- I have got just about a
2302 minute left. The 6(b) program -- I guess that is a program
2303 that is very important, particularly for manufacturers, too,
2304 so that they aren't necessarily -- you know, so they have the
2305 opportunity to make sure that they are guilty or at least
2306 they are innocent until proven guilty.

2307 So can you just very briefly, Ms. Buerkle, explain the
2308 6(b) program?

2309 Ms. Buerkle. Sure. Congress and CPSA and then CPSIA
2310 address the issue of making sure that the information that we
2311 put out is fair and accurate, and that is the 6(b)

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2312 protection.

2313 I know that there's a lot of discussion about 6(b) and
2314 the value of 6(b), because also in CPSIA Congress also
2315 developed and implemented SaferProducts.gov website and I
2316 think that affords the consumer the ability to go in and to
2317 search and to be able to access information about safety
2318 data.

2319 So I hope that there is a good balance there. But if
2320 Congress wants to change that authority that is their
2321 decision.

2322 Mr. Carter. Okay. Well, thank you very much. Again,
2323 thank all of you for your work in this area. It is extremely
2324 important in the 1st District of Georgia as well.

2325 Thank you, Madam Chair, and I yield back.

2326 Ms. Schakowsky. The gentleman yields back.

2327 And now Congresswoman Blunt Rochester will have five
2328 minutes for questions.

2329 Ms. Blunt Rochester. Thank you, Madam Chair, and thank
2330 you to all of you for your testimony and your attendance
2331 today. I want to focus first on internet-connected consumer
2332 products and cyber security.

2333 We have heard talk about the Internet of Things, the
2334 fact that your phone can actually control your alarm system,
2335 your lights in your house, your heating, and we also know

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2336 that these devices can be hacked or disabled due to faulty
2337 software, potentially causing physical safety hazards.

2338 So one example that was particularly troubling to me was
2339 in Wired magazine. There is an article about scooters that
2340 are -- can be controlled or hacked, accelerating or breaking
2341 them by people external to the person.

2342 So researchers found that not just the scooters, which
2343 we have seen fleets of those in different cities, but even
2344 hover boards can have this kind of problem.

2345 Someone being able to control your device from a remote
2346 location is deeply alarming for many reasons, not the least
2347 of which is your life can be in jeopardy.

2348 So it raises questions about security and safety of
2349 these devices within the Internet of Things, including our
2350 kitchen appliances and locks and wearables.

2351 Commissioners Kaye and Feldman, you have both spoken
2352 about some of these challenges before. How can CPSC address
2353 these alarming safety challenges?

2354 Mr. Feldman. Thank you for the question and thank you
2355 for raising the Wired article. I am familiar with it and I
2356 have referred it to agency staff for further review. If it
2357 is okay with you I would like to follow up offline and give
2358 you and update.

2359 Using that as the example, the vulnerability and the

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2360 particular exploit, as I understand it, in that case had to
2361 do with a Bluetooth vulnerability.

2362 I have concerns and the agency has pointed out in its
2363 budget request to Congress that we have an expertise gap with
2364 respect to understanding new and emerging technologies
2365 including things like Bluetooth. That is why I, along with
2366 Commissioner Baiocco, advanced an amendment to hire a chief
2367 technologist.

2368 I know that sister agencies like the Federal
2369 Communications Commission and the Federal Trade Commission
2370 have brought individuals on in that role.

2371 They tend to be academic Ph.D.s that split their time
2372 between academia and advising the Commission about things
2373 like Bluetooth exploits.

2374 I think we need to understand the technicalities behind
2375 those particular vulnerabilities before we can address them
2376 in a meaningful way.

2377 I would also say that we are not in and of ourselves a
2378 security regulator in the sense that the Federal Trade
2379 Commission or the Secret Service is. That is why I think it
2380 is important that the agency has taken the step that it has
2381 taken to convene an interagency working group so that our
2382 staff can communicate with their counterparts across the
2383 independent and Cabinet agencies so that at the very least we

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2384 are all talking to each other and operating off a common set
2385 of facts.

2386 Ms. Blunt Rochester. Commissioner Kaye?

2387 Mr. Kaye. Thank you, Congresswoman. I am not even sure
2388 we can really call this an emerging technology anymore
2389 because it has emerged, and that is a major concern that I
2390 have. In 2017, the CPSC staff did an excellent report on
2391 emerging technologies and I think they surfaced at that
2392 point, and we are happy to get you a copy.

2393 I think they surfaced the issues enough at that point to
2394 know that there are concerns that consumers should have about
2395 these products and that when there is that vulnerability
2396 there could be safety implications.

2397 Because I am not a patient individual, especially when
2398 it comes to safety, after waiting a period of time, hoping
2399 that something else would emerge and not seeing it, my
2400 personal office staff and I drafted a paper of best practices
2401 that we have circulated and that we are happy to get you as
2402 well, that we feel like our bare minimum really that should
2403 be adopted across the board to provide some comfort to
2404 consumers that these products are not going to operate in an
2405 unsafe fashion.

2406 Ms. Blunt Rochester. Thank you.

2407 You know, I actually am skipping all the questions I

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2408 have in the middle because you brought up the chief
2409 technologies and also a chief data officer.

2410 I am big on the future of work. It's really important
2411 to me, even to the point of starting a bipartisan caucus
2412 here, and you have heard other members talk about it as well.

2413 Commissioner Feldman, you mentioned something about
2414 opportunities that we can explore, I guess, in the interim,
2415 and I know -- I have heard the testimony so far about the
2416 needs that you really do have from a personnel basis.

2417 Are there things that we can do right now?

2418 Mr. Feldman. I believe that there are, and that is why
2419 I thought our amendment to add that position to our agency
2420 was timely. Looking across the -- CPSC is a small agency.
2421 It is a resource constrained agency. Simply throwing more
2422 money at the agency isn't always the right answer. I think
2423 that there are efficiencies to be had.

2424 When you look at our current staffing levels, we have
2425 around 30 vacancies right now. It is possible to pull within
2426 those existing vacancies, I believe, to supplement our
2427 expertise.

2428 I think it is critical that we do that. I see my time
2429 has expired.

2430 Ms. Blunt Rochester. Thank you. Thank you, Madam
2431 Chair.

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2432 Ms. Schakowsky. The gentlewoman yields back.

2433 Mr. Griffith, you have been very patient. When I say he
2434 waived on while not sitting on this subcommittee, we
2435 appreciate your coming and welcome you now for five minutes
2436 to ask your questions.

2437 Mr. Griffith. Thank you very much, and I appreciate you
2438 allowing me we waive on to this committee.

2439 Acting Chairman Buerkle, I have some brief questions on
2440 the furniture tip-over issue and I want everybody to know I
2441 really appreciate what you all are doing. I am just trying
2442 to figure out some things and try to decide what action I
2443 should take or not take.

2444 But when my now 11-year-old was about three he pulled a
2445 grandfather or grandmother clock over on him. The good news
2446 is he destroyed the clock but he was fine. A little shaken
2447 up but it was a light enough piece of furniture that it
2448 didn't cause him any problems other than, you know, it
2449 stressed Mom and Dad.

2450 But I do appreciate what you all are doing in this
2451 regard because I do think it is important that we make sure
2452 they're safe.

2453 So I guess a couple of my questions were -- the leading
2454 question would be how did you all arrive at the figure of 60
2455 pounds versus 56 or 62 or 63 as the appropriate test weight

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2456 to modify the current standard?

2457 Ms. Buerkle. I would answer that question and then I
2458 would welcome any of my colleagues to answer it as well.

2459 But the voluntary standards group, what they were doing
2460 was they were basing it on the age and that has been the
2461 discussion of the anthropometric data that the average weight
2462 for a five-year-old is up to 72 months old and so that weight
2463 is 60 pounds. Some would argue it's even slightly higher.
2464 But 60 pounds is where this issue has been stuck for a long
2465 period of time.

2466 Mr. Griffith. And is that because after five they start
2467 to think a little bit better about climbing up on top of
2468 stuff?

2469 I am just trying to get the thought process. Anybody
2470 can answer it.

2471 Ms. Buerkle. I think what is happening is that some are
2472 looking at where the injuries are occurring and they are
2473 saying what age group -- why don't you focus on those.

2474 But I think we have seen some fact patterns, most
2475 recently where it has kind of enlightened, I will say, the
2476 agency and how staff is looking in this issue and the
2477 question is will 60 pounds address the hazard or is it
2478 something else that will address the hazard, and I want to
2479 reassure this committee that our agency has invested

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2480 significant funding and our staff is doing robust testing to
2481 help inform us on this issue.

2482 In the meantime, as I mentioned earlier, we are taking
2483 some steps in the interim to try to make sure that this
2484 hazard is addressed.

2485 Mr. Griffith. And is there some data, and obviously
2486 it's an ongoing process, but is there some data regarding
2487 those who have complied with the voluntary requirements and
2488 those who have not as to whether there are less accidents,
2489 more accidents, et cetera?

2490 Ms. Buerkle. The agency is -- as I mentioned earlier,
2491 the agency has put manufacturers on notice that there will be
2492 -- there will be testing to make sure that the current
2493 dressers that are out there are compliant with the 2014
2494 standard because that is a concern we have heard.

2495 I know within the industry there are companies that are
2496 concerned that not everyone is complying with the standard.
2497 It is time that we level the playing field and I believe that
2498 that letter to manufacturers will help.

2499 Mr. Griffith. That you sent earlier?

2500 Ms. Buerkle. Yes.

2501 Mr. Griffith. Yes, ma'am. But do you have any data as
2502 to those that are complying and those that aren't as to
2503 whether there are more injuries or more severe injuries? Or

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2504 is it anecdotal?

2505 Ms. Buerkle. It is anecdotal at this point.

2506 Mr. Griffith. Now, you probably already answered this.

2507 But because I am not on the committee and don't hear these
2508 issues regularly, I am just wondering if you can tell me
2509 basically what the process would be to establish a mandatory
2510 standard.

2511 What sort of data would be required and is there a cost-
2512 benefit analysis? Of course, I would have to agree with one
2513 of the previous people who said for saving a child's life it
2514 is hard to do a cost-benefit analysis. What would be that
2515 process for a mandatory requirement?

2516 Ms. Buerkle. So it would be onerous to get us to a
2517 mandatory standard, as my colleagues mentioned. Our Section
2518 7 and Section 9 rule making -- we have to make those findings
2519 and it is important that the agency does because what will
2520 happen is we'll get overturned in the courts if we don't make
2521 that finding.

2522 So as we explore possibilities to address this hazard,
2523 when I met with Congresswoman Schakowsky and mentioned it
2524 earlier today, the STURDY Act, that a piece of legislation
2525 may be a more effective and a quicker way to go.

2526 Mr. Griffith. All right, and I appreciate that.

2527 I appreciate all of you being here today and I know it

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2528 has been a long morning. But it has been very informative
2529 and it's always good to see you, Madam Chair.

2530 And I yield back.

2531 Ms. Schakowsky. Well, that concludes the first panel.
2532 I think all members have -- how many days?

2533 [Side comments.]

2534 Ms. Schakowsky. At this time, I will ask the staff to
2535 prepare the witness table such as we may begin the second
2536 panel shortly.

2537 We do ask that members may submit questions to you and I
2538 hope that all of you will respond promptly to those
2539 inquiries.

2540 So thank you. Appreciate it.

2541 [Pause.]

2542 Ms. Schakowsky. So we will now hear from our second
2543 panel. This is kind of the second panel syndrome. Often,
2544 people -- I am hoping that some will come in and out.

2545 And before I introduce everyone, I want to just thank
2546 this panel. I want to particularly thank the advocates
2547 without whom I think it would be hard to make the kind of
2548 changes that we need.

2549 But I also want to say that behind every one of the
2550 issues that we are talking about are very brave parents who
2551 step forward, often in the midst of very tragic situations to

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2552 bring these issues to our attention and turn their pain into
2553 powers, advocates.

2554 And, you know, this isn't just about policy. This isn't
2555 just about rules and regulations or even budgets. This is
2556 about real people. That is what I actually appreciate so
2557 much about this committee -- this subcommittee.

2558 So let me introduce the panel. Rachel Weintraub, who is
2559 the legislative director and general counsel for Consumer
2560 Federation of America; Mr. Remington Gregg, counsel for civil
2561 justice and consumer rights at Public Citizen; Mr. Mike
2562 Gentine -- pronounced correctly? Counsel at Schiff Hardin,
2563 LLP; and Ms. Nancy Cowles, executive director of Kids in
2564 Danger.

2565 I want to thank all our witnesses for joining us today.
2566 We look forward to your testimony.

2567 At this time, the chair will recognize Ms. Weintraub for
2568 five minutes to provide her opening statement.

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2569 STATEMENTS OF RACHEL WEINTRAUB, LEGISLATIVE DIRECTOR AND
2570 GENERAL COUNSEL, CONSUMER FEDERATION OF AMERICA; REMINGTON A.
2571 GREGG, COUNSEL FOR CIVIL JUSTICE AND CONSUMER RIGHTS, PUBLIC
2572 CITIZEN; MIKE GENTINE, COUNSEL, SCHIFF HARDIN LLP; NANCY
2573 COWLES, EXECUTIVE DIRECTOR, KIDS IN DANGER

2574

2575 STATEMENT OF MS. WEINTRAUB

2576 Ms. Weintraub. Chairman Schakowsky, Ranking Member
2577 McMorris Rodgers, and members of the subcommittee, I
2578 appreciate the opportunity to provide testimony today.

2579 I am Rachel Weintraub, general counsel and legislative
2580 director of Consumer Federation of America. CFA is a
2581 nonprofit association of approximately 280 pro-consumer
2582 groups that was founded in 1968 to advance the consumer
2583 interest through advocacy and education.

2584 The CPSC's mission impacts every American every day to
2585 protect the public from unreasonable risks of death or injury
2586 associated with the use of consumer products.

2587 This mission relies upon full use of agency authority to
2588 issue mandatory standards, assess civil and criminal
2589 penalties, work on voluntary standards, and conduct recalls
2590 as well as educating consumers.

2591 I am going to focus my testimony on a number of key
2592 product safety issues facing American consumers. But please

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2593 see my written testimony from my full -- from my full
2594 comments.

2595 Decades of deaths and injuries caused by window covering
2596 cords and extensive advocacy efforts led to last December's
2597 WCMA standard. A recent Pediatrics Journal article reported
2598 that approximately 11 children die and 80 suffer near fatal
2599 incidents every single year as a result of window cord
2600 strangulation.

2601 The new version of the window covering voluntary
2602 standard requires that window coverings sold as stock or as-
2603 is must be cordless.

2604 This standard should also require that custom products
2605 be cordless and the CPSC must monitor the marketplace for
2606 compliance, especially online.

2607 CFA's initial research has found inconsistently online
2608 with stock products being sold with cords as well as a lack
2609 of consistent warnings.

2610 Flame retardants can be found in numerous types of
2611 consumer products that have been associated with serious
2612 human health problems.

2613 CFA and other groups filed a petition urging the agency
2614 to adopt mandatory standards to protect consumers from
2615 hazards caused by the use of nonpolymeric additive form
2616 organohalogen flame retardants in children's products,

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2617 furniture, mattresses, and casing surrounding electronics.

2618 While the agency has voted to move forward with our
2619 petition and acknowledge that CPSC has clear authority, much
2620 more must be done.

2621 On the Internet of Things, the Gartner firm estimated
2622 that by the end of 2017 there would be 8.4 billion connected
2623 things in use worldwide of which more than 5 billion would be
2624 consumer applications and that by 2020 this would more than
2625 double.

2626 The CPSC must lead efforts to address and prevent
2627 product safety risks posed by connected products. CPSC's
2628 last May's hearing gathered stakeholder input. Commissioner
2629 Kaye issued a white paper this year and we are aware of some
2630 interagency activity.

2631 But it is not clear what the CPSC is doing and how they
2632 are leading in this area. For example, in electronic
2633 scooters, Bluetooth module was hacked and the hacker was able
2634 to control the braking and acceleration of the scooter.

2635 The CPSC must take enforcement action to protect
2636 consumers from this unequivocal product safety hazard.

2637 On liquid nicotine, there has been confusion about
2638 enforcing this important law. At first the CPSC
2639 misinterpreted the start date, delaying application, and then
2640 did not include flow restrictors in its 2018 guidance letter

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2641 to industry.

2642 The CPSC has since clarified the law but we remain
2643 concerned about the CPSC's enforcement and the fact that
2644 noncompliance, as we saw in the first panel, remain on the
2645 market.

2646 The CPSC must monitor much more carefully, must take
2647 enforcement actions for noncompliant products, and we urge
2648 the IOG to investigate the CPSC's delayed and
2649 misinterpretation of the law.

2650 On electric scooters, the growth of electric scooters
2651 and the injuries they cause has been profound. Consumer
2652 Reports had identified 1,500 scooter injuries across the
2653 country from late 2017 with numerous gaps in data collection
2654 and reporting.

2655 Again, the CPSC should be leading this effort. The CDC
2656 is working with the Austin Public Health Department on
2657 investigation. But the CPSC must do much more.

2658 On portable generators, much more needs to be done. On
2659 average, there are about 70 deaths and several thousand
2660 nonfatal injuries every year associated with CO poisoning
2661 from portable generators.

2662 We need a mandatory standard, we need compliance, and we
2663 need to make sure that fewer people are dying from using
2664 portable generators in emergencies.

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2665 In conclusion, the CPSC plays a critical role in
2666 ensuring that consumers are safe from product hazards and
2667 this subcommittee plays an important CPSC oversight role.

2668 We look forward to working with the subcommittee and the
2669 Commission to prevent deaths and injuries from consumer
2670 products.

2671 Thank you very much.

2672 [The prepared statement of Ms. Weintraub follows:]

2673

2674 *****INSERT 6*****

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2675 Ms. Schakowsky. Let me now call on Mr. Gregg for five
2676 minutes of testimony.

2677

2678 STATEMENT OF MR. GREGG

2679

2680 Mr. Gregg. Good afternoon, Chair Schakowsky, Ranking
2681 Member McMorris Rodgers, and members of the subcommittee.

2682 On behalf of Public Citizen and now more than 500,000
2683 members and supporters, thank you for giving me the
2684 opportunity to testify.

2685 My written testimony explores a wide range of issues but
2686 I would like to talk to you about two areas of concern --
2687 removing Section 6(b) of the Consumer Product Safety Act from
2688 law and ensuring robust enforcement of product safety laws.

2689 According to a Public Citizen report, the CPSC took an
2690 average of 209 days to warn the public about hazardous
2691 products in 46 cases from 2002 to 2008 in which the
2692 Commission levied fines against the manufacturers.

2693 We believe that the Commission took so long to notify
2694 the public in part because of the requirements of 6(b). 6(b)
2695 restricts the CPSC from publicly disclosing any information
2696 from which the public can readily ascertain the identity of a
2697 manufacturer or private labeller unless certain criteria are
2698 met.

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2699 The requirement has the effect of stopping or slowing
2700 the flow of pertinent information from getting to the public.

2701 Withholding information from parents, children, and other
2702 users of these products for such an unreasonable amount of
2703 time puts all families at risk.

2704 The law unnecessarily hamstringing the agency with
2705 restrictions that, to our knowledge -- and this is key -- no
2706 other similarly situated government health and safety agency
2707 has to endure. The requirements of the 6(b) are outdated.
2708 They are anti-consumer.

2709 When Congress passed the Consumer Product Safety
2710 Improvement Act in 2008, rather than remove 6(b) from
2711 statute, Congress decided to require the CPSC to create
2712 SaferProducts.gov, and we are pleased that Congress did that.

2713 It is clear that SaferProducts.gov has become a critical
2714 tool for protecting consumers from potential hazards and
2715 helps to close the time gap between the manufacturer learning
2716 of a hazard and the information actually reaching consumers.

2717 But what was clear a decade ago is even clearer today.
2718 Section 6(b) restrains the CPSC in its ability to proactively
2719 disclose safety hazards to the public. There isn't a lot of
2720 6(b) case law.

2721 But what is out there shows that companies have used it
2722 not to ensure that accurate information is out in the public

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2723 domain but to delay critical information from being released.

2724 There is a very big difference between correcting
2725 objectively and accurate information and simply delaying or
2726 killing the release of information that could be potentially
2727 damaging to the companies' bottom line.

2728 Congress should ask itself what is the point of 6(b).
2729 Does it now or has it ever helped the agency effectively
2730 carry out its mission to keep products that have the
2731 potential to injure or cause death out of the marketplace,
2732 and if not, why keep it around? Why give industry insiders
2733 and corporate America the reins to legislating?

2734 In terms of criminal and civil penalties at the agency,
2735 there is now a disinclination to place the safety of
2736 consumers over industry loyalty and a steady decrease in the
2737 number of penalties imposed on corporate bad actors.

2738 Criminal and civil penalties serve as an important tool
2739 to discourage companies from cutting corners on manufacturing
2740 products and they also create an incentive to ensure that
2741 manufacturers quickly report product defects.

2742 The data clearly suggests that Commission leadership is
2743 prepared to continue a less enforcement is best attitude. We
2744 urge the Commission to make it clear -- Congress, excuse me,
2745 to make it clear that the agency -- that its mission is to
2746 protect the public from unreasonable injury or death and it

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2747 requires the Commission to promulgate robust rules to protect
2748 consumers and hold corporate wrongdoers accountable with
2749 strong penalties that serve as an effective deterrent.

2750 Thank you, and I look forward to your questions.

2751

2752 [The prepared statement of Mr. Gregg follows:]

2753

2754 *****INSERT 7*****

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2755 Ms. Schakowsky. The gentleman yields back.

2756 And now I am happy to give five minutes for an opening
2757 statement to Mr. Gentine.

2758

2759 STATEMENT OF MR. GENTINE

2760

2761 Mr. Gentine. Thank you very much, Chair Schakowsky,
2762 Ranking Member McMorris Rodgers, and members.

2763 Good afternoon, and thank you for inviting me to appear
2764 before you today. Thank you as well for holding this hearing
2765 to talk about the vital work of the Consumer Product Safety
2766 Commission.

2767 First, I should note that I am appearing in my personal
2768 capacity. My opinions are my own, may not represent those of
2769 any previous or current form employer or client.

2770 I am honored to share this panel with three tireless
2771 consumer advocates, each of whom I have come to know and
2772 respect even though we may sometimes disagree about how we
2773 pursue our shared goal of advancing consumer safety.

2774 I've also had the privilege of working alongside many of
2775 the talented dedicated staff at CPSC who devote their lives
2776 to protecting consumers. Every officer and employee of the
2777 CPSC is a public servant in the truest sense of that term and
2778 they all deserve our thanks.

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2779 The notice for this hearing asks a simple question: is
2780 the Consumer Product Safety Commission fulfilling its
2781 mission.

2782 From my perspective, the answer is equally simple. Yes.

2783 As you know, CPSC is charged with protecting against
2784 unreasonable risks of injury associated with consumer
2785 products. Since 1972, CPSC has worked alongside the consumer
2786 products industry to fulfill that mission.

2787 Most of that work goes unnoticed, from thousands of
2788 incident reports to hundreds of recalls to dozens of
2789 standards, CPSC is continuously engaged in a variety of
2790 efforts that most consumers never see but that benefit every
2791 consumer.

2792 The third of these activities -- working on standards
2793 bodies -- has been criticized of late, and I fear that
2794 criticism comes from some misunderstandings about the role
2795 that voluntary consensus standards play.

2796 First, while they are legally voluntarily standards,
2797 myriad influences drive manufacturers toward compliance.
2798 These include retailers who demand certification for shelf
2799 space and CPSC staff and civil courts who use voluntary
2800 consensus standards and defect determinations.

2801 Second, they are consensus standards. They are the
2802 products of collaboration between all interested stakeholders

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2803 including CPSC staff, whose opinions carry great weight.

2804 Indeed, consensus standards can be more collaborative
2805 than rulemaking. By the time an agency issues an NPR, much
2806 of its thinking is developed if not cemented. Voluntary
2807 consensus standards start with collaboration.

2808 The consensus bodies also offer safety advantages. They
2809 are a force multiplier for CPSC staff. They are made up of
2810 product-specific experts and they are better able to adapt to
2811 developing hazards and emerging innovation.

2812 CPSC also has tools to make these mandatory -- excuse
2813 me, these nominally voluntary standards more mandatory. It
2814 can give standards for durable infant and toddler products
2815 the same effect as mandatory rules.

2816 It can rely on a standard, creating a reporting
2817 obligation for noncompliant companies, and it can force
2818 recalls or prevent importation of products whose readily
2819 observable characteristics show they do not comply with the
2820 standard.

2821 With these tools, CPSC can use voluntary consensus
2822 standards to provide a safer, more level playing field rather
2823 than one that slants in favor of the noncompliant company.

2824 As with the voluntary consensus standards process, the
2825 information disclosure provisions of Section 6 of the CPSA
2826 have been criticized of late. But that criticism ignores

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2827 three key principles.

2828 First, Section 6 creates process requirements. It does
2829 not prescribe or proscribe any outcome. Second, it asks CPSC
2830 to take reasonable steps to ensure the fairness and accuracy
2831 of its disclosures. Why would we want the agency to do
2832 anything else?

2833 And third, CPSC has multiple vehicles consistent with
2834 due process that allow it to either shorten or eliminate the
2835 modest time these steps require.

2836 Some point out that other agencies are not subject to
2837 the same restrictions. This is a half truth. Other agencies
2838 also do not have the same access to information.

2839 Section 6 assures companies that CPSC will handle
2840 carefully information that other agencies never receive.
2841 That assurance enables candid discussions that better inform
2842 CPSC staff.

2843 Without it, those conversations would be more limited
2844 and consumers would be less safe.

2845 There are areas in which I believe the agency can
2846 improve. First, for an example and as raised by
2847 Congresswoman Matsui, I agree with the industry and consumer
2848 advocate consensus that CPSC should adopt California's
2849 Technical Bulletin 117.

2850 This flammability standard has proven effective and

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2851 manufacturers can meet it without the use of chemical flame
2852 retardants.

2853 Second, CPSC's import surveillance program can only
2854 physically surveille a handful of ports. The agency needs
2855 data tools that can more reliably distinguish between higher
2856 risk and known compliant products before their arrival.

2857 And third, CPSC's fast track voluntary recall program
2858 should recover its speed, as some recalls are taking months
2859 for approval.

2860 CPSC must, of course, do its due diligence. But it is
2861 not in anyone's best interest if staffing constraints
2862 unnecessarily impede companies whose sole aim is to act
2863 swiftly to protect consumers.

2864 I began with two assertions -- that CPSC is fulfilling
2865 its mission and that its successes come from the public
2866 service of the talented dedicated people who make up the
2867 agency.

2868 I believe strongly in both. While the agency should
2869 always seek to improve, consumers can draw comfort from their
2870 faithful watchdog in Bethesda.

2871 Thank you.

2872 [The prepared statement of Mr. Gentine follows:]

2873

2874 *****INSERT 8*****

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2875 Ms. Schakowsky. The gentleman yields back.

2876 And now I welcome Ms. Cowles for five minutes for her
2877 opening statement.

2878

2879 STATEMENT OF MS. COWLES

2880

2881 Ms. Cowles. Thank you, Chairman Schakowsky, Ranking
2882 Member McMorris Rodgers, and subcommittee members for this
2883 opportunity to testify before you about the CPSC's mission.

2884 KID is a nonprofit organization dedicated to protecting
2885 children by fighting for product safety. We were founded in
2886 1998 by two Chicago parents whose son, Danny, was killed in a
2887 poorly designed and untested portable crib.

2888 As Danny's mother foresaw when she testified before a
2889 House subcommittee in 2004, improved children's product
2890 safety will be Danny's legacy.

2891 Last month, we released our report on 2018 recalls. We
2892 found that the number of recalls overall was the lowest since
2893 2003 and the number of children's products recalls as well as
2894 the units of children's products recalled were the lowest
2895 since we started tracking in 2001.

2896 It is tricky to say whether low recall numbers are a
2897 good thing, pointing to safer products or a sign of lax
2898 enforcement, leaving dangerous products on store shelves and

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2899 in our homes.

2900 Indicators this year such as other less effective
2901 actions in lieu of recalls make us worry that now it is the
2902 latter.

2903 After filing suit last year for a recall of the BOB
2904 strollers with almost a hundred injuries, CPSC settled for an
2905 information campaign that is explicitly not a recall and
2906 lasts only one year.

2907 Unlike recalled products, these BOB jogging strollers
2908 can be legally sold in the secondhand market, meaning we will
2909 see continuing injuries.

2910 KID has also looked at recall effectiveness numbers
2911 reported by recalling companies to CPSC each year. For this
2912 year's report, we were unable to get that data due to a lack
2913 of response from the CPSC's FOIA office.

2914 But according to the CPSC in the hearing that was held,
2915 that number is under 10 percent. One example is the 2016
2916 recall of IKEA dressers. Publicly available information
2917 shows that fewer than 2 percent of these dressers have been
2918 returned to IKEA for a refund.

2919 IKEA has focussed their messaging almost exclusively on
2920 anchoring the dressers rather than returning them for a
2921 refund and getting them out of homes.

2922 Every 10 days a child dies when a dresser or other

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2923 furniture tips over on them and crushes them. Every 18
2924 minutes a family rushes a child to the emergency room for
2925 that same hazard.

2926 There is no federal standard to stop manufacturers from
2927 making unstable furniture. The voluntary ASTM standard lag
2928 behind the evidence that all of these incidents provide.

2929 Industry has been dragging their feet for years and
2930 children are paying the price. Several families whose
2931 children were killed by furniture and TV tip-overs have
2932 joined together to form PAT, Parents Against Tip-Overs.

2933 The group participates in the voluntary standards
2934 settings, has met with CPSC leadership, and, I dare say, will
2935 be in to see each of you if they haven't already.

2936 As Lisa Siefert of Barrington, Illinois, said when she
2937 joined KID last month to announce support for legislation on
2938 this issue, if action had been taken when her son, Shane, was
2939 killed seven years ago, these other families could be home
2940 with their children now.

2941 An effective standard would include all storage units
2942 and testing protocol, would represent all children under 72
2943 months, and include tests to account for real-world use.

2944 We also need that strong standard to be mandatory so
2945 that every family can be sure that the furniture they
2946 purchase is stable.

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2947 We support the STURDY Act to achieve this goal. We've
2948 heard about 6(b). I will just say parents should not have to
2949 wait on the manufacturer's timetable before learning that
2950 their child is sleeping in a deadly crib, playing with a
2951 lead-tainted toy, or riding in a stroller prone to losing a
2952 wheel.

2953 Section 6(b) should be repealed or, at the very least,
2954 should be -- more should be done to weaken its negative
2955 impact on safety.

2956 Through the implementation of Section 104, or Danny's
2957 Law, of the CPSIA, CPSC has successfully implemented strong
2958 mandatory standards for 20 types of durable infant and
2959 toddler products.

2960 Five from the original list remain, however. Either
2961 they have been passed but the effective date has not been
2962 reached or they are still pending.

2963 But last year was CPSIA's tenth anniversary. More than
2964 a decade after passage of this landmark legislation,
2965 consumers still have no assurance that all nursery products
2966 are tested for safety before they reach store shelves.

2967 We believe just as standards of all these new designs
2968 introduce potential hazards, the group of products covered by
2969 Danny's Law should also evolve as new products enter the
2970 market.

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2971 Among children's products safety issues a safe sleep
2972 environment is an overriding concern. Suffocation, most of
2973 it in a sleeping environment, is the leading cause of
2974 unintentional death in infants.

2975 The number of sleep-related deaths in infants is a
2976 public health emergency. We heard this from this week's
2977 warning on Fisher-Price Rock 'N Play that these products
2978 carry risk of suffocation and death.

2979 Consumer Reports released an article documenting the
2980 additional hazard of positional asphyxia in younger babies
2981 that was not in CPSC's warning. This products and others
2982 that pose the same hazard should be recalled.

2983 Again, thank you for allowing me to testify today. We
2984 appreciate the attention and oversight that your committee is
2985 bringing to these important issues.

2986 [The prepared statement of Ms. Cowles follows:]

2987

2988 *****INSERT 9*****

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2989 Ms. Schakowsky. Thank you all for your important
2990 testimony.

2991 I want to just say a special thank you to Commissioner
2992 Adler and Commissioner Baiocco. Thank you for staying for
2993 the testimony of Panel II. No, I understand you have other
2994 things to do. But I am very happy that you were and are
2995 here.

2996 So now we will turn to our members for five minutes and
2997 I will -- questions and I will begin.

2998 It is so tempting and I think I will go to that, to look
2999 at some of these particular incidents that are now
3000 threatening our children and I do want to see if we could get
3001 answers that deal with the item, for example, of furniture
3002 tip-overs but also how that reflects on the Commission and
3003 how we can improve.

3004 You know, right now, the CPSC launched the Anchor It!
3005 campaign in 2011 to explain to parents why they need to
3006 anchor the furniture against the wall.

3007 So we are now talking about an 11-year effort to reduce
3008 the number of deaths and, as was pointed out, they continue
3009 and the injuries continue at a rapid pace.

3010 So it seems to me that, first of all, this idea of
3011 anchoring, if you are a renter and you are told put a hole in
3012 the wall so that you can anchor that dresser, some will say,

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3013 absolutely not, because I want my down payment on the
3014 apartment and I am not going to put a hole in the wall that
3015 is effective.

3016 But how can we allow an eight-year problem or maybe even
3017 more to go on with these furniture tip-overs? Anyone who
3018 wants to answer.

3019 Ms. Cowles?

3020 Ms. Cowles. Yes, I will start on that. We worked very
3021 hard on this issue. We have participated in the ASTM
3022 furniture subcommittee, which I have to say, I work on a lot
3023 of ASTM committees. They are all a little bit frustrating
3024 for the consumer advocates. But this one in particular there
3025 has just been stonewalling of progress in that committee.

3026 We also -- we support the Anchor It! campaign. There is
3027 a need right now, because furniture is unstable for parents
3028 to consider and look at ways to make sure that they have
3029 stable furniture and one of those is anchoring.

3030 But the long-term solution is to make stable furniture.

3031 There are ways to do this. We work with university students
3032 who have some great designs that cannot tip over. They are
3033 as effective as a strap holding it to the wall. We
3034 appreciate the comments made by Chairman Buerkle recently
3035 saying that she would enforce the voluntary standard, saying
3036 that calling for additional weight in the testing.

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3037 That one in particular is probably getting stuck right
3038 now in the ASTM committee. We --

3039 Ms. Schakowsky. Not only weight but aren't we going to
3040 have a test where kids' weights are actually --

3041 Ms. Cowles. That was not part of her commitment at this
3042 point. We certainly look for that in the future. That is
3043 what is going to be necessary to do.

3044 But in terms of enforcement, in 2016 KID and Shane's
3045 Foundation did research. We found noncompliant dressers as
3046 did CPSC that same year, Consumer Reports last year. This
3047 statement that was made in February we still see very few.
3048 We have seen no furniture recalls in the past year and four
3049 months -- three months of this year.

3050 So it's okay to talk, but we need to start seeing action
3051 on this because, again, just picture every 10 days a child is
3052 dying and the number of that group and PAT is just growing
3053 and they don't want their core to grow.

3054 Ms. Schakowsky. Ms. Weintraub, you mentioned a whole
3055 bunch of different things that we need to do at the CPSC.
3056 How come it has taken so long to address them?

3057 Ms. Weintraub. I think that's a great question and
3058 there is many factors to it. I think you need political
3059 will. I think the agency needs to use the tools at their
3060 disposal.

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3061 Based on the safety hierarchy, warnings are the weakest
3062 thing we could do. We need the Rock 'N Play to be recalled.
3063 We need the Britax to be recalled. We need civil penalties
3064 that are meaningful and not merely a cost of doing business,
3065 and with the voluntary standards CPSC by statute relies on
3066 voluntary standards but those process, while they may meet
3067 the technical definitions of consensus, they vary widely and,
3068 as Nancy mentioned, it is a very difficult process. There
3069 are few consumers. Sometimes the standard is already
3070 completely baked when consumers have any access to it.

3071 There is many issues and I think 6(b) is one that
3072 pervades everything. There is the rule itself which I think
3073 Mr. Gentine outlined some of those things. But there is also
3074 the culture.

3075 The culture of 6(b) and the shadow of 6(b) is so vast
3076 that it impacts everything the agency does and gives
3077 companies negotiating with the agency huge amounts of power
3078 and, ultimately, consumers suffer as a result.

3079 Ms. Schakowsky. Thank you. Boy, five minutes just goes
3080 rushing by.

3081 I am going to yield now to the ranking member, who says
3082 it's okay to just say Mrs. Rodgers.

3083 Mrs. McMorris Rodgers. There we go. New improved.

3084 Thank you, Madam Chair, and I appreciate everyone being

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3085 here and sharing testimony today.

3086 I wanted to start with Mr. Gentine, and from your
3087 testimony it's clear that you're a proponent of voluntary
3088 standards.

3089 Can you please explain why they help protect consumers?

3090 Mr. Gentine. I think, from the outset, the first is
3091 simply a matter of scale. CPSC in this current fiscal year
3092 is engaged in 76 different voluntary standards activities on
3093 top of the mandatory rulemakings on top of recalls, et
3094 cetera.

3095 There is simply no way. I know we have talked a lot
3096 about CPSC's budget and I would join the chorus to say that
3097 it should be a bit higher.

3098 But a CPSC that was big enough to engage directly in all
3099 of those issues, some of which are more on the level of
3100 monitoring and looking for continuous improvement would be a
3101 CPSC that carries an awfully large price tag and, frankly,
3102 would be intrusive in ways that I don't believe it's intended
3103 to be.

3104 It's intended to be a partner with industry, with
3105 consumers, with advocates in building a safer consumer
3106 products market.

3107 So I think, again, for one, just a matter of economy or
3108 staffing realities that CPSC cannot get into all of those

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3109 issues. But beyond that, I think the fact that they're
3110 closer to the individual products at issue is key for me.

3111 The standards bodies, as Ms. Cowles mentioned, have
3112 engineers on them who have designed and worked on those
3113 products -- those specific products their entire career.
3114 CPSC -- 550 people -- a fraction of those are engineers.
3115 They have to be generalists. They cannot -- they do not have
3116 the luxury of focussing their careers on one product.

3117 So I think there is a greater expertise and, again, a
3118 staff multiplying effect that is vital for consumers.

3119 Mrs. McMorris Rodgers. Thank you. How old is the
3120 oldest open rule on CPSC's agenda and should the Commission
3121 consider cleaning up the docket, moving forward?

3122 Mr. Gentine. To answer those, I suppose, in reverse,
3123 one, CPSC definitely should. There are rules that have been
3124 around for a while and I can't confidently assert that it's
3125 the oldest but the oldest one I am aware of is the open
3126 rulemaking on upholstered furniture flammability.

3127 The NPR in that was issued actually shortly before a
3128 certain Mr. Simpson sort of took a ride in a white Bronco.
3129 So it's now of legal drinking age, which I suppose is a good
3130 thing for an NPR. I am not sure.

3131 So I think the reality that that drives home is that
3132 CPSC has been in this issue for a while and hasn't come to a

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3133 conclusion, and I take Commissioner Adler's point that there
3134 are some process issues about adopting California's standard.

3135 I think they can be overcome and, more importantly, I
3136 think they should be overcome. Staff has some reservations
3137 about that. But I think the opportunity exists to lock in
3138 what we already have, which is a very good standard from
3139 California, and then pursue whatever is left.

3140 Mrs. McMorris Rodgers. Okay. Another question on
3141 Section 6(b), which we have talked about some this morning.
3142 It has been characterized by some as a kind of gag order.

3143 Would you speak to that description and why the
3144 procedures laid out in Section 6(b) are important for
3145 consumers?

3146 Mr. Gentine. Sure, and I think one thing I would take
3147 issue with is the notion that it is somehow there is a power
3148 for companies in that. There really isn't much power because
3149 the only -- the only enforcement mechanism prior to a
3150 Commission statement is a willingness to litigate against
3151 CPSC in open court, and we don't see a lot of that for very
3152 good reasons.

3153 And there is no post-statement enforcement mechanism
3154 beyond requiring CPSC to correct any inaccuracy. There is no
3155 -- there is no mechanism for a company to get any kind of
3156 redress for what is simply a process violation.

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3157 So I think, you know, there is a nuance to this issue
3158 that has been cast aside and, again, it's important because,
3159 as Ms. Cowles talked about, you know, the difference between
3160 the number of recalls and the number of reports that is there
3161 for a reason. That was a deliberate choice by Congress to
3162 set a reporting threshold that's very, very low -- much lower
3163 than a recall threshold.

3164 As a result of that, especially as companies take CPSC's
3165 message and when in doubt report, that means CPSC is getting
3166 a lot of information that would not form the basis of a
3167 recall.

3168 And I am not sure how it is in consumers' best interest
3169 to flood the market with even more ostensibly safety-related
3170 messages that don't have any concrete action to them and,
3171 frankly, may not have a basis in reality.

3172 Mrs. McMorris Rodgers. The title of today's hearing is,
3173 "Is the Consumer Product Safety Commission Fulfilling Its
3174 Mission?" You answered yes. Would you just elaborate a
3175 little bit more on why you believe that to be the case?

3176 Mr. Gentine. Certainly, and I keep going back to my
3177 good friend, Commissioner Adler, who has got probably the
3178 longest running perspective on this agency.

3179 And as he pointed out, there have been dramatic
3180 reductions in all sorts of deaths and injuries, and some of

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3181 that is the direct result of the Commission's actions but
3182 more of it is the way the Commission has engaged with
3183 industry with consumer stakeholders to bring attention to
3184 issues and to address them where they can be addressed
3185 through design or manufacture.

3186 So I think, frankly, those numbers speak for themselves
3187 and, of course, there is more to be done. There will always
3188 be more to be done.

3189 Perfect is not attainable. But the fact that we haven't
3190 gotten to an unattainable state does not mean CPSC isn't
3191 fulfilling its mission and I think it is.

3192 Mrs. McMorris Rodgers. Thank you. I yield back.

3193 Ms. Schakowsky. And I now call on Mr. McNerney for five
3194 minutes.

3195 Mr. McNerney. Well, I thank the chairman -- the
3196 chairwoman and I thank the panellists.

3197 You will notice I am wearing pink today. I wanted to
3198 show my softer side so I shouldn't have any troubles.

3199 First of all, on recalls, recalls don't do any good if
3200 people don't know about it, if they are not able to or don't
3201 know about it or don't want to -- don't have any way to get
3202 their product recalled.

3203 So, Ms. Weintraub and Ms. Cowles, your groups
3204 participated in a recall effectiveness workshop in 2017. Now

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3205 that it's two years later, have there been any improvements?

3206 Ms. Weintraub. Not that we have seen concretely. The
3207 notes were publicized, which took a while to happen. But,
3208 unfortunately, there are fewer recalls. There are more
3209 announcements about products that we think should be recalled
3210 but that aren't.

3211 I think a key principle about recall effectiveness, and
3212 we have to call an enforcement action a recall -- that
3213 triggers consumers knowing more about it. If something is a
3214 recall or if something is an education campaign, a lot of
3215 people aren't going to find out about it.

3216 So, at a minimum, it needs to be called a recall and
3217 both the CPSC and manufacturers need to do everything they
3218 can to communicate that information to consumers and we know
3219 that that is not happening, especially due to Nancy's great
3220 report.

3221 Ms. Cowles. Yes, and I will just add to that. So not
3222 only did we see the number of recalls go down last year, we
3223 saw CPSC came to Facebook in 2017 and reported 75 percent of
3224 the recalls on their Facebook page.

3225 And social media isn't the panacea. It's not the total
3226 answer. But it shows an intent. Certainly, consumers follow
3227 it. Last year, that dropped to 45 percent. So they are
3228 already dropping back from the one tool that they added to

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3229 their arsenal.

3230 And actually I mentioned Linda was here in 2004 and she
3231 said something that is still true today. These companies
3232 know exactly how to reach us when they are trying to sell us
3233 a product.

3234 They need to use those very same tools when they are
3235 trying to get the product out of the market. That means
3236 marketing. Rachel worked hard to try and get marketing
3237 experts for CPSC to invite to that hearing.

3238 They were not invited. There are tools. These are
3239 companies that do great outreach to consumers. They know how
3240 to reach us. They can get these products back if it was a
3241 priority of both theirs and the agency's.

3242 Mr. McNerney. Does the agency have the tools to compel
3243 these businesses to use their resources to publicize recalls?

3244 Ms. Cowles. Well, that is the issue, right, and
3245 Chairman Buerkle alluded to it earlier when she said it was
3246 better to take this very sad action with Britax.

3247 It really does nothing to make consumers whole than to
3248 keep fighting for a recall when a company doesn't want to do
3249 it. The companies are really in the driving seat with the
3250 recall. They edit the press release. They determine what
3251 they are willing to do.

3252 One of the rules that is pending would put into place

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3253 mandatory things that would have to be done for every recall
3254 and that has just not gone anywhere.

3255 And so, unfortunately, you know, there is just not
3256 enough pressure on companies to reach some number above 10
3257 percent of the products recalled.

3258 Mr. McNerney. Okay.

3259 Mr. Gregg, what are some actions that the agency could
3260 take to get information out about recalls?

3261 Mr. Gregg. Well, I think that one important next step
3262 would be to get that chief technologist or experts who
3263 actually know more about technology.

3264 In the previous administration I worked at the White
3265 House Office of Science and Technology Policy, and that was
3266 one of the big things we did which was to try to ensure
3267 greater use of technology to reach the whole of the American
3268 people as well as making government better.

3269 And right now what we are seeing is just an inability to
3270 do that and you can do -- there are things that can be done.

3271 Just think about what we do -- what we use with our phone
3272 right now. We use it for everything.

3273 And you could -- you could use it when you go and buy
3274 something and you could use the bar code and you could scan
3275 it and you would know -- and you could -- the company would
3276 know all of your information and as soon as there was a

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3277 recall could push out a notification there has been a recall.

3278 That can be done. Now, do we want that to be done?

3279 That's probably a decision and policy question that we have
3280 to grapple with. But the technology is out there, which is
3281 the important point, and the agency needs to lead into it.

3282 Mr. McNerney. Well, I mean, one of the deterrents of
3283 bad products is that you get put on a recall and then
3284 customers aren't going to -- they are going to be more
3285 cautious about your products.

3286 So companies are going to naturally resist this.

3287 Mr. Gregg. And that is what they are doing right now,
3288 yes.

3289 Mr. McNerney. Okay. Moving on a little bit, you --
3290 emergency rooms are monitored for product safety. But what
3291 about urgent care centers and other avenues that people go to
3292 that aren't being monitored that could be monitored?

3293 Ms. Weintraub. So that is true. Currently, the CPSC
3294 has a system called NEISS. It is a representative sample of
3295 100 hospitals and for those selected hospitals they intake
3296 product safety incident information and CPSC then makes
3297 national estimates. And as of now, the NEISS system is --
3298 does not include urgent care centers.

3299 However, I would say that the NEISS system is one of the
3300 best systems. Even with limitations that we have, CDC relies

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3301 on it. Other countries use it as a model.

3302 So while it could definitely be improved, it is
3303 imperative that it remain in effect as it is a very important
3304 source of safety information.

3305 Mr. McNerney. Okay. I will yield back.

3306 Ms. Schakowsky. And I thought I heard Acting
3307 Commissioner -- or Chairman Buerkle say that she wanted to
3308 include urgent care data, going forward. So, hopefully, we
3309 can help make that happen.

3310 Mr. Bucshon for five minutes.

3311 Mr. Bucshon. Thank you very much.

3312 First of all, I am going to start out by saying I think
3313 -- I am going to go by the assumption that over 500 employees
3314 and the commissioners at the -- at the agency are on all of
3315 our sides, trying to do the best they can to make sure the
3316 consumers are safe as you are, too.

3317 So basing it from that, sometimes I think we make the
3318 assumption there is nefarious activity here and I think a lot
3319 of times it has to do with legal and sometimes policy --
3320 legal barriers and policy differences that we need to debate
3321 and that is why this hearing is so important.

3322 Quickly, Mr. Gregg, in your written testimony you said
3323 an average of 209 days to warn the public in 46 cases between
3324 2002 and 2008. I was just interested in what is the start

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3325 date for the average.

3326 Because if it is from the initial complaint to the CPSC
3327 or is it from when it is determined to be valid complaint or
3328 is it when the fine is levied, because I think that is
3329 important.

3330 Because the reason is let me just say is because I think
3331 it is a long time, it seems like, on the face of it. But the
3332 reality is is that, you know, from a competitive standpoint
3333 if all you had to do was complain to the agency about your
3334 competitor's product and they sent out a warning, you know, I
3335 am just using an extreme example.

3336 So what is -- kind of in short, what is the time -- what
3337 is the start date on that?

3338 Mr. Gregg. That would be from the -- when the -- I will
3339 double check but I am almost positive it is from the date
3340 that the agency gets that -- gets warning that there is
3341 something afoot that they need to look into.

3342 Mr. Bucshon. Okay. So that is what I am trying to
3343 clarify because, I mean, you could send a warning, right,
3344 about a product or anyone could send a warning.

3345 And so I think it is important to -- as in the context
3346 of Section 6(b) I guess, you know, it is important to make
3347 sure that there are -- they are valid and then to move as
3348 quickly as possible to get that warning out to the consumers.

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3349 Mr. Gregg. The one thing I would add to that, which I
3350 just wanted to ensure we get on the record, the policy
3351 discussions are important.

3352 You know, the Supreme Court has interpreted 6(b) to be -
3353 - that FOIA is included in 6(b). So, again, that is
3354 something that this agency has and no other agency has where,
3355 for example, information can't go into the public in the FOIA
3356 context. So we can have that discussion but it's
3357 hamstringing in other ways, too.

3358 Mr. Bucshon. I get that.

3359 Mr. Gentine, do you think the CPSC could ever handle
3360 implementing mandatory standards for every product under
3361 their jurisdiction?

3362 Mr. Gentine. No. No. Again, as a matter of scale and,
3363 frankly, you know, in a lot of situations we've talked today
3364 about some voluntary standards that people believe need
3365 improvement and, certainly, every standard every rule --
3366 every human activity can always be improved.

3367 But there are a lot of voluntary standards covering
3368 products within CPSC's jurisdiction that aside from sort of
3369 regular cyclical review aren't ever at issue because they are
3370 working very well and they are keeping those products --
3371 keeping those consumers safe.

3372 So I don't think -- I don't think CPSC ever could issue

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3373 rules to cover all 15,000 products in its jurisdiction and I
3374 don't think it should even if it were possible.

3375 Mr. Bucshon. It doesn't seem practical, at least with
3376 the current staffing levels, to make that happen. I think you
3377 commented that to try to do something like that would just
3378 massively expand the staffing levels and the money required
3379 to do that.

3380 Mr. Gentine. Correct, and that is --

3381 Mr. Bucshon. When they -- when it sounds like from what
3382 you just said that in many -- in most cases voluntary
3383 standards are being complied with?

3384 Mr. Gentine. Correct. And not only where --

3385 Mr. Bucshon. Many times.

3386 Mr. Gentine. Where there are gaps, you know, that is
3387 what CPSC is there to do, to help fill the gaps one way or
3388 another.

3389 Mr. Bucshon. Yes. And, again, can you just reiterate
3390 again? You already commented on this a little bit. Like the
3391 top three areas where you think maybe there can be some
3392 improvement at the CPSC?

3393 Mr. Gentine. Sure. One of them --

3394 Mr. Bucshon. I think this is an important point. That
3395 is why I want you to kind of reiterate again.

3396 Mr. Gentine. Certainly. One of them I did mention was

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3397 TB 117, the upholstery furniture flammability standard. One
3398 that is in my written comments but didn't, you know, meet the
3399 five-minute cut was on the question of tip-over. Again,
3400 there are certainly open questions about the adequacy of that
3401 standard and how its testing works.

3402 But I think at a minimum to take that standard and make
3403 it mandatory would at least help ensure that noncompliant
3404 products aren't getting in and then we can talk about moving
3405 the standard -- moving the standard forward.

3406 And I think, again, we come back to resource
3407 constraints. I say I don't want a CPSC big enough to write
3408 rules on all 15,000 of its products.

3409 But I think a CPSC with more robust resources than it
3410 has now that would allow it to get into more data and
3411 technology issues and would allow it to speed recalls along I
3412 think would benefit everyone.

3413 Mr. Bucshon. Yes. I mean, I think particularly as it
3414 relates to children, you know, because obviously they can't
3415 report that my crib isn't working properly, right?

3416 So, I mean, in that respect, you know, you could create
3417 a prioritization of what things should be mandatory maybe and
3418 involuntary and credit -- kind of prioritize what things are
3419 the most at risk for the consumers, particularly children.

3420 Mr. Gentine. Certainly. Thank you.

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3421 Mr. Bucshon. Yes. I yield back.

3422 Ms. Schakowsky. Well, that completes our second panel.

3423 I want to thank you all so very much.

3424 I wanted to make a comment and if you would like to,
3425 Ranking Member, also. One of the takeaways that I have that
3426 seems pretty unanimous is that the Consumer Product Safety
3427 Commission needs more resources.

3428 And I hope we are thinking big. When I think about all
3429 the problems that -- and the dangers that are out there that
3430 are under the jurisdiction of the Consumer Product Safety
3431 Commission, we have an agency that started small and all we
3432 have had are sort of incremental increases that pretty much,
3433 relative to other agencies, keep it small.

3434 And so I hope we can be bold in our thinking about and
3435 begin with what does the Consumer Product Safety Commission
3436 really need to be effective in handling all that is under its
3437 jurisdiction and go for that kind of increase and, perhaps,
3438 authorities that would make it a more effective agency
3439 because it is so important.

3440 And I yield to the ranking member, if you want to make
3441 any comments.

3442 Mrs. McMorris Rodgers. Well, thank you, Madam Chair,
3443 and I do want to say thanks again to everyone who testified,
3444 the consumer advocates as well as the commissioners for being

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3445 here today. It is great to see all of the positions filled
3446 on the Consumer Product Safety Commission.

3447 I am hopeful that we will see Ann Marie Buerkle
3448 confirmed shortly in the Senate so that we can continue to
3449 move forward on addressing these important issues.

3450 And I too would acknowledge that there was broad
3451 agreement that there needed to be more support, more
3452 resources, more funding for the Commission in order to -- for
3453 them to continue to do the good work that they are doing and
3454 I look forward to working with everyone to make sure that
3455 this Commission is doing everything possible to protect our
3456 consumers, our families, our children from the many, many
3457 products that are out there, and thank you again for this
3458 hearing.

3459 Ms. Schakowsky. Thank you. I would like unanimous
3460 consent to enter into the record the following documents: a
3461 letter from the Electronic Privacy Information Center, a
3462 letter from CPSC Acting Chair, Ann Marie Buerkle, two ASTM
3463 International, a letter from the National Association of
3464 Manufacturers.

3465 I seek unanimous consent. Without objection, they are
3466 entered into the record.

3467 [The information follows:]

3468

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3469

*****COMMITTEE INSERT 10*****

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3470 Ms. Schakowsky. And the committee hearing is -- oh,
3471 wait. Let us see. I do want to again thank the witnesses
3472 for their participation in today's hearing.

3473 I remind members -- there you are, members -- that
3474 pursuant to committee rules you have 10 days -- business days
3475 to submit additional questions for the record to be answered
3476 by witnesses who have appeared. I ask each witness, as I did
3477 earlier, to please respond promptly to any such questions
3478 that you may receive at this time.

3479 The subcommittee is adjourned.

3480 [Whereupon, at 1:21 p.m., the subcommittee adjourned.]