

**CPSC COMMISSIONER ROBERT ADLER'S RESPONSE**

**TO QUESTIONS FOR THE RECORD FROM THE HONORABLE ROBIN L. KELLY**

1. ***QUESTION: Do you think, given the current state of our nation's gun violence epidemic, if the CPSC were empowered – under the law, and with adequate resources and funding – to regulate firearms it would have a demonstrable impact in reducing gun violence?***

**ANSWER:** My short answer is “perhaps,” but I need to explain in more detail my concerns about the issues raised by your question.

Before answering the question, I would like to go on record as deploring the easy access to firearms – especially assault weapons – and lax regulation of these dangerous products that exists in the United States today. Were it in my power, I would impose severe restrictions on the sale and use of firearms.

As one who has variously worked at, studied, written about, and followed CPSC since its beginning, I would like to share some history about gun issues at the agency. When the Commission was established in 1972, Congress went out of its way to bar the agency from regulating guns.<sup>1</sup> Notwithstanding this prohibition, Congress left untouched the agency's ability to regulate the safety of bullets, which then existed under the Federal Hazardous Substances Act – an Act previously enforced by FDA, but which transferred to CPSC upon passage of the Consumer Product Safety Act.<sup>2</sup>

In June 1974, an anti-gun group, the Committee for Hand Gun Control, Inc. of Chicago, petitioned the Commission for a rule banning the sale of bullets for most hand guns. Although the Commission denied the petition on the basis of a lack of jurisdiction, a court subsequently overturned the agency's determination and directed it to consider the group's petition.<sup>3</sup> Accordingly, on February 14, 1975, the Commission published a notice in the Federal Register soliciting comments on the petition's merits.

To say the least, these developments ignited a major public outcry – almost exclusively from opponents of gun control. The controversy soon reached Congress, which almost

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<sup>1</sup> Congress did so through the use of highly technical language that undoubtedly obscured its intent. See Consumer Product Safety Act, 15 USC § 2052(a)(1)(E) which states that the term “consumer product” does not include

Any article which, if sold by the manufacturer, producer, or importer would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article.

<sup>2</sup> FDA never seriously considered banning bullets. Instead, the agency limited its enforcement efforts to instances of defective ammunition that misfired or exploded inappropriately.

<sup>3</sup> Committee for Hand Gun Control, Inc. v. Consumer Product Safety Commission, Civ. Action No. 74-1387.

immediately extended its prohibition on CPSC firearm jurisdiction to include bullets as well as guns, thereby effectively rendering the bullet petition inoperative.<sup>4</sup>

I mention this moment in gun control history for several reasons. First, once the Commission's Federal Register notice was published, we at CPSC were inundated with correspondence from gun supporters in an unprecedented fashion. So great was the volume of mail that we were forced to hire a staff person to do nothing but open letters – carefully setting aside for law enforcement authorities the various threats directed at the Commission and its personnel. As I recall, the agency received hundreds of thousands of letters opposing any action by CPSC. In addition, we received numerous calls and letters from members of Congress similarly opposing any agency action.

My point is not that anyone at CPSC objected to hearing from the public or the Congress, but that we faced such a volume of protests that we had to divert substantial resources simply to read and respond to the correspondence that we received – not to mention the various law suits filed against us by the National Rifle Association and other affiliated groups. Unfortunately, as the smallest and least funded health and safety agency,<sup>5</sup> we found these demands on time and staff resources to be extremely burdensome.

Turning more specifically to your question, in order for CPSC to address gun violence, we would have to do so through a combination of safety standards for firearms and effective consumer education. Given the extremely controversial nature of such approaches, I suspect any step we would take to lessen the dangers of firearms would be both costly and time-consuming. My own view is that we would need, at a minimum, significant additional statutory authority and greatly expanded funding – on the order of a 2-3 fold increase in our budget, if not more.

Second, a threshold question for Congress regarding added statutory authority for CPSC would be the nature of such authority. On one hand, Congress could limit our authority to ensuring that firearms and ammunition be free from defects that would interfere with the effective functioning of these products. In other words, we could be directed to guarantee that firearms and ammunition shoot as intended instead of unexpectedly or unreasonably misfiring or malfunctioning.

On the other hand, Congress could provide expanded authority to the Commission to regulate specific weapons or ammunition that presented an unreasonable risk of harming innocent people even when these products operated exactly as intended.

In my opinion, limiting CPSC to the first type of authority would do little to prevent gun violence. If anything, it might lead to more mayhem because of improved functionality of these

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<sup>4</sup> Pub. L. 94-284 (May 11, 1976).

<sup>5</sup> To put our budget in context, I would compare a sister agency, FDA, with CPSC. FDA's request for a budget *increase* for FY 2020 exceeded CPSC's *entire* budget by five times.

products. Providing us with the second type of authority might well lead to reduced incidents of violence, but this approach would clearly require political action that might be difficult to muster.

To be blunt, I fear that providing authority to CPSC even with greatly expanded resources would likely force us to turn our attention almost exclusively to the regulation of firearms. This would be to the detriment of regulating the safety of the roughly 15,000 other product categories under our jurisdiction.

Accordingly, I have reluctantly concluded that giving CPSC the primary authority to regulate firearm safety would so fundamentally alter the nature of our mission that I would prefer to see such authority provided to a much larger and more politically powerful agency than CPSC.

**2. Question: *What can we – as a committee and Congress – do additionally to further empower the CPSC to help keep us safe and tackle our nation’s gun violence epidemic, including increasing the Commission’s funding?***

One small, but significant, step might be to authorize CPSC to broaden our data collection efforts to capture more precise data on the frequency and severity of firearm injuries. Although I am not an expert on the various restrictions on CDC’s (and other agencies’) ability to compile data on gun violence, I gather that the government has at least a modest ability to track the annual death and injury statistics associated with gun violence. As it turns out, CPSC has an excellent tool for compiling data and making national estimates of injuries associated with consumer products – our National Electronic Injury Surveillance System, known as NEISS. We gather data from a statistically representative group of hospital emergency rooms across the nation on a daily basis and use this data to make national estimates of injuries.

As I understand it, CPSC compiles some data on injuries associated with guns for CDC, but the sample size is smaller than what we typically collect and the estimates are therefore somewhat less reliable than those we compile for most consumer products. For most policy issues, a starting point typically needs to be the accumulation of accurate data. And, having a reliable source of data might help move the debate forward.

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