

Additional Questions for the Record

Subcommittee on Consumer Protection and Commerce

Hearing on

“Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?”

April 9, 2019

The Honorable Ann Marie Buerkle, Acting Chairman, U.S. Consumer Product Safety Commission

The Honorable Jan Schakowsky

1. Many people keep portable fuel containers in their homes. These products are prone to dangerous flame jetting and can quickly burn anyone nearby. The use of an inexpensive flame mitigation device can prevent flames from entering portable fuel containers and igniting the vapors, but current law does not require containers to have this safety mechanism in place. In 2015, CPSC wrote to ASTM International to offer its expertise and assistance in developing standards and test methods for flame mitigation devices for portable fuel containers. Please provide an update on these efforts.

Response: Following CPSC staff’s September 29, 2015 letter to ASTM International requesting an update on research on flame mitigation devices (FMDs) in gasoline containers, staff worked with the ASTM subcommittee members to develop a standard test method for assessing performance of FMDs on gasoline containers. As a result, ASTM published a new standard, ASTM F3326-19, *Standard Specification for Flame Mitigation Devices on Portable Fuel Containers*, in January 2019, with specific performance standards for FMDs on gasoline containers.

CPSC staff have also been working with a separate subcommittee to develop a new voluntary standard for disposable fuel containers. CPSC previously contracted work in FY16 and FY18 for technical research to assist in developing a draft standard test method for FMDs on disposable fuel containers.

Another major component of staff’s work is to expand consumer awareness of the hazards of flame jetting. CPSC staff have collaborated with other stakeholders including the U.S. Chemical Safety Board, the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, the National Fire Protection Association, the American Chemical Society, the Fairfax County, VA Fire Department, the Portable Fuel Container Manufacturers

Association, Underwriters Laboratories, and the American Burn Association to educate consumers on this hazard.

2. Bed rails can be a hazard for seniors through entrapment, strangulation, and suffocation. CPSC staff received reports of 140 senior deaths associated with adult portable bed rails over the past 10 years. In 2013, CPSC received two petitions to ban or issue a mandatory standard for adult portable bed rails. Since then, it has been working with ASTM International to develop a voluntary standard, which was finalized in 2017.
 - a. Has CPSC determined whether the voluntary standard eliminates or adequately reduces the risk of injury?
 - b. If so, has CPSC determined whether substantial compliance with the voluntary standard is likely?
 - c. What is the status of the petitions?

Response: CPSC has determined that the new voluntary standard, ASTM F3186 - 17 “*Standard Specification for Adult Portable Bed Rails and Related Products*,” which was published in 2017, is expected to address entrapment, strangulation and suffocation. CPSC staff believes that the voluntary standard, if complied with, will reduce the risk of injury.

The Commission considered the two petitions as one petition (CP 13-1), and in 2014 voted to defer the petition so staff could work with stakeholders to develop a voluntary standard. After staff completes its evaluation of the compliance with the voluntary standard, staff will provide the Commission with a briefing package on the standard’s effectiveness and the level of expected compliance so the Commission can consider how to proceed with respect to the petition(s).

3. In 1983, CPSC closed an investigation of Federal Pacific Electric “Stab-Lok” circuit breakers, citing budget constraints. In 2011, CPSC clarified that it had closed the investigation without making a determination as to the safety of the circuit breakers. Several experts have expressed concern about the safety of these products.¹
 - a. Has CPSC received any incident reports regarding “Stab-Lok” circuit breakers since it closed its investigation in 1983? If so, please list them.

Response: CPSC staff identified 32 reports of incidents between 1995 and 2018 positively associated with Federal Pacific Electric Stab-Lok breakers. 11 of the 32 incidents reportedly occurred after 2011. The table below list the incidents.

¹ *Despite Previous Safety Concerns, This Circuit Breaker Is Still in Homes*, Washington Post (May 9, 2018) (www.washingtonpost.com/lifestyle/home/despite-previous-safety-concerns-this-circuit-breaker-is-still-in-homes/2018/05/08/8927af86-4ef9-11e8-b725-92c89fe3ca4c_story.html).

- b. Has CPSC taken any subsequent action to investigate the safety of these products since 1983? If so, what action? If not, why not?

When the Commission re-evaluated this matter in 2011, it was concerned about the failure of these FPE breakers to meet UL calibration requirements, but was unable at that time to link those failures to the development of a hazardous situation. As noted above, there has not been an appreciable change in the incident data to warrant further reexamination for this issue, although staff continues to monitor for any emerging trends.

| Incident | Date | Description | Severity of injury |
|-----------------|--------------------------|---|---------------------------|
| 1 | 3/1/1995 | WHEN A SHORT OCCURRED AS A MAN WAS WORKING ON THE ELECTRIC FURNACE IN HIS HOME, THE CIRCUIT BREAKER IN THE ELECTRIC PANEL BOX FAILED TO TRIP. NO INJURY, FIRE HAZARD. | Incident, No Injury |
| 2 | 2/8/2000 | A HOUSE FIRE APPEARS TO HAVE STARTED IN THE CIRCUIT BREAKER BOX. THE HOME WAS BUILT IN 1986. NO INJURY. | Incident, No Injury |
| 3 | 3/2/2000 | A 25 YEAR OLD CIRCUIT BREAKER BOX DID NOT TRIP CAUSING A BUILDING FIRE NO INJURY. | Incident, No Injury |
| 4 | 5/28/2002 | NOBODY WAS INJURED WHEN A 50-AMP SUB-PANEL CIRCUIT BREAKER DID NOT TRIP, AND THE 60-AMP BREAKER ON THE MAIN PANEL PARTIALLY TRIPPED WHEN AN ELECTRIC CLOTHES DRYER IN A HOME HAD A SHORT CIRCUIT ON A HEATING ELEMENT. | Incident, No Injury |
| 5 | 3/1/2004 | A RESIDENTIAL CIRCUIT BREAKER FAILED TO TRIP DURING A DIRECT SHORT CIRCUIT. THE BREAKER IS LOCATED IN AN EXTERIOR MOUNTED ELECTRIC PANEL. NO INJURY. | Incident, No Injury |
| 6 | Unknown, Received 8/2005 | A HOME INSPECTOR, WHILE INSPECTING THE ELECTRICAL PANELS IN SEVERAL HOMES FOUND LIVE WIRES SCORCHED DUE TO SPARKING. ALSO FIRE HAD DESTROYED A COUPLE OF HOMES WHEN THE CIRCUIT BREAKER IN THESE PANEL FAILED TO TRIP. NO INJURY. | Incident, No Injury |
| 7 | 12/9/2006 | A WOMAN STATED THAT THE CIRCUIT BREAKER BOX CAUSED HER ELECTRIC WATER HEATER TO STOP WORKING. SHE HAD A CIRCUIT BREAKER FAILURE & A CASCADE FAILURE FROM THE WATER HEATER. NO INJURY. | Incident, No Injury |
| 8 | 1/8/2007 | CONSUMER REPORTS SIGNIFICANT HEAT, SPARK & CORROSION WITHIN ELECTRICAL SERVICE PANEL. NO INJURY. | Incident, No Injury |
| 9 | 1/20/2007 | A MALE CONSUMER REPORTS THAT HIS CIRCUIT BREAKER WAS DAMAGED TO THE POINT WHERE THE TOP AND BOTTOM OF A PORTION OF THE HOUSING HAD A HOLE BURNED THROUGH IT. SEVERAL OF HIS ELECTRICAL OUTLETS DID NOT WORK AS A RESULT. NO INJURIES. | Incident, No Injury |
| 10 | 9/10/2007 | THE COMPLAINANT HAD TWO INCIDENTS WERE HE TURNED ON A WALL SWITCH FOR AN OVERHEAT FIXTURE AND THE SWITCHES BEGAN TO ARC AND SMOKE. BOTH TIMES THE ELECTRIC CIRCUIT BREAKER(S) IN THE MAIN ELECTRICAL PANEL DIDN'T TRIP. THERE WERE NO INJURIES. | Incident, No Injury |
| 11 | 3/1/2008 | A 66 YEAR-OLD FEMALE CONSUMER REPORTED THAT THE CIRCUIT BREAKER FAILED TO TRIP. NO INJURIES. | Incident, No Injury |
| 12 | 11/23/2008 | CONSUMER REPORTS THE CIRCUIT BREAKER OF AN APARTMENT BUILDING WAS WARM TO THE TOUCH, ARCING & SPARKS WERE COMING FROM THE PRODUCT. IT WAS DISCOVERED THE CIRCUIT BREAKER HAD A HOLE BURNED INTO THE BACK OF THE UNIT. NO INJURY. | Incident, No Injury |

Acting Chairman Buerkle Responses

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| 13 | 1/24/2009 | CIRCUIT BREAKER FAILED TO TRIP OPEN WHEN A CIRCUIT WAS SHORTED OUT AND IT BURNT UP INTERNALLY. NO INJURY. | Incident, No Injury |
| 14 | 7/10/2009 | 74 OLD FEMALE CONCERNED ABOUT FAILURES OF TWO CIRCUIT BREAKERS. ONE OTHER HAD BURNED WIRE FROM OVERHEATING. | Incident, No Injury |
| 15 | 10/10/2009 | BREAKER FAILED TO TRIP AFTER INSULATION FAILED ON DISHWASHER HOT WIRE FROM VIBRATION & AFTER ELECTRIC STOVE LOWER BURNER TURNED BRIGHT WHITE & MELTED A SECTION. ANOTHER BREAKER ALSO FAILED TO TRIP AFTER COMPUTER POWER SUPPLY BURNED UP. | Incident, No Injury |
| 16 | 12/14/2009 | A 54 YOF FEMALE RECEIVED AN ELECTRICAL SHOCK & FELL ACROSS HER KITCHEN FLOOR WHILE PLUGGING A LIGHT. THE CIRCUIT BREAKER HAD NOT TRIPPED. HER BREAKER PANEL HAS AN ENORMOUS FAILURE RATE & NEEDED IMMEDIATE REPLACEMENT. | Level of care not known |
| 17 | 3/30/2010 | CIRCUIT BREAKER KEEPS TRIPPING FOR THE BATHROOM WITH OR WITHOUT A LOAD ON. | Incident, No Injury |
| 18 | 1/12/2011 | <p>Caller has lived in modular stationary mobile home since 2007 and from the first day she had problems with the breaker panel.</p> <p>On numerous occasions the owner/manager of the mobile home park switched breakers or parts from other panels in park.</p> <p>On many occasions when she would plug electrical products into an outlet she states that sparks would come out of outlet before she plugged into outlet.</p> <p>The mobile home she is living in is 40 yrs old, has had rats that she believes that they may have chewed on wiring.</p> <p>January 12, 2011 she had two space heaters running as well as her [hot tub/spa] when her friend smelled burning.</p> <p>She went to the breaker box, said there was burning, the main line coming into the box was red hot and melting so she disconnected it and did without heat for the night.</p> <p>The next morning she contacted the owner of the mobile home park who she says found amusement with her report of burning did come to her mobile home but did not wish to repair.</p> | Incident, No Injury |
| 19 | 4/14/2011 | A 23 YEAR OLD FEMALE CONSUMER LOST POWER TO TWO BEDROOMS. SHE TESTED THE CIRCUIT BREAKER USING THE "TEST" BUTTON. WHEN POWER WAS NOT RESTORED, SHE REMOVED THE COVER FROM THE PANEL BOX AND DISCOVERED THE CIRCUIT BREAKER WAS BURNED. SHE DID NOT WITNESS FIRE OR SMOKE AND THE INCIDENT DID NOT CAUSE A SMOKE ALARM TO ACTIVATE. NO OTHER CIRCUIT BREAKERS TRIPPED DURING THE INCIDENT. | Incident, No Injury |

Acting Chairman Buerkle Responses

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| 20 | 5/7/2011 | <p>I am a home owner. I would like to share some information with you about the hazards of electrical panels / circuit breakers. I believe you are already aware of this issue. I urge you, please, to accelerate the replacement of these dangerous panels, perhaps through a public awareness campaign and other methods.</p> <p>When we bought our home, we were made aware of the hazards by the home inspector. He called it a major defect. As I understand it, it is not only the circuit breakers that are the problem, but other areas of design inside the panel as well. (When we had an electrician replace it, he found scorch marks inside.)</p> <p>As noted above, we have since replaced the panel but are aware that other homes in both our old and new neighborhoods have more of these panels. From research, there are many, many more of these panels across America.</p> | Incident, No Injury |
| 21 | 12/4/2011 | <p>The other night, our electric [REDACTED] dryer overheated/caught fire and filled the basement with smoke. The smoke alarm alerted us to this danger. When we went into the laundry room, the dryer was still running and the air was thick with smoke. The dryer was too hot to touch on any of the metal surfaces (sides and top). We opened the door to stop the cycle and yanked out the clothes which were also too hot to touch. In retrospect, that was probably the wrong thing to do in case they had actually been in flames. Most likely, lint got on the elements and burned.</p> <p>However, the dryer KEPT RUNNING even after it overheated/caught fire. We had to unplug it with a pot holder. The breaker DID NOT TRIP.</p> <p>My concern is that the purpose of the circuit breaker is to stop the electricity to an overheated or burning appliance to stop the electricity. In this case that did not happen.</p> | Incident, No Injury |
| 22 | 6/18/2012 | <p>Caller is an electrician for a large housing complex where not for the first time that when he changed the breaker to downsize it to a 15 amp, 2 pole, the wire stays dangled and energized posing a burn hazard.</p> <p>This has happened on eight breakers, occurring in the higher amp breakers but not with the lower amp breakers.</p> <p>The 15 amp breakers in the complex have been downsized from 20 amps to 15 amps.</p> <p>The breakers inside are 20 amps and the breakers outside are 100 amps in an enclosed area.</p> <p>The caller identifies this as a safety hazard and would ask that it be investigated before there is a fire.</p> | Incident, No Injury |

Acting Chairman Buerkle Responses

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| 23 | 10/17/2012 | <p>In September of 2006 I began a remodel of my home. While changing out light fixtures I became aware of a CIRCUIT BREAKER that, when switched off, did not disconnect the circuit. I purchased a replacement and installed it.</p> <p>In October of 2012 I was informed that my breakers, were sub-standard and unsafe. (Our housing complex maintenance dept. WEB-SEARCH)</p> <p>An electrician came to my home and tested my breakers. One 15 amp breaker would not trip when and excessive load was applied.</p> <p>My panel was replaced with [REDACTED] equipment.</p> <p>My duplex "other half" was inspected visually. Its breaker panel contained breakers with significant "CHARRING" around the bus contact areas. The panel was replaced.</p> <p>Our duplex was constructed in 1987.</p> | Incident, No Injury |
| 24 | 1/9/2013 | <p>Our realtor informed us that we would need to change our electric panel circuit breaker box in order to put our house on the market. We contacted an electrician. He confirmed that these panels are "deadly" and "scare" him. We will need to replace the unit. However, this item continues to be sold on-line even though the manufacturing is no longer in business. There has never been a recall for the product and consumers are spending significant dollar amounts out of their own pockets to replace these malfunctioning circuit breakers.</p> | Incident, No Injury |
| 25 | 3/21/2013 | <p>I have just found out, I have a REDACTED circuit breakers' box, which is known to be hazardous!</p> | Incident, No Injury |
| 26 | 5/15/2014 | <p>Since the 1980's I've researched and published public information on the hazards of circuit breakers, including the US CPSC documents, independent research, and more than 170 reports of field failures of the product.</p> <p>I've also addressed (and recommend against) the use of replacement circuit breakers as there is not only no evidence that these products have corrected the original design and performance flaws in the product line, there is some evidence both in limited independent tests as well as field failure reports that replacement breakers, at a rate far above usual industry failure rates, perhaps 14% failure rate or higher as opposed to less than 0.01% failures across most of the industry.</p> | Incident, No Injury |
| 27 | 7/13/2014 | <p>Breaker panel preventing the sale of my home.</p> | Incident, No Injury |
| 28 | 2/24/2016 | <p>My new insurance company is reusing coverage until I replace an unsafe product, breaker panel. This is in my condo that was built in 1972. There have been a recall issued on this product. I only have until the end of March to get this completely replaced. This condo is being rented at this time. Time is of the essence!</p> | No Incident, No Injury |

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| 29 | 12/7/2016 | <p>I filed one report, but cannot find it on the web site. So, I am filing the report again. Our family had the horror of being a home with a circuit breaker panel box. It dated from a previous owner add-on in the early 1960s, and by the 1990s, spot outlet fires began to occur. Audible hums from the walls and dimming of lights while those had occurred, along with flickering lights when the washing machine was running were thought of as strange, but not anything was thought to be coming from the circuit breaker panel box.</p> <p>This changed, however, when in December 2016, a burning odor began emanating from the circuit breaker panel box itself when an upright vacuum cleaner was in use, and later on, when a circuit breaker had tripped, and an electrical burning odor was noticed. The circuit appeared to not have functioned properly. Power was out to certain parts of the house, but the burning odor was there. No flames were noted.</p> | Incident, No Injury |
| 30 | 5/16/2017 | <p>Found a melted down panel in a residence. Breaker failed to trip causing the main service cable to melt down along with the breaker. The wire reached temperatures hot enough to weld the main lug to the copper wire. Active sparking and glowing wires when arriving at the property.</p> | Incident, No Injury |
| 31 | 5/11/2018 | <p>This report regards the residential circuit breaker panel and circuit breakers. A recent (May 2018) story indicated that the CPSC intends to revisit the issue of the likelihood that this product and configuration will cause fires in homes because the circuit breakers fail to trip in circuit overload conditions.</p> <p>This is NOT a failure report, but I cannot find where to file a positive statement.</p> <p>BACKGROUND: My specific interest is that I have in my home a panel that I installed in the late 1980s, using a panel and breakers my wife found at a yard sale. No doubt, this panel was pulled out as a result of the criticism at the time. I am not a licensed electrician, so I knew nothing of the apparent controversy. As with several rental and residence properties I had owned, I installed the panel consistent with code requirements after obtaining a permit from local county authorities.</p> | No Incident, No Injury |
| 32 | 5/25/2018 | <p>Panel showed evidence of arcing and smoke according to my electrician.</p> | Incident, No Injury |

4. At the hearing, during discussion of the Britax settlement, you stated that CPSC “will monitor that plan very closely and we will also make sure they issue, they will send us reports about the recall and we will monitor those very closely, that they’ve complied with the settlement agreement.” According to the *Washington Post*, Britax failed to notify consumers, dealers, retailers, and secondary markets about the “information campaign” as required by the settlement.²

² *Britax Missed Deadline to Send Some Notices About Its BOB Strollers, Despite Deal with Federal Agency*, *Washington Post* (Apr. 9, 2019) (www.washingtonpost.com/business/economy/britax-missed-deadline-to-send-some-notices-

- a. How could Britax fail to fulfill these obligations if CPSC was monitoring compliance very closely?

Response: The Consent Agreement and Order require Britax to submit quarterly reports to the CPSC staff that include the number of views of the Information Campaign, and the number of consumers who took advantage of the particular incentives. The first quarterly report was submitted on April 10, 2019. It is customary for staff to review a firm's compliance with a corrective action plan by monitoring the reports received by a firm, and that procedure was followed here.

Britax also provided additional information regarding its compliance with the terms of the Consent Agreement, and staff has been in communication with the Firm regarding the Firm's obligations under the Agreement and Order.

- b. What action will CPSC take in response to this apparent breach of the settlement?

Response: The CPSC has not yet determined what actions it may take in response to various concerns about the Britax matter.

- c. Has CPSC determined whether any other terms of this settlement have been breached? If so, which terms?

Response: The Commission has made no determination on these matters as of this date.

- d. Has CPSC reviewed its other settlements to determine whether they have been violated? If so, please list all violations and any action CPSC has taken in response.

Response: In the case *In the Matter of Baby Matters, LLC*, CPSC Docket 13-1, staff monitored compliance with a May 2013 Consent Agreement that required the firm to maintain a recall website for five years. Staff determined in June 2016 that Respondent Baby Matters, LLC had not properly maintained the website as required by the Consent Agreement, and required the firm to correctly display the recall website. The firm then corrected the website.

In the case of *In the Matter of Maxfield and Oberton Holdings, LLC*, CPSC Docket 12-1, staff monitored a May 2014 Consent Agreement that required the Respondent timely to transfer funds into a Recall Trust to provide refunds to consumers. Staff determined in May 2015 that Respondent had not timely transferred money to the trust in accordance with the schedule established in the Consent Agreement. Staff contacted Respondent to ensure compliance, and Respondent then transferred the funds as required.

In both cases, staff was able to resolve the matter and promptly bring the firm into compliance.

5. How does your office ensure that commissioners get information regarding investigations and enforcement actions? Is there a protocol for informing commissioners at specific times?

Response: Commissioners receive regular updates from various staff offices including the offices of the Executive Director, Compliance and Field Operations, General Counsel, Hazard Identification and Reduction, Communications, Legislative Affairs, Import Surveillance, International Programs, Financial Management and the Small Business Ombudsman, as well as others. Commissioners may also request briefings from staff on specific issues they may be interested in.

Specifically, the Office of Compliance and Field Operations provides multiple reports on a recurring basis to ensure that Commissioners get information on investigations and enforcement actions, including monthly status reports, weekly briefings by the Office of the Executive Director and biweekly briefings with the Director of the Office of Compliance and Field Operations. In addition to these regularly scheduled briefings, the Office of Compliance and Field Operations also provides ad hoc briefings to Commissioners on emerging topics of interest.

During my tenure as Acting Chairman, I have made sure that other Commissioners have received more information on Compliance matters than I was privy to when I was a Commissioner.

The Honorable Robin L. Kelly

According to the National Center for Injury Prevention and Control, more than 31,000 men, women and children die annually from gunshot wounds in the United States. The burden of gun violence has taken an incredible toll on our nation. A recent study on gun violence found that the loss of quality of life, psychological and emotional trauma, decline in property values and other legal and societal consequences stemming from gun violence cost an estimated \$174 billion, with the government absorbing \$12 billion in costs.

The wide-ranging impact of gun violence is real, and the consequences are too great to ignore. It's critical that we act now to make our communities safer from guns. A bill that I introduced this Congress would amend the Consumer Product Safety Act and remove the exclusion of pistols, revolvers and other firearms from the Consumer Product Safety Commission's (CPSC) definition of "consumer product." This would allow the CPSC – which already oversees hazardous products that pose a threat to American consumers – to issue safety standards for guns and ammunition that will help reduce gun-related deaths.

The CPSC currently has jurisdiction over more than 15,000 kinds of consumer products used in and around the home, like teddy bears and bicycles. However, guns, which kill thousands of Americans every year, are virtually the only consumer product not regulated for health and safety. Regulation of the design of guns and ammunition can save lives and prevent serious injuries. If the CPSC can regulate relatively benign consumer products, it certainly should also be allowed to regulate guns, which pose a far greater threat to consumers. By allowing the CPSC to regulate guns, we'll be taking responsible steps in promoting common sense safety reforms that will reduce gun-related deaths. The sole task of the CPSC is to protect Americans from the dangers of certain consumer products, and by preventing them from regulating easily accessible firearms, we fail to adequately protect the everyday American from an epidemic of gun crime.

The mission of the CPSC is to protect consumers from an unreasonable risk of injury or death associated with use and foreseeable misuse of a consumer product. According to CPSC's data gathered through the National Electronic Injury Surveillance System from approximately 100 Emergency Departments throughout the country, about 22 percent of firearms injuries are unintentional. It is clear that guns pose a risk to consumers.

In that spirit, I ask an open question to all of you:

1. 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?

Response: I have concerns on whether CPSC is the appropriate agency to regulate firearms, even with additional funding. Gun violence is a problem with many causes, many of which the CPSC is not set up to address. We are a small agency with an already large mission. I

am proud to say that the CPSC works every day to prevent injuries and deaths, and has made great progress on many hazards. I think adding firearms to that mission could easily become an all-consuming exercise. Depending on the authority given to the CPSC, it is possible that there could be an impact on firearm incidents but the cost to CPSC's core mission should not be dismissed.

2. 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?

Response: As I mentioned at the hearing, CPSC needs additional funding and resources to help us accomplish our mission. The committee and Congress can assist us most by providing those resources. Currently, CPSC does enforce the safety of gun safes, other firearms locking devices and youth-resistant firearm containers. CPSC participates in voluntary standards on locking devices and youth-containers and recently called for updates to these standards. Earlier this year we issued a recall of a gun safe that could fail and allow access to the firearms inside. Our efforts related to these products help prevent needless tragedies related to guns. I am aware of proposals to expand CPSC's authority on this issue. I stand ready to carry out any law Congress may enact.

The Honorable Cathy McMorris Rodgers

1. Acting Chair Buerkle, I am strongly concerned about the open table saw rulemaking that would grant a government mandated monopoly to one company, using unclear data, with no FRAND licensing terms. The courts have struck down the agency when it's gone too far – most recently in the 10th Circuit.

- a. What are your process reform priorities for the Consumer Product Safety Commission's (CPSC) agenda, and how we can ensure safer products for consumers and less taxpayer funds are at risk of being tied up in litigation?

Response: I agree with your concerns and believe the priority should be consumer safety. A priority of mine has been that staff works within the confines of our governing statutes. In rulemaking, it is essential that we meet all statutory requirements so that any action we take will withstand legal scrutiny.

2. Acting Chair Buerkle, I believe in streamlined and efficient government – which requires interagency cooperation and public private partnerships. I'm concerned about the risk of duplication with limited resources in some of the discussion around Internet of Things activities. Can you describe the Commission's interagency work and how you plan to avoid duplicative regulations, particularly with initiatives around internet-connected consumer products?

Response: I also believe in streamlined and efficient government with an emphasis on collaborations with all of our stakeholders, including our sister agencies. The Internet of Things (IoT) presents new and unique challenges and opportunities for the CPSC, because internet connectivity introduces new capabilities over a wide spectrum of products. We recognize the importance of collaborating with other federal agencies and our stakeholders to avoid duplicative efforts and reach consensus on the best approach to keep consumers safe.

To that end, CPSC is taking a three-pronged approach to address the safety of internet connected consumer products:

- development of voluntary standards (domestic and international),
- collaboration and coordination with other federal agencies and foreign governments, and
- collaboration and coordination with our stakeholders.

Under my leadership, CPSC staff established an Interagency Working Group on Consumer Product Safety of Internet Connected Products. Participating agencies include the National Institute of Standards and Technology's (NIST) National Cybersecurity Center of Excellence (NCCoE), the Food and Drug Administration (FDA), the Federal Trade Commission (FTC), the Federal Communications

Commission (FCC), the Department of Energy (DoE), and the Department of Homeland Security (DHS).

The CPSC's Interagency Working Group serves as a focal point for information sharing, research, and enforcement activities specific to internet connected consumer products. The purpose of the Interagency Working Group is to articulate each agency's roles and responsibilities on internet connected products, identify potential gaps that agencies are experiencing, find opportunities to learn from each other in a collaborative manner, create an opportunity for interagency-cooperation, promote the development of voluntary, consensus-based standards, and for CPSC to develop high level best practices baselines to ensure that connected consumer products are secure by design.

Additionally, as Acting Chair, I have advanced the concept of "tech to tech" meetings with our stakeholders. These have been very productive in the development of voluntary standards. The agency has increased its number of public meetings and interactions with all of our stakeholders.

3. Acting Chair Buerkle, in a typical case where Section 6(b) of the Consumer Product Safety Act would apply, what is the process the Commission currently undergoes to provide a company notice of public disclosure of information?

Response: The most common case is a request for a company's records pursuant to the Freedom of Information Act. In this case, CPSC's FOIA Office provides notice to the company via its electronic FOIA Public Access Link (PAL) or certified U.S. mail to inform them that a request was made for records pertaining to them. A copy of the potentially responsive records (with redactions for any exempt inter- or intra-agency communications, or personally identifiable information (PII)) is attached to the notice and the company is given 15 business days to respond with comments as to why the records should or should not be disclosed.

4. Acting Chair Buerkle, please explain the statutory options the Commission has to notify the public of imminent hazards, such as an action filed pursuant to Section 12 of the Consumer Product Safety Act?
 - a. If necessary, can the Commission file an administrative complaint? If so, please explain.
 - b. If necessary, can the Commission make a "health and safety finding" under Section 6 to shorten the notice period? If so, please explain.

Response: Section 12 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2061, gives the Commission authority to file an action in a U.S. District Court against an "imminently hazardous consumer product" for seizure of such product or against any person who is a manufacturer, distributor or retailer of such product, or both. An "imminently hazardous consumer product" is defined as a consumer product which

presents imminent and unreasonable risk of death, serious illness, or severe personal injury. Filing an action under section 12 in Federal court could provide temporary and permanent injunctive relief in the form of an order requiring public notice, recall, or refund after hearing by the court.

Section 15(c)(1) of the CPSA, 15 U.S.C. § 2064(c)(1) allows the Commission to notify a manufacturer that a product is an “imminently hazardous consumer product” where it has filed an action under section 12. In such circumstance, the Commission can order the manufacturer to cease distribution of the product and notify all persons that transport, store, or distribute the product to cease distribution. The Commission can further order the manufacturer to notify appropriate state and local health officials, and the public. Under section 15(c)(3) of the CPSA, if the district court determines that the product is not an “imminently hazardous consumer product” under section 12, the Commission must rescind its order.

The Commission may also issue such an order after filing an administrative complaint under section 15(c)(1) against a manufacturer and determining, after a hearing under 5 U.S.C. § 554, that a product distributed in commerce presents a substantial product hazard and that notification is required in order to adequately protect the public from such substantial product hazard.

Section 12(c) of the CPSA, 15 U.S.C. § 2061(c) provides that the Commission, where appropriate, shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product where a section 12 proceeding is filed in District Court.

Where the Commission has filed an action under section 12 of the CPSA, or initiated a Rulemaking or Adjudicatory proceeding, section 6(b)(4) of the CPSA makes inapplicable the 6(b)(1) public disclosure requirements for a manufacturer’s advance notice and opportunity to comment on product specific information (which includes a provision for a public health and safety finding to shorten the applicable notice period).

5. Acting Chair Buerkle, if a potential hazard relates more to a category of consumer products, rather than a particular product associated with a specific company, does Section 6(b) apply? If not, please explain.

Response: Section 6(b)(6) of the CPSA, 15 U.S.C. § 2055(b)(6), governs the Commission initiation of the public disclosure of information that reflects on the safety of a consumer product or class of consumer products, whether or not the public could ascertain readily the identity of any manufacturer or private labeler. Section 6(b)(6) requires the Commission to establish procedures designed to ensure that such information is accurate and not misleading. Section 6(b)(7) of the CPSA, 15 U.S.C. §

2055(b)(7), requires the Commission, where it has made a public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product or upon the practices of any manufacturer, private labeler, distributor or retailer of consumer products, shall in an equivalent manner, publish a retraction of such inaccurate or misleading information.

6. Acting Chair Buerkle, I have serious concerns with agencies issuing guidance as a basis for agency action. Will you commit to working within your statutory authority and avoiding extra-statutory actions?

Response: I share your concern related to agencies utilizing guidance as a method to circumvent proper administrative procedure. I believe any agency policy, rulemaking or other administrative action should follow CPSC's statutes and proper procedure.

7. Acting Chair Buerkle, I am always concerned with protecting consumers and small businesses while fostering an environment that supports innovation. Please provide an update on the Regulatory Robot and how the Commission will think about how burdens on small businesses impact consumer safety and choice under your leadership?

Response: The Small Business Ombudsman (SBO) office provides businesses the information they need to ensure they are making and importing compliant products. To better assist small businesses in identifying applicable requirements to their product, in 2018 the SBO released an enhanced version of the Regulatory Robot which is now available online at <https://business.cpsc.gov/robot>. The Robot 2.0 asks users to identify their product category and answer a few short, intuitive questions to generate an end report listing applicable labeling, testing, and product certification requirements. The Robot is available entirely in English and Chinese (simplified), and available for some product categories in Spanish, Vietnamese, and Bahasa Indonesia.

Throughout my CPSC tenure, I have stressed the importance of hearing from all stakeholders, including small businesses. I regularly rely on feedback received by the SBO to understand and consider ways that we may be able to eliminate unneeded regulatory burdens without compromising safety. In 2017, CPSC issued a request for information on ways to reduce regulatory burdens. Staff have compiled responses to that request and we are examining ways we can move forward with some of the suggestions we have received.

8. Acting Chair Buerkle, you have repeatedly stated that voluntary safety standards are generally preferable to mandatory ones. There many misconceptions about voluntary standards, which are not in fact voluntary for industry. Please explain why they are preferable, and whether they are faster than rulemaking proceedings at the CPSC.

Response: The Consumer Product Safety Act expresses a strong preference for voluntary standards rather than government-imposed mandatory standards for most products. Voluntary standards are developed through a structured, consensus-driven process by standards setting organizations such as ASTM, ANSI and UL. The committees that set these standards include participants from the regulated community, consumer advocates, testing labs and the CPSC. Voluntary standards often become widely adopted due to market forces (such as purchasing requirements established by the retail sector or consumer preference for certified products) and the fact that there is buy-in from the regulated industry and stakeholders as they are developed.

CPSC-promulgated mandatory standards generally take much longer to develop than the voluntary standard process. Apart from durable nursery products and other statutory exceptions, CPSC has promulgated only two mandatory standards in the last 14 years. The most recent one was vacated by the courts. Mandatory standards are also harder to update as opposed to voluntary standards which are continually being updated to keep up with emerging hazards and trends.

I am not opposed to mandatory standards if a voluntary standard is found to be insufficient for addressing the hazard or it is not being widely complied with, as our statute dictates.

9. Acting Chair Buerkle, in the CPSC 2020 Budget Request, you state that the CPSC will collaborate with other agencies and industry to advance consumer product safety. I'm pleased to hear you will work with other agencies, and hopefully avoid wasteful duplication. Can you explain why collaboration is important and what, if any, efforts are underway?

Response: Staff actively participates in the development of consensus-based consumer product safety standards which includes consumer advocacy groups, industry, testing labs and other stakeholders. Staff anticipates participating in 74 voluntary standards activities in FY19 for products including numerous juvenile products, Internet of Things and interconnected devices, high-energy density rechargeable batteries and many others.

In addition to the CPSC establishing the Interagency Working Group described in the response to question 2, CPSC works with numerous other agencies to fulfill its mission. One of the more successful partnerships CPSC has is with U.S. Customs and Border Protection. CPSC has built an effective import program that includes co-locating CPSC investigators to work side by side with CBP staff at the largest ports of entry. As an agency with limited resources, CPSC would not be able to do the critical work of intercepting high risk products before they reach consumers without CBP's help.

CPSC's Risk Assessment Methodology (RAM) targeting system utilizes a feed of import data from CBP, and when combined with CPSC's internal data, helps our staff

prioritize shipments to stop for examination. CPSC also has staff co-located at CBP's Commercial Targeting and Analysis Center – or CTAC - in Washington DC. Along with other government agencies that have an interest in targeting commercial shipments, CTAC serves as a fusion center to coordinate activities and share information.

As Acting Chairman, I am involved in addressing the tough policy issues facing government agencies in the area of trade facilitation and trade enforcement. I currently serve as the Vice-Chair of the Border Interagency Executive Council (BIEC). The BIEC is comprised of senior leaders from various agencies with jurisdiction over imports and exports. As budgets become tighter it is more important than ever that agencies work together to find solutions that make sense in terms of protecting the public while efficiently using taxpayer dollars.

10. Acting Chair Buerkle, you and several of your colleagues have indicated publicly that transparency and stakeholder engagement have been one of your key priorities. Do you intend to establish a formal trade advisory group to inform the agency on such issues as import screening and enforcement? Please walk us through your analysis.

Response: I do not oppose a formal trade advisory group, but the costs of such an approach can be substantial. I have tried to achieve the same objectives at lower cost by increasing stakeholder engagement and transparency throughout the agency. I continue to be open to more formal advisory groups if the agency's appropriation allows.

11. Acting Chair Buerkle, this Committee worked on bipartisan legislation addressing liquid nicotine and required child-proof caps on containers. What actions has the Commission taken on this issue, and what are you seeing in the marketplace as a result of this legislation?

Response: In fiscal year 2017, CPSC launched an inspection program to evaluate industry compliance with the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA). Over 300 establishment inspections were conducted. The majority of violations found during these inspections concerned certification-related violations. There were a small number of violations that concerned special packaging violations. These generally involved low volumes of inventory in which the establishment chose to destroy the violative products during the on-site inspection. In addition, a few establishments were found to be manufacturing liquid nicotine products in-house and not using special packaging. In these cases, CPSC staff worked with these firms to bring their products into compliance.

In April 2019, CPSC launched a new compliance effort. In addition to child-resistance, this program also is evaluating compliance with the CNPPA's flow restriction requirements. Collection of products for testing and determination of their

compliance is ongoing, and we will take appropriate action to remove violative product from the market.

CPSC continues to work to inform and educate industry members, including suppliers and retailers, to promote compliance with the law. Staff has issued several letters this year to provide guidance on the packaging and certification requirements of the CNPPA as well as supplying testing protocols for restricted flow.

12. Acting Chair Buerkle, please give us an update on the Fast Track Recall process. Are there any barriers to this program reaching its full potential, and are there any ways that Congress could improve the program?

Response: The Fast Track program has been in place 22 years, and has proven to be a valuable tool for responding quickly to address hazardous consumer products both in the marketplace and with consumers. Between FY14 and FY18, CPSC has, in conjunction with firms, removed approximately 433 million products that posed a safety concern from the marketplace — approximately 45% of all product removals over that time period were under the Fast Track program.

Our staff is currently evaluating the Fast Track program to identify areas for improvement. Once our evaluation is complete, I will inform the Committee should improvements to the program need support from Congress.