

Additional Questions for the Record

**Subcommittee on Consumer Protection and Commerce
Legislative Hearing on
“Keeping Kids and Consumers Safe from Dangerous Products”
June 13, 2019**

Mr. Charles A. Samuels, Member, Mintz

The Honorable Michael C. Burgess, M.D. (R-TX)

1. Mr. Samuels, in your testimony you pointed out that the part of the fast track process that most often derails the expedited recall of a product is the CPSC press release.
 - a. Why is it the press release that causes such delays? First, thank you Mr. Burgess for your questions. I also want to thank the Subcommittee for the opportunity to testify about this important subject. I want to emphasize that the fast-track program is valuable and productive and the aim of any legislation should be to recognize that statutorily and improve it, not dilute its value, in protecting consumers by notifying them on as timely a basis as possible of a corrective action or recall. CPSC and its capable career staff support this program, but as I noted in my testimony it has become overly bureaucratic and inflexible over time. It can be improved and one of these improvements would be to eliminate the sometimes lengthy internal time periods in which a variety of CPSC offices input and make revisions to press releases before they can be used publicly. This is a two-way street and sometimes it is the company that causes the delay on communications releases. If a reasonable statutory framework can eliminate the internal press- release- by -committee process while ensuring that critical information is provided to the CPSC and the public and that the corrective action entails the proper product scope as well as a technically sound fix, then such legislation will allow public notification to be expedited. Consumers will be safer.
 - b. There are reports that some press releases are delayed due to only one or two words. In your view, is this reasonable? This is not reasonable where disagreements and internal delays over press release wording have more to do with the need for bureaucratic uniformity or concern about the agency making a mistake than expediting communications to the public.
 - c. In addition to Representative McMorris Roger's legislation, what else can congress do to improve the speed and efficiency of this program? Is more oversight necessary? The Commission has compliance staff dedicated to Fast-Track but that does not appear to be the case throughout the other offices in the agency. Other aspects of the review, such as technical and communications,

appear to be handled in the normal course sometimes causing delays. Whether or not this legislation is advanced, the Subcommittee should require a report from the Commission on relevant time periods associated with Fast-Track and with a detailed description of the resources devoted and internal coordination procedures.

- d. Many of the products reviewed by the CPSC are manufactured by small businesses that cannot afford high legal fees or a heavy-handed punitive action by federal regulators. In your view, what other options do regulators have to incentivize voluntary recalls? This is a critical point because, as you note, many smaller US businesses, whether manufacturers, assemblers, importers, distributors or retailers, are covered by and get caught up in the CPSC regulatory system, often through no fault of their own when, for example, they are entirely reliant on suppliers. Often, retaining specialized legal counsel is not practical. The Commission has a Small Business Ombudsman who with very limited resources does an excellent job. This function should be significantly enhanced and this office should assist smaller businesses when they are going to be involved with a corrective action. At the same time, the online resources of the Commission explaining practically what a small business will need to do in its involvement with the recall are useful but limited and could be enhanced based on decades of experience. The Commission should reach out to small businesses and their representatives and learn how these materials can be improved. Finally, and this is true across the corrective action spectrum, there are too many recalls of minor hazards in which the same format and procedure is applied as for significant product hazards. Greater use of hazard classification and tiers and appropriate corrective action responses related to the hazardousness of the product would reduce the burden on regulated industry, small or large, as well as Commission staff. The Commission is start to look at this issue but should be required to provide much greater focus and take appropriate action in the future.