Description of document:	Letters on various topics from the Consumer Product Safety Commission (CPSC) to Congress, FYI5 - FY17
Requested date:	2017
Release date:	13-December-2019
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Source of document:	U.S. Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814 Fax: 301-504-0127 Email: CPSCFOIARequests@cpsc.gov CPSC e-FOIA Public Access Link Website

U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

December 13, 2019

VIA EMAIL & CERTIFIED MAIL

RE: Freedom of Information Act Request #17-F-00486: CPSC Letters to Congress during FY15, FY16, and FY17.

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). The responsive record has been processed and a copy containing the releasable portions is enclosed. Per your December 5, 2019 email, all attachments that implicate Section 6 of the Consumer Product Safety Act (CPSA) have been omitted.

Certain portions of the responsive record are being withheld pursuant to FOIA Exemptions 3, 5 and 6, and section 6(b)(1), of the CPSA. *See* 5 U.S.C. §§ 552(b)(3), (b)(5), (b)(6); and 15 U.S.C. § 2055(b)(1).

Exemption 3. FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to these records, we are relying on CPSA section 6(b)(1), which prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers.

Exemption 5. Additionally, certain internal staff memoranda, notes, and drafts are being withheld pursuant to FOIA Exemption 5. Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Portions of text being withheld are both predecisional and deliberative, consisting of the recommendations, opinions, suggestions, and/or analyses of staff. We have determined that disclosure would be contrary to the public interest because disclosure would impair the frank exchange of views necessary with respect to such matters.

Exemption 6. FOIA Exemption 6 provides for the withholding of personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Absent authorization to disclose the identity of the person named in the record, we believe that information falls within the protection of FOIA Exemption 6, and is being withheld accordingly.

FOIA Administrative Procedures

Right to appeal. You may appeal the delay in processing your request. If you are not satisfied with the response to this request, you may administratively appeal in writing, addressed to FOIA APPEAL, Office of the General Counsel, ATTN: Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East West Highway, Room 820 Bethesda, MD 20814-4408. Your appeal must be postmarked or electronically transmitted (cpscfoiarequests@cpsc.gov) within 90 days of the date of the response to your request. You can also fax your appeal to 301-504-0127. You can contact us Monday – Friday from 8:00AM – 4:30PM EST by telephone at 1-800-638-2772, by fax to 301-504-0127.

Before filing a formal appeal with the Commission, you may contact me or Senior FOIA Public Liaison, Bob Dalton (rdalton@cpsc.gov), at 1-800-638-2772 for any further assistance or to discuss any aspect of your request. Assistance may include guidance on possible reformulation of your request or an alternative time frame for processing the request.

Right to Mediation. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile to 202-741-5769.

Fees. No fee was charged.

Sincerely,

ABIOYE MOSHEIM

Digitally signed by ABIOYE MOSHEIM
DN: c=US, o=U.S. Government, ou=Consumer Product Safety Commission, cn=ABIOYE MOSHEIM, 0.9.2342.19200300.100.1.1=61001003544829
Date: 2019.12.13 14:16:03 -05'00'

Abioye Mosheim
Chief FOIA Officer, and
Assistant General Counsel
Office of the General Counsel
Division of the Secretariat
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Attachment/Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

January 22, 2015

The Honorable Richard Blumenthal
United States Senate
724 Hart Senate Office Building
Washington, DC 20510

Dear Senator Blumenthal:

Thank you for your letter of November 12, 2014, concerning the U.S. Consumer Product Safety Commission's (CPSC) work on reducing deaths and injuries associated with fire involving upholstered furniture, as well as concerns relating to the use of flame retardant (FR) chemicals in furniture. I want you to know that I certainly share your concerns as well as your opposition to consumers, especially children, being exposed to harmful chemicals. I also want to thank you for your continued leadership on this important safety matter.

I believe the public deserves a comprehensive national standard that addresses the deadly risks associated with upholstered furniture fires but does not involve the use of harmful chemicals to meet that standard. Our staff is continuing its technical work toward this goal. As part of this effort, we are closely monitoring the implementation of the California Department of Consumer Affairs, Bureau of Electronic and Appliance Repair, Home Furnishing and Thermal Insulation's (the Bureau) recent update to TB-117-2013.

As you note in your letter, CPSC's March 2008 Notice of Proposed Rulemaking (NPR), published in the *Federal Register*, proposed a standard addressing about half of the total fire-related deaths from residential furniture fires. The proposal would allow manufacturers and importers of upholstered furniture to choose one of two possible methods to comply with an upholstered furniture flammability standard. Manufacturers could use cover materials that are sufficiently smolder resistant to meet

a cigarette ignition test, or they could place a fire barrier that meets both smoldering and open-flame resistance tests between the cover fabric and interior filling materials. FR chemical additives would not be necessary nor, in CPSC staff's view, would they likely be used.

(b)(5)

To gather more information about developments in fire barrier technology and their potential to reduce the fire hazard posed by residential upholstered furniture, CPSC held a public meeting in April 2013. At that meeting, CPSC solicited comments on several topics, including the technical and economic feasibility of fire barriers, as well as information on the technologies fire barrier manufacturers use to achieve improved fire performance and whether those technologies include, among other things, FR chemicals, specialty fibers, or inherently fire resistant materials. CPSC staff also requested comments on the possibility of moving from a regulatory approach that primarily addresses fire deaths caused by smoldering ignition sources to a regulatory approach that relies on the use of fire barriers to address fires started by multiple types of ignition sources (including smoldering).

Since the 2013 meeting, CPSC staff has developed and completed a full scale flammability pilot test program of furniture constructed with a range of commercially available fire barriers and begun material characterization to identify the presence and types of FR chemicals currently being used. CPSC also provided testimony before the Bureau as the Bureau considered its proposed updates to TB 117.

As you are aware, TB 117-2013's requirements became mandatory in California beginning January 1, 2015. Our technical staff will be closely monitoring this implementation. Additionally, we were pleased to see the Bureau take a similar approach to the Commission's when the Bureau announced that it would "commence a two-year study to evaluate and re-evaluate its flammability standards including a study on the available and emerging fire barrier materials and other relevant technologies to examine their open flame fire resistant properties, to monitor and evaluate cost effectiveness, and determine their applicability in open flame testing of upholstered furniture." CPSC staff will continue to track the Bureau's findings on this and other relevant studies in this area.

Finally, in addition to monitoring the ongoing regulatory and scientific activities in California, CPSC staff is working with ASTM International and the National Fire Protection Association (NFPA) on voluntary standards development activities for furniture flammability standards.

As this work continues, we will certainly keep your views in mind, as I believe we share the same goal of protecting consumers from fires associated with upholstered furniture while avoiding exposure to harmful chemicals. I want to assure you that I will continue to closely track the progress the agency and the related stakeholders make in this area.

Thank you again for your letter and for your continued support of the Commission and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Jason K. Levine, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at JLevine@cpsc.gov.

Sincerely,

Elliot F. Kaye

Senator -
Looking forward to
working with you
as our new Ranking Member.

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

January 22, 2015

The Honorable Edward J. Markey
United States Senate
218 Russell Senate Office Building
Washington, DC 20510

Dear Senator Markey:

Thank you for your letter of November 12, 2014, concerning the U.S. Consumer Product Safety Commission's (CPSC) work on reducing deaths and injuries associated with fire involving upholstered furniture, as well as concerns relating to the use of flame retardant (FR) chemicals in furniture. I want you to know that I certainly share your concerns as well as your opposition to consumers, especially children, being exposed to harmful chemicals. I also want to thank you for your continued leadership on this important safety matter.

I believe the public deserves a comprehensive national standard that addresses the deadly risks associated with upholstered furniture fires but does not involve the use of harmful chemicals to meet that standard. Our staff is continuing its technical work toward this goal. As part of this effort, we are closely monitoring the implementation of the California Department of Consumer Affairs, Bureau of Electronic and Appliance Repair, Home Furnishing and Thermal Insulation's (the Bureau) recent update to TB-117-2013.

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a cigarette ignition test, or they could place a fire barrier that meets both smoldering and open-flame resistance tests between the cover fabric and interior filling materials. FR chemical additives would not be necessary nor, in CPSC staff's view, would they likely be used.

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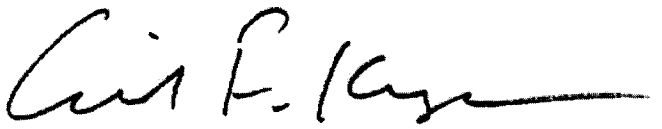
Finally, in addition to monitoring the ongoing regulatory and scientific activities in California, CPSC staff is working with ASTM International and the National Fire Protection Association (NFPA) on voluntary standards development activities for furniture flammability standards.

As this work continues, we will certainly keep your views in mind, as I believe we share the same goal of protecting consumers from fires associated with upholstered furniture while avoiding exposure to harmful chemicals. I want to assure you that I will continue to closely track the progress the agency and the related stakeholders make in this area.

Thank you again for your letter and for your continued support of the Commission and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Jason K. Levine, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at JLevine@cpsc.gov.

Sincerely,



Elliot F. Kaye

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

June 12, 2015

The Honorable Jerry Moran
United States Senate
521 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Moran:

Thank you for your May 7, 2015 letter regarding the U.S. Consumer Product Safety Commission's (CPSC) congressionally directed rulemaking on phthalates and phthalate alternatives. As you know, section 108(b)(3)(A) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), 15 U.S.C. § 2057c, directs the CPSC to promulgate a final rule on phthalates and phthalate alternatives for use in children's toys and childcare articles based on the report of an independent Chronic Hazard Advisory Panel (CHAP).

The Commission received the final CHAP report on July 18, 2014. Because of section 108(b)(3)'s direction to promulgate a final rule not later than 180 days after receiving the report of the panel, I directed CPSC staff to work as expeditiously as possible on this rulemaking. Consistent with the legal requirement of Section 108 and the corresponding provisions of the Administrative Procedure Act. After receiving CPSC staff's draft Notice of Proposed Rulemaking (NPR) based upon the CHAP report, the Commission voted to publish the NPR and take public comments through March 16, 2015. On March 13, 2015 the Commission voted unanimously to extend this comment period 30 days, until April 15, 2015.

I share your belief that there is a need for the agency to analyze the more current data sets regarding exposure of pregnant women to phthalates. This is why, at my direction, CPSC staff is analyzing the 2011– 2012 and earlier National Health and Nutrition Examination Survey (NHANES) data sets using the same approach and

methodology as the CHAP, to the extent possible. The revised 2011–2012 data set became available in October 2014.

My colleagues have supported my position on the need for this analysis, which is why I was pleased they joined me in a unanimous vote of the Commission directing staff to draft a technical analysis of phthalates exposures using the 2009-10 and the 2011-12 NHANES data and, upon completion of the analysis, to publish a *Federal Register* notice announcing a 45-day public comment period on that analysis, which will be made publicly available for comment. It is my expectation that this request for comments on the staff's technical analysis will be transmitted to the *Federal Register* before the end of June.

CPSC staff is currently reviewing and considering all of the comments we received regarding the NPR, through the end of the extended comment period. These previously received comments, any comments received as a result of the staff's analysis of the 2009-10 and 2011-12 NHANES data, as well as the draft final rulemaking package sent to the Commission, will be available publicly. In addition, the CHAP report, the peer review comments on the CHAP report, and CHAP meeting summaries are all available, and have been available since the CHAP issued its report, for public review on CPSC's website: http://www.cpsc.gov/en/Regulations-Laws--Standards/Statutes/The-Consumer-Product-Safety-Improvement-Act/Phthalates/Chronic-Hazard-Advisory-Panel-CHAP-on-Phthalates/.

Your letter also addresses the issue of the CHAP's use of a cumulative risk assessment methodology as part of its analysis, a topic I understand that has been subject to numerous comments as part of this rulemaking. However, it is important to note that specifically with respect to the use of a cumulative risk assessment, section 108(b)(2)(B)(iv) of the CPSIA charged the CHAP to "consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources, such as personal care products."

I appreciate your sharing your views on this important public health issue before the Commission. You have my full commitment that I will continue to work within the required legal framework and specific mandates prescribed by the CPSIA. I believe that our decision to request comments regarding staff's analysis of the more recent NHANES data demonstrates our commitment to maintaining an open and transparent rulemaking process as required by the APA. Additionally, as part of maintaining a full record on this rulemaking, I have directed CPSC staff to add your letter to the rulemaking record. I will review all comments carefully and am committed to the rulemaking being conducted

exclusively within the confines of the agency's legal authorities and in the interest of public health and safety.

Thank you again for your letter and for your continued support of the Commission and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Jason K. Levine, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at JLevine@cpsc.gov.

Sincerely,

Elliot F. Kaye

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

June 20, 2016

The Honorable Edward Markey
United States Senate
218 Russell Senate Office Building
Washington, DC 20510

The Honorable Richard Durbin
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Dear Senators Markey and Durbin:

Thank you for your letter regarding the report issued by the Environmental Working Group (EWG) regarding asbestos and crayons and toy fingerprint analysis kits imported from China. Protecting children from exposure to harmful chemicals and substances in consumer products, especially children's products, remains one of my highest priorities.

As your letter notes, CPSC has examined previously the issue of asbestos in crayons. In 2000, CPSC staff analyzed certain crayon products after media reports surfaced about the presence of asbestos in three major brands of crayons. Based on the results of that testing and evaluation, CPSC staff concluded that the risk of a child being exposed to fibers through inhalation or ingestion of crayons containing asbestos and transitional fibers was extremely low. Despite this determination, CPSC staff concluded that, as a precaution, crayons should not contain these fibers. CPSC staff asked the industry to reformulate their crayons, using substitute ingredients. Three crayon manufacturers ((b)(3):CPSA Section 6(b)(1) agreed to reformulate. The complete CPSC staff report on asbestos fibers in children's crayons can be found here: http://www.cpsc.gov/pagefiles/108033/crayons.pdf.

In addition, CPSC is aware of the 2007 and 2008 reports involving the (b)(3):CPSA Section 6(b)(1) and the subsequent recall by the product's manufacturer. The investigation of asbestos fibers in (b)(3):CPSA Section 6(b)(1)

(b)(3): CPSA involved 10 kits sampled and tested by the Health Canada (HC) Product Safety Laboratory. The HC investigation concluded that none of the kits showed any quantifiable amounts of asbestos by either polarized light microscopy or by transmission electron microscopy.

Because we share your view that children should not be exposed to asbestos in consumer products, we moved quickly to evaluate the products identified in the EWG report. As our staff previously shared with your offices via phone, CPSC staff collected samples of the crayons and activity kits containing sandy or powdered materials as described in the EWG report and arranged testing to assess the potential for these products to release asbestos during use. Staff worked with accredited labs and used state-of-the-art microscopy techniques to estimate potential children's exposure to asbestos during use of the products. As a result of test data, staff found a negligible risk for cancer from use of children's crayons or crime scene kits, i.e., no risk estimates exceeded one per million. CPSC staff believes that these estimates are conservative (i.e., health protective) based on assumptions that tend to overestimate exposure. While we have no data to support taking additional action at this time, if either of your staffs has any additional information that could be actionable, please let us know. Your letter also raises a critical aspect of this matter – resources and tools. When we next meet, I would like to have a better discussion about the limitations of our resources and tools and how those limitations are materially preventing us from protecting the public, especially children, to the level they should be protected.

Thank you for sharing your views on these important public health issues and for your continued support of the Commission and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Julia Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at: JRichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

Elliot F. Kaye

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

Julia Richardson
Director, Office of Legislative Affairs

Tel: (301) 504-7853
E-mail: OLA@CPSC.gov

December 15, 2015

The Honorable Mike Pompeo
U.S. House of Representatives
436 Cannon House Office Building
Washington, DC 20515

The Honorable Brett Guthrie
U.S. House of Representatives
2434 Rayburn House Office Building
Washington, DC 20515

The Honorable Adam Kinzinger
U.S. House of Representatives
1221 Longworth House Office Building
Washington, DC 20515

The Honorable Garrett Graves
U.S. House of Representatives
204 Cannon House Office Building
Washington, DC 20515

Dear Representatives Pompeo, Guthrie, Kinzinger, and Graves:

Thank you for your August 6, 2015 letter regarding the U.S. Consumer Product Safety Commission's (CPSC or Commission) congressionally-directed rulemaking on phthalates and phthalate alternatives.

The Chairman appreciates you sharing your views on this important public health issue before the Commission. As part of maintaining a full record on this rulemaking, the Chairman directed CPSC staff to add your letter to the rulemaking record. All comments are reviewed carefully and the Chairman remains committed to the rulemaking being conducted exclusively within the confines of the agency's legal authorities and in adherence to the requirements of the Administrative Procedures Act.

Thank you again for your letter and for your continued support of the Commission and its mission to safeguard consumers.

Should you or your staff have any questions, please do not hesitate to contact me by telephone at (301) 504-7853, or by e-mail at JRichardson@cpsc.gov.

Sincerely,

Julia E. Richardson

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

December 18, 2015

The Honorable Bill Nelson
United States Senate
425 Hart Senate Office Building
Washington, DC 20510

The Honorable Richard Blumenthal
United States Senate
425 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Members Nelson and Blumenthal:

Thank you for your November 4, 2015 letter regarding the safety of fields and playgrounds across the country made or infilled with crumb rubber from scrap tires. As Chairman of the U.S. Consumer Product Safety Commission (CPSC), and more importantly, as a father of two young boys, I certainly share your concerns. Consumers, and in particular parents, deserve to know whether or not these fields and playgrounds are safe to use.

You ask several questions in your letter about the technical assistance that CPSC plans to provide to California's Office of Environmental Health Hazard Assessment's comprehensive review of crumb rubber. The answers to each of those questions are below:

1. How will the CPSC ensure that the California study also assesses health risks associated with crumb rubber used on playgrounds?

Crumb rubber is used in the manufacture of mats or padding that may be used in playground areas such as unitary surfacing. After speaking with officials from California who are involved in the study, it is CPSC staff's understanding that the California study plan includes the evaluation of chemicals released from indoor and outdoor playground mats. Surface wipe samples and air samples taken from one foot above the mat surface will be used to assess potential skin and respiratory exposures to children. To assess the ingestion route of exposure, California's analysis of extractions from new uninstalled crumb rubber could provide adequate surrogate data for the crumb rubber playground mats. Those extractions include artificial biofluids (lung, sweat, saliva, gastric juice, and intestinal juice). As such, it is expected that the California study will address the health risks of certain crumb rubber used on playgrounds. CPSC staff will continue to monitor the study and recommend adaptations and augmentations if/as necessary.

2. Does CPSC staff believe that crumb rubber or synthetic turf products marketed primarily towards primary schools should comply with the lead limits applicable to children's products under section 101 of the Consumer Product Safety Improvement Act of 2008?

CPSC staff is not currently aware of any manufacturers that market their crumb rubber and synthetic turf products primarily toward primary schools. Even so, the current voluntary standard, ASTM F2765-14 Standard Specification for Total Lead Content in Synthetic Turf Fibers, requires that the artificial turf fibers comply with the 100ppm lead limit for children's products. Considering how harmful lead is to children, if further study demonstrates children are being exposed to lead from these products, especially over 100ppm, I would direct staff to consider all reasonable options to address that exposure.

3. How will the CPSC ensure that risks to the most vulnerable populations, including toddlers and athletes who play frequently and intensely, are assessed in this study?

Based on CPSC staff's review of the California study approach, the California study will examine the manner in which sensitive populations, such as children, may be more vulnerable to exposures than others, including how exposures may vary by age group. The study plans to assess the frequency and manner in which children interact with the different turf fields and playground mats. CPSC staff will also continue to monitor the study and recommend adaptations and augmentations if/as necessary.

4. Since the makeup of crumb rubber varies widely from one batch to another, and since tire ingredients can be proprietary, how can the CPSC ensure that this study examines truly representative samples?

CPSC staff acknowledges that the composition of tires varies by manufacturer and over time. A single soccer- or football-sized field typically contains crumb rubber from 20,000 to 40,000 scrap tires of various origins. Therefore samples collected from a single field would represent a mixture of scrap tires from thousands of sources. As California intends to collect samples from multiple fields, old and newly installed, staff expects that an extensive variety of tire compositions will be studied.

5. How will the CPSC ensure that all potential exposure pathways (dermal, oral and inhalation) are being evaluated?

Based on CPSC staff's review of the California study approach, the study is sampling for inhalation, dermal, and oral exposure routes. Air sampling above fields and playground mats will be used to assess for chemicals and particles that can be inhaled. Extraction with artificial lung fluid will assess chemical release from particles that are inhaled into the lungs. Wipe sampling of turf, playground mats and athletic equipment (e.g., gloves, balls) will aid in the assessment of dermal exposure as well as extraction, using artificial sweat, of chemicals from crumb rubber and synthetic grass blades. Extraction of crumb rubber in saliva, gastric juice, and intestinal juice will reveal compounds that may be released after ingestion of particles.

6. What steps will be made to guarantee that conclusions from the California study can be generalized for any scrap tire crumb rubber products and playing conditions nationwide?

The CPSC staff acknowledges that outdoor fields within the state of California will not be representative of all synthetic turf fields across the country. However, since California is the third largest state in the U.S. and covers 770-miles of North-South dimension, CPSC staff notes that a range of climatic conditions for outdoor fields are possible. In addition, the California study will assess chemical releases from fields of various ages, activity patterns, and weather conditions (e.g., summer peak heat), as well as varying degrees of maintenance (e.g., poorly versus well maintained fields). CPSC staff will also continue to monitor the study and recommend adaptations and augmentations if/as necessary.

(b)(5)

While I am pleased CPSC staff will be providing technical assistance to California, I believe the federal government has a far larger role to play to provide parents with the answers they deserve. This public health matter requires the kind of close coordination between federal agencies, as well as Congress, that from my perspective has been lacking thus far. I also believe this coordination is preferable to each agency responding to separate Congressional committees by undertaking individual and different investigations. There has to be a more efficient, timely and effective approach.

Since I have been in this position, I have made it a point to engage with the leadership at a number of our sister agencies with jurisdiction in the area of chemical exposures to begin to enhance significantly federal coordination. And this engagement is not just on crumb rubber. There are a stunning number of chemicals of concern that need far more attention than they are currently receiving because of unnecessary limitations. In the meantime, countless children continue to be exposed to potentially harmful chemicals and parents continue to be frustrated and concerned.

Even with improved agency coordination, Congress has a crucial role to play in the government finding answers to chemical exposures to children, both through much-needed appropriations (at least for CPSC), as well as potentially through granting additional legal authorities. On funding specifically, while we can and will continue to provide technical assistance, CPSC is not in a position to contribute significant resources to any federal effort

without a commensurate increase in appropriations. While that might not be what Congress wishes to hear in this budget environment, it would be disingenuous of me to pretend otherwise.

With Congress and the relevant agencies working together, I believe the U.S. Government can augment any work undertaken by California and move toward providing much-needed answers. I am hopeful we will see such a coordinated effort move forward in the near future.

Thank you again for your letter and for your continued support of the CPSC and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Julia Richardson, Director of the Office of Legislative Affairs, by telephone at: (301) 504-7853, or by e-mail at: JRichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

Elliot F. Kaye

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

March 11, 2016

The Honorable Amy Klobuchar
United States Senate
302 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Klobuchar:

Thank you for your January 12, 2016 letter regarding the potential fire and fall hazards associated with self-stabilizing scooters, commonly referred to as "hoverboards." This investigation remains a priority and the U.S. Consumer Product Safety Commission (CPSC) is working diligently to provide answers that will help to protect consumers from falls and fires.

Consumers deserve answers about the safety of hoverboards. On December 16, 2015, and then again on January 20, 2016, I issued statements on hoverboards that discussed our investigations into the hoverboard-related fires across the country, highlighted the fall hazards associated with the product and offered safety tips to consumers. Additionally, I offered comments to numerous news outlets to keep the public apprised of our investigations and included information aimed at preventing future incidents of fires and user injuries due to falls. Currently, both ASTM International and Underwriters Laboratories (UL) are developing standards for hoverboards to address all identified hazards. I have directed CPSC staff to participate in those efforts.

I was very pleased that in the interim UL announced a voluntary standard to address electrical design issues that could lead to fires, UL 2272, "Outline of Investigation for Electrical Systems for Self-Balancing Scooters." CPSC staff is urging industry to make certain that all hoverboards sold in the U.S. comply with this standard. CPSC compliance staff considers any self-balancing scooter that does not meet the aforementioned standard to be defective and may be detained and/or seized at our ports of entry. In addition, if we encounter such products domestically, we may seek a recall of these products. We have also expanded our investigation of the falls associated with hoverboards, including reviewing the current designs of these products.

Several federal government agencies have been working in close coordination to address this serious issue. CPSC, U.S. Customs and Border Protection, the U.S. Department of Transportation and the Federal Aviation Administration are regularly sharing information and insights with a common goal of taking whatever steps are necessary to prevent injuries and property damage from fires and falls involving hoverboards. CPSC has also been engaged with our international counterparts on an unprecedented level, with nearly daily contact regarding hoverboards. CPSC will continue to publish and disseminate safety information and updates regarding our investigations as our work progresses.

Thank you again for your letter and for your continued support of CPSC and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Julia Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at JRichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

July 27, 2016

The Honorable Amy Klobuchar
United States Senate
302 Hart Senate Office Building
Washington, DC 20510

Dear Senator Klobuchar:

This letter follows-up to my March 11, 2016 correspondence concerning hoverboards. As you are aware, the U.S. Consumer Product Safety Commission (CPSC) recently coordinated a comprehensive recall of more than 500,000 hoverboard units spanning 10 different firms. I have attached the recall notice for your reference. The hoverboards listed in this notice are responsible for more than 99 incidents of the battery packs overheating, sparking, smoking, catching fire and/or exploding, including reports of burn injuries and property damage. The firms involved in the recall are offering refunds, repairs or replacement hoverboards, depending on the model.

Thank you again for your support of CPSC's mission to safeguard consumers. Should you, or your staff, have any questions, please do not hesitate to contact me, or Julia Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at JRichardson@cpsc.gov .

Sincerely,

Elliot F. Kaye

Elliot F. Kaye

Attachment

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

October 17, 2016

The Honorable Roger Wicker
555 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Richard Blumenthal
706 Hart Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Richard Burr
217 Russell Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Ron Johnson
328 Hart Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Kirsten Gillibrand
478 Russell Senate Office Building
United States Senate
Washington, DC 20510

Dear Senators Wicker, Blumenthal, Burr, Johnson and Gillibrand:

Thank you for your recent letter regarding the U.S. Consumer Product Safety Commission's (CPSC or the Commission) decision to direct staff to prepare a briefing package for the Commission considering the safety merits of adopting California's furniture flammability standard, California Technical Bulletin 117-2013 (TB 117-2013), as a mandatory national standard. I certainly share your concern with the danger that flammable furniture poses to consumers as well as the real concerns relating to exposure from toxic chemicals, which are especially harmful to children.

The CPSC staff recently completed its package and submitted it to the Commission for its review. I have enclosed a copy with this letter. (b)(5)

(b)(5)

(b)(5)

(b)(5)

In the meantime, avoiding chemical exposures, especially to children, remains one of my top priorities as Chairman. As I have stated before, while there are a number of agencies with jurisdiction over acute and chronic chemical hazards, CPSC is the only federal agency focused on chemical hazards in consumer products. Chronic chemical hazards in consumer products are especially insidious because they cannot be perceived and consumers cannot make a truly informed decision on the risks associated with them. Furthermore, deaths and injuries are difficult to attribute to chronic chemical exposure because they result from a slow accumulation over time.

Regarding upholstered furniture specifically, I have publicly stated that I will not approve any actions by the Commission while I am Chairman that would require or encourage manufacturers to use harmful chemicals with these products. To the extent manufacturers have already wisely removed harmful chemicals in response to TB 117-2013, they need not be concerned we will proceed with any actions that I can control that would cause them to have to resume using them.

The public deserves an effective and comprehensive national standard that addresses the deadly risks associated with upholstered furniture fires but does not involve the use of harmful chemicals to meet that standard. As we further examine the briefing package and continue our discussions with staff from BEARHFTI, we will continue to look for ways forward including, but not limited to, further research, education and outreach and voluntary standard efforts.

As this work progresses, please continue to share your views with me on this important topic. Additionally, if you have any technical data that is not consistent with the staff report regarding the technical insufficiencies of TB 117-2013, I am hopeful you will share that with me.

Thank you again for your letter and for your continued support of the Commission and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Julia Richardson, Director of the Office of Legislative Affairs, by telephone at 301.504.7853.

Sincerely,

Elliot F. Kaye

Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

July 7, 2016

The Honorable John Thune
Chairman
Committee on Commerce, Science, and Transportation
512 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Chairman Thune:

Pursuant to your request dated July 1, 2016, we are providing you with copies of the Corrective Action Plans (CAPs) and corresponding press releases related to the following CPSC Releases: 09-172, 15-190, 16-198 and 16-204, document numbers CPSCTHUNEREQ-000001-CPSCTHUNEREQ-000043. We are providing you with this information pursuant to 15 U.S.C. §2055(a)(7) and in your capacity as Chairman of the U.S. Senate Committee on Commerce, Science, and Transportation. We have provided notification of your request to the affected firms. These documents include information that is confidential, commercial in nature or otherwise protected from disclosure, and we request that you and your staff ensure that none of this information is disclosed publicly. Julia E. Richardson, Director of CPSC's Office of Legislative Affairs, will be reaching out to your staff today to coordinate the briefing you requested and will continue to work with your staff with respect to your request. Please feel free to contact me should you have any additional questions.

Sincerely,

Elliot F. Kaye

Elliot F. Kaye

Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

September 7, 2016

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Commerce,
Manufacturing, and Trade
Committee on Energy and Commerce
2367 Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Member Schakowsky:

Pursuant to your request dated September 6, 2016, we are providing you with a copy of the monthly progress report related to the (b)(3):CPSA recall #16-204, document numbers CPSCSCHAKOWSKYREQ-000001 to CPSCSCHAKOWSKYREQ-000002. We are providing you with this information pursuant to 15 U.S.C. §2055(a)(7) and in your capacity as Ranking Member of the U.S. House Subcommittee on Commerce, Manufacturing, and Trade. We have provided notification of your request to the affected firm. This document includes information that is confidential, commercial in nature or otherwise protected from disclosure, and we request that you and your staff ensure that none of this information is disclosed publicly.

Should you or your staff have any questions, please do not hesitate to contact me or Julia E. Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853 or by email at jrichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

Julia Richardson
Director, Office of Legislative Affairs

Tel: (301) 504-7853
E-mail: OLA@CPSC.gov

October 28, 2016

The Honorable James Inhofe
United States Senate
205 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Inhofe:

Thank you for your letter of September 15, 2016, regarding the U.S. Consumer Product Safety Commission's (CPSC or Commission) congressionally directed rulemaking on phthalates and phthalate alternatives.

The Chairman appreciates your sharing your views on this important public health issue before the Commission. All comments and empirical data are reviewed carefully. Please know that the Chairman remains committed to the rulemaking being conducted exclusively within the confines of CPSC's legal authorities and in adherence to the requirements of the Administrative Procedure Act. Your letter has been included in the record, and we will share the Final Rule briefing package with you when it is provided to the Commission.

Thank you again for your letter and for your continued interest in this matter. Should you or your staff have any questions, please do not hesitate to contact me by telephone at (301) 504-7853, or by e-mail at JRichardson@cpsc.gov.

Sincerely,

Julia E. Richardson

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

October 5, 2016

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Marsha Blackburn
Vice Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2266 Rayburn House Office Building
Washington, DC 20515

The Honorable Michael Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Leonard Lance
Vice Chairman
Subcommittee on Commerce,
Manufacturing, and Trade
Committee on Energy and Commerce
U.S. House of Representatives
2352 Rayburn House Office Building
Washington, DC 20515

The Honorable Gregg Harper
U.S. House of Representatives
307 Cannon House Office Building
Washington, DC 20515

The Honorable Mike Pompeo
U.S. House of Representatives
436 Cannon House Office Building
Washington, DC 20515

The Honorable Brett Guthrie
U.S. House of Representatives
2434 Rayburn House Office Building
Washington, DC 20515

The Honorable Markwayne Mullin
U.S. House of Representatives
1113 Longworth House Office Building
Washington, DC 20515

The Honorable Susan Brooks
U.S. House of Representatives
1505 Longworth House Office Building
Washington, DC 20515

The Honorable Adam Kinzinger
U.S. House of Representatives
1221 Longworth House Office Building
Washington, DC 20515

The Honorable Gus Bilirakis
U.S. House of Representatives
2112 Rayburn House Office Building
Washington, DC 20515

The Honorable Pete Olson
U.S. House of Representatives
2133 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Upton and Burgess, Vice Chairmen Blackburn and Lance, and other members of the U.S. House Committee on Energy and Commerce:

Thank you for your September 27, 2016 letter regarding selected open rulemakings in the Consumer Product Safety Commission's (CPSC or the Commission) Fall 2016 Regulatory Agenda, specifically the voluntary recall and Section 6(b) information disclosure rulemakings.

As you note in your letter, section 602 of the Regulatory Flexibility Act ("RFA") requires each agency to publish in the Federal Register in October and April of each year a regulatory flexibility agenda. By approving the Regulatory Agenda for Fall 2016 the Commission did not "accelerate [the] time frame" for either the voluntary recall rule or the 6(b) rule as your letter states. Instead, the Fall 2016 Regulatory Agenda was nothing more than a reflection of previous Commission's votes setting general timetables for Commission action. As the agency's Executive Director made clear in our public decisional meeting on this matter[1], CPSC staff proposed dates in the Regulatory Agenda after carefully evaluating the items included based on the Commission's Fiscal Year 2016 Operating Plan, Fiscal Year 2016 Midyear Review and budget, as well as the status of the Commission's many safety projects. Those are the facts. No deal was struck and nothing was accelerated.

Furthermore, as I made clear at that same meeting, I have not changed my position about the relative importance of these rules compared with other pressing safety work. I have also not changed my direction to CPSC staff regarding these rules and CPSC staff has not advanced either of these rules. I have continued to state my belief that these rules can be resolved through compromise at the Commission level.

The only aspect that has changed is that one of my fellow Commissioners has expressed an interest in acting on my call for potential compromise at the Commission level. During the meeting, Commissioner Robert Adler offered to work with the other Commissioners to try to find this compromise. To date, however, he has not circulated anything concrete to the Commission. If he does,

[1] Available at: https://www.cpsc.gov/Newsroom/Video/fall-2016-regulatory-agenda.

and the Commission does decide to move forward with anything concrete, we would proceed by taking into account valuable stakeholder input.

The next opportunity for the Commission to discuss these rules is the public meeting on our Fiscal Year 2017 Operating Plan on October 19, 2016. At this meeting, the Commission will vote on the projects it wishes the CPSC staff to work on in the 2017 fiscal year.[2] At that time, I anticipate that the Commission may express a desired path forward regarding either or both of these rules. The meeting is open to the public and will be webcast live at CPSC.gov. If any action is taken on either of these rules at this meeting, we will inform your staff of that outcome.

I hope the information I have provided dispels any misconceptions about the status of these rules. Your letter notes that candor is expected of someone in this position. I agree completely and that is how I have approached this issue. As I have explained, nothing has changed in terms of how I or the CPSC staff have proceeded with respect to these two rules.

I understand these rules are of real concern to you. I know you have a serious and legitimate oversight role to play. I embrace the critical importance of that role, and I remain committed to continuing to be transparent and candid as a part of that effort.

Should you wish to speak to me directly about this or anyone other issue, I am always available to schedule either a call or a meeting with any of you individually or as a group. If you have any additional questions, please do not hesitate to contact me, or Julia Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at: JRichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

[2] https://www.cpsc.gov/s3fs-public/Fiscal%20Year%202017%20Operating%20Plan%20-%20September%2015%2C%202016.pdf

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

October 18, 2016

The Honorable John Thune
Chairman
Committee on Commerce, Science and Technology
U.S. Senate
512 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Thune:

Thank you for your October 5, 2016 letter regarding the *Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices* and *Disclosure Under Section 6(b) of the Consumer Product Safety Act* rulemakings and my statements during the U.S. Consumer Product Safety Commission's (CPSC) Fall 2016 Regulatory Agenda meeting on August 31, 2016.

While I appreciate your ongoing interest in these rulemakings, I would like to address the concerns raised in your letter. It is correct that I have testified before your committee (and other committees) that, as Chairman, the voluntary recall rule and the proposed 6(b) revisions have not been priorities of mine, and that I preferred to prioritize other pressing safety work. It is also correct that I agreed to keep the committee fully informed if I were to change my intentions regarding this rule.

Your letter does not acknowledge, however, that at those same hearings I also testified to the fact that I did not want to withdraw these rules because I feel that there is some merit to them and that my preference is to come to a Commission-level compromise, if possible. Please see the following excerpts of my testimony and responses to questions for the record at various committee hearings since I have been Chairman:

> "I have stated previously that my priority as Chairman is for the Commission to prioritize those efforts to address persistent and deadly hazards, especially to children, in a meaningful, effective and sustained way. **That does not mean that other proposals, such as the voluntary recall rule are without merit or without**

a safety benefit. However, I would not characterize this rulemaking as my highest priority to finalize given our limited resources at the agency."[1]

Senator Moran (paraphrasing my statements): "It [the voluntary recall rule] is not where the Commission is focusing its attention at the moment. **But you are uninterested in withdrawing the rule in case the attention should be or, in the Commission's view, becomes important to be considered at some point in time."**
Kaye: "That was 100% accurate. Thank you."[2]

"I am not necessarily wedded to any particular provision in there. I am more wedded to trying to find, as I mentioned in my opening testimony, a process that is even more focused on consumer protection. So I will continue to devote my time to those primary hazards that I mentioned at the beginning of this answer, but **if we can also work in time—no surprises here—working with our colleagues to try to enhance that process through both voluntary efforts, guidance, and potential rulemaking, I am certainly going to want to have all of those options available."**[3]

"There remains support for this rule in some form. **I would prefer to see a compromise reached as opposed to taking the time and resources to end this rulemaking and beginning another to serve as the vehicle for such a compromise."**[4]

"Can I just say quickly, **one thing that is really important is that I am not wedded to a specific legal or voluntary approach. I am wedded to a goal, the goal of improving the recall process. And if it turns out that some form of this rule, in any direction, is a valuable piece of that, then I am going to pursue that. And of course we are going to be open about that."**[5]

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[1] *Financial Services and General Government Appropriations For 2017: Hearings Before the Subcomm. on Financial Services and General Government of the H. Comm. on Appropriations*, 114th Cong. Part 5 Pg. 42 (2016) (statement of Chairman Elliot F. Kaye) (emphasis added).
[2] *Consumer Product Safety and the Recall Process: Hearing Before the Subcomm. On Consumer Protection, Product Safety, Insurance, and Data Security of the S. Comm. on Commerce, Science, and Transportation*, 114th Cong. Pg. 15 (2015) (statement of Senator Moran and Chairman Elliot F. Kaye)(emphasis added).
[3] *Id.* (Statement of Chairman Elliot F. Kaye)(emphasis added).
[4] *Financial Services and General Government Appropriations For 2017: Hearings Before the Subcomm. on Financial Services and General Government of the H. Comm. on Appropriations*, 114th Cong. Part 5 Pg. 53 (2016) (statement of Chairman Elliot F. Kaye)(emphasis added).
[5] *Consumer Product Safety and the Recall Process: Hearing Before the Subcomm. On Consumer Protection, Product Safety, Insurance, and Data Security of the S. Comm. on Commerce, Science, and Transportation*, 114th Cong. Pg. 16 (2015) (statement of Chairman Elliot F. Kaye)(emphasis added).

> "When I took over this position about a year ago, I made it very clear then and I have said it on a number of occasions, that with such limited resources, I wanted to make sure that the agency was focusing on those rules that were addressing persistent long term hazards, ROVs, window coverings, those types of issues where lives were being lost on a regular basis because of those products, and if we were able to turn our attention to items like the voluntary recall notice rule, it would be great if we could.
>
> There is certainly some value to it, having more of a systemized process. I know some of the other Commissioners, Commissioner Robinson in particular, feels very strongly about it. My hope is that we can figure out as a commission a way working together as a group to come up with a compromise that we feel like will further consumer safety and accelerate the process."[6]

As you are aware, section 602 of the Regulatory Flexibility Act requires each agency to publish in the Federal Register in October and April of each year a regulatory flexibility agenda. The Fall 2016 Regulatory Agenda and associated public meeting was nothing more than a reflection of previous Commission votes setting general timetables for Commission action. As the agency's Executive Director made clear in our public decisional meeting on this matter[7], CPSC staff proposed dates in the Regulatory Agenda after carefully evaluating the items included based on the Commission's Fiscal Year 2016 Operating Plan, Fiscal Year 2016 Midyear Review and budget, as well as the status of the Commission's many safety projects. I was very clear at this meeting that I have not changed my position on the relative importance of these rules, nor have I changed my direction to staff on these rules. From my perspective, nothing about my position had changed, so there was no need to notify your committee.

At this meeting Commissioner Adler publicly communicated his interest in acting on my call for potential compromise at the Commission level by offering to circulate specific compromise language at a later date. If the Commission does decide to move forward with anything concrete, we would notify your committee as I agreed and proceed by taking into account valuable stakeholder input.

The next opportunity for the Commission to discuss these rules is tomorrow's public meeting on our Fiscal Year 2017 Operating Plan at 9:30 am. At this meeting, the Commission will vote on the projects it wishes the CPSC staff to work on in the 2017 fiscal year.[8] At that time, I anticipate that the Commission might express a desired path forward regarding either or

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[6] *Oversight of the Consumer Product Safety Commission: Hearing Before the Subcomm. on Consumer Protection, Product Safety, Insurance, and Data Security of the S. Comm. on Commerce, Science, and Transportation*, 114th Cong. Pg. 32 (2015) (statement of Chairman Elliot F. Kaye)(emphasis added).

[7] Available at: https://www.cpsc.gov/Newsroom/Video/fall-2016-regulatory-agenda.

[8] https://www.cpsc.gov/s3fs-public/Fiscal%20Year%202017%20Operating%20Plan%20-%20September%2015%2C%202016.pdf.

both of these rules. The meeting is open to the public and will be webcast live at CPSC.gov. Since your letter requested a response prior to this meeting date, we are responding with the most complete information that we have at this time. However, if any action is taken on either of these rules at this meeting, we will inform you and your staff of that outcome.

Below are the responses to the questions in your letter:

1) Have you, in fact, been working for "almost two years" toward a compromise on the voluntary recall rule as you claimed at the CPSC's August 31 public meeting?

Response: As my testimony indicates, I have been pushing my fellow Commissioners to try to work out a Commission-level compromise. However, pushing compromise as a matter of process should not be confused with pushing any specific substantive compromise. Each time this issue comes up in discussions with my colleagues, whether it be a request to move forward on the rule, or a request to withdraw the rule, I communicate that the best way forward is to attempt to compromise at the Commission level.

a. If so, when specifically did you begin pushing for such a compromise?

Response: As I previously indicated, from the beginning of my chairmanship, I have consistently said that it was not my priority for staff to work on this rule, and that a compromise at the Commission level would be more appropriate. During my time as Chairman, I have met individually with most of the Commissioners almost weekly. Those meetings cover a wide-range of CPSC-related topics and have, no doubt, included these two rulemakings and their status, particularly when other Commissioners raise them with me. At those meetings, I have often reiterated my desire to see a Commission compromise and have likely commented on possible ways to seek compromise. These meetings were not specifically related to the inclusion of either of these rulemakings in the Fall 2016 Regulatory Agenda. Importantly, during that entire time, CPSC staff has not moved forward with these rules, consistent with my direction to them.

2) Please provide all documents and communications, including but not limited to e-mails and text messages, referring or relating to compromise on the *Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices and Disclosure Under Section 6(b) of the Consumer Product Safety Act* rules and the inclusion of these items on the Fall 2016 Regulatory Agenda.

Response: Please see Appendix A.

3) Please provide a list of all CPSC meetings and teleconferences, including dates and attendees, at either the staff or commissioner level, as well as any meetings and teleconferences with third parties, regarding the inclusion of the aforementioned items on the Fall 2016 Regulatory Agenda. Please provide all documents relating to these meetings.

Response: Please see Appendix B.

I have requested, through your office, a call with you on this issue, and hope that is still possible. In the meantime, if your staff has any additional questions, they should please contact Julia E. Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at: JRichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

Enclosures

cc: The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science,
and Transportation

The Honorable Jerry Moran
Chairman
Subcommittee on Consumer Protection,
Product Safety, Insurance, and Data Security

The Honorable Richard Blumenthal
Ranking Member
Subcommittee on Consumer Protection,
Product Safety, Insurance, and Data Security

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

October 17, 2016

The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
425 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Nelson:

Pursuant to your letter dated October 11, 2016, we are providing you with copies of the documents you requested related to incidents involving the (b)(3):CPSA Section 6(b)(1) We are providing you this information pursuant to 15 U.S.C. § 2055(a)(7) and in your capacity as Ranking Member of the Committee on Commerce, Science, and Transportation. We have provided notification of your request to the affected firm.

These documents include information that is confidential, commercial in nature or otherwise protected from disclosure, and we request that you and your staff ensure that none of this information is disclosed publicly. We are providing all documents that fit your request through today's date. We are happy to provide ongoing assistance with any additional documents upon request. Please feel free to contact me or Julia E. Richardson, Director of CPSC's Office of Legislative Affairs, should you have any additional questions.

Sincerely,

Elliot F. Kaye

Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

November 10, 2016

The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
425 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Nelson:

Pursuant to your letter dated October 11, 2016, we are providing you with copies of the documents you requested related to incidents involving (b)(3):CPSA Section 6(b)(1) recalls #16-266 and #17-011, document number CPSCNELSONREQ-000001a. We are providing you this information pursuant to 15 U.S.C. § 2055(a)(7) and in your capacity as Ranking Member of the Committee on Commerce, Science, and Transportation. We have provided notification of your request to the affected firm.

These documents include information that is confidential, commercial in nature or otherwise protected from disclosure, and we request that you and your staff ensure that none of this information is disclosed publicly. We are providing all documents that fit your request through today's date. We are happy to provide ongoing assistance with any additional documents upon request. Please feel free to contact me or Julia E. Richardson, Director of CPSC's Office of Legislative Affairs, should you have any additional questions.

Sincerely,

Elliot F. Kaye

Enclosure

cc: The Honorable John Thune, Chairman

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

November 2, 2016

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Commerce,
Manufacturing, and Trade
Committee on Energy and Commerce
2367 Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Member Schakowsky:

Pursuant to your request dated October 25, 2016, we are providing you with a copy of the monthly progress report for August 1 – September 4 related to the (b)(3):CPSA recall #16-204, document number CPSCSCHAKOWSKYREQ-000002a. We are providing you with this information pursuant to 15 U.S.C. § 2055(a)(7) and in your capacity as Ranking Member of the U.S. House Subcommittee on Commerce, Manufacturing, and Trade. We have provided notification of your request to the affected firm. This document includes information that is confidential, commercial in nature or otherwise protected from disclosure, and we request that you and your staff ensure that none of this information is disclosed publicly.

Should you or your staff have any questions, please do not hesitate to contact me or Julia E. Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853 or by email at jrichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

Julia Richardson
Director, Office of Legislative Affairs

Tel: (301) 504-7853
E-mail: OLA@CPSC.gov

December 19, 2016

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Commerce,
Manufacturing, and Trade
Committee on Energy and Commerce
2367 Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Member Schakowsky:

Pursuant to your request dated October 25, 2016, we are providing you with a copy of the monthly progress report for October 3 – October 30 related to the (b)(3):CPSA recall #16-204, document number CPSCSCHAKOWSKYREQ-000002b. We are providing you with this information pursuant to 15 U.S.C. § 2055(a)(7) and in your capacity as Ranking Member of the U.S. House Subcommittee on Commerce, Manufacturing, and Trade. This document includes information that is confidential, commercial in nature or otherwise protected from disclosure, and we request that you and your staff ensure that none of this information is disclosed publicly.

Should you or your staff have any questions, please do not hesitate to contact me by telephone at (301) 504-7853 or by email at jrichardson@cpsc.gov.

Sincerely,

Julia E. Richardson

Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

ACTING CHAIRMAN ANN MARIE BUERKLE

July 19, 2017

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Digital Commerce
and Consumer Protection
Committee on Energy and Commerce
2367 Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Member Schakowsky:

Pursuant to your letter dated June 27, 2017, we are providing you with copies of the documents you requested related to Recall #16-204.

Some of the information contained in the response is subject to section 6 of the Consumer Product Safety Act, 15 U.S.C. § 2055. Section 6(a) of the CPSA, 15 U.S.C. § 2055(a) contains restrictions on the public disclosure of information that contains or relates to a trade secret or other matter referred to in 18 U.S.C. § 1905 or is confidential commercial information. Section 6(b) of the CPSA, 15 U.S.C. § 2055(b), prohibits the public disclosure of any information that would permit the public to ascertain readily the identity of a manufacturer or private labeler of a consumer product without following certain advance notice requirements set forth in this provision. Restrictions on the disclosure of consumer identities are also covered in sections 6A(b)(6) and 25(c) of the CPSA. The information we are submitting to you may fall within one of the categories described or is sensitive personal information.

Accordingly, we may not lawfully provide this information to the general public at this time. Nevertheless, consistent with the CPSA and Commission regulations, and with the expectation that this information will be kept confidential, we are providing this information to you in your capacity as Ranking Member of the Subcommittee on Digital Commerce and Consumer Protection. Please note that the information being provided also requires sensitive

handling because it may concern open Compliance investigations and may provide nonpublic information about the Commission's internal assessments. We request that this information be treated as for official use only and that we be advised in writing if you or your staff intends to release any of this information to the public.

Thank you again for sharing your concerns. Should you or your staff have any questions, please do not hesitate to contact me, or Aaron Hernandez, Acting Director, Office of Legislative Affairs, by phone at (301) 504-7853 or e-mail at: ahernandez@cpsc.gov.

Sincerely,

Ann Marie Buerkle
Acting Chairman

Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

October 27, 2016

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Commerce,
Manufacturing, and Trade
Committee on Energy and Commerce
2367 Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Member Schakowsky:

Pursuant to your request dated October 25, 2016, we are providing you with a copy of the monthly progress report related to the (b)(3):CPSA recall #16-204, document number CPSCSCHAKOWSKYREQ-000002. We are providing you with this information pursuant to 15 U.S.C. §2055(a)(7) and in your capacity as Ranking Member of the U.S. House Subcommittee on Commerce, Manufacturing, and Trade. We have provided notification of your request to the affected firm. This document includes information that is confidential, commercial in nature or otherwise protected from disclosure, and we request that you and your staff ensure that none of this information is disclosed publicly.

Should you or your staff have any questions, please do not hesitate to contact me or Julia E. Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853 or by email at jrichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

November 10, 2016

The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
425 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Nelson:

Pursuant to your letter dated November 1, 2016, we are providing you with copies of the documents you requested related to incidents involving (b)(3):CPS top-loading washing machines. We are providing you this information pursuant to 15 U.S.C. § 2055(a)(7) and in your capacity as Ranking Member of the Committee on Commerce, Science, and Transportation. We have provided notification of your request to the affected firm.

These documents include information that is confidential, commercial in nature or otherwise protected from disclosure, and we request that you and your staff ensure that none of this information is disclosed publicly. We are providing all documents that fit your request through today's date. We are happy to provide ongoing assistance with any additional documents upon request. Please feel free to contact me or Julia E. Richardson, Director of CPSC's Office of Legislative Affairs, should you have any additional questions.

Sincerely,

Elliot F. Kaye

Enclosure

cc: The Honorable John Thune, Chairman

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

December 15, 2016

The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science,
and Transportation
United States Senate
425 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Nelson:

Thank you for your letter dated November 17, 2016, regarding the U.S. Consumer Product Safety Commission's (CPSC) performance metrics and oversight applied in administering monetary bonuses for Senior Executive Service (SES) employees. As you noted, these monetary bonuses are awarded in accordance with 5 U.S.C. § 5384 to promote excellence in the SES and to improve the CPSC's ability to serve the American people.

As you requested, we have provided the list of all SES, Senior Level (SL), Senior Scientific or Professional (ST), or equivalent employees who received monetary awards for Fiscal Years (FY) 2015 and 2016. We do not have any SES, SL, ST, or equivalent employees who received monetary awards for FY 2015 or 2016 that totaled more than 20 percent of the employee's base annual salary. We have also provided our general guidelines for SES ratings.

Should you or your staff have any questions, please do not hesitate to contact me, or Julia E. Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at JRichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

Attachments

cc: The Honorable John Thune, Chairman

Senior Executive Service Performance Management System

Consumer Product Safety Commission

1. System Coverage

The Consumer Product Safety Commission (hereafter referred to as the agency) Senior Executive Service (SES) performance management system applies to all career, noncareer, limited term and limited emergency Consumer Product Safety Commission senior executives covered by subchapter II of chapter 43 of title 5, United States Code.

2. Definitions

- *Appointing authority* means the agency head or designee with authority to make appointments in the Senior Executive Service.
- *Appraisal period* means the established period of time for which a senior executive's performance will be appraised and rated.
- *Balanced measures* means an approach to performance measurement that balances organizational results with the perspectives of distinct groups, including customers and employees.
- *Critical element* means a key component of an executive's work that contributes to organizational goals and results and is so important that unsatisfactory performance of the element would make the executive's overall job performance unsatisfactory.
- *Performance* means the accomplishment of the work described in the senior executive's performance plan.
- *Performance appraisal* means the review and evaluation of a senior executive's performance against performance elements and requirements.
- *Performance management system* means the framework of policies and practices that an agency establishes under subchapter II of chapter 43 of title 5, United States Code, for planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance and for using resulting performance information in making personnel decisions.
- *Performance requirement* means a statement of the performance expected for a critical element.
- *Progress review* means a review of the senior executive's progress in meeting the performance requirements. A progress review is not a performance rating.
- *Ratings:*
    - *Initial summary rating* means an overall rating level the supervisor derives from appraising the senior executive's performance during the appraisal period and forwards to the Performance Review Board.
    - *Annual summary rating* means the overall rating level that an appointing authority assigns at the end of the appraisal period after considering a Performance Review Board's recommendations. This is the official rating.
- *Senior executive performance plan* means the written summary of work the senior executive is expected to accomplish during the appraisal period and the requirements against which performance will be evaluated. The plan addresses all critical elements established for the senior executive.
- *Strategic planning initiatives* means agency strategic plans, annual performance plans, organizational work plans, and other related initiatives.

3. Appraisal Period

- **Appraisal Period.** Executives must be appraised at least annually on their performance and an annual summary rating must be assigned for the relevant period of performance of each year (e.g., October 1 through September 30). The annual performance appraisal period for senior executives is October 1 through September 30.
- **Minimum Period.** The minimum period of performance that must be completed before a performance rating can be given is 90 days.

- **Adjusting Appraisal Period.** The agency may end an appraisal period at any time after the minimum appraisal period is completed, if there is an adequate basis on which to appraise and rate the senior executive(s).
- **Transition Period.** The agency may not appraise and rate any career executive within 120 days after the beginning of a new Presidential administration.

4. **Summary Performance Levels**
   - The system includes five summary performance levels:
     - Level 5 (Outstanding)
     - Level 4 (Exceeds Fully Successful)
     - Level 3 (Fully Successful)
     - Level 2 (Minimally Satisfactory)
     - Level 1 (Unsatisfactory)

5. ***Planning Performance*: Critical Elements**
   - Supervisors must establish performance plans for senior executives in consultation with the senior executives and communicate the plans to them on or before the beginning of the rating period. Each senior executive performance plan shall include, as a minimum, the following critical elements and performance requirements:
     - **Leading Change**
       Develops and implements an organizational vision that integrates key organizational and program goals, priorities, values, and other factors. Assesses and adjusts to changing situations, implementing innovative solutions to make organizational improvements, ranging from incremental improvements to major shifts in direction or approach, as appropriate. Balances change and continuity; continually strives to improve service and program performance; creates a work environment that encourages creative thinking, collaboration, and transparency; and maintains program focus, even under adversity.

     - **Leading People**
       Designs and implements strategies that maximize employee potential, connect the organization horizontally and vertically, and foster high ethical standards in meeting the organization's vision, mission, and goals. Provides an inclusive workplace that fosters the development of others to their full potential; allows for full participation by all employees; facilitates collaboration, cooperation, and teamwork, and supports constructive resolution of conflicts. Ensures employee performance plans are aligned with the organization's mission and goals, that employees receive constructive feedback, and that employees are realistically appraised against clearly defined and communicated performance standards. Holds employees accountable for appropriate levels of performance and conduct. Seeks and considers employee input. Recruits, retains, and develops the talent needed to achieve a high quality, diverse workforce that reflects the nation, with the skills needed to accomplish organizational performance objectives while supporting workforce diversity, workplace inclusion, and equal employment policies and programs.

     - **Business Acumen**
       Assesses, analyzes, acquires, and administers human, financial, material, and information resources in a manner that instills public trust and accomplishes the organization's mission. Uses technology to enhance processes and decision making. Executes the operating budget; prepares budget requests with justifications; and manages resources.

     - **Building Coalitions**
       Solicits and considers feedback from internal and external stakeholders or customers. Coordinates with appropriate parties to maximize input from the widest range of appropriate

stakeholders to facilitate an open exchange of opinion from diverse groups and strengthen internal and external support. Explains, advocates, and expresses facts and ideas in a convincing manner and negotiates with individuals and groups internally and externally, as appropriate. Develops a professional network with other organizations and identifies the internal and external politics that affect the work of the organization.

- **Results Driven**
  This critical element includes specific performance results expected from the executive during the appraisal period, focusing on measurable outcomes from the strategic plan or other measurable outputs and outcomes clearly aligned to organizational goals and objectives. At a minimum, the performance plan will include performance requirements (including measures, targets, timelines, or quality descriptors, as appropriate) describing the range of performance at Level 3 for each result specified. It is recommended to also establish the threshold measures/targets for Levels 5 and 2.

  The Results-Driven critical element must also identify clear, transparent alignment to relevant agency or organizational goals/objectives, page numbers, from the Strategic Plan, Congressional Budget Justification/Annual Performance Plan, or other organizational planning document in the designated section for each performance result specified.

- Executive performance plans must include the Governmentwide SES performance requirements as written and may include additional agency-specific performance requirements written as competencies or specific results/commitments associated with the element.

- Senior executive performance plans must include additional, specific performance requirements for each objective listed under the Results-Driven element. Performance requirements for the Results Driven element must include measures, targets, and timelines.

- The performance requirements in the executive performance plan describe performance at the fully successful level, as established in the Fully Successful performance standard contained in section 6 of this document.

- Each critical element must be assigned a weight value, with the total weights adding to 100 points.
  - The minimum weight that can be assigned to the Results Driven critical element is 20 percent.
  - The minimum weight that can be assigned to the other four critical elements is 5 percent.
  - No single performance element can be assigned a greater weight than the Results Driven element.
  - The Performance Review Board (PRB) will establish an agency-wide weight for each critical element prior to the start of the performance appraisal period each year.

- The gaining organization must set performance goals and requirements for any detail or temporary assignment of 120 days or longer and appraise the performance in writing. The executive's rating official will factor this appraisal into the initial summary rating.

6. ***Planning Performance*: Performance Standards for Critical Elements**
The performance standard for each critical element is specified below.

- **Level 5:** The executive demonstrates exceptional performance, fostering a climate that sustains excellence and optimizes results in the executive's organization, agency, department or government-wide. This represents the highest level of executive performance, as evidenced by the extraordinary impact on the achievement of the organization's mission. The executive is an inspirational leader and is considered a role model by agency leadership, peers, and employees. The executive continually contributes materially to or spearheads agency efforts that address or accomplish important agency goals, consistently achieves

expectations at the highest level of quality possible, and consistently handles challenges, exceeds targets, and completes assignments ahead of schedule at every step along the way. Performance may be demonstrated in such ways as the following examples:

- Overcomes unanticipated barriers or intractable problems by developing creative solutions that address program concerns that could adversely affect the organization, agency, or Government.
- Through leadership by example, creates a work environment that fosters creative thinking and innovation; fosters core process re-engineering; and accomplishment of established organizational performance targets.
- Takes the initiative to identify new opportunities for program and policy development and implementation or seeks more opportunities to contribute to optimizing results; takes calculated risks to accomplish organizational objectives.
- Accomplishes objectives even under demands and time pressure beyond those typically found in the executive environment.
- Achieves results of significant value to the organization, agency, or Government.
- Achieves significant efficiencies or cost-savings in program delivery or in daily operational costs of the organization.

- **Level 4:** The executive demonstrates a very high level of performance beyond that required for successful performance in the executive's position and scope of responsibilities. The executive is a proven, highly effective leader who builds trust and instills confidence in agency leadership, peers, and employees. The executive consistently exceeds established performance expectations, timelines, or targets, as applicable. Performance may be demonstrated in such ways as the following:
  - Advances progress significantly toward achieving one or more strategic goals.
  - Demonstrates unusual resourcefulness in dealing with program operations or policy challenges.
  - Achieves unexpected results that advance the goals and objectives of the organization, agency, or Government.

- **Level 3:** The executive demonstrates the high level of performance expected and the executive's actions and leadership contribute positively toward the achievement of strategic goals and meaningful results. The executive is an effective, solid, and dependable leader who delivers high-quality results based on measures of quality, quantity, efficiency, and/or effectiveness within agreed upon timelines. The executive meets and often exceeds challenging performance expectations established for the position. Performance may be demonstrated in such ways as the following:
  - Seizes opportunities to address issues and effects change when needed.
  - Finds solutions to serious problems and champions their adoption.
  - Designs strategies leading to improvements.

- **Level 2:** The executive's contributions to the organization are acceptable in the short term but do not appreciably advance the organization towards achievement of its goals and objectives. While the executive generally meets established performance expectations, timelines and targets, there are occasional lapses that impair operations and/or cause concern from management. While showing basic ability to accomplish work through others, the executive may demonstrate limited ability to inspire subordinates to give their best efforts or to marshal those efforts effectively to address problems characteristic of the organization and its work.

- **Level 1:** In repeated instances, the executive demonstrates performance deficiencies that detract from mission goals and objectives. The executive generally is viewed as ineffectual by agency leadership, peers, or employees. The executive does not meet established performance expectations/timelines/targets and fails to produce – or produces unacceptable – work products, services, or outcomes.

7. ***Monitoring*** **Performance**

- **Monitor and Provide Feedback.** A supervisor must monitor senior executive performance in accomplishing elements and requirements and provide feedback, including advice and assistance on improving performance, when needed, and encouragement and positive reinforcement, as appropriate.
- **Progress Review.** Each senior executive must receive at least one progress review during the appraisal period. At a minimum the executive must be informed how well he or she is performing against performance requirements.

8. ***Rating*** **Critical Elements**
   - The weight assigned to each critical element will be distributed evenly across the performance requirements, unless otherwise specified in the performance plan. For example, if the Results-Driven critical element has 5 performance requirements, each performance requirement under the Results-Driven critical element could be weighted at 20% for a total of 100%. The overall performance level for each critical element is determined by the same derivation formula used to determine the summary rating (outlined in Section 9).

9. **Deriving the Summary *Rating***
   - **Critical Element Point Values.** Once the rating for each critical element is determined, the following point values will be assigned to the element ratings:
     - Level 5 = 5 points
     - Level 4 = 4 points
     - Level 3 = 3 points
     - Level 2 = 2 points
     - Level 1 = 0 points
   - **Derivation Formula.** The derivation formula is calculated as follows:
     - If any critical element is rated Level 1 (Unsatisfactory), the overall summary rating is Unsatisfactory. If no critical element is rated Level 1 (Unsatisfactory), continue to the next step.
     - For each critical element, multiply the point value of the element rating by the weight assigned to that element.
     - Add the results from the previous step for each of the five critical elements to come to a total score.
     - Assign the initial summary rating using the ranges below:
       - 475-500 = Level 5
       - 400-474 = Level 4
       - 300-399 = Level 3
       - 200-299 = Level 2
       - Any critical element rated Level 1 = Level 1
     - **Example**, with the initial summary rating determined to be Level 4 (Exceeds Fully Successful):

	Rating Level		Score	
Critical Element	Initial Element Score	Weight	Initial Point Score	Summary Level Range
1. Leading Change	4	15	4 x 15 = 60	475-500 = Level 5
2. Leading People	5	20	5 x 20 = 100	400-474 = Level 4
3. Business Acumen	3	15	3 x 15 = 45	300-399 = Level 3
4. Building Coalitions	4	20	4 x 20 = 80	200-299 = Level 2
5. Results Driven	4	30	4 x 30 = 120	Any CE rated Level 1 = Level 1
Total		100%	405	

- **Initial Rating.** The rating official will develop an initial summary rating, in writing, and share the initial rating with the senior executive.
- **Opportunity for Written Response.** A senior executive may respond in writing to the initial appraisal.
- **Opportunity for Higher Level Review (HLR).** The senior executive may request review by an employee, or (with the consent of the senior executive) a commissioned officer in the uniformed services serving on active duty, in a higher level in the agency than the official who prepared the initial rating before the rating is presented to the PRB. The higher level reviewer may not change the initial rating but may recommend a different rating to the PRB and the appointing authority. The agency will provide HLR, unless the agency has determined HLR is not possible (e.g., the initial rater is the head of an executive agency and there is no employee at a higher level in the agency). Upon the request of an affected executive, the agency must provide a complete explanation of its basis for concluding that HLR, as defined in law and regulation, is not possible.
- **Forced Distribution.** A forced distribution of rating levels is prohibited.
- **Job Changes or Transfers.** When a senior executive who has completed the minimum appraisal period changes jobs or transfers to another agency, the supervisor must appraise the executive's performance in writing before the executive leaves and the appraisal will be forwarded to the gaining agency.
- **Transferred Ratings.** When developing an initial summary rating for an executive who transfers from another agency, a supervisor must consider any applicable ratings and appraisals of the executive's performance received from the former agency.
- **Extending the Appraisal Period.** If the agency cannot prepare an executive's rating at the end of the rating period because the executive has not completed the minimum appraisal period or for other reasons, the agency must extend the executive's rating period and will then prepare the annual summary rating.
- **Authority for Rating.** The annual summary rating must be assigned by the appointing authority (and may not be delegated to an official who does not have authority to make SES appointments) only after considering the recommendations of the Performance Review Board.

10. Performance Review Boards (PRBs)

- **PRB.** The agency shall establish one or more PRBs to make written recommendations on annual summary ratings to the appointing authority on the performance of senior executives and has appointed members in accordance with 5 CFR 430.310.
- **Membership Number.** Each PRB must have 3 or more members selected by the agency head or designee(s) in a manner that ensures consistency, stability, and objectivity in SES performance appraisal. PRB appointments must be published in the Federal Register before service begins.
- **Career Membership.** More than one-half of the PRB's members must be career appointees when considering a career appointee's appraisal or performance award. PRB members may not be involved in deliberations involving their own appraisals.
- **Review Ratings.** The PRB must review and evaluate the initial appraisal and summary rating, the senior executive's response and any recommendation by a higher-level reviewer, and conduct any additional review necessary to make written recommendations to the appointing authority on annual summary ratings, bonuses and (as applicable) pay adjustments for each senior executive.
- **Executive Response.** The PRB must not be provided a proposed initial summary rating to which the executive has not been given the opportunity to respond in writing.
- **Agency/Organizational Performance.** The PRB must be provided and take into account appropriate assessments of the agency/organization's performance when making recommendations.

11. Dealing with Poor Performance

- **Performance Actions.** The agency must: 1) reassign, transfer or remove from the Senior Executive Service a senior executive who has been assigned a Level 1 (Unsatisfactory) final rating; 2) remove from the Senior Executive Service an executive who has been assigned two final ratings at less than

Level 3 (i.e., Level 2 or a combination of Levels 2 and 1) within a three year period; and 3) remove from the Senior Executive Service an executive who receives two Level 1 (Unsatisfactory) final ratings within five years. Non-probationary career appointees are removed under procedures in 5 CFR 359 subpart E. Probationary career appointees are removed under procedures in 5 CFR 359 subpart D. (Nothing here shall be interpreted to limit removal of probationary SES employees as permitted by current regulations.) Guaranteed placement in a non-SES position will be provided under 5 CFR 359 subpart G when applicable.

- **Appeal Rights.** Senior executive performance appraisals and ratings may not be appealed. The executive may file a complaint about any aspect of the rating process the executive believes to involve unlawful discrimination (EEOC) or a prohibited personnel practice (Office of Special Counsel). A career appointee being removed from the SES under 5 U.S.C. 3592(a)(2) shall, at least 15 days preceding the date of removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board.

12. Other System Requirements

- **Appraisal Results.** Results of performance appraisal will be used as a basis for adjusting pay, granting awards, determining training needs and making other personnel decisions.
- **Organizational Assessment and Guidelines.** The agency must assess organizational performance (overall and with respect to each of its particular missions, components, programs, policy areas, and support functions). The agency must also ensure its assessment results and evaluation guidelines based upon them are communicated by the agency head (or another official designated by the agency head) to senior employees, rating officials, higher level review officials and PRBs so that they may be considered in preparing performance appraisals, ratings and recommendations.
- **Oversight.** The agency head or the official designated by the agency head provides organizational assessments and evaluation guidelines and is responsible to oversee the system and to certify: 1) the appraisal process makes meaningful distinctions based on relative performance; 2) executive ratings take into account assessments of organizational performance; and 3) pay adjustments, awards and pay levels accurately reflect individual and organizational performance. The responsible official designated to provide evaluation guidelines and oversee the appraisal system must do so for the entire executive agency.
- **Performance Distinctions.** Rating officials and PRBs will make meaningful distinctions based on relative performance that take into account assessment of the agency's performance against relevant program performance measures.
- **Differences in Pay Based on Performance.** Senior executives who have demonstrated the highest levels of performance will receive the highest annual summary ratings and the largest corresponding pay adjustments, cash awards and levels of pay, and will be appropriately positioned in the pay range.

13. Training and Evaluation

- **Training.** The agency will provide information and training for executives on the requirements and operation of the agency's performance management and pay-for-performance system, including the results of the previous appraisal period.
- **Evaluation.** The agency will periodically evaluate the effectiveness of the performance management system(s) and implement improvements as needed.

14. Agency specific requirements. No additional CPSC-specific requirements.

CPSC SES Monetary Awards for FY15 and FY16

Name	Position Title Opm	ANNUAL PAY	Date Effective	Noa Nart 1	Amount Award	Rating
FY15						
SCHOEM, MARC J	DEP DIR, OFFICE OF COMPLIANCE	$181,497	12/19/2014	SES PERFORMANCE AWARD	$15,427	5
HOWELL JR , ROBERT JACKSO	DEPUTY EXECUTIVE DIRECTOR	$181,497	12/19/2014	SES PERFORMANCE AWARD	$17,242	5
RAY, JERRY DEWANE	DEPUTY EXECUTIVE DIRECTOR	$170,100	12/19/2014	SES PERFORMANCE AWARD	$16,160	5
HOFFMAN, DENNIS J	CHIEF FINANCIAL OFFICER	$180,651	12/19/2014	SES PERFORMANCE AWARD	$15,355	5
CAVE, CAROL J	DIR, OFFICE OF IMPORT SURVEILLANCE	$160,993	12/19/2014	SES PERFORMANCE AWARD	$13,684	5
STRALKA, KATHLEEN ANN	AED FOR EPIDEMIOLOGY	$169,318	12/19/2014	SES PERFORMANCE AWARD	$10,498	5
STADNIK, ANDREW G	ASSOC EXEC DIR FOR LS	$177,135	12/19/2014	SES PERFORMANCE AWARD	$10,982	5
RAY, JERRY DEWANE	DEPUTY EXECUTIVE DIRECTOR	$178,605	03/10/2015	INDIVIDUAL CASH AWARD NRB	$6,758	N/A
FY16						
RAY, JERRY DEWANE	DEPUTY EXECUTIVE DIRECTOR	$178,605	12/10/2015	SES PERFORMANCE AWARD	$13,863	5
HOWELL JR , ROBERT JACKSO	DEPUTY EXECUTIVE DIRECTOR	$183,300	12/10/2015	SES PERFORMANCE AWARD	$14,227	5
HOFFMAN, DENNIS J	CHIEF FINANCIAL OFFICER	$183,300	12/13/2015	SES PERFORMANCE AWARD	$12,394	5
CAVE, CAROL J	DEP DIR, OFFICE OF COMPLIANCE	$168,077	12/10/2015	SES PERFORMANCE AWARD	$11,365	5
BORLASE, GEORGE A	ASST EX DIR HAZ ID & RED	$166,305	12/10/2015	SES PERFORMANCE AWARD	$11,245	5
STRALKA, KATHLEEN ANN	AED FOR EPIDEMIOLOGY	$175,075	12/10/2015	SES PERFORMANCE AWARD	$10,087	5
BONIFACE, DUANE E	DEPUTY AED HAZ ID & RED	$165,433	12/10/2015	SES PERFORMANCE AWARD	$8,855	5
STADNIK, ANDREW G	ASSOC EXEC DIR FOR LS	$183,158	12/10/2015	SES PERFORMANCE AWARD	$9,437	5
BECHT, JOEL R	AED FOR ENGINEERING SCIENCES	$169,569	12/10/2015	SES PERFORMANCE AWARD	$8,737	5

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

ACTING CHAIRMAN ANN MARIE BUERKLE

March 21, 2017

The Honorable Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Blumenthal:

Thank you for your letter addressed to former Chairman Kaye regarding the safety risks associated with exploding electronic cigarettes (e-cigarettes). On February 9, 2017, I was named Acting Chairman of the U.S. Consumer Product Safety Commission (CPSC or Commission). I am responding to your letter in that capacity.

I share your concern over the increased reports of harm caused by faulty e-cigarettes and the role batteries may be playing in these incidents. As you are aware, "tobacco and tobacco products" are excluded from the jurisdiction of the U.S. Consumer Product Safety Commission (CPSC or Commission). 15 U.S.C. §§ 2052(a)(5)(B), 1261(f)(2). In May 2016, the U.S. Food and Drug Administration (FDA) issued broad deeming regulations under the authority of the Family Smoking Prevention and Tobacco Control Act of 2009. Those regulations asserted FDA's jurisdiction over e-cigarettes and other Electronic Nicotine Delivery Systems (ENDS). The FDA included within its rules "components" and "parts" of deemed products, and explained in the rule's preamble that this includes batteries intended or reasonably expected to be used with ENDS. Although FDA has jurisdiction over e-cigarettes and its components and parts, the CPSC has been providing support to the FDA by sharing our expertise on battery failures in consumer products. The CPSC and FDA have a long history of working together to protect the American public from products that pose a safety risk.

Moreover, safety concerns about the use of lithium-ion and other high energy density batteries remain a priority for the CPSC. In September 2016, the Commission unanimously adopted an amendment to our Fiscal Year 2017 Operating Plan that directs technical staff to "address the emerging and ongoing hazards associated with high energy density batteries." In addition to several high-profile safety recalls of products where these batteries have been

involved, technical staff is reviewing the data to identify gaps in the standards and determine how improvements in these standards could promote safety and prevent device failures. The CPSC is also working with our international partners and industry to identify emerging issues with lithium-ion products and to prepare for the next generation of high energy density battery products.

As consumers continue to demand more powerful and portable electronic devices, the limits of battery design and manufacturing will continue to be pushed. The Commission is very focused on the potential hazards and will work across government and industry to protect the public from unreasonable risks of injury or death.

Some of the information contained in the enclosure may be subject to section 6 of the Consumer Product Safety Act, 15 U.S.C. § 2055. Section 6(a) of the CPSA, 15 U.S.C. § 2055(a), contains restrictions on the public disclosure of information which contains or relates to a trade secret or other matter referred to in 18 U.S.C. § 1905 or is confidential commercial information. Section 6(b) of the CPSA, 15 U.S.C. § 2055(b), prohibits the public disclosure of any information that relates to the identity of specific products without following certain advance notice requirements set forth in this provision. Restrictions on the disclosure of consumer identities is also covered in sections 6A(b)(6) and 25(c) of the CPSA. The information submitted herein may fall within one of the categories described or is sensitive personal information.

Accordingly, we may not lawfully provide this information to the general public at this time. Nevertheless, consistent with Section 6(a)(7) of the CPSA, 15 U.S.C. § 2055(a)(7) and 16 CFR § 1101.12(g), and with the expectation that this information will be kept confidential, we are providing this information to you in your capacity as Ranking Member of the Consumer Protection, Product Safety, Insurance and Data Security Subcommittee. Please note that the information being provided also requires sensitive handling as it may concern open compliance investigations and may provide nonpublic information about the Commission's internal assessments. We request that this information be treated as for official use only and that we be advised in writing if you or your staff intend to release any of this information to the public.

Thank you again for your letter and for your continued support of the CPSC and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Julia Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at JRichardson@cpsc.gov.

Sincerely,

Ann Marie Buerkle
Acting Chairman

Enclosure

cc: The Honorable Stephen Ostroff, M.D., Acting Commissioner, U.S. Food and Drug Administration

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

ACTING CHAIRMAN ANN MARIE BUERKLE

April 4, 2017

The Honorable Leonard Lance
U.S. House of Representatives
2352 Rayburn House Office Building
Washington, DC 20515

The Honorable Adam Kinzinger
U.S. House of Representatives
1221 Longworth House Office Building
Washington, DC 20515

The Honorable Brett Guthrie
U.S. House of Representatives
2434 Rayburn House Office Building
Washington, DC 20515

The Honorable Gregg Harper
U.S. House of Representatives
307 Cannon House Office Building
Washington, DC 20515

Dear Representatives Lance, Kinzinger, Guthrie, and Harper:

Thank you for your letter addressed to former Chairman Kaye regarding the U.S. Consumer Product Safety Commission's (CPSC or Commission) actions on table saws. On February 9, 2017, I became Acting Chairman of the CPSC, and I am responding to your letter in that capacity.

As you know, the proposed rule on table saws was presented to the Commission on January 17, 2017, under then-Chairman Kaye. I share your concerns regarding the impact that the adoption of this rule would have on the table saw market. Furthermore, I agree with you that the Commission should not proceed with a rulemaking without fully evaluating the data and addressing stakeholder concerns. Please know that I am committed to the rulemaking being conducted exclusively within the confines of CPSC's legal authorities and in adherence to the requirements of the Administrative Procedure Act.

I appreciate your sharing your views on this issue before the Commission and your letter will be entered into the record.

A copy of the draft package can be found on the CPSC website at: https://www.cpsc.gov/s3fs-public/Proposed%20Rule%20-%20Safety%20Standard%20for%20Blade-Contact%20Injuries%20on%20Table%20Saws%20-%20January%2017%202017.pdf

Thank you again for sharing your concerns and for your continued support of the Commission and its mission. Should you or your staff have any questions, please do not hesitate to contact me, or Aaron Hernandez, Deputy Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at AHernandez@cpsc.gov.

Sincerely,

Ann Marie Buerkle
Acting Chairman

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

ACTING CHAIRMAN ANN MARIE BUERKLE

April 27, 2017

The Honorable Amy Klobuchar
United States Senate
302 Hart Senate Office Building
Washington, DC 20510

The Honorable Janice Schakowsky
U.S. House of Representatives
2367 Rayburn House Office Building
Washington, DC 20515

The Honorable Robert Casey
United States Senate
393 Russell Senate Office Building
Washington, DC 20510

Dear Senators Klobuchar and Casey, and Representative Schakowsky:

Thank you for your letter of January 10, 2017, addressed to former Chairman Kaye, urging the U.S. Consumer Product Safety Commission (CPSC or Commission) to take further action to prevent injuries and deaths caused by furniture tip-overs. On February 9, 2017, I became Acting Chairman of the CPSC, and I am responding to your letter in that capacity.

CPSC staff is actively working with the voluntary standards community on this issue. On November 10, 2016, CPSC staff attended the ASTM International 15.42 Furniture Safety subcommittee meeting and presented staff's recommendations based on the September 30, 2016 briefing package submitted to the Commission. Currently, staff is participating in all of the tip-over task groups established by the subcommittee. On April 6, 2017, CPSC staff attended another ASTM 15.42 subcommittee meeting, and the consensus was these task groups will continue their work concerning this issue. In addition, as you note, CPSC's FY 2017 Operating Plan directs staff to provide an Advance Notice of Proposed Rulemaking (ANPR) to the Commission.

Thank you again for sharing your concerns and for your continued support of the Commission and its mission. Should you or your staff have any questions, please do not hesitate to contact me, or Aaron Hernandez, Deputy Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at AHernandez@cpsc.gov.

Sincerely,

Ann Marie Buerkle
Acting Chairman

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

ACTING CHAIRMAN ANN MARIE BUERKLE

June 26, 2017

The Honorable Cory Booker
United States Senate
359 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Booker:

Thank you for your letter of May 18, 2017, on behalf of your constituent, (b)(6) urging the U.S. Consumer Product Safety Commission (CPSC or Commission) to consider Petition CP 15-2: Petition Requesting Ban on Supplemental Mattresses for Play Yards with Non-Rigid Sides. I share your concerns about latent hazards posed to young children and appreciate your interest in this important matter before the Commission.

On May 25, 2017, the Commission voted on the petition. I voted to approve CPSC staff's recommendation to defer the petition and work through the voluntary standards process with stakeholders to address consumer concerns while increasing the safety of all aftermarket mattresses. Supplemental mattresses are not inherently hazardous. Rather, they can become hazardous when they are too small for the play yard in which they are used. For this reason, a ban on supplemental mattresses would be too drastic a solution because it would eliminate safe as well as unsafe products from the market. In addition, a ban could have serious unintended consequences. For example, in the absence of supplemental mattresses, caregivers looking to provide a more comfortable sleep environment for their infant might place blankets, pillows, or other soft bedding in a play yard, creating a safety hazard that may be even more serious.

While the Commission voted 3–2 to grant the petition, none of the Commissioners voted in support of a ban. Instead, the majority directed staff to initiate a rulemaking under section 104 of the Consumer Product Safety Improvement Act (CPSIA). The Commission's vote requires promulgating a mandatory section 104 standard to address the risk of injury associated with using ill-fitting mattresses. The scope of the rulemaking will include crib mattresses, as well as supplemental and aftermarket mattresses used in play yards and portable cribs.

Consequently, CPSC staff will expand its ongoing cooperation with the ASTM F15.66 and F15.18 subcommittees to begin reviewing the crib mattress voluntary standard under the provisions of section 104 of the CPSIA. Staff also plans to work with the ASTM F15.18 Play Yards Subcommittee on the non-full size crib and play yards voluntary standard to assess whether the standard for play yard mattresses can address consumers' comfort concerns without compromising safety.

Thank you again for sharing your concerns and for your support of the Commission and its mission. Should you or your staff have any questions, please do not hesitate to contact me or Aaron Hernandez, Acting Director, Office of Legislative Affairs, by phone at (301) 504-7853 or e-mail at ahernandez@cpsc.gov.

Sincerely,

Ann Marie Buerkle
Acting Chairman

cc: The Honorable Robert Adler
The Honorable Marietta S. Robinson
The Honorable Elliot F. Kaye
The Honorable Joseph Mohorovic

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

ACTING CHAIRMAN ANN MARIE BUERKLE

June 5, 2017

The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

Dear Ranking Member Pallone:

Thank you for your letter of May 25, 2017, requesting a briefing on lithium ion battery safety issues from the U.S. Consumer Product Safety Commission (CPSC or Commission). I share your concerns over the increased incident reports caused by these products and the role batteries may be playing.

I want to assure you that CPSC has taken a multi-faceted approach to the issue of lithium ion batteries, and I have directed the CPSC Office of Legislative Affairs to reach out to your staff and find an amenable time to brief you on the multiple activities concerning lithium ion batteries.

Thank you again for sharing your concerns and for your continued support of the Commission and its important mission. Should you or your staff have any questions, please do not hesitate to contact me, or the Office of Legislative Affairs by telephone at (301) 504-7853.

Sincerely,

Ann Marie Buerkle
Acting Chairman

cc: The Honorable Scott Gottlieb, M.D., Commissioner, U.S. Food and Drug Administration

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

May 11, 2015

The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
United States House of Representatives
2322A Rayburn Office Building
Washington, DC 20515

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Commerce,
Manufacturing, and Trade
Committee on Energy and Commerce
United States House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

Dear Ranking Members Pallone and Schakowsky:

Thank you for your March 20, 2015 letter regarding the U.S. Consumer Product Safety Commission's (CPSC) congressionally directed rulemaking on phthalates and phthalate alternatives. As you know, section 108(b)(3)(A) of the Consumer Product Safety Improvement Act of 2008 (CPSIA, 15 U.S.C. 2057c) directs the CPSC to promulgate a final rule on phthalates and phthalate alternatives for use in children's toys and childcare articles based on the report of an independent Chronic Hazard Advisory Panel (CHAP).

I certainly agree with your recommendation that the CPSC take a health-protective approach when it comes to protecting the public, particularly where infants and children are concerned. The charge given to the CHAP was an important and serious one – "to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles." (Section 108(b)(2)(A)) This charge included instructions for the CHAP to undertake a de novo review of eight separate questions including the potential health effects of the full range of phthalates (section 108(b)(2)(B)(i)) in order to consider the cumulative effect of total exposure to

phthalates, both from children's products and from other sources, such as personal care products. (Section 108(b)(2)(B)(iv)).

The Commission received the final CHAP report on July 18, 2014. Because of section 108(b)(3)'s direction to promulgate a final rule not later than 180 days after receiving the report of the panel, I directed CPSC staff to work as expeditiously as possible on this rulemaking. After receiving CPSC staff's draft Notice of Proposed Rulemaking (NPR) based upon the CHAP report, the Commission voted to publish the NPR and take public comments through March 16, 2015. On March 13, 2015 the Commission voted unanimously to extend this comment period 30 days, until April 15, 2015.

When conducting rulemaking under section 553 of the Administrative Procedure Act ("APA"), providing notice and an opportunity for public comment is required. The agency is required under the APA to consider public comments as the CPSC develops its final rule. We are pleased to have been able to accommodate the receipt of stakeholders' comments since the release of the final CHAP report last summer. We look forward to reviewing and considering all of the comments we receive regarding the NPR, through the end of the extended comment period. All comments, as well as the draft final rulemaking package, will be available publicly.

I appreciate your sharing your views on this important public health issue before the Commission. You have my full commitment that I will work within the required legal framework and specific mandates prescribed by the CPSIA, and that I will work to maintain an open and transparent rulemaking process as required by the APA. Additionally, as part of maintaining a full, open record on this rulemaking, I have directed CPSC staff to add your letter to the rulemaking record. I will review all comments carefully and am committed to the rulemaking being conducted exclusively within the confines of the agency's legal authorities.

Thank you again for your letter and for your continued support of the Commission and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Jason K. Levine, Director of the

Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at ILevine@cpsc.gov.

Sincerely,

Elliot F. Kaye

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

March 19, 2015

The Honorable Bill Nelson
United States Senate
120 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Nelson:

Thank you for your letter of March 4, 2015, concerning media reports about Lumber Liquidators and the potential sale of laminate wood flooring material imported from China with high levels of formaldehyde. The U.S. Consumer Product Safety Commission (CPSC) takes very seriously issues involving chemicals, such as formaldehyde, and consumer products and is aware of these media reports.

Since the airing of these media reports, the CPSC staff has initiated work to determine whether these laminate wood flooring materials present an unreasonable risk to the consumer. As in any compliance matter that may involve complex issues such as indoor air quality, chemical emissions, and imported products, CPSC is pleased to be able to collaborate and coordinate with our partners across the federal government. CPSC staff has been in contact with our federal partners at the Environmental Protection Agency (EPA), the Centers for Disease Control (CDC), the Agency for Toxic Substances and Disease Registry (ATSDR), and the Federal Trade Commission (FTC) to determine the best path to move forward and address the existence of potential health or safety effects to consumers. As part of an inter-agency effort, CPSC looks forward to playing its statutory role in addressing consumer product related hazards, and will plan to defer, as appropriate, to the expertise and jurisdiction of our federal partners, particularly on issues such as potential long term health impacts of exposure to formaldehyde, or even false or predatory marketing.

CPSC staff has also reached out directly to (b)(3):CPSA Section 6(b)(1) and CBS to request test reports for the products referred to during the March 1, 2015, *60 Minutes* program. We are hopeful that the information contained in these reports will assist CPSC, our federal partners, and consumers in understanding better the alleged problems with the imported laminate wood flooring materials.

Attached to this letter is CPSC's booklet, "Update on Formaldehyde," which provides some basic information about formaldehyde and its potential impact on indoor air quality. Our federal partners at EPA have also have published useful information on the topic, which can be found at: http://www2.epa.gov/formaldehyde/questions-and-answers-regarding-laminate-flooring.

Thank you again for your letter and for your continued support of the Commission and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Jason K. Levine, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at JLevine@cpsc.gov.

Sincerely,

Elliot F. Kaye

cc: The Honorable Gina McCarthy, Administrator
The Honorable Thomas Frieden, Director and Administrator
The Honorable Edith Ramirez, Chairman

Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

Julia Richardson
Director, Office of Legislative Affairs

Tel: (301) 504-7853
E-mail: OLA@CPSC.gov

January 27, 2016

The Honorable Bill Nelson
United States Senate
716 Hart Senate Office Building
Washington, DC 20510

The Honorable Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Members Nelson and Blumenthal:

This letter is a follow-up to our December 18, 2015 correspondence regarding crumb rubber in artificial turfs and playgrounds. Regarding your reference to the CPSC's Public Playground Safety Handbook, as Chairman Kaye mentioned in his response, technical staff have reviewed the handbook and clarified certain places so it is clear that the descriptions of rubber surfacing relate only to the surface softness requirements in the ASTM standard. Please see the second page of the attached enclosure for these changes. The technical clarifications are attached to this response and can also be found here: https://www.cpsc.gov/PageFiles/122149/325.pdf .

Thank you again for your continued support of the CPSC and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me by telephone at: (301) 504-7853, or by e-mail at: JRichardson@cpsc.gov.

Sincerely,

Julia Richardson

Enclosure

U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

December 29, 2015

The U.S. Consumer Product Safety Commission's ("CPSC" or "Commission") *Public Playground Safety Handbook* was first published in 1981 under the name *A Handbook for Public Playground Safety*. The recommendations in the *Handbook* are focused on playground-related *injuries* and mechanical mechanisms of injury; falls from playground equipment have remained the largest single hazard pattern associated with playground use. Since the first edition, the Commission has included recommendations that playgrounds not be installed over concrete, asphalt, or paved surfaces to address serious head injuries due to falls from the equipment. Additionally, the Commission has made suggestions for commonly used loose-fill and unitary surfacing materials (*e.g.*, wood mulch, pea gravel, sand, gym mats, and shredded/recycled rubber mulch) that provide head impact attenuation and can mitigate the hazard presented by falls from playground equipment. Maintaining the focus on falls, the *Handbook's* surfacing recommendations are based on the surfacing material's energy absorbing effectiveness.

During the past 35 years, innovations in technology have led to new playground equipment and surfacing practices. Voluntary standards for equipment and impact attenuation for protective surfacing have evolved. The 2010 edition of the *Handbook*, the most recent version, still discusses common materials, but also covers new surfacing systems that are specifically designed and tested to comply with ASTM F1292, the voluntary standard for measuring impact attenuation of surfacing. Maintaining that focus, Section 2.4 of the *Handbook* identifies shredded/recycled rubber mulch as an "Appropriate Surfacing" product, given that this product can meet the impact attenuation requirements of ASTM F1292, as long as minimum depths of the material are maintained, as specified in Table 2 of Section 2.5. This notation is solely focused on the impact attenuation to minimize serious head injuries, and not on other aspects that may pose other risks, such as chemical exposure or ingestion.

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

April 9, 2015

The Honorable Mike Pompeo
United States House of Representatives
436 Cannon House Office Building
Washington, DC 20515

The Honorable Adam Kinzinger
United States House of Representatives
1221 Longworth House Office Building
Washington, DC 20515

Dear Representatives Pompeo and Kinzinger:

Thank you for your March 13, 2015 letter regarding the U.S. Consumer Product Safety Commission's (CPSC) congressionally directed rulemaking on phthalates and phthalate alternatives. As you know, section 108(b)(3) of the Consumer Product Safety Improvement Act of 2008 (CPSIA, 15 U.S.C. 2057c) directs the CPSC to promulgate a final rule on phthalates and phthalate alternatives for use in children's toys and childcare articles based on the report of an independent Chronic Hazard Advisory Panel (CHAP). Your letter asks the Commission to consider extending the official period of time for the public to comment on the Notice of Proposed Rulemaking (NPR) in the interest of integrity of the rulemaking process.

The Commission received the final CHAP report on July 18, 2014. Because of section 108(b)(3)'s direction to promulgate a final rule not later than 180 days after receiving the report of the panel, I directed CPSC staff to work as expeditiously as possible on this rulemaking. After receiving CPSC staff's draft Notice of Proposed Rulemaking (NPR) based upon the CHAP report, the Commission voted to publish the NPR and take public comments through March 16, 2015. On March 13, 2015 the Commission voted unanimously to extend this comment period 30 days, until April 15, 2015.

I am pleased to answer your question regarding how the agency will utilize the more current data sets regarding exposure of pregnant women to phthalates. CPSC staff plans to analyze the hazard index calculations for pregnant women using the

2011– 2012 and earlier National Health and Nutrition Examination Survey (NHANES) data sets, using the same approach and methodology as the CHAP, to the extent possible. The revised 2011–2012 data set became available in October 2014. Additionally, staff will review and consider all public comments, including any additional recent exposure data and new scientific literature. This analysis will also be made part of the rulemaking record.

When conducting rulemaking under section 553 of the Administrative Procedure Act ("APA"), providing notice and an opportunity for public comment is required. The agency is required under the APA to consider public comments as the CPSC develops its final rule. We are pleased to have been able to accommodate the receipt of stakeholders' comments since the release of the final CHAP report last summer. We look forward to reviewing and considering all of the comments we receive regarding the NPR, through the end of the extended comment period. All comments, as well as the draft final rulemaking package, will be available publicly.

I appreciate your sharing your views on this important public health issue before the Commission. You have my full commitment that I will work within the required legal framework and specific mandates prescribed by the CPSIA, and that I will work to continue to maintain an open and transparent rulemaking process as required by the APA. Additionally, as part of maintaining a full, open record on this rulemaking, I have directed CPSC staff to add your letter to the rulemaking record. I will review all comments carefully and am committed to the rulemaking being conducted exclusively within the confines of the agency's legal authorities.

Thank you again for your letter and for your continued support of the Commission and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Jason K. Levine, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at JLevine@cpsc.gov.

Sincerely,

Elliot F. Kaye

Elliot F. Kaye

cc: Commissioner Robert Adler
Commissioner Marietta Robinson
Commissioner Ann Marie Buerkle
Commissioner Joseph Mohorovic

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

May 20, 2016

The Honorable Michael Burgess
Chairman
Subcommittee on Commerce,
Manufacturing and Trade
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Burgess:

On January 28, 2016, President Obama signed into law the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA). The CNPPA requires that "any nicotine provided in a liquid nicotine container sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States" shall be packaged in accordance with the Poison Prevention Packaging Act (PPPA) of 1970. Liquid nicotine is commonly sold in a highly concentrated form. Even a small amount absorbed through the skin can make a child severely ill. Between January 1, 2015 and May 31, 2015, the American Association of Poison Control Centers received nearly 1,500 reports of child exposure to liquid nicotine. This law aims to stop that child exposure.

The CNPPA becomes effective on July 26, 2016, and covers products packaged on and after that date. The Consumer Product Safety Commission (CPSC) will begin enforcing the law's requirements at that time. Currently, CPSC staff is familiarizing themselves with the market for this product and has developed a compliance strategy to implement this important child safety law. This strategy includes enforcing the requirements with respect to liquid nicotine products that are sold (including online and retail), offered for sale, distributed in commerce, manufactured or imported. We are presently engaging manufacturers on compliance with the packaging standards and are pleased that many seem to be packaging products in special packaging that appears to comply with PPPA requirements. Since the PPPA

was passed in 1972, child fatalities from unintentional poisonings have declined significantly. I am confident that the CNPPA will have a similar impact.

Thank you for your continued support of the CPSC and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Julia Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at: JRichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

May 20, 2016

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Commerce,
Manufacturing and Trade
Committee on Energy and Commerce
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

Dear Ranking Member Schakowsky:

On January 28, 2016, President Obama signed into law the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA). The CNPPA requires that "any nicotine provided in a liquid nicotine container sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States" shall be packaged in accordance with the Poison Prevention Packaging Act (PPPA) of 1970. Liquid nicotine is commonly sold in a highly concentrated form. Even a small amount absorbed through the skin can make a child severely ill. Between January 1, 2015 and May 31, 2015, the American Association of Poison Control Centers received nearly 1,500 reports of child exposure to liquid nicotine. This law aims to stop that child exposure.

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Thank you for your continued support of the CPSC and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Julia Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at: JRichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

May 20, 2016

The Honorable Richard Blumenthal
Ranking Member
Subcommittee on Consumer Protection,
Product Safety, Insurance, and Data Security
Committee on Commerce, Science, and Transportation
United States Senate
428 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Blumenthal:

On January 28, 2016, President Obama signed into law the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA). The CNPPA requires that "any nicotine provided in a liquid nicotine container sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States" shall be packaged in accordance with the Poison Prevention Packaging Act (PPPA) of 1970. Liquid nicotine is commonly sold in a highly concentrated form. Even a small amount absorbed through the skin can make a child severely ill. Between January 1, 2015 and May 31, 2015, the American Association of Poison Control Centers received nearly 1,500 reports of child exposure to liquid nicotine. This law aims to stop that child exposure.

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Thank you for your continued support of the CPSC and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Julia Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at: JRichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

May 20, 2016

The Honorable Jerry Moran
Chairman
Subcommittee on Consumer Protection,
Product Safety, Insurance, and Data Security
Committee on Commerce, Science, and Transportation
United States Senate
512 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Moran:

On January 28, 2016, President Obama signed into law the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA). The CNPPA requires that "any nicotine provided in a liquid nicotine container sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States" shall be packaged in accordance with the Poison Prevention Packaging Act (PPPA) of 1970. Liquid nicotine is commonly sold in a highly concentrated form. Even a small amount absorbed through the skin can make a child severely ill. Between January 1, 2015 and May 31, 2015, the American Association of Poison Control Centers received nearly 1,500 reports of child exposure to liquid nicotine. This law aims to stop that child exposure.

The CNPPA becomes effective on July 26, 2016, and covers products packaged on and after that date. The Consumer Product Safety Commission (CPSC) will begin enforcing the law's requirements at that time. Currently, CPSC staff is familiarizing themselves with the market for this product and has developed a compliance strategy to implement this important child safety law. This strategy includes enforcing the requirements with respect to liquid nicotine products that are sold (including online and retail), offered for sale, distributed in commerce, manufactured or imported. We are presently engaging manufacturers on compliance with the packaging standards and are pleased that many seem to be packaging products in special packaging that appears to comply with PPPA requirements. Since the PPPA

was passed in 1972, child fatalities from unintentional poisonings have declined significantly. I am confident that the CNPPA will have a similar impact.

Thank you for your continued support of the CPSC and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me, or Julia Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853, or by e-mail at: JRichardson@cpsc.gov.

Sincerely,

Elliot F. Kaye

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

July 22, 2016

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Commerce,
Manufacturing and Trade
Committee on Energy and Commerce
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

Dear Ranking Member Schakowsky:

This letter serves as a follow up to our May 20, 2016 letter regarding the U.S. Consumer Product Safety Commission's (CPSC) implementation of the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA). The CNPPA requires that "any nicotine provided in a liquid nicotine container sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States" shall be packaged in accordance with the Poison Prevention Packaging Act (PPPA) of 1970. Our May 20, 2016 letter stated that the CNPPA "covers products packaged on and after" the effective date.

Upon further legal analysis of *National Resources Defense Council v. U.S. Consumer Product Safety Commission*, No. 08 Civ. 10507 (S.D.N.Y. filed Feb. 5, 2009), CPSC staff has determined that the CNPPA applies to existing inventory on its effective date. We provided this updated guidance to the retailers and manufacturers of these products. We will continue to work with the stakeholder community to implement the CNPPA's requirements and ensure the safety of children, which remains our highest priority, consistent with this important new safety law.

If you have any questions, please contact me or Julia E. Richardson, Director of the Office of Legislative Affairs, by telephone at (301) 504-7853 or by e-mail at jrichardson@cpsc.gov.

Sincerely,

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UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

July 22, 2016

The Honorable Jerry Moran
Chairman
Subcommittee on Consumer Protection,
Product Safety, Insurance, and Data Security
Committee on Commerce, Science, and Transportation
United States Senate
512 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Moran:

This letter serves as a follow up to our May 20, 2016 letter regarding the U.S. Consumer Product Safety Commission's (CPSC) implementation of the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA). The CNPPA requires that "any nicotine provided in a liquid nicotine container sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States" shall be packaged in accordance with the Poison Prevention Packaging Act (PPPA) of 1970. Our May 20, 2016 letter stated that the CNPPA "covers products packaged on and after" the effective date.

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UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

July 22, 2016

The Honorable Michael Burgess
Chairman
Subcommittee on Commerce,
Manufacturing and Trade
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Burgess:

This letter serves as a follow up to our May 20, 2016 letter regarding the U.S. Consumer Product Safety Commission's (CPSC) implementation of the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA). The CNPPA requires that "any nicotine provided in a liquid nicotine container sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States" shall be packaged in accordance with the Poison Prevention Packaging Act (PPPA) of 1970. Our May 20, 2016 letter stated that the CNPPA "covers products packaged on and after" the effective date.

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UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN ELLIOT F. KAYE

July 22, 2016

The Honorable Richard Blumenthal
Ranking Member
Subcommittee on Consumer Protection,
Product Safety, Insurance, and Data Security
Committee on Commerce, Science, and Transportation
United States Senate
428 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Blumenthal:

This letter serves as a follow up to our May 20, 2016 letter regarding the U.S. Consumer Product Safety Commission's (CPSC) implementation of the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA). The CNPPA requires that "any nicotine provided in a liquid nicotine container sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States" shall be packaged in accordance with the Poison Prevention Packaging Act (PPPA) of 1970. Our May 20, 2016 letter stated that the CNPPA "covers products packaged on and after" the effective date.

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