Additional Written Comments and Supplemental Information Regarding Agenda and Priorities for Fiscal Years 2017 and 2018

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2. Following Organizations: American Home Furnishings; Alliance Association of Home Appliance Manufacturers; Baby Carrier Industry Alliance; Fashion Jewelry and Accessories Trade Association; Halloween Industry Association; International Sleep Products Association; Juvenile Products Manufacturers Association; National Association of Manufacturers; National Retail Federation; Outdoor Power Equipment Institute; Power Tool Institute; Society of the Plastics Industry, Inc.; Toy Industry Association; Upholstered Furniture Action Council; Window Covering Manufacturers Association

3. Bill Perdue VP Regulatory Affairs, The American Home Furnishings Alliance (AHFA)

4. Linda Kaiser, Parents for Window Blind Safety

5. Stephanie Fox-Rawlings on behalf of Dr. Diana Zuckerman, President, National Center for Health Research

6. Carol Pollack-Nelson, Ph.D, Independent Safety Consulting

7. Daniel Penchina, National Breast Cancer Fund & Washington Toxics Coalition (submitted by Nancy Buermeyer)

8. Ernie Rosenberg, President and CEO, American Cleaning Institute

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Retail Industry Leaders Association (RILA)

RILA
RETAIL INDUSTRY LEADERS ASSOCIATION
Educate.Collaborate.Advocate.

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Via Electronic Filing

June 1, 2016

Todd A. Stevenson
Office of the Secretary
U.S. Consumer Product Safety Commission
Office of the Secretary | Room 820
4330 East-West Highway
Bethesda, MD 20814

Dear Secretary Stevenson,

The Retail Industry Leaders Association (RILA) respectfully submits the following comments to the U.S. Consumer Product Safety Commission (CPSC or Commission), regarding its Fiscal Years 2017 and 2018 Agenda and Priorities. RILA appreciates the opportunity to provide the perspective of its members regarding agency priorities and hopes that the Commission and agency staff carefully consider RILA's views while developing its Fiscal Year 2017 Operating Plan and 2018 Budget Request.

RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry – retailers, product manufacturers, and service providers – which together account for more than $1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad. As some of the largest U.S. importers, RILA members share the CPSC's commitment to product safety and ensuring that all products sold to U.S. consumers meet or exceed all applicable safety requirements and standards while facilitating legitimate trade.

As the CPSC aligns its activities with its proposed 2016-2020 Strategic Plan, the following comments seek to provide input into the Commission's priorities, regulatory enforcement efforts, and rulemaking and the level of resources RILA believes the Commission should allocate for various agency activities in 2017 and 2018. RILA submits these comments in the spirit of collaboration and partnership taking into account the guidance provided by the agency's "Policy on Establishing Priorities for Commission Action."[1] We look forward to continuing to work with the CPSC to achieve our shared product safety goals.

Executive Summary

RILA members appreciate the Commission's leadership on consumer product safety matters, including consumer education campaigns, stakeholder and industry outreach, and international regulatory alignment. The CPSC and RILA members have a tradition of working together to address consumer product safety issues. For example, several of RILA's members participate in the agency's industry partnership programs, including the CPSC's voluntary Retailer Reporting Program pilot and the combined U.S. Customs and Border Protection (CBP)/CPSC Importer

[1] 16 C.F.R. § 1009.8

Self-Assessment Product Safety Pilot (ISA-PS) program. In addition, RILA's member retailers regularly cooperate with the CPSC to promote CPSC's consumer education programs and on third-party product recalls. Through these efforts and others, RILA's members work with the CPSC to find practical ways to address consumer product safety concerns.

As the Commission determines its 2017 and 2018 priorities, RILA respectfully submits its recommendations, summarized below:

First, it is critical that the Commission provide transparency into regulatory enforcement decisions, particularly in the area of civil penalty determinations. In the wake of the agency's first post-Consumer Product Safety Improvement Act (CPSIA) maximum civil penalty settlement, industry and, ultimately, consumers are best served by the CPSC providing clear guidance on effective compliance programs and mitigating and aggravating penalty factors so as to strengthen industry compliance efforts and meet the shared goal of enhancing consumer product safety;

Second, retailers, distributors, importers and manufacturers all occupy unique positions within the supply chain with separate and distinct roles and responsibilities. Although retailers always strive to be collaborative partners with the CPSC, it is inappropriate for the Commission to seek to impose manufacturers' responsibilities for product design and recalls on retailers. Therefore, the CPSC's enforcement and regulatory priorities should be aligned to reflect the appropriate role of all members of the supply chain;

Third, as the Commission moves forward with its efforts to enhance and strengthen its import, surveillance capabilities, transparency regarding the metrics the CPSC will use to evaluate the value of the alpha e-filing pilot information and continued stakeholder engagement are key to ensuring that a final CPSC import surveillance program targets high-risk products without unduly burdening legitimate trade. CPSC should develop a trusted trader program for low risk importers as part of its import surveillance program to include importers that are currently certified as part of the joint Customs and Border Protection (CBP)/CPSC Importer Self-Assessment – Product Safety (ISA-PS) program. Also, the CPSC's import surveillance program should be funded under the agency's normal operating budget;

Fourth, the CPSC should continue its efforts to enhance data-driven decision making by bolstering its data collection and analysis capabilities, particularly in the areas of product safety incident reporting. To this end, the current Retail Reporting Program pilot where participants partner with the agency to provide real-time data on consumer product hazards should be formalized and expanded;

Fifth, the Commission should maximize regulatory predictability for the regulated community by updating its priorities for Fiscal Years 2017 and 2018 and future budget request documents to accurately reflect the status of two pending low priority process-oriented rulemakings – the Voluntary Recall Rule and 6(b) rulemaking; and

Sixth, the CPSC should continue to emphasize and create opportunities for stakeholder engagement and agency collaboration with industry. While recent engagement efforts with

impacted stakeholders on the proposed import e-filing alpha pilot have proven productive and should be continued, many other issues such as consumer education, recall effectiveness, and expansion of the CPSC's import surveillance program would benefit from the creation of a federal advisory committee or other vehicle to provide sustained, structured stakeholder engagement.

I. The CPSC Should Provide Transparency and Clarity to Enforcement Decisions and Calculation of Civil Penalties

RILA and its members note with concern the upward trend of civil penalty cases in addition to the Chairman's recent statements regarding his desire to see "civil penalties in the double-digits." In March, the CPSC announced a record-breaking $15.45M settlement with Gree Electric,[2] marking the first post-CPSIA maximum penalty settlement. While the settlement achieved notoriety and was widely reported in the trade press, due in large part to the high dollar amount of the settlement, the CPSC missed a unique and important opportunity to provide the regulated community much-needed clarity and guidance. The CPSC's failure to include critical facts and the specific aggravating and mitigating factors considered by the Commission in its penalty decision, leaves the regulated community with little guidance to enable companies to review and enhance product safety compliance programs.

RILA members believe that transparency and candor by the Commission on best practices for compliance programs and how penalties are calculated, including specific mitigating and aggravating factors, will spur compliance efforts. Recent statements by Commissioner Mohorovic and Commissioner Buerkle have argued that the Commission should be more transparent in penalty decisions.[3] RILA supports these statements and urges the Commission to dedicate sufficient resources and funding in FY 2017 and 2018 to accomplish this goal.

II. The CPSC Should Respect and Not Blur the Unique Roles and Responsibilities of Individual Supply Chain Members for Product Safety Compliance

The CPSC and the regulated community share the same goal of ensuring the safety of all products sold to U.S. consumers. The retail industry historically has worked collaboratively with agency staff on a variety of issues including consumer education efforts, such as the CPSC's *Anchor It* program to inform consumers about furniture tip-over risks and options to mitigate the risk. In addition, in situations where a manufacturer is no longer in business or able to conduct a recall, retailers have voluntarily taken on the role of the manufacturer to recall a defective product (e.g., drop-side cribs recalls). However, it is important for the Commission to remember that each type of businesses within the supply chain (i.e., manufacturer, importer, distributer, wholesaler and retailer) has a different and distinct role

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[2] CPSC News Release 16-127: Gree Agrees to Pay Record $15.45 Million Civil Penalty, Improve Internal Compliance for Failure to Report Defective Dehumidifiers, March 25, 2016

[3] Statement of Commissioner Joseph P. Mohorovic Regarding the Commission's Provisional Acceptance of a Settlement Agreement with Gree Electric, March 24, 2016 and Statement of Commissioner Ann Marie Buerkle on the Commission's Growing Civil Penalty Settlements, March 25, 2016.

and responsibility for product safety compliance particularly as it relates to product design and recalls.

RILA members are deeply concerned about recent actions by the Commission and agency staff attempting to blur the roles of retailers and manufacturers and to push retailers to take on compliance responsibilities that more appropriately lie with manufacturers. In connection with corded window coverings, high-powered magnet office toys, and most recently hoverboards, the Commission has attempted to leverage retailers in order to effectuate desired actions, including changes to product design, withdrawal of a product category from the market, product testing and potential product recall, that are typically within the scope of manufacturers' responsibilities. The Commission's recent actions, including the public shaming in the media of retailers that the agency believes are not being "cooperative," stands in stark contrast to the long history of collaboration between the CPSC and the retail industry. As the agency develops its enforcement priorities for FY 2017 and 2018, RILA urges the agency to recognize the unique and distinct roles of retailers and manufacturers and restore the long-standing cooperative relationship between the CPSC and the retail industry by realigning its regulatory enforcement approaches with statutory and regulatory responsibilities.

III. CPSC Proposed E-Filing Pilot and Related Import Surveillance Activities

RILA members support the CPSC's efforts to strengthen its import surveillance activities through enhancement of its Risk Assessment Methodology ("RAM") for targeting high risk and potentially unsafe and non-compliant products prior to importation into the United States. In this regard, RILA offers the following suggestions for the agency to consider as it moves forward with its import surveillance priorities for FY 2017 and 2018.

a. <u>CPSC Should Clearly Articulate the Metrics It Intends to Use Evaluate the Value of the Information Provided Through the Alpha E-filing Pilot and Continue to Engage with CBP and Stakeholders on Future Developments</u>

RILA and its members are appreciative of CPSC staff and the Chairman, in particular, for engaging with the regulated community regarding the structure and components of the alpha e-filing pilot. We note that, in response to stakeholder feedback, the Commission decided to limit the number of required data fields for the alpha e-filing pilot to five fields from the previously proposed 10 fields.[4] However, much work remains to be done before the program demonstrates its value and ability to enhance import surveillance without unduly burdening legitimate trade.

As part of this process, the agency should develop and clearly articulate to all stakeholders the specific metrics it will use to evaluate whether the information provided under the alpha e-filing pilot directly advances and enhances the CPSC's import surveillance capabilities. Additionally, the CPSC should conduct a cost-benefit analysis to measure the administrative costs of the e-filing program to pilot participants and the agency compared to the value of the information received. As the proposed pilot develops

[4] 80 Fed. Reg. 50827

and enters its Beta and future phases, RILA urges the CPSC to continue and broaden stakeholder engagement. Also, it is critical that CPSC continue to collaborate with CBP to incorporate the technology-based streamlined approach and strategic vision of CBP's Automated Commercial Environment into CPSC import surveillance program. We encourage CPSC work with CBP to integrate its import surveillance and risk management program into CBP's Centers of Excellence (CEEs) (e.g., CBP's Apparel, Footwear & Textiles CEE located in San Francisco and the Consumer Products and Mass Merchandise CEE located in Atlanta, Georgia). It is only through constructive dialogue among CPSC, CBP and impacted stakeholders, that the proposed pilot can achieve shared product safety goals and, ultimately, produce a final import surveillance program that will safeguard U.S. consumers while avoiding needless regulatory burdens on trade.

b. The CPSC Should Develop a Trusted Trader Program as an Integral Part of Its Risk-Based Import Surveillance Program

One important benefit of a risk-based import surveillance program is that it will allow the CPSC to allocate its limited resources to targeted high risk importers and products. A government-industry partnership or trusted trader program for low risk importers is a key component to a strong risk-based import surveillance program. RILA members strongly support the development of a Trusted Trader program as part of the CPSC's overall import surveillance program. RILA renews its recommendation that the agency develop a robust Trusted Trader program, inclusive of significant trade benefits for importers willing to subject their product safety compliance programs, import processes, and supply chains to CPSC scrutiny. Additionally, importers that are currently certified and participating the joint CBP/CPSC ISA-PS program should be considered to be "trusted traders" and integrated into any new CPSC Trusted Trader program.

RILA appreciates the Commission's prior decisions to allocate staff resources towards the development of a Trusted Trader program and placement of the initiative in the CPSC's proposed 2016-2020 Strategic Plan. However, recent comments by agency staff have raised concerns that the creation of CPSC's Trusted Trader program could be delayed until after CBP completes development of its new trusted trader program. RILA urges the Commission to move forward now and not delay the development of a mutually beneficial CPSC-industry partnership program pending another agency's uncertain timeline. Instead, a CPSC Trusted Trader Program developed and based upon the risk-based approach for imports already agreed upon in the interagency process can be implemented and ultimately incorporated as one component of into the new overarching CBP trusted trader program with minimal modifications. Therefore, RILA urges the CPSC to allocate sufficient resources in Fiscal Years 2017 and 2018 to develop a risk-based, voluntary Trusted Trader program with clearly defined obligations and benefits.

c. Import Surveillance Activities Are Part of the CPSC's Core Mission and Should Be Funded Under The CPSC Normal Operating Budget

The CPSC has requested statutory authority to levy user fees to fund the nationalization of its import surveillance RAM program in its previous requests for Fiscal Years 2015

and 2016, and most recently in its Fiscal Year 2017 budget request. To date, Congress has declined to provide such authority to the Commission. RILA members continue to support the agency's efforts to strengthen and expand its import surveillance program to ensure the safety of consumer products that enter into U.S. commerce and actively engage with the CPSC to accomplish this goal.

However, RILA renews its recommendation that the CPSC seek funding of a nationalized RAM program through the normal congressional appropriations process. As import surveillance is an essential part of the agency's product safety mission, these activities should be part of CPSC's normal appropriations process subject to Congressional approval, monitoring and oversight. RILA believes that further stakeholder engagement is critical to enhancing transparency and clarity regarding plans for national RAM implementation. The CPSC should work with the regulated community to provide more detail as to the roll-out of the nationalized RAM program prior to receiving such funding.

IV. The CPCS Should Take Steps to Expand Data Collection Efforts and Analysis Capabilities to Enhance Data-Driven Decision Making

As noted in recent statements by several commissioners, the CPSC is a data driven safety agency.[5] RILA members support the CPSC's efforts to enhance its data collection and analysis capabilities in order to promote data-driven decision making. At last year's Data Collection Hearing, RILA's testimony detailed the value of real-time, product-specific safety incident data provided as part of the Retailer Reporting Program pilot and outlined opportunities for improvement and expansion of the program.[6] The ten-year old RRP pilot program is currently under review by the CPSC. To date, the agency has only focused on attempting to evaluate the usefulness of specific data received through the current ad-hoc RRP pilot, which does not have standardized processes or procedures, and instead, operates through independent agreements with the participating companies. RILA believes that the usefulness of the data received through the RRP would be more properly evaluated if the Commission explored the potential value of data provided under a more formalized program using advanced data analytics tools.

RILA urges the Commission to dedicate resources in its priorities for Fiscal Years 2017 and 2018 to completing its internal review of its Retailer Reporting Program pilot and pushing forward to formally explore program expansion through solicitation of public comment and direct engagement with retailers and manufacturers. RILA members noted with interest the Chairman's recently expressed intention to hold a public workshop on ways by which the agency's Section 15(b) reporting system can be improved. RILA encourages the Commission to include the following topics in the upcoming workshop: formalization and expansion of the RRP and confirmation that reporting product safety incident information through the RRP meets the requirements for an initial report under Section 15 (b).

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[5] CPSC Hearing on Data Sources and Consumer Product-Related Incident Information – Panel 1 and Panels 2 & 3, June 26, 2015.

[6] RILA Testimony on Data Sources and Consumer Product-Related Incident Information, June 25, 2015

V. The CPSC Should Clarify Rulemaking Priorities and Increasing Regulatory Predictability For the Regulated Community by Withdrawing Pending Rulemakings That Do Not Directly Advance Product Safety

The Chairman has repeatedly stated, including at last year's Priority Hearing, that he is interested in moving forward with only those rulemakings that directly advance product safety.[7] There are several process-focused rulemakings, including proposed amendments to the Voluntary Remedial Actions and Guidelines for Voluntary Recall rule (16 C.F.R. § 1115), and the proposed amendments to information disclosure rules under Section 6(b) of the Consumer Product Safety Act (16 C.F.R. § 1101) that are pending before the Commission where the agency should either allocate additional resources to broaden stakeholder engagement prior to developing a final rule or accurately reflect the status and priority of the completion of rulemaking, so as to provide industry with increased regulatory predictability.

RILA submitted extensive comments on both the proposed Voluntary Recall rand Section 6(b) rules detailing serious issues retailers have with each proposal. Last year, the Commission indicated that both proposed rules, being primarily process-focused, did not warrant the expenditure of resources among the Commission's other priorities. However, the forecast for final rules in both the proposed Voluntary Recall and Section 6(b) rulemaking proceedings continues to appear on the agency's mandatory standards chart in its operating plan and budget request documents. RILA agreed with the CPSC's ordering of agency priorities last year with respect to these two proposed rules and urges the Commission to adopt the same position for FY 2017. RILA further requests that the Commission's FY 2017 priorities, operating plan, and FY 2018 budget request do not allocate any resources or budget to finalization of these rules.

VI. CPSC's Continued Engagement, Collaboration, and Cooperation with All Stakeholders Will Enhance Agency Rulemaking and Enforcement Decisions, Increase Product Safety and Better Protect U.S. Consumers

RILA members believe in fostering a strong mutual partnership with the CPSC, yielding a collaborative and comprehensive approach to rulemaking, information collection, and program development. Retailers appreciate the Commission's efforts, thus far, to work with the regulated community on the import alpha e-filing pilot and note the Chairman's announcement that the agency will hold two public workshops this year on the topics of improving recall effectiveness and streamlining and enhancing Section 15(b) reporting. While RILA members are optimistic that the workshops will produce beneficial results, the CPSC can and should be doing to advance consumer product safety goals through formal and informal stakeholder engagement efforts. RILA continues to recommend that the Commission establish a permanent stakeholder group, under the Federal Advisory Committee Act, similar to CBP's Advisory Committee on Commercial Operations (COAC). Stakeholder groups, such as the COAC, provide invaluable insight to regulators and would foster more informed CPSC actions and rulemaking. Collaboration with the regulated

[7] CPSC Agenda and Priorities Hearing for Fiscal Years 2016 and 2017 – Panel 1, Panel 2, and Panel 3 – June 26, 2015

community will continue to raise the bar on product safety compliance resulting in increased protection for U.S. consumers.

Conclusion

RILA appreciates the opportunity to provide comments on the CPSC's agenda and priorities over the next two fiscal years. RILA and its members share the Commission's commitment to improving consumer product safety and consumer education and to quickly removing potentially harmful products from the U.S. marketplace. We look forward to continuing to working collaboratively relationship with the agency to advance our shared safety goals.

Sincerely,

Kathleen McGuigan
Senior Vice President, Legal & Regulatory Affairs
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Various Organizations as follows:

American Home Furnishings Alliance

Association of Home Appliance Manufacturers

Baby Carrier Industry Alliance

Fashion Jewelry and Accessories Trade Association

Halloween Industry Association

International Sleep Products Association

Juvenile Products Manufacturers Association

National Association of Manufacturers

National Retail Federation

Outdoor Power Equipment Institute

Power Tool Institute

Society of the Plastics Industry, Inc.

Toy Industry Association

Upholstered Furniture Action Council

Window Covering Manufacturers Association

June 1, 2016

Todd A. Stevenson
Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Commission Agenda and Priorities; Notice of Hearing (Docket No. CPSC-2016-0010)

Dear Mr. Stevenson:

The undersigned organizations provide these comments in response to the notice of public hearing on the Consumer Product Safety Commission's ("CPSC" or "the Commission") agenda and priorities for fiscal years 2017 and 2018. We represent manufacturers of consumer products, their suppliers, retailers and other key stakeholders that are impacted by the actions of the Commission. Our collective members are committed to providing safe products and assert that the most effective product safety regime must be based on the highest quality information available and proactive engagement with manufacturers, retailers and others. The Commissions' priorities should focus on product safety and protecting consumers effectively, and valuable agency resources should not be diverted to initiatives that fail to protect the public.

I. The Commission Should Terminate Rulemakings That Would Not Advance Consumer Protection

Several open rulemakings on which the CPSC is allocating scarce and valuable resources are controversial proposals that would not advance consumer protection, and the Commission should formally withdraw the rules.

Information Disclosure under Section 6(b) of the Consumer Product Safety Act. In February 2014, the CPSC issued a proposed rule that would significantly alter its interpretation of section 6(b) of the Consumer Product Safety Act (CPSA), changing the agency's longstanding policy on publicly disclosing information on companies and products. The CPSA requires the CPSC to "take reasonable steps to assure" that any disclosure of information relating to a consumer product safety incident is accurate and fair. Manufacturers and other companies rely on the safeguards provided by section 6(b) and the Commission's current information disclosure rules to ensure that information disclosed publicly is accurate and fair as the law requires. Recognizing the impact that information disclosed publicly by the Commission can have on a company, Congress has kept the foundations of section 6(b) intact despite amending the CPSA. If finalized, the Commission's proposal would limit critically important protections afforded to manufacturers from the disclosure of inaccurate information. This is in direct conflict with the intent of Congress.

Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices. In November 2013, the CPSC issued a proposed rule that would place significant burdens on manufacturers and retailers of consumer products and negatively affect the highly successful voluntary recall process. The proposed rule would make voluntary corrective action plans and voluntary recalls legally binding, increasing enforcement jeopardy and legal consequences in product liability, other commercial contexts or in a civil penalty matter. The proposal would essentially eliminate

a company's ability to disclaim admission of a defect or potential hazard. This raises serious First Amendment concerns as the CPSC seeks to prevent companies from making truthful public statements. The proposed rule would also empower CPSC staff to include compliance programs in corrective action plans. If the CPSC continues with this rulemaking, it could threaten the cooperative relationship that many companies rely upon and could potentially eliminate the Fast Track recall program, which the Commission itself highlights as a model of good governance.

Mandatory Standard for Table Saws. In October 2011, the CPSC initiated rulemaking procedures to establish mandatory safety standards for table saws. The rulemaking, in its current trajectory, would potentially seek to impose a standard that could only be achieved through the use of one claimed patented technology. Regulation should not be used to advantage one technology or one company over another. The CPSA dictates when the commission can issue a mandatory standard: only upon a finding that an existing voluntary standard would not prevent or adequately reduce the risk of injury in a manner less burdensome than the proposed CPSC mandatory standard. Data used by the CPSC on alleged table saw injuries are questionable and outdated and not relevant to current voluntary standards. If the CPSC proceeds with a mandatory standard, such action would undermine the industry's incentive to develop new alternative table saw safety technology and would impose unnecessary and significantly increased costs on consumers. In issuing an advance notice of proposed rulemaking, the CPSC fails to mention the costs to small businesses, such as carpenters and contractors, in its discussion on economic considerations. According to the Power Tool Institute, the CPSC's proposal would increase the cost of each benchtop table saw by approximately $1,000—four times the average price and an $875 million impact only for the benchtop category of table saws. Such a burden is not justifiable for do-it-yourself or small contractor customers. Unfortunately, this rulemaking illustrates a trend at the agency where the CPSC has failed to conduct adequate cost-benefit analyses with its rulemakings and imposes prohibitive costs on manufacturers and consumers without accounting for the actual risks associated with the products.

Mandatory Standard for Recreational Off-Highway Vehicles. In October 2014, the CPSC proposed a mandatory standard for recreational off-highway vehicles (ROVs) despite admitting that it had no evidence showing its proposed changes would improve safety. The ROV industry is highly innovative, using technological advances to improve safety, and it has recently issued new comprehensive voluntary standards. The CPSC, however, is seeking to dictate design and handling characteristics of vehicles. The proposal violates statutory requirements that the agency defer to voluntary standards and, when issuing mandatory standards, to issue only performance-based criteria and not design mandates. The CPSC's insistence on a mandatory standard will compromise the mobility and utility of the vehicles in the off-highway setting for which they are intended, negatively impact safety by limiting research and innovation and harm consumer demand. The result of this agency action would be the loss of thousands of American manufacturing and retail jobs. The CPSC's threat of a mandatory standard as a way to force an entire industry into accepting unproven design requirements is a dangerous precedent-setting tactic. Such action could greatly harm an entire industry with no clear improvements to safety and no justification for the costs the agency seeks to impose on manufacturers and consumers.

II. The Commission Should Make a Priority Its Statutory Mandate to Reduce Testing Burdens

We encourage the Commission to make efforts to reduce third-party testing burdens a priority as Congress intended when it passed H.R. 2715 (Pub. Law 112-28) in 2011. Congress

has directed the CPSC to identify ways to reduce "third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations." Congressional intent is clear: safety in consumer products should be maintained without imposing an undue burden on manufacturers, retailers and consumers. President Obama also supports this ideal. In July 2011, the President issued Executive Order 13579 asking independent regulatory agencies, to the extent permitted by law, to comply with the provisions of Executive Order 13563. The latter order states that our regulatory system "must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends."

The regulated community agrees that testing is a critical component to product safety assurance. However, all companies, especially small ones, are still struggling with the costs associated with mandatory testing requirements that do not help determine compliance or are redundant. The agency has spent significant time identifying opportunities to reduce unnecessary testing burdens, but the result to date has been *very* limited relief. The agency has recently issued several studies that have looked for materials that will not contain regulated substances, and we urge the agency to move quickly to exempt these materials, specifically the plastic materials, from expensive testing.

III. The Commission Should Formalize Proactive Engagement with External Stakeholders

Product safety goals and objectives are shared by the business community, consumer organizations and the Commission alike. Fostering a cooperative, rather than an adversarial, relationship will likely best achieve these shared goals. We urge the Commission to formalize engagement with stakeholders to address ongoing issues that have a significant contribution to CPSC's mission: import surveillance, recall effectiveness and information collection/management. We encourage the CPSC to make this activity a priority moving forward.

IV. The Commission Should Focus Resources on Addressable Safety Concerns

Given the Commission's limited resources, the agency must focus attention on safety issues where the agency has specialized experts. We support the CPSC's cooperation with other federal agencies in identifying and responding to areas of risk, but the Commission must not duplicate or even complicate the efforts that other agencies have undertaken. The Commission should also commit to working with manufacturers, retailers and other interested parties in developing strategies for addressing safety concerns. Through the CPSA and its amendments, Congress recognized the importance of voluntary standards and cooperative engagement with stakeholders as effective tools for protecting consumers. Industries can identify and respond to emerging risks quickly, so the agency would be wise to foster this working relationship. With a mission focused on safety, the CPSC must rely on the best available and relevant data to support regulatory decisions. Importantly, the CPSC should complete a thorough a robust analysis of its regulatory proposals and employ sound regulatory principles to ensure that they effectively meet policy objectives.

V. Conclusion

The decisions and actions of the Commission greatly impact manufacturers, retailers and other stakeholders who share the Commission's mission to protect consumers and support

Bill Perdue, VP Regulatory Affairs

The American Home Furnishings Alliance (AHFA)

Before the

U.S. Consumer Product Safety Commission

'The Commission's Agenda and Priorities for Fiscal Year 2017'

(Docket No. CPSC-2016-0010-0001)

Comments of

The American Home Furnishing Alliance

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01 June 2016

Mr. ***Todd A. Stevenson***, Secretary
U.S. Consumer Product Safety Commission
Room 820
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Via Electronic Mail – Federal e-Rulemaking Portal (regulations.gov)

Re: ***'The Commission's Agenda and Priorities for Fiscal Year 2017'***

The ***American Home Furnishings Alliance*** ('AHFA') provides these written comments in response to the U.S. Consumer Product Safety Commission's (hereafter 'Commission' or 'CPSC') request for comments (CPSC-2016-0010-0001) regarding the Commission's agenda and priorities for fiscal year 2017. The AHFA, respectfully requests: (A) that the Commission adopt CA TB-117-2013 as a national residential upholstered furniture flammability standard, and (B) address the fundamental questions raised by the ASTM F 15.42 subcommittee on furniture safety regarding the analysis of incident data to determine if units involved were designed and engineered to meet the performance test methods prescribed in Section 7 of ASTM F 2057-14.

The AHFA represents the residential home furnishings industry, including companies large and small, public and private, domestic and import. Our membership includes nearly 400 companies that are part of a sophisticated global supply chain sourcing products from factories in 31 U.S. states and more than a dozen foreign countries. AHFA member companies are part of an industry sector that provides nearly 90,000 U.S. manufacturing jobs and sells more than $100 billion in home furnishings products annually to U.S. consumers.

A. *Upholstered Furniture Flammability*

As outlined in its ***Joint Industries Petition***[1] dated October 30, 2015 ('Petition'), the AHFA asked the Commission, under 16 C.F.R Section 1051, to adopt the performance standards and test methods as prescribed in California Technical Bulletin 117-2013, under the Flammable Fabrics Acts.

The AHFA petition was submitted on behalf of the Joint Industry Coalition (hereafter, the 'Coalition') listed in the petition. The Coalition is a diverse group of stakeholders who have been working on the residential upholstered furniture flammability issue for several years and

[1]CPSC-2008-0005-0053

who support the petition to provide the Commission an opportunity to bring closure to the longstanding flammability issue in residential upholstered furniture.

For over 40 years, since it inherited the ***Flammable Fabrics Act*** ("FFA") from Congress in 1973, the CPSC has been debating whether it should adopt a national flammability standard for residential upholstered furniture. Beginning in 1981, CPSC focused exclusively on cigarette-smolder ignition as the primary cause of fires in residential upholstered furniture. In 1993 the National Association of State Fire Marshals petitioned the CPSC requesting the issuance of a flammability standard for residential upholstered furniture under the FFA, based in part, on California Technical Bulletin 117 ("TB 117"), as it then existed.[2] The Commission granted the petition in part in 1994. The Commission denied the Petition with respect to large open-flame-ignition fires, stating that there was no information before the Commission to support the conclusion that a large open-flame standard would lead to a substantial reduction in deaths, injury, and property damage; also of concern was the extraordinary costs of compliance to such a standard.[3]

In 2008, after almost 15 years of regulatory activity, the CPSC issued a Notice of Proposed Rulemaking (the "2008 NPRM") which promoted a flammability standard for residential upholstered furniture that focused primarily on protecting against fires started by smoking materials, almost always cigarettes.[4] In its 2008 NPRM, the CPSC noted that for addressable fires, 90% of deaths were from fires started by smoking materials.[5] In other words, 90% of the deaths in addressable fires were caused by a smoldering ignition source. The balance of addressable fires resulted from all other sources, including small open-flame sources. In the 2008 NPRM, the CPSC recognized that "relatively few open flame deaths and injuries could be averted, even under highly effective open flame requirements."[6] Accordingly, the 2008 NPRM "does not include provisions related to open flame ignition performance of filling materials."[7] The 2008 NPRM rejected such an open flame resistant standard in part at the request of environmental groups which expressed concern that flame retardant (FR) chemicals would be needed to meet these requirements.[8] Because it did not include the open flame requirements, the CPSC anticipated that FR chemicals would be the least likely means of compliance with the proposed rule. Furthermore, in the 2008 NPRM, the CPSC supported an open flame residential upholstered furniture flammability standard; however, CPSC is reluctant to support such a standard today.

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[2] *See Petition Requesting Issuance of Flammability Standard for Upholstered Furniture*, 58 Fed. Reg. 43,301 (Aug. 9, 1993).

[3] Upholstered Furniture; Advance Notice of Proposed Rulemaking; Request for Comments and Information, 59 Fed. Reg. 30,735, 30,736 (June 15, 1994).

[4] Standard for the Flammability of Residential Upholstered Furniture, 73 Fed. Reg. 11,702, 11,704 (Mar. 4, 2008).

[5] 73 Fed. Reg. 11704 (March 4, 2008)

[6] See 73 Fed. Reg. at 11706

[7] See 73 Fed. Reg. at 11723

[8] See 73 Fed. Reg. at 11709

Since 1993 and as a result of cooperation from a broad coalition of interested stakeholders (including fire fighters and several influential NGOs), TB- 117 has been substantially improved to address flammability concerns associated with smolder ignition, thereby aligning it with the 2008 NPRM. In fact, the California Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (the 'Bureau' or 'BEARHFTI), in its ***'Final Statement of Reasons'*** for the 2013 amendments to TB 117, noted the CPSC's conclusion that upholstery cover fabrics play a more important role in fire behavior performance than filling materials. The Bureau rejected comments urging the continued application of an external ignition or open-flame standard.[9] In 2013, the home furniture industry and its related retail partners submitted comments in response to the CPSC's announcement considering fire barriers for residential upholstered furniture[10]. Those comments provide additional background information documenting the reasons that the CPSC should adopt the 2013 improvements that were made to TB 117 as the most effective and appropriate solution to achieve our mutual public health and safety goals and objectives.[11]

The principal performance requirements proposed in the 2008 NPRM were intended to reduce the risk of fire from smoldering ignition. Manufacturers were required to demonstrate cover fabric compliance by using the smolder resistance test method. In addition, manufacturers that chose to demonstrate compliance through barriers would be required to meet both an interior fire barrier smoldering resistance test and an interior fire barrier open-flame resistance test. The 2008 NPRM projected that barriers to comply with the proposed rule would be '***used in only about 5% of all upholstered furniture***'—primarily 'designers of higher-priced furniture' that could absorb the higher cost of the barriers.

TB 117-2013 achieves the same objectives as the 2008 NPRM by focusing on the risk of smolder ignition of cover fabrics and offers proven repeatable and reproducible test methods that can be met without the use of flame retardants. Stakeholders, including the CPSC and the state of California, have recognized the lack of information to support the conclusion that there will be a substantial reduction in deaths, injury, and property damage from large open-flame ignition of upholstered furniture with any open-flame standard.

The Petitioners are collaborating with the BEARHFTI in its ongoing efforts to evaluate the flammability standards through research, testing, and implementation of new technologies – in particular through participation in the California Bureau's task force dedicated to the study of barrier technologies. Specifically, this two-year study will assess the effectiveness of such technologies in reducing open-flame ignition of residential upholstered furniture and assist in determining whether to incorporate open-flame testing into TB 117-2013.

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[9] *See* Dep't of Consumer Affairs, Bureau of Elect. & Appliance Repair, Home Furnishings and Thermal Insulation, *Final Statement of Reasons* at 19–20, *available at* http://www.bhfti.ca.gov/about/laws/tb_fsor.pdf.

[10] CPSC-2008-0005-0031, CPSC-2008-0005-0052

[11] See Joint Industry Comments (June 2013) and AHFA Comments (January 2014) submitted to the CPSC and NFPA attached as Exhibits 1 and 2.

As the CPSC knows, California has a well-established and broadly supported standard, Technical Bulletin 117-2013. The 2013 amendments to that Technical Bulletin were the result of an extensive regulatory review process that included the active participation of Fire Safety experts, the furniture manufacturing industry, and other interested parties. Adoption of the Technical Bulletin's requirements under the FFA by the CPSC, coupled with a robust labeling program evidencing each manufacturer's compliance with the required test methods and performance standards, would create a national standard that addresses the risk of residential upholstered furniture flammability, saves lives, and reduce losses at a relatively low cost to the agency, the industry, and the consumer.

B. ***ASTM F 2057-14, 'Safety Specification for Clothing Storage Units' (tip over standard)***

For Several months, the ASTM F15.42 Furniture Safety Subcommittee has been working with CPSC staff to analyze the most current incident data related to furniture tip over. Coming out of its October 2015 meeting several task groups were assigned to examine proposed changes to the voluntary standard, F 2057-14. Each task group was specifically ***'scoped'*** and provided with a time line for completing their assigned tasks. As a result of this work, several fundamental issues were noted from the limited available data.

F2057 was first adopted in 2000 as a general industry standard and was intended to reduce injury and death to children from the tip-over of clothing storage units as defined in the standard, i.e. chests and dressers. The standard was updated by the subcommittee in 2004, 2009 and again in 2014. All of these updates were based on CPSC and industry data that revealed a need to revise the standard. This has been, and continues to be, the historical pattern of the furniture safety subcommittee; namely, ***to make changes when the objective data warrants a revision***.

The CPSC and the ASTM furniture safety subcommittee have been reviewing the standard since 2013, when research by CPSC data revealed that a child is killed every two weeks when a television or piece of furniture tips over on them. During the October 2015 ASTM Furniture Safety Subcommittee meeting, CPSC staff proposed several far reaching unsubstantiated revisions to the standard:

- Lowering the minimum height requirement for furniture covered by the standard
- Increase the test weight prescribed in the performance test method outlined in the standard
- Update the warning label
- Evaluate a situational test method to test products with tip restraints installed

This was the work assigned to the task groups. In analyzing the available data, the furniture safety subcommittee noted several ***data gaps*** that CPSC staff was asked to address. As noted in the October CPSC staff presentation to the furniture safety subcommittee, a clear hazard pattern was discovered which caused the following issues:

1. Many (68%) of the incidents involved the ***improper use of the clothing storage unit*** by placing a television on top of the unit clearly ignoring the required warning label barring such use.
2. In all of the incidents, ***the provided tip restraint was not installed***, again ignoring the required warning label.
3. It was not clear if the ***units involved in the incidents were even designed and engineered to meet the performance test requirements*** detailed in Section 7 of the voluntary standard.

Between the October 2015 and April 2016 ASTM F15.42 furniture safety subcommittee meetings, CPSC Commissioners acknowledge the need to provide sufficient supporting data in order to respond to the fundamental questions raised by the subcommittee. In February, the Commission voted to amend its 2016 operating plan, directing staff to develop a briefing package[12] that would provide meaningful data to the subcommittee and guide any proposed revisions to the standard.

While there was considerable discussion during the hearing about the need for an engineering solution not reliant on an anchoring system, it needs to be reiterated that the current version of F 2057-14, ***does not rely on the tip restraint as the primary safety measure and the testing requirements outlined in Section 7 demand an engineering solution in order to demonstrate compliance.***

In his statements and comments, Chairman Kaye was clear,

> ***'this work will pay dividends in working with industry and consumer groups to find a path forward to make furniture more stable – ultimately if the data warrants it, the standard will catch up with that effort and we will finally be able to solve this problem.'***

Commissioner Robinson followed up with, ***'that is certainly the hope of this project that is being driven by the voluntary standards committee.'*** Commissioner Mohorovic stated that ***'before staff can credibly recommend changes to F 2057-14, we have to have the data to show how the current standard is effective or ineffective because we really don't know.'***

As a result of this directive, some of the work in the task groups has been put on hold until staff completes the briefing package and presents their findings to the furniture safety subcommittee. It is critical that staff adequately address the issues raised:

1. Does the IDI data suggest tip restraints are utilized? If so, are they failing?
2. Of the cases involved in the IDIs, do they pass the performance testing requirements outlined in Section 7 of the voluntary standard?

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[12] CPSC 2016 Operating Plan, pg.16, Section 22560 – ***'Children's/Nursery Products Hazards: Voluntary Standards'***, Furniture Tip-over Incident Data.

3. How will the CPSC address the fact that 68% of the IDIs involve TVs?
4. How have the 2014 changes to the standard affected the IDI data?

Change for the sake of change, will not provide greater consumer protection. It is imperative that we understand the true nature and cause of these incidents before committing to revise this standard – again. It is critical that CPSC understand, that while many furniture manufacturers design and engineer furniture to meet the performance criteria outlined in Section 7 of F 2057-14, CPSC must commit to bringing enforcement actions against companies that do not follow the standard. It is counter-productive to continue rewarding bad behavior while penalizing companies that have committed to designing and engineering furniture that meets the requirements outlined in F 2057-14. Without rapid and appropriate enforcement, F 2057-14 can be revised again and again ***without effectively impacting the IDIs***. Before making changes, it is critical that this subcommittee and CPSC determine if cases involved in the IDIs meet those performance criteria and, if not, CPSC must use all means available to ensure furniture in the market place is designed and engineered to meet the performance requirements of F 2057.

AHFA respectfully requests that the Commission build on the staff briefing package and continue to focus on adequately mining the IDI data and address the question of compliance being posed by the ASTM furniture safety subcommittee.

January 14, 2014

Via Electronic Mail to NFPA (stds_admin@nfpa.org)

Standards Council – Fire Test Committee
National Fire Protection Association (NFPA)
1 Batterymarch Park
Quincy, MA 02169

Re: ***New Test Method to Evaluate Fire/Ignition Resistance of Upholstered Furniture Subject to a Flaming Ignition Source***

These comments have been developed on behalf of the US home furnishings industry (industry stakeholders) by the ***American Home Furnishings Alliance*** (hereafter AHFA), the Upholstered Furniture Action Council (UFAC), the Polyurethane Foam Association (PFA), the National Council of Textile Organizations (NCTO), and the North American Home Furnishings Association (NAHFA).

The AHFA is the world's largest trade organization serving the home furnishings industry. AHFA member companies primarily operate residential upholstered furniture manufacturing facilities and comprise an extensive global supply chain that provides a wide variety of residential home furnishings to the US consumer.

The issue of upholstered furniture flammability has been a topic of discussion and debate at the US Consumer Product Safety Commission (hereafter CPSC) since it inherited the ***Flammable Fabrics Act*** from Congress in 1973. The issue of small-open flame and smolder ignition standards have been proposed and evaluated by the CPSC since 1981. For over 30 years, the CPSC has inherently understood that the focus on cigarette-smolder ignition remains the highest value effort in reducing the incidence and severity of residential upholstered furniture fires.

Since the 1980's, upholstered furniture manufacturers' efforts have directly led to significant declines in both the number of incidents where upholstered furniture was the first article ignited, as well as the severity of those incidents as measured in injuries and deaths. In fact, data collected by the ***National Fire Protection Association*** (hereafter NFPA) from 2005-2009, demonstrates that upholstered furniture was the first ignited item in only 2% of reported home structure fires[1]. In numbers, fires reported where upholstered furniture was the first ignited item has decreased from 21,500 in 1980 to 1,500 in 2010. This 93% decrease can largely be attributed to voluntary programs such as the ***Upholstered Furniture Action Council*** (UFAC) program, as well as voluntary testing standards such as the ASTM E1353 standard. This 93% decrease speaks volumes to the success of the industry in addressing this issue. It is important to note these numbers are actually conservative, as they do not account for the increase in US population or furniture placements within US homes. Also, fire incidents continue to

[1] NFPA-Mary Ahrens; Home Structure Fires; May 2011 P. 42-43 Table 11

trend downward, as older furniture is removed from the marketplace and is replaced with newer models.

It should also be noted that the contribution of upholstered furniture as the material first ignited in home smoking materials fires has decreased significantly since 1980[2]. In 1980, 30% of fire events identified upholstered furniture as the primary ignition source. In 2010, that number had decreased to 8.5%[2]. ***The number of fire events is decreasing!*** The percentage of those events where upholstered furniture was the material first ignited in home smoking materials fires is also dropping, showing a 72% reduction over 30 years[2]. All of this occurred while the number of US homes and the number of articles of furniture within those homes continues to rise. In 2010, there were 0.387 fire deaths per million pieces of furniture placed within US homes[1,3].

The two primary modes of furniture ignition remain smolder and small-open flame. However, these two modes have significant differences in their contribution to overall upholstered furniture fires. In its 2008 ANPR, the CPSC noted that of those fires considered addressable, 90% of the deaths that occurred were ignited by smoking materials[4]. In other words, 90% of the deaths within addressable fires were caused by a fire that began with a smoldering ignition source. It should be noted that recent evidence on smolder ignition sources is promising. The reduced ignition propensity (RIP) cigarette, while introduced in 2003, did not see complete implementation across all 50 states until 2011[5]. For example, in 2008 only 38% of the United States population lived in states that mandated the RIP cigarette[5]. With the complete implementation of the RIP cigarette legislation now completed, in combination with fewer smokers, continuously more aggressive anti-smoking campaigns, higher tax rates on these products, improved use of smoke detectors and sprinkler systems, these improvements will continue to drive the decrease of smolder ignited furniture events.

That takes us to the remaining 10% of fires, attributed to all other sources including open flame. Since 1994 barrier technology has been discussed, but has proven inconclusive at best and ineffective at worst in addressing the primary cause of residential upholstered furniture fires. Currently available barrier technology utilized by the mattress industry, with its simple uniform shape, limited types of ticking fabrics and use, is not well-suited for application to upholstered furniture. The various geometries, spatial relationships, design, construction, cover fabric options and varying consumer use all specifically prevent a simple uniform application of barriers. These primary differences prevent a one size fits all solution to barrier technology within upholstered furniture. Additionally, consumer preferences and comfort remain the driving force behind design advancements. Upholstered furniture flammability performance has improved 93% without consumer sacrifice of hand, drape, seat or price of residential upholstered furniture. There is little data to support that an inconclusive solution that requires compromises by the consumer within selection, comfort, style AND price will find a great level of demand in the marketplace.

This leads us to a discussion of upholstered furniture that is involved in a 'fire event' not as the primary source of ignition but as the second or third item ignited. Current estimates of fires or deaths where upholstered furniture is the primary contributor to fire or flame spread but not the first item ignited are pure speculation. The assumptions made when generating these estimates are not

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[2] National Fire Protection Association, John R. Hall, Jr., ***'The Smoking-Material Fire Problem'***, pg.21, Table 6.
[3] UFAC Upholstered Furniture Items Sold, 2004-2010.
[4] §73 Fed. Reg. 11704 (March 4, 2008).
[5] National Fire Protection Association, ***'Smoking-Materials'***, fire deaths drop to 30 year low, pg.1.

supported by data. Additional data collection and extensive research with fire departments participating in NFIRS would be needed before any standard development could be justified.

In conclusion, the AHFA believes NFPA should not pursue the development of a ***'small open flame test method'*** because it shifts the focus from arguably the greatest risk, smolder ignition:

1. Smoldering ignition rather than small open flame ignition is still responsible for the majority of fire deaths from fires originating in upholstered furniture.
2. The State of California updated TB-117 by eliminating the requirement for a small open flame standard. In their research and in the interest of fire safety, they determined to move to a smolder ignition standard.
3. Open flame testing will require a full scale 'build one-burn one' testing scheme that will create a significant testing burden on manufacturers. With the vast number of different constructions and styles utilized in the industry, a single cover fabric may be used on numerous builds and a single build could be sold with numerous cover fabrics. Without the ability to meet a standard using a component level testing scheme, the marketplace is hurt by limiting availability and options.
4. With the technology currently available, an open-flame standard can only be met using flame retardant chemicals. Many states are looking at various restrictions on flame retardant chemicals. This could leave manufacturers in a situation of being required to meet an open-flame standard for one state and required to meet chemical requirements in another; an obvious untenable situation.
5. Other options to address open flame ignition of upholstered furniture, such as barriers, have been proven not to be cost effective and limit the styling and comfort demanded by consumers.
6. Several UK studies indicate high concentrations of flame retardant chemicals are used to meet the open flame requirements of BS 5852.
7. AHFA believes NFPA should evaluate and understand why California moved away from an open-flame standard. It is clear that in their complete evaluation of available research, they determined the best benefit to fire-risk was a smolder ignition test method similar to UFAC.

AHFA appreciates the opportunity to provide comment on this important subject. We greatly respect the important work and research performed by NFPA and its members. Should NFPA decide to pursue the development of an open flame standard we respectfully request that industry be invited to participate so that real world manufacturing and design issues can be considered during the process.

Respectfully,

Bill Perdue
VP Regulatory Affairs
American Home Furnishing Alliance
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Polyurethane Foam Association

American Home Furnishings Alliance

National Council of Textile Organizations

UFAC SM

National Retail Federation®
The Voice of Retail Worldwide

North American Home Furnishings Association

Joint Industry Comments
Regarding 16 CFR Part 1634
Docket No. CPSC-2008-0005

American Home Furnishings Alliance
North American Home Furnishings Association
National Council of Textile Organizations
National Retail Federation
Polyurethane Foam Association
Upholstered Furniture Action Council

Submitted to the U.S. Consumer Product Safety Commission

June 28, 2013

June 28, 2013

Via Electronic Mail- Federal eRulemaking Portal (regulations.gov)
Office of the Secretary
Consumer Product Safety Commission
Room 820, 430 East West Highway
Bethesda, MD 20814

Re: ***Joint Industry Coalition Comments regarding the 'Upholstered Furniture Fire Safety Technology; Meeting and Request for Comments 16 CFR Part 1634, Docket No. CPSC-2008-0005.***

These comments have been developed on behalf of the U.S. Home Furnishings Industry by the American Home Furnishings Alliance (AHFA), the National Council of Textile Organizations (NCTO), the Polyurethane Foam Association (PFA), the Upholstered Furniture Action Council (UFAC), the National Retail Federation (NRF), and the North American Home Furnishings Association (NAHFA).

These organizations represent manufacturers, retailers, and suppliers of residential and contract furnishings, including upholstered furniture, wood furniture, home office, and decorative accessories. Member companies participate in a highly competitive market characterized by ever-changing style preferences, margin pressures, and the tendency of consumers to postpone big-ticket purchases if their perceptions of value and function are not satisfied.

Scope of the Current Rulemaking

The issue of upholstered furniture flammability has been a topic of discussion and debate at the US Consumer Product Safety Commission (CPSC) since it inherited the Flammable Fabrics Act from Congress in 1973. The issue of small-open flame and smolder ignition standards have been proposed and evaluated by the Commission since 1981.

The latest 2008 NPR proposed performance standards for upholstered furniture which focused primarily on reducing the risk presented by smoldering ignition of

upholstered furniture[1]. The Commission at that time said that '90% of the estimated deaths, 65% of the estimated injuries and 59% of property damage resulted from ignition from smoking materials, almost always cigarettes.'[2] The balance of the addressable fires was started by small open flame sources.

Now, rather than completing or terminating the 2008 NPR, the agency announced in March 2013 its intention to consider fire barriers for residential upholstered furniture even though barriers are typically used with upholstered furniture to address the risk of large open flame for commercial and institutional applications where the risk of ignition may be high and egress is limited. Open flame ignition of residential upholstery is an entirely different risk of ignition than smoldering ignition. It presents a much greater technical challenge to both the Commission and the industry. The Commission denied that portion of the petition back in 1994 because it found a lack of information indicating that a large open flame standard for residential upholstered furniture similar to TB 133 would lead to a substantial reduction in deaths, injury, and property damage and the costs of compliance for residential upholstered furniture were extraordinary.[3] We do not believe that there are any new facts to change the Commission's original decision on large open flame.

In our view, the 2008 proposal properly focuses on the risk of smolder ignition because that is the predominant hazard associated with upholstered furniture and the one that readily responds to changes in upholstered furniture construction. The shifting focus of the current rulemaking makes it difficult for our industry to work in partnership with the Commission to resolve the flammability of residential upholstered furniture from smoldering ignition. Barrier technology to address open flame ignition of upholstered furniture as the first, second or third item to be ignited, is not a logical outgrowth of the 2008 NPR and we believe is outside the scope of this rulemaking. Large open flame ignition of residential upholstered furniture specifically was denied by the Commission in 1994.

For over 30 years, the Commission has inherently understood that the focus on cigarette-smolder ignition remains the highest value effort in reducing the incidence and severity of residential upholstered furniture fires. However, it should be noted, the test methods in the 2008 NPR have not been defined or demonstrated to be repeatable or reproducible. CPSC Chairman, **Inez Tenenbaum**, testified on July 17, 2012 before a U.S. Senate Appropriations sub-committee to this point. When addressing the inability of the CPSC to finalize the draft proposed standard, the Chairman stated:

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[1] 73 Federal Register 11703 (March 4, 2008)

[2] 73 Federal Register 11704 (March 4, 2008)

[3] Twenty years ago the staff estimated the total annual cost of compliance could exceed $2 billion and could add an estimated $75 to the average price of items of upholstered furniture. 59 Federal Register 30736 (June 15, 1994).

'One substantial challenge staff has faced is the development of the reasonable and repeatable testing requirements to ensure compliance with any new rule. One component of this is developing appropriate scale tests that can account for the diversity of upholstered furniture products. Unlike other products, such as mattresses, furniture comes in a multitude of sizes and shapes, making representative and repeatable testing mechanisms a substantial undertaking.'

What Does the Data Tell Us?

Regardless of the extrapolation method used to estimate national death and injury statistics, the risk associated with upholstered furniture fires is lower than many other risks commonly accepted, whether those fires are ignited with cigarettes or small open flame sources. Since the 1980's, upholstered furniture manufacturers' efforts have directly led to significant declines in both the number of incidents where upholstered furniture was the first article ignited, as well as the severity of those incidents as measured in injuries and deaths. In fact, data collected by the National Fire Protection Association (NFPA) from 2005-2009, demonstrates that upholstered furniture was the first ignited item in only 2% of reported home structure fires[4]. In numbers, fires reported where upholstered furniture was the first item ignited have decreased from 21,500 in 1980 to 1,500 in 2010[5]. This 93% decrease can be attributed to many factors including voluntary programs such as the Upholstered Furniture Action Council (UFAC) program, as well as voluntary testing standards such as the ASTM E1353 standard. This speaks volumes to the success of the industry in addressing this issue. It should also be noted that the contribution of upholstered furniture as the material first ignited in home smoking materials fires has decreased significantly since 1980[5]. NFPA data underscores the fact that predictable fires with upholstered furniture as the first ignition source have decreased 67.3% preventing 448,300 fire events[6]. The CPSC estimates that 447 million upholstered furniture products were in homes in 2004[7] and UFAC estimates between 11-18 million upholstered furniture products were sold each year from 2004-2010[8]. The data shows a marked decrease in death, injuries and incidents from 1980-2012.

A risk level of under 1 per million is considered by many to be *'de minimis'*, or below many everyday risks that are essentially unavoidable. For example, the National Highway Traffic Safety Administration (NHTSA) lists the death rate for pedestrians was 17 per million in 2002 and the death rate for motor vehicle occupants was 153 per million in the same year. Similarly, EPA requirements for chemical concentrations at Superfund Sites imply a lifetime risk of death not to exceed 1 in 10,000, or 100 in 1 million. This corresponds to an annual risk of about 1 in 1 million.

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[4] NFPA, Marty Ahrens, Home Structure Fires; May 2011 P. 42-43 Table 11
[5] NFPA, John Hall, The Smoking-Material Fire Problem; P. 21 Table 6
[6] NFPA, John Hall, 'The Smoking-Material Problem', pg.32, Table 6
[7] Federal Register, Volume 73, No. 43: Proposed Rules, pg.11703
[8] UFAC, 'Items Sold', 2004-2010

The current risk for upholstered furniture fires caused by cigarettes and small open flames are already below the 1 per million level and will likely continue to fall in the future. Smoking prevalence and cigarette consumption have steadily declined since the 1980s[9]. As acknowledged by the CPSC in the 2008 staff briefing package, the reduction in smoking in the U.S. over the past two decades can at least partially explain the simultaneous decrease in the number of cigarette-ignited upholstered furniture fires and related losses. The National Fire Protection Association (NFPA) recently calculated that smoking-related upholstered furniture fires have declined by nearly 93 percent since 1980, attributing this decline to the voluntary UFAC cigarette ignition-resistance standard, aided by the decline in smoking prevalence, and the growth in the use of smoke detectors, among other factors[10]. Smoking prevalence rates continue to decline over time, supporting the contention that these trends will continue in the future. Declines in smoking are likely to persist due to the continuance of aggressive anti-smoking campaigns including smoking bans as well as increased education about the dangers of smoking. Smoking prevalence should also continue to decline in reaction to increasing insurance costs and taxes. Future declines in smoking prevalence are likely to result in a continued reduction in cigarette-related deaths, injuries, and fire losses.

In 1980, 30% of fire events identified upholstered furniture as the primary ignition source[5]. In 2010, that number had decreased to 8.5%[5]. The percentage of those events where upholstered furniture was the material first ignited in home smoking materials fires is also dropping, showing a 67% reduction over 30 years[5]. All of this occurred while the number of US homes and the number of articles of furniture within those homes continues to rise. In 2010, there were 0.387 fire deaths per million pieces of furniture placed within U.S. homes[4,11]. To put this data into perspective, a person was 9-times more likely to be struck by lightning than to die in a fire where upholstered furniture was the first ignition source.

The two primary modes of furniture ignition remain smolder and small-open flame. However, as the Commission is well aware, and has data to support, these two modes have significant differences in their contribution to overall upholstered furniture fires. In its 2008 NPR, the Commission noted that of those fires considered addressable, 90% of the deaths that occurred were ignited by smoking materials[12]. In other words, 90% of the deaths within addressable fires were caused by a fire that began with a smoldering ignition source. Despite population growth, the risk of fire fatalities and the number of upholstered furniture fires continue to decline. The risk associated with death or injury from these types of fires has dramatically declined during the past two decades. In recent years, the risk has been extremely low. In 1980 the death rate for cigarette fires was 4.54 per million population, by 2002 the death rate had been

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[9] NFPA, John Hall, 'The Smoking Material Fire Problem', March 2012, pg.4
[10] NFPA, John Hall, 'The Smoking Material Fire Problem', March 2012, pg.5
[11] UFAC Upholstered Furniture Items Sold, 2004-2010
[12] 73 Fed Reg. 11704 (March 4, 2008)

reduced to 0.87 per million. By 2010 the death rate had been reduced to 0.68 per million population. The death rate for small open flame fires in 1980 was 0.61 per million population. By 2002 the death rate had been reduced to 0.53 per million population. Research by the National Fire Protection Association (NFPA) shows a sharp 67 percent decline in deaths involving upholstered furniture[13].

A detailed analysis and supporting data can be found in Appendix A of these comments.

There is No 'Silver Bullet'

That takes us to the remaining 10% of addressable fire deaths, attributed to all other sources including open flame. Since 1994 barrier technology has been discussed, but has proven inconclusive at best and ineffective at worst in addressing the primary cause of residential upholstered furniture fires. There is no defined test method with a verifiable precision and bias or confidence interval. Without a test method, it is impossible for the industry to speculate about barrier efficiency.

Currently available barrier technology utilized by the mattress industry, with its simple uniform shape, limited types of ticking fabrics and use, is not well-suited for application to upholstered furniture. The various geometries, spatial relationships, design, construction, cover fabric options and varying consumer use all specifically prevent a simple uniform application of barriers. These primary differences prevent a one size fits all solution to barrier technology within upholstered furniture. Currently, most upholstered products require ***'double upholstery'*** to demonstrate compliance to CA TB-133 resulting in cost increases ranging from 13% to more than 40%. It should be noted that in most cases, based on design and fabrics, FR chemicals are used to support the barriers in order to demonstrate compliance to TB-133. Additionally, consumer preferences and comfort remain the driving force behind design advancements. Upholstered furniture flammability performance has improved 93% **without** consumer sacrifice of hand, drape, seat or price of residential upholstered furniture. There is little data to support that an inconclusive solution that requires compromises by the consumer within selection, comfort, style AND price will find a great level of demand in the marketplace.

Conclusions and Recommendations

The various material, chemical and engineering strategies employed to meet other standards such as TB-117, BS-5852, and 16 CFR 1632 and 1633 have not been demonstrated as applicable to the diverse universe of residential upholstered furniture. Current open flame standards for upholstered furniture limit fabric choice, negatively impact comfort and styling, have a significant cost impact, and in most cases, require the use of FR chemistry. If the Commission determines, even in light of the significant

[13] NFPA, Marty Ahrens, 'Home Fires that Begin with Upholstered Furniture', August 2011, pg.2

improvements to furniture safety in the recent years, that a national flammability standard is justified, it must remain focused on the primary opportunity to partner with industry to address safety in a manner that will attract consumers to the product, and therefore, maximize the impact and benefit of the rulemaking. Currently proposed changes to California Technical Bulletin 117 incorporate both methods of compliance proposed by the Commission in the NPR under discussion and use test methods that have been proven repeatable, reproducible, and correlate to full scale. Further, if properly revised and implemented, the proposed changes offer additional consumer choices without compromising on flammability performance.

We encourage the Commission to monitor, review and consider adopting California's approach as the most effective and appropriate method to achieve additional reduction in upholstered furniture flammability incidents. This approach, combined with continued public education and outreach to impact other primary causes of fires has every indication of meeting the mandates for public health and safety while keeping the cost of the upholstered furniture in the marketplace within the reach of all consumers.

There will sadly never be a 'perfect solution', but proven approaches to address smolder ignition exist and represent what is achievable, reasonable, and effective given the facts and trends regarding upholstered furniture flammability. We look forward to working with the Commission on this important issue.

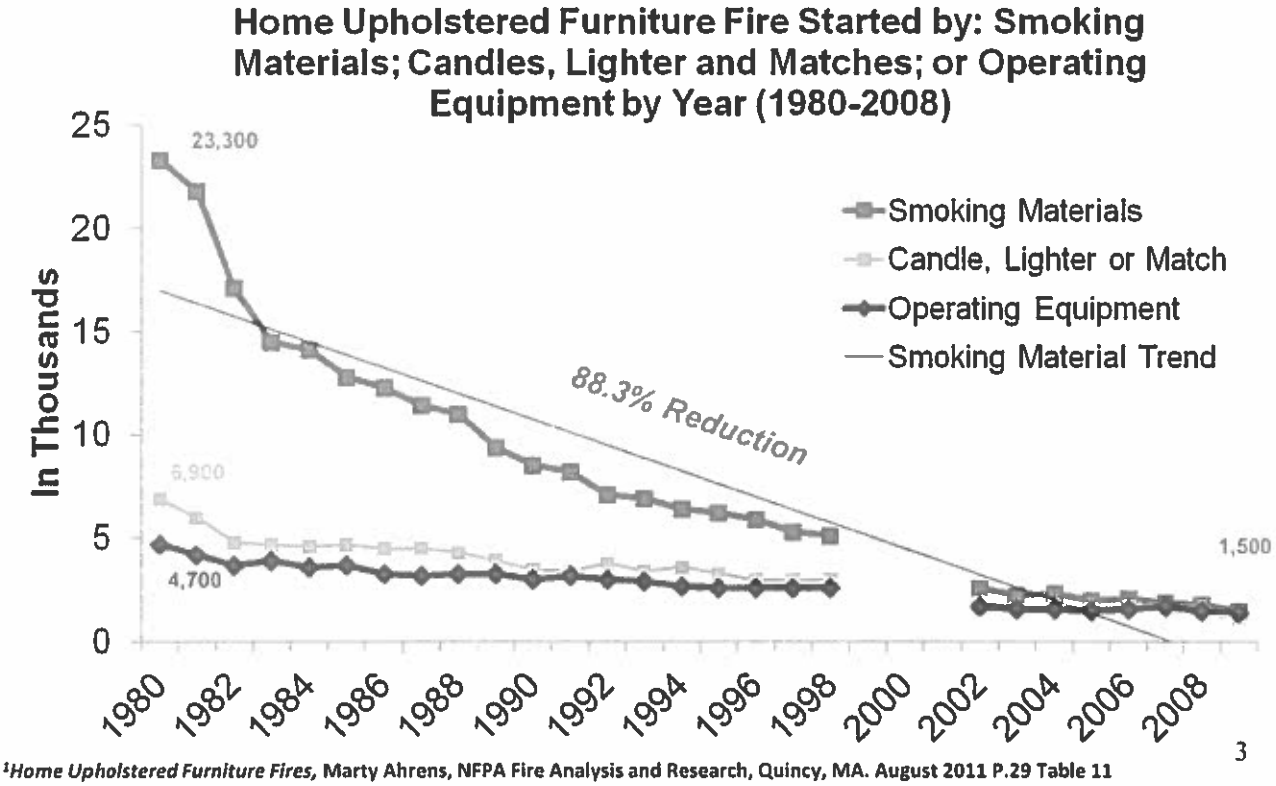
Appendix A
Joint Industry Comments
Upholstered Furniture Fire Safety Technology

16 CFR Part 1634
CPSC Docket No. CPSC-2008-0005

Fires Are On The Decline!

- Data from all sources since data has been reliably collected, illustrate a sharp and significant drop in structural fires from all causes over the last 30 years
- Injuries, deaths, and property damage, the three primary measurements of the "cost" of fire events, began declining 30 years ago, and have maintained a marked and steady decline
- Even within this overall positive trend, the drop in incidents regarding upholstered furniture fire events is uniquely significant and overwhelmingly positive

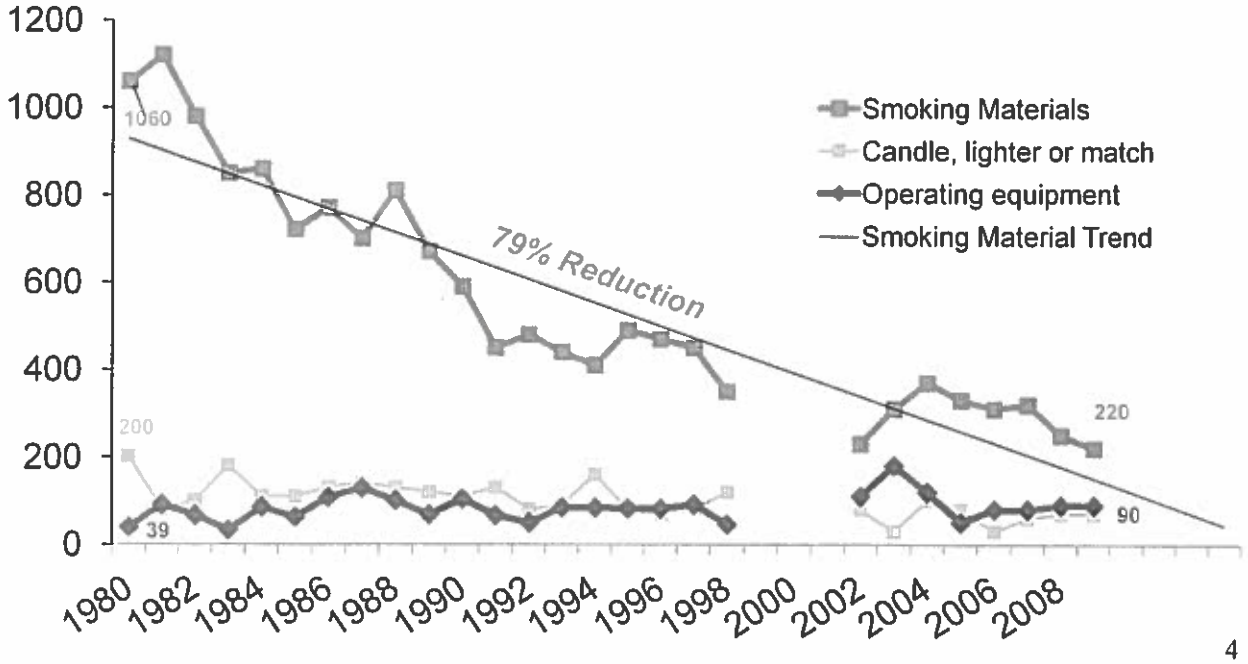
NFPA Data Indicates Sharp Declines In Fire Events Involving Upholstered Furniture[1]



[1]*Home Upholstered Furniture Fires,* Marty Ahrens, NFPA Fire Analysis and Research, Quincy, MA. August 2011 P.29 Table 11

NFPA Data Indicates Sharp Declines In Deaths Involving Upholstered Furniture[1]

Civilian Deaths from Home Upholstered Furniture Fires Started by: Smoking Materials; Candles, Lighter and Matches; or Operating Equipment by Year (1980-2010)

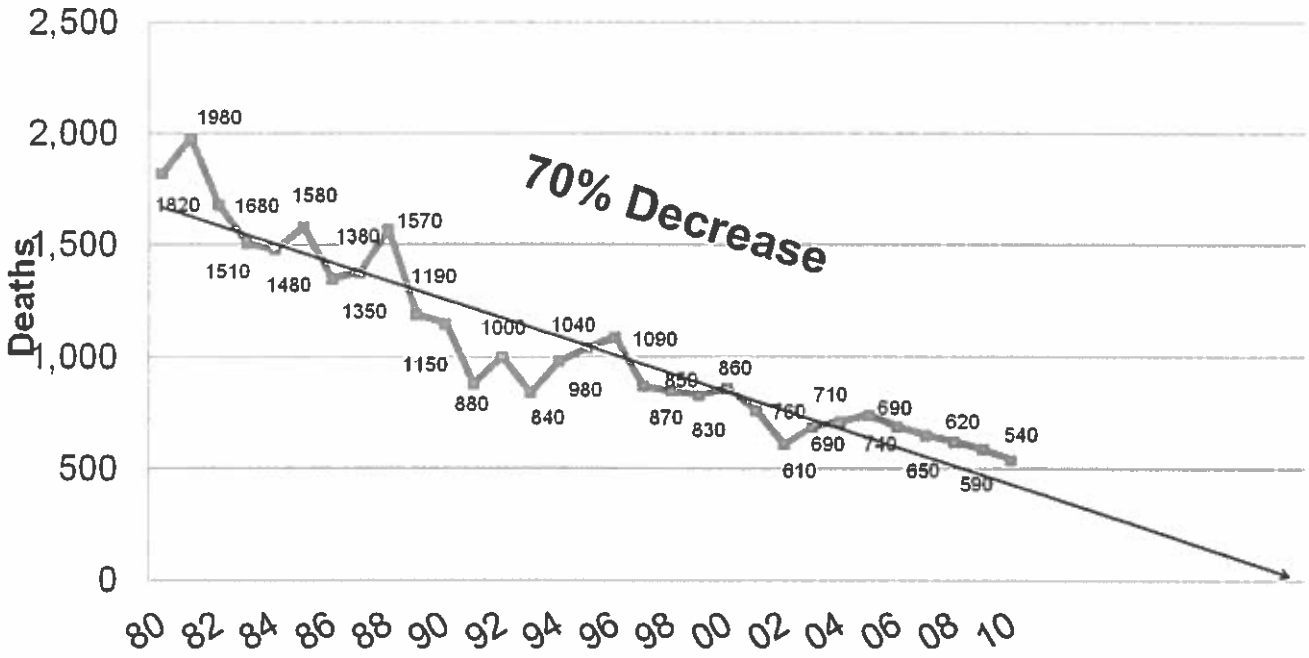


[1]*Home Upholstered Furniture Fires*, Marty Ahrens, NFPA Fire Analysis and Research, Quincy, MA. August 2011 P.30 Table 12

Categories of Ignition Sources

- Fire statistics cited within this presentation are divided into three categories of ignition
  - Smolder
  - Open-Flame
  - Operating Equipment
- ***Smolder Fires*** include ignition by cigarettes and cigars (as well as the smoldering remnants of same) that have been dropped, lost, or discarded
- ***Open-flame*** refers to sources of ignition such as: candles, matches, lighters, including playing with, and intentional or unintentional misuse
- ***Operating Equipment*** fires refer to ignition from electrical and mechanical short-circuits and malfunctions, as well as, ignition that occurs from improper placement of items such as space heaters

U.S. Trend in Civilian Deaths Among All Fires With Smoking Materials as the Primary Ignition Source



National Fire Protection Association; *Smoking-Material Fire Problem Fact Sheet*

Leading Items First Ignited in Home Structure Fires 2005-2009

- 28% - Cooking Materials, including food
- 14% - Other known item
- 8% - Unclassified item first ignited
- 6% - Structural member or framing
- 5% - Electrical wire or cable insulation
- 5% - Flammable or combustible liquid or gas or associated piping or filter
- 4% - Rubbish, trash, or waste
- 4% - Exterior wall covering or finish
- 3% - Appliance housing or casing
- 3% - Mattress or bedding
- 3% - Household Utensil
- 2% - Clothing
- 2% - Interior wall covering
- 2% - Unclassified organic material
- 2% - Unclassified structural component or finish
- 2% - Unclassified utensil or furniture
- 2% - Magazine, newspaper, or writing paper
- 2% - Cabinetry
- 2% - Insulation within structural area
- ***2% - Upholstered furniture***

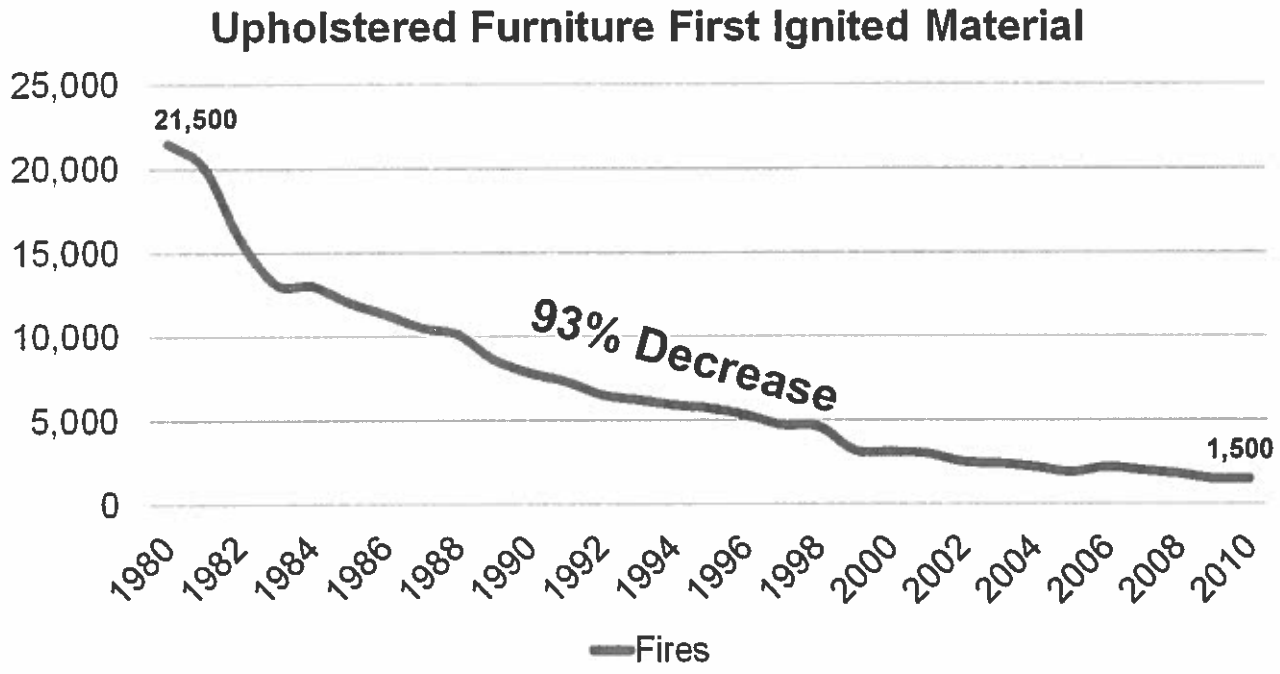
NFPA-Mary Ahrens; *Home Structure Fires*; May 2011 P. 42-43 Table 11

Reported Home Fires

- From 2005-09, only 2% of all reported home fires began with upholstered furniture[1]
  - Smoking materials remain the leading ignition source for upholstered furniture fires
- As of 2006-2010, the severity of home fires are at their lowest levels since 1983-87[2]
  - "The average severity of reported smoking-material fires is indicated by rates, such as deaths or injuries per 100 fires"[3]

[1]National Fire Protection Association; *Home Fires That Began With Upholstered Furniture – Executive Summary;* P.1 Par. 1
[2]National Fire Protection Association; John R. Hall, Jr.; *The Smoking-Material Fire Problem;* P. 3 Par. 3
[3]Id at P. 2

Number of Home Smoking-Material Fires Reported



National Fire Protection Association; John R. Hall, Jr.; *The Smoking-Material Fire Problem*; P. 21 Table 6

Upholstered Furniture Improvements1975- Present

- Initiatives within upholstered furniture flame-resistance have improved upholstered furniture safety
  - UFAC Standard Testing (1979)
    - ***ASTM Smolder Standard E1353 (1999)***
  - TB 117 Testing (1975)
- Over time, the improvements will be magnified by the replacement of older furniture models with new pieces constructed and tested to the UFAC standard

What Is UFAC?

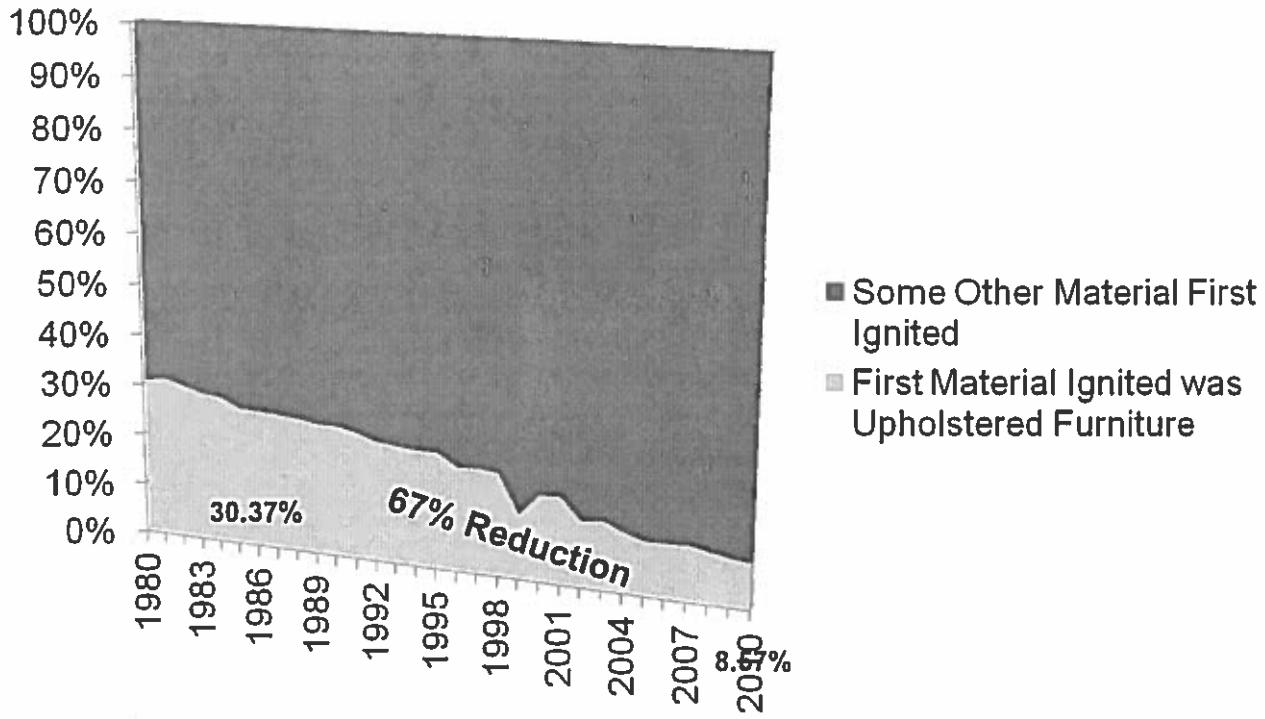
- The Upholstered Furniture Action Council (UFAC) is a Furniture Industry association formed expressly for the purpose of improving, testing, verifying, and influencing the safety and performance of upholstered furniture
- Within this mission, UFAC members submit samples of materials used for manufacturing upholstered furniture on an annual basis for third-party testing including:
  - Filling / Foam
  - Decking and Cover Fabrics
  - Barrier Fabrics
  - Welting
  - Decorative Elements
- Approximately 85-90% of upholstered furniture manufacturered within the US (by dollar volume) participates within the UFAC program
  - ***Membership in UFAC is voluntary***

Upholstered Furniture Reduction in Home Smoking-Material Fire Events (v. Other Sources)

Incidents	Upholstered Furniture	Total Incidents	Upholstered Furniture Events (% Basis of Fire Events)
1980	21,500	70,800	30.37%
2010	1,500	17,500	8.57%
Decrease	93.02%	75.28%	
Deaths			
1980	1,030	1,810	56.91%
2010	210	540	38.89%
Decrease	79.61%	70.17%	
Injuries			
1980	1,910	4,190	45.58%
2010	260	1,330	19.55%
Decrease	86.39%	68.26%	

National Fire Protection Association; John R. Hall Jr.; *The Smoking-Material Fire Problem;* P. 21-23

Impact of Upholstered Furniture Improvements in Home Smoking-Material (v. other materials ignited)



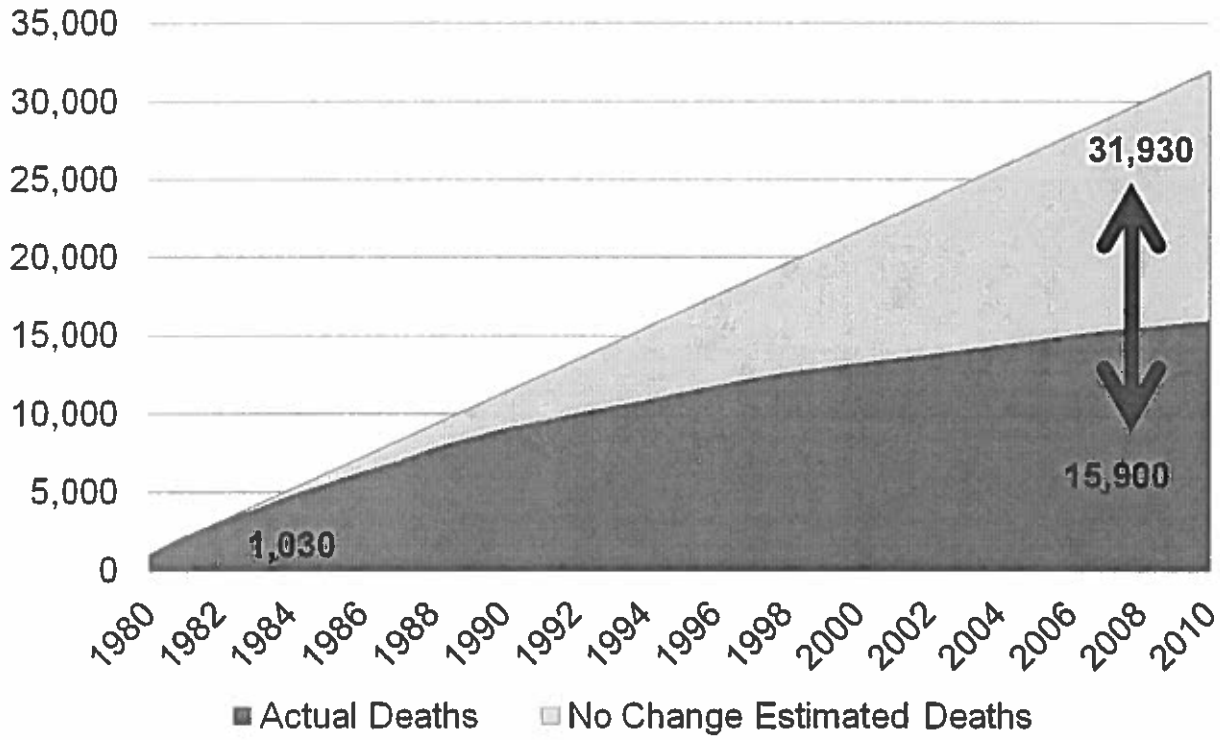
National Fire Protection Association; John R. Hall, Jr.; *The Smoking-Material Fire Problem;* P. 21 Table 6

Furniture Industry Impact (1980 Basis)

- In 1980, there were 112 home fires per billion cigarettes smoked[1]. In 2006, that number was 58
  - A decrease of 48%
  - In 2006, only one state (6.6% of the US population) had implemented legislation regarding a reduced ignition propensity cigarette
- The number of fires was 21,500 in 1980[2]
  - 666,500 predictable fires (1980-2010) with upholstered furniture as first ignition source
    - ***Assuming no improvements: 21,500 X 30 years***
- 218,200: The actual number of fires in the 30 year period with upholstered furniture as the first ignition source[1]
  - Smoking-material fires have decreased 73% from 1980 to 2010
- 448,300: Statistically predictable fires prevented
  - A decrease of 67.26%

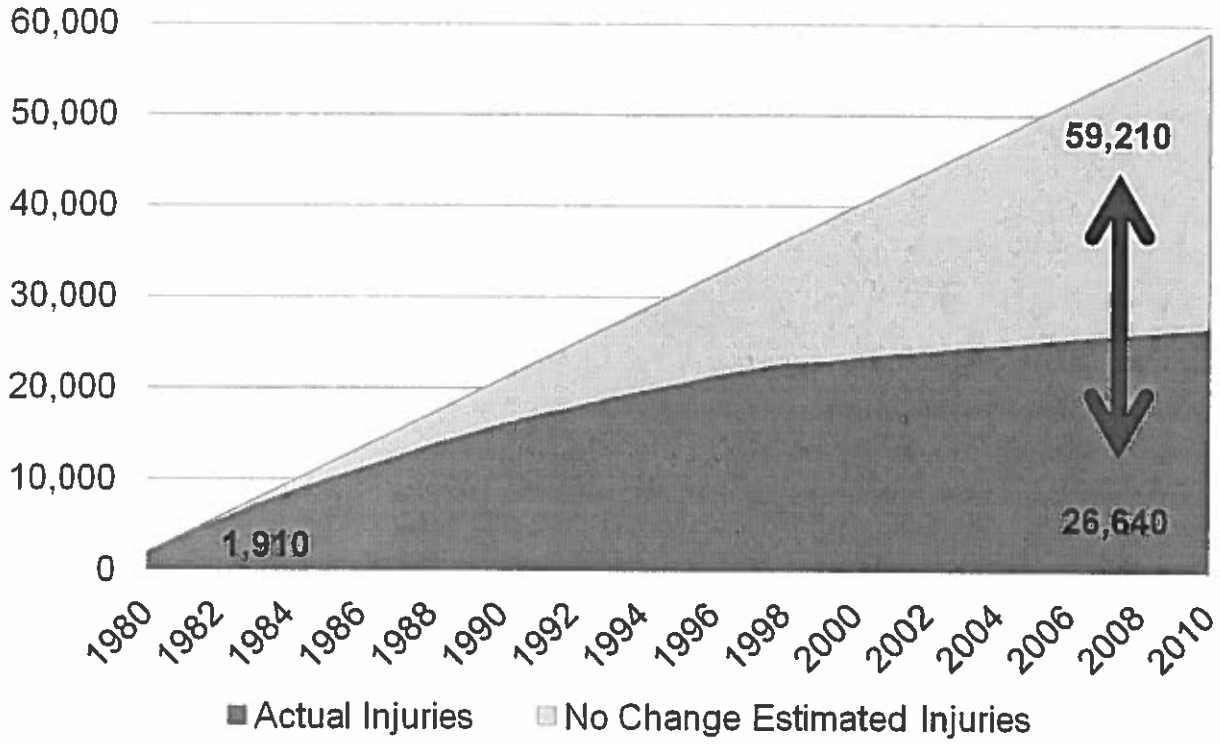
[1]National Fire Protection Association; John R. Hall Jr.; *The Smoking-Material Fire Problem;* P. 19 Table 4
[2]Id. At P. 21 Table 6

Lives Saved: 16,030! (1980 Basis)



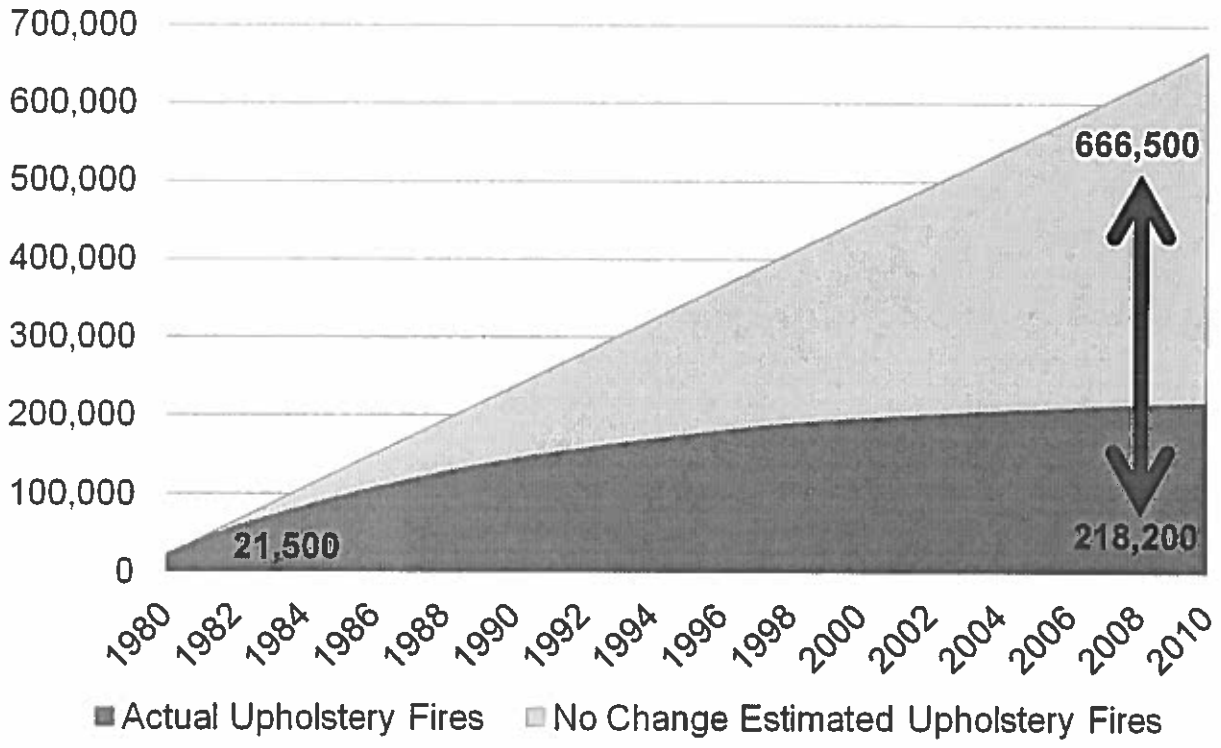
National Fire Protection Association; John R. Hall Jr.; *The Smoking-Material Fire Problem;* P. 22 Table 6

Injuries Prevented: 32,570! (1980 Basis)



National Fire Protection Association; John R. Hall Jr.; *The Smoking-Material Fire Problem;* P. 23 Table 6

Fires Prevented: 448,300! (1980 Basis)



National Fire Protection Association; John R. Hall Jr.; *The Smoking-Material Fire Problem;* P. 21 Table 6

Number of Fires have <u>Decreased</u>, Even as the Opportunity has Grown!

- The Consumer Product Safety Commission (CPSC) estimates that in 2004 there were 447 million upholstered furniture products in homes[1]
- The Upholstered Furniture Action Council (UFAC) estimates that between 11-18 million new upholstered furniture items were sold each year from 2004-2010, adding an additional 86.5 million new potential sources of ignition[2]
  - UFAC is a voluntary industry association and does not represent all upholstered furniture sales
- Additional population information was used from the US Census Bureau[3]

[1]Federal Register; Vol. 73, No. 43; Proposed Rules; P. 11703
[2]UFAC Upholstered Furniture Items Sold, 2004-2010
[3]US Census Bureau, Population Estimates; *http://www.census.gov/popest/data/historical/index.html*

Hazard = Risk X Exposure

- All reported improvements are based on the erroneous assumption that the opportunity for fires (exposure) remained constant
- The number of US households, and the number of pieces of upholstered furniture within each household, has grown significantly since the impact of upholstered furniture improvements has been measured
- While the figures referenced previously show impressive improvements in safety, they only tell half of the story

US Census Bureau, Population Estimates; *http://www.census.gov/popest/data/historical/index.html*
UFAC Upholstered Furniture Items Sold, 2004-2010

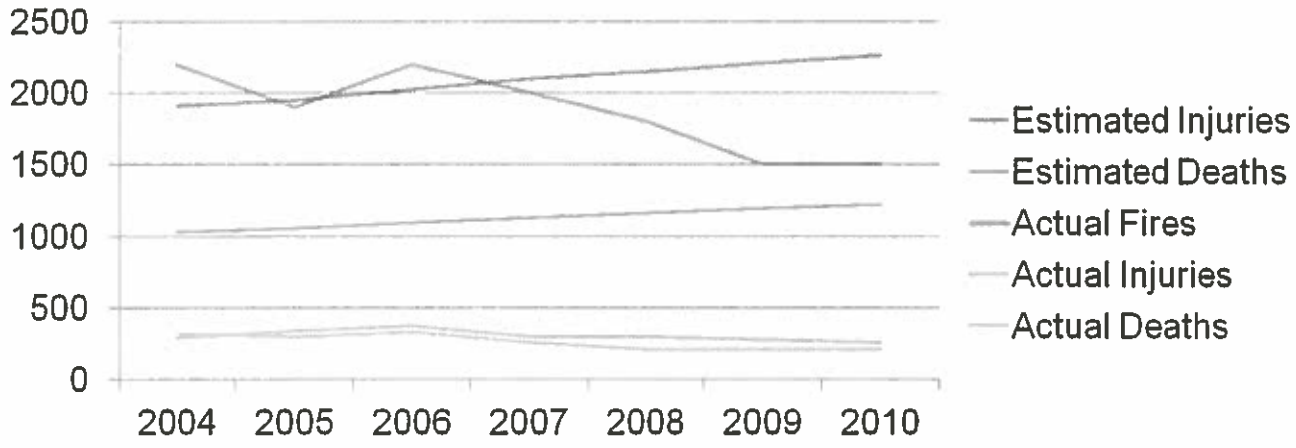
US Population and Furniture Placement Estimates

Year	US Population Estimates	Furniture Placement Estimates
2004	293,655,404	447,000,000
2005	296,507,061	466,500,000
2006	299,398,484	484,500,000
2007	301,579,895	501,850,000
2008	304,374,846	515,500,000
2009	307,006,550	529,100,000
2010	308,745,538	542,850,000
Growth	4.8%	17.7%

US Census Bureau, Population Estimates; *http://www.census.gov/popest/data/historical/index.html*
UFAC Upholstered Furniture Items Sold, 2004-2010

Adjusted Data to Reflect 2012 Homes and Furniture Placements

2004-2010[1,2,3]	Exposure (Adjusted from 1980 Basis)	Actual	Total Prevented
Deaths	7,882	1,840	6,042
Injuries	14,616	2,140	12,476
Fire Incidents	164,521	13,100	151,421



[1]National Fire Protection Association; John R. Hall Jr.; *The Smoking-Material Fire Problem;* P. 21-23
[2]US Census Bureau, Population Estimates; *http://www.census.gov/popest/data/historical/index.html*
[3]UFAC Upholstered Furniture Items Sold, 2004-2010

Furniture Risk in Context

	Actual Fire Deaths* Per Million Pieces of Upholstered Furniture Placed (2012 Basis)	Actual Fire Deaths* Per million people (2012 Basis)	1980 Basis Projected Fire Deaths* per Million Pieces of Upholstered Furniture Placed[1;3;4]	Decreased Risk Factor
2004	0.716	1.090	2.304	3.22X
2005	0.643	1.012	2.300	3.58X
2006	0.681	1.102	2.297	3.37X
2007	0.518	0.862	2.294	4.43X
2008	0.407	0.690	2.293	5.63X
2009	0.397	0.684	2.291	5.77X
2010	0.387	0.680	2.290	5.92X

A person is 9 times more likely to be struck by lightning than to die in a fire where upholstered furniture was the first ignition source[2] (odds of being struck by lightning: 3.57 per million US populace)

[1]National Fire Protection Association; John R. Hall Jr.; *The Smoking-Material Fire Problem*; P. 21-23
[2]National Lightning Safety Institute; *Determining the Probability of Lightning Strikes*; R. T. Hasbrouck
[3]US Census Bureau, Population Estimates; *http://www.census.gov/popest/data/historical/index.html*
[4]UFAC Upholstered Furniture Items Sold, 2004-2010
*Where upholstered furniture was the first ignition source

Discussion on De Minimis

- A common theory behind risk management sets de minimis as the level at which any incidence below should be exempted from further consideration
- Common de minimis definitions within the context of risk assessment include:
  - A level of risk that has achieved a "virtually safe"[1] level or "a risk that people readily accept in daily life"[2]
- Within these or other definitions of de minimis, where is the expected point of performance within these regulations considering extenuating circumstances such as human factors or other contributors?

[1]

[2] National Economic Research Associates; *Assessing the Need for a Federal Small Open Flame/Cigarette Ignition Upholstered Furniture Flammability Standard; P. 2*

The 'Safe' Cigarette *Reduced Ignition Propensity (RIP) Cigarette*

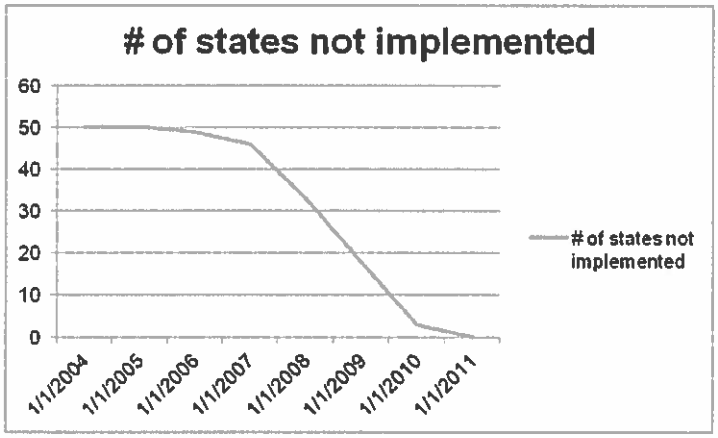
- In 2003, states began adopting fire-safe cigarette laws[1]
  - In 2006, 49 states (93.4% of the population) had yet to implement requirements regarding the sale of reduced ignition propensity cigarettes
  - In 2007, 46 states (79.7% of the population) had yet to implement requirements regarding the sale of reduced ignition propensity cigarettes
  - In 2008, 33 states (61.9% of the population) had yet to implement requirements regarding the sale of reduced ignition propensity cigarettes
- However, it wasn't until 2011 that all states implemented some fire-safe cigarette regulation[2]
- The effects of fire-safe cigarettes have yet to be realized
  - The NFPA projects this will lead to additional reductions in fire events

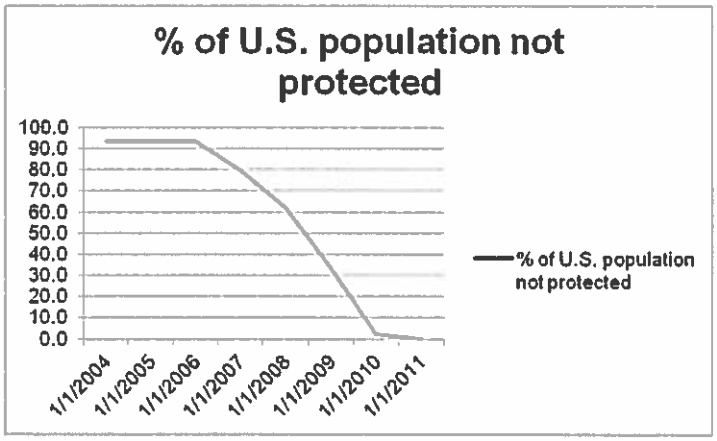
[1]National Fire Protection Association; *Smoking-Materials fire deaths drop to 30 year low;* Par. 1
[2]National Fire Protection Association; John R. Hall, Jr.; *The Smoking-Material Fire Problem;* P. 11

The NFPA RIP Cigarette Implementation Data

Date	# of states not implemented	% of U.S. population not protected
12/31/2004	50	93.6
12/31/2005	50	93.6
12/31/2006	49	93.4
12/31/2007	46	79.7
12/31/2008	33	61.9
12/31/2009	18	33.5
12/31/2010	3	2.3
12/31/2011	0	0.0

** Data includes District of Columbia*





National Fire Protection Association: *States that have passed fire-safe cigarette laws*

Supplement to Oral Presentation on June 15, 2016

Linda Kaiser

Parents for Window Blind Safety

Parents *for* Window Blind Safety

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20 June 2016

US Consumer Product Safety Commission
Office of the Secretary
4330 East-West Highway
Bethesda, MD 20814

I would like this letter to supplement my previously submitted written comments as well as my oral presentation on June 15, 2016.
During the hearing, Commissioner Mohorovic asked Al Silverberg - a retailer who sells only cordless blinds - if he plans to recall previously sold corded blinds.
This raises an important question – are corded blinds considered defective by Commissioner Mohorovic?
If, in fact, they are, then it would be appropriate for CPSC's Compliance Directorate to ask manufacturers to recall their corded products.
Note that while retailers would be expected to facilitate such a recall, the recall itself would be carried out (*and paid for*) by manufacturers of corded blinds, such as Hunter Douglas and others.

For the record, I entirely support such a recall and appreciate Commissioner Mohorovic suggesting this path to safety and request that CPSC follow through on this suggested action.

With Gratitude,

Linda Kaiser

by Linda Kaiser
Parents for Window Blind Safety
#GoCordless

Supplement to Oral Presentation on June 15, 2016 by Stephanie Fox-Rawlings

on behalf of Dr. Diana Zuckerman, President

National Center for Health Research

Statement of Dr. Diana Zuckerman, President
National Center for Health Research

The National Center for Health Research is a nonprofit research center staffed by scientists, medical professionals, and health experts who analyze and review research on a range of health issues. Thank you for the opportunity to share our views concerning the Consumer Product Safety Commission's (CPSC) priorities for fiscal year 2017 and 2018. We respect the essential role of the CPSC, as well as the challenges you face in selecting the most important priorities

Phthalates and flame retardants need to be among your top priorities because they are in all our homes and they migrate from products into the our daily environment. Multiple phthalate metabolites and flame retardants are detectable in nearly all people in the U.S.(1) and scientists agree that their impact on health can be dangerous and long-lasting.

Additional bans on phthalates in children's toys and care products

We applaud the current permanent and temporary bans on six phthalates in children's toys and child care articles.(2) However, these bans need to be expanded. The rule "Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates" proposed in spring 2015 following the Chronic Hazard Advisory Panel (CHAP) would provide essential additional protections for children.(3,4)

We support the permanent bans on four additional phthalates (DIBP, DPENP, DHEXP, and DCHP) and making permanent the interim ban on DINP.(3) However, the CHAP report also recommended an intern ban on DIOP, which should also be included in the rule. We strongly disagree with the proposal to lift the interim bans on DNOP and DIDP. While they may not be associated with antiandrogenicity, they are associated with organ toxicity and altered development.

The CHAP report also recommended additional studies on three other phthalates (DMP, DPHP, and DEP) and six phthalate alternatives.(4) The final rule should include a timeline for the completion of these studies.

In summary, we strongly urge the CPSC to finalize the proposed rule on phthalates in children's toys and child care articles, including consideration of our safety concerns.

It is also important for CPSC to expand its work on phthalates to include safeguards for older children. There is increasing evidence of the impact of these chemicals on early puberty,which itself is associated with drug abuse, sexual exploitation, and suicide.(5)

Bans on flame retardants

The CPSC has the responsibility and ability to protect consumers from toxic flame retardants under the Federal Hazardous Substances Act.

We agree with others groups commenting today that the CPSC should propose and finalize regulations that would ban additive, non-polymeric organohalogen flame retardants in four categories of household products as proposed in Petition No. HP 15-1.(6) Like phthalates, these chemicals move from products to our daily environment and from there into consumers' bodies where they can cause irreparable harm. All of the organohalogen flame retardants studied have been associated with chronic health effects.

The most well-studied organohalogen flame retardants are the polybrominated diphenyl ethers (PBDEs), which have been phased out in part due to their effects on human health.(7) The alternatives in the same class are proving to have similar problems. These alternatives found in a large percentage of people tested in various communities.(8) They have been linked to cancer, reproductive problems, neurotoxicity, developmental toxicity. endocrine disruption. and behavioral changes in models and/or humans.(6)

We strongly urge the CPSC to develop and finalize a ban on these chemicals in the proposed residential products to protect consumers from their toxic effects.

In conclusion, we urge the CPSC to prioritize the research and rulemaking to limit exposure of consumers, and especially children, from the phthalates and flame retardants that have been found to have negatively impact health and development.

Thank you for your time and consideration of our views.

1. National Health and Nutrition Examination Survey (NHANES) (October 2014). Phthalates and Plasticizers Metabolites- Urine (PHTHTE_G); years of content 2011-2012. http://wwwn.cdc.gov/Nchs/Nhanes/2011-2012/PHTHTE_G.htm
2. Federal Register (December 30, 2014). Consumer Product Safety Commission. Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates. Docket No. CPSC-2014-0033. http://www.gpo.gov/fdsys/pkg/FR-2014-12-30/pdf/2014-29967.pdf
3. Federal Register (December 30, 2014). Consumer Product Safety Commission. Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates. Docket No. CPSC-2014-0033. http://www.gpo.gov/fdsys/pkg/FR-2014-12-30/pdf/2014-29967.pdf
4. Consumer Product Safety Commission (July 2014). Chronic Hazard Advisory Panel On Phthalates and Phthalate Alternatives.
5. Bourguignon JP, Juul A, Franssen D, Fudvoye J, Pinson A, Parent AS (2016) Contribution of the Endocrine Perspective in the Evaluation of Endocrine Disrupting Chemical Effects: The Case Study of Pubertal Timing. Horm Res Paediatr. In Press. Zhang Y, Cao Y Shi H Jiang X Zhao Y Fang X Xie C (2015) Could Exposure to Phthalates Speedup or Delay Pubertal Onset and Development? A 1.5-year Follow-up of a School-based Population. Environ Int 83:41-49. Fisher MM Eugster EA (2014) What is in our Environment that Effects Puberty? Reprod Toxicol 44:7-14. Hedges K Korchmaros JD (2016) Pubertal Timing and Substance Abuse Treatment Outcomes: An Analysis of Early Menarche on Substance Use Patterns. J Child Adolesc Subst Abuse. In Press. Golub MS, Collman GW, Foster PM, Kimmel CA, Rajpert-De Meyts E, Reiter EO, Sharpe RM, Skakkebaek NE, Toppari J (2008) Public Health Implications of Altered Puberty Timing. Pediatrics. Suppl 3:S218-230. Mendle J, turkheimer E, Emery RE (2007) Detrimental Psychological Outcomes Associated with Early Pubertal Timing in Adolescent Girls. Dev Rev 27(2):151-171.
6. Earthjustice and Consumer Federation. (July 2015) Petition HP 15-1 Requesting Rulemaking on Products Containing Organohalogen flame Retardants. https://www.cpsc.gov/Global/Regulations-Laws-and-Standards/Petitions/PetitionHP151RequestingRulemakingProductsContainingOrganohalogenFlameRetardents.pdf
7. US EPA. Polybrominated Diphenyl Ethers (PBDEs). https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/polybrominated-diphenyl-ethers-pbdes
8. Centers for Disease Control and Prevention (2009). Fourth National Report on Human Exposure to Environmental Chemicals, at 311-13. http://www.cdc.gov/exposurereport/. Centers for Disease Control and Prevention (2015). Fourth National Report on Human Exposure to Environmental Chemicals, Updated Tables. http:/ /www.cdc.gov/exposurereport/.

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June 20, 2016

Thank you Chairman Kaye and Commissioners Robinson, Adler, Buerkle and Mohorovic for inviting comments about CPSC's Priorities for 2017 and 2018.

Many years ago, when I was a graduate student, I was fortunate to have a wise and seasoned mentor, Dr. James Mosel. Dr. Mosel gave me a lot of great advice over the years. One of the most important and lasting things he told me is - all behavior is motivated. He advised me that when someone is not working hard or doing what I think they should be doing, I should not ask why that person is not motivated. Because, in fact, they are motivated; they just are not motivated to do what I want them to do. When you learn what motivates someone, you understand their behavior.

I raise this in the context of window coverings. I wonder – what is it that could possibly motivate the WCMA and some of its members to fight so vigorously against making window coverings safe?

> It is not that the technology to eradicate this hazard does not exist; it does. In fact, manufacturers like Hunter Douglas have manufactured cordless blinds for years.
>
> It is not that the technology is not affordable. Not only is it affordable but it would be even more so if all products were required to be cordless.

So, what could it possibly be? Could it be that it is financially beneficial for manufacturers like Hunter Douglas to sell *both* corded and cordless blinds in their product lines? Does doing so allow them to charge a premium for safer products?

Dr. Mosel imparted another important insight that has remained with me throughout my career. As I was attempting to understand some rather confusing findings from my dissertation research, he advised me: "Don't dance with the data." In other words, be true to the numbers and allow the data to speak for itself. *It is what it is, not what you say it is.*

Again, very important advice and advice that I believe this Commission understands. Unfortunately, WCMA has manipulated the injury data to exclude some deaths and injuries in the CPSC's data. If WCMA were to include all deaths and injuries, it would prove the

ineffectiveness of industry's voluntary standard that relies on warning labels to prevent strangulation, instead of known and affordable technology that eliminates the hazard. WCMA finds many ways to manipulate and minimize the data.

> For example, Ralph Vassami of WCMA explained that WCMA discounted certain deaths as it believes the incident(s) may be suicide. Really? Suicide by a toddler?
>
> WCMA refuses to include non-fatal strangulation incidents in its data set. Try explaining to this Heather Dautrich who testified at the Priorities Hearing on June 15, 2016 with her severely disabled son, Bobby, in her lap. Bobby was a fully functioning toddler in a loving and well-supervised home when he strangled on window cords that fell down within his reach (the cords had been put out of reach).

It appears that WCMA and some of its key members made a decision many years ago that rather than lead industry to eliminate hazardous cords, they would fight this to the end. As such, WCMA leads the fight by lobbying on the Hill, and by hiring attorneys and PR people to run defense for them. They do all this while children continue to die or strangle every 3 - 4 weeks.

I have petitioned the Commission on many issues over the years. In every single case, industry has stepped up and addressed the hazard voluntarily and satisfactorily. And in every case, the rate of incidents has dramatically declined or been eliminated. For example, I petitioned on the following issues:

> Strangulation on hunting waist belts – Treestand Manufacturers Association no longer permits single strap belts on TMA certified products.
>
> Bunk bed neck entrapment & strangulation in the juncture between the ladder and lower bunk – ASTM standard for bunk beds was revised to prevent such entrapment.
>
> Toddler burns on exposed hot glass of gas fireplaces – ANSI standard now requires protective screens.

Most of you were serving in your roles at the Commission when I filed the bunk bed and gas fireplace petitions. The action by industry means CPSC is no longer discussing these issues. No more dollars or staff time is needed because these hazards have been addressed. In addition, I have worked on countless other product hazards that were addressed through protective designs, including child resistant cigarette and utility lighters and flammable vapor ignition resistant water heaters.

In each of the examples above, industry took necessary steps to eliminate or drastically reduce exposure to a hazard when a petition was filed. This is where WCMA is unique – the behavior of this association and certain members is egregious. Their decision to *spend money fighting a*

safety standard that is entirely feasible and affordable demonstrates a lack of concern for the safety and well-being of children.

It is important to remember that this is not a situation where an unsafe product with utility cannot be modified to eliminate the hazard due to technological or cost concerns. The technology to manufacture safe blinds has existed at an affordable cost for many years. Safe cordless blinds are in fact on the market. *Therefore, it is the removal of unsafe products that WCMA is fighting*. WCMA's effort to keep unsafe and deadly products on the market is unconscionable and will continue unless and until the Commission makes corded blinds a top priority and imposes a mandatory standard.

Saying that one cares about children or wants to see the hazard go away is hollow and has absolutely no impact unless this rhetoric it is accompanied by action. The only thing that matters is *doing something*. Since WCMA will not take action to address the hazard, I request the following of this Commission:

1. Please do not accept an information & education (I&E) campaign as the way to solve this problem.

I have studied I&E campaigns for years. An I&E Campaign for window coverings is not the answer. An I&E campaign is a safety net and a net has holes. Just because information is disseminated, does not mean it is received or makes an "impression" on consumers. It does not. It has not. CPSC and WCMA have issued Safety Alerts about the dangers of window blind cords for more than 20 years. Deaths and injuries continue at the same or nearly the same rate.

2. Push hard for the elimination of accessible cords. Require a change.

I understand that there are laws making this an uphill battle. This is worth the fight. You can save lives. Moreover, eliminating the strangulation hazard is consistent with best practices espoused by the Commission and the Safety Hierarchy for Hazard Prevention. Consistent with the hierarchy and published research, we know that informational strategies, including warning labels, are entirely inappropriate and ineffective for this hazard.

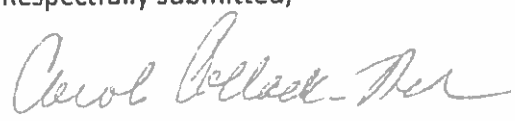
3. Present a unified front.

A unified Commission is more effective than a divided Commission.

In deciding whether you will support only an I&E campaign versus requiring safe blinds, I ask each of you to consider what motivates you in how you decide to act on this issue? With the Commission's mission being to protect the public from unreasonable risk of injury, I hope the answer is easy. After all, this is a hazard that can be stopped right now. The technology to do so already exists and is affordable for industry.

If you believe that the incident rate has hit a floor and can go no lower, then do nothing. But, if you believe as I do, that *this hazard can be eradicated*, I urge you to find a way to remove corded blinds from the market. With every day that passes, thousands of new, corded blinds are installed in the homes of children. And you can count on another death or strangulation occurring this month, next month, and every month thereafter until this Commission causes this to end. This is a fixable problem – please, fix it.

Respectfully submitted,



Carol Pollack-Nelson

Supplement

Updated Testimony with Full List of Supporting Organizations

Daniel Penchina

Submitted by Nancy Buermeyer

National Breast Cancer Fund & Washington Toxics Coalition

1. Email from Nancy Buermeyer **(Printed)**
2. Testimony_CPSC priorities_Jun2016_sign ons.pdf **(Printed)**
3. FULL REPORT What Stinks Toxic Chemicals in Your Home.pdf **(Printed)**
4. What's On Your List.pdf **(Printed)**
5. ECY Testing Children's Clothing.pdf **(Printed)**
6. 2016 Phthalates Reporting Summary Table 2-2-16 (2).xlsx **(Not printed) (email attachment only)**

Hammond, Rocky

From: CPSC-OS
Sent: Wednesday, June 22, 2016 10:05 AM
To: Hammond, Rocky; Adkins, Patricia; Ziemer, Michelle
Subject: FW: Additional Submission RE: Agenda and Priorities FY 2017 and/or 2018
Attachments: 2016 Phthalates Reporting Summary Table 2-2-16 (2).xlsx; FULL REPORT What Stinks Toxic Chemicals in Your Home (2).pdf; What's On Your List.pdf; ECY Testing Children's Clothing.pdf; Testimony_CPSC priorities_Jun2016_sign ons.pdf

Todd Stevenson
Director, The Secretariat
Office of the General Counsel
US Consumer Product Safety Commission
(301) 504-6836, Fax (301) 504-0127

From: Nancy Buermeyer [mailto:nbuermeyer@breastcancerfund.org]
Sent: Tuesday, June 21, 2016 6:06 PM
To: CPSC-OS
Cc: Daniel Penchina (dpenchina@rabengroup.com); Laurie Valeriano
Subject: Additional Submission RE: Agenda and Priorities FY 2017 and/or 2018

Dear Mr. Stevenson,

Thank you for the opportunity to testify at last week's hearing regarding the Commission's priorities for FY 2017 and 2018. I understand you are still excepting submissions, so I have attached additional information. In addition to the updated testimony with a full list of supporting organizations, I have also included reports that summarize some of the disclosure data collected by the states of Washington and Maine. Our testimony calls on the CPSC to use data from the states to broaden the scope of consumer products it reviews for potential harmful exposures. The attached documents provide examples of the type of data currently available. Vermont and Oregon are in the process of implementing similar disclosure laws that will add to that information. We urge the Commission to take full advantage of this important data.

Thank you again for the opportunity to comment on the Commission's priorities and we look forward to working with the CPSC in the future.

Best,
Nancy

Nancy Buermeyer
Senior Policy Strategist

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WASHINGTON
TOXICS
COALITION

June 7, 2016

Chairman Elliot F. Kaye
Commissioner Robert S. Adler
Commissioner Ann Marie Buerkle
Commissioner Joseph Mohorovic
Commissioner Marietta S. Robinson
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: ***Testimony regarding CPSC agenda and priorities for FY 2017 & 2018***

Dear Chairman Kaye, and Commissioners Adler, Buerkle, Mohorovic, and Robinson:

Thank you for the opportunity to share our views on the Consumer Product Safety Commission's (Commission) agenda and priorities for fiscal years (FY) 2017 and 2018. We urge the Commission to make completion and implementation of the Proposed Rulemaking on the ***Prohibition of Children's Toys and Child Care Articles Containing Specific Phthalates*** an immediate top priority. Over the remainder of FY 2017 and 2018, we urge the Commission to expand its oversight and regulation of consumer products containing harmful and potentially harmful chemicals, making full use of its authority under the Federal Hazardous Substances Act, the Consumer Product Safety Act and the other statutes enforced by the agency.

The Breast Cancer Fund is a national non-profit organization committed to preventing breast cancer by reducing exposure to chemicals and radiation linked to the disease. We base our work on a foundation of sound, peer-reviewed science showing increased risk of breast cancer from exposure to chemicals, including carcinogens and endocrine-disrupting compounds (EDCs) such as phthalates.

Washington Toxics Coalition (WTC) is a state-based non-profit organization that combines science and advocacy to create a toxic-free future. Through WTC's leadership Washington State has achieved policies that get chemicals such as toxic flame retardants, heavy metals, and hormone-disrupting phthalates out of consumer products - an important source of both human and environmental exposure. In 2008, WTC led the effort to pass legislation banning six

phthalates in toys and child care items sold in Washington, the same six phthalates included in the Consumer Product Safety Improvement Act. WTC also achieved a ground-breaking reporting law that requires manufacturers of children's products to report to the state when they sell products in Washington containing any of 66 chemicals of high concern to children.

Proposed Rule Prohibiting Phthalates in Children's Toys and Child Care Articles

The Breast Cancer Fund and Washington Toxics Coalition have closely followed the implementation of Section 108 of the Consumer Product Safety Improvement Act (CPSIA) (15 U.S.C. §2057c.) and the resulting Chronic Hazard Advisory Panel (CHAP) process. The Breast Cancer Fund has participated in many of the numerous opportunities for public comment.

The CPSIA was signed into law in August 2008 and the prohibition on the use of six phthalates went into effect in February 2009. In CPSIA, Congress laid out a very specific timeline for the Commission to appoint and support a CHAP review of the science on the safety of phthalates, and then to implement the CHAP recommendations through rule making. The overall process should have taken approximately three years; it has now been over seven. In the statute, the Commission had 180 days to finish a rule making process following the issuance of the CHAP report. The CHAP report came out on July 18, 2014; following the statute's timeline, the final rule should have been promulgated on January 14, 2015. The proposed rule was issued on December 30, 2014 and the public comment period closed on April 15, 2015. It has now been well over a year since all formal public comment was received and the final rule has yet to be promulgated. We are also deeply concerned that the chemical industry is continuing to flout the public comment process established by the Commission by submitting additional materials well past the deadline in an attempt to shed doubt on the CHAP report.

One of the key provisions of the CHAP report, which was reflected in the proposed rule, was the recommendation to ban four additional phthalates that were not included in the six phthalates banned in the CPSIA, specifically diisobutyl phthalate (DIBP), di-n-pentyl phthalate (DPENP), di-n-hexyl phthalate (DHEXP) and dicyclohexyl phthalate (DCHP). The longer the Commission delays issuing a final rule, the longer children in this country are exposed to these chemicals deemed potentially harmful by the CHAP's expert panel of scientists.

We urge the Commission to make promulgation of the final rule a top priority and to issue the rule as soon as possible, preferably in this fiscal year, and absolutely no later than the first quarter of FY 2017.

Chemicals in the Broader Scope of Consumer Products

The presence of phthalates in child care products and toys is one of many exposures to hazardous chemicals as a result of contact with consumer products. The Consumer Product Safety Commission should broaden the scope of consumer products it reviews for the presence of and

risk from hazardous chemicals. The Commission should then take necessary action to protect public health, specifically accounting for the vulnerability of certain populations such as children and pregnant women. States such as Washington, Maine, and soon Vermont and Oregon, collect and make publically available information about the presence of harmful chemicals in products that are either designed for children or to which children or pregnant women could be exposed. For example, data from Washington State shows the presence of chemicals such as formaldehyde, flame retardants, and numerous phthalates in products such as clothing, art supplies, and baby care items. The Commission should use the data generated by these state programs as a roadmap to identify additional products that require further evaluation and potential action to protect the health of children from these dangerous chemicals.

In conclusion, we urge to you prioritize finalizing the proposed phthalates rule and to consider dangerous chemical exposures from other consumer products. We thank the Commission for this opportunity to comment on your future activities and priorities, and look forward to continuing to engage with you on this important work.

Sincerely,

Jeanne Rizzo, R.N.
President and CEO
Breast Cancer Fund

Laurie Valeriano
Executive Director
Washington Toxics Coalition

Also supported by:

Pamela Miller
Executive Director
Alaska Community Action on Toxics

Katie Huffling, MS, RN, CNM
Director of Programs
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Tom Lent
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Patricia Lillie
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Learning Disabilities Association of America

Jen Coleman
Health Outreach Director
Oregon Environmental Council

Sarah Doll
National Director
Safer States

Carli Jensen
Toxics Campaign Director
U.S. PIRG

Lauren Hierl
Political Director
Vermont Conservation Voters

Falko Schilling
Consumer and Environmental Advocate
Vermont PIRG

A report from:

ENVIRONMENTAL HEALTH STRATEGY CENTER

PREVENT HARM

What Stinks? Toxic Phthalates in Your Home

New Data Reveals Widespread Use of Hormone-Disrupting Chemicals in Cleaners, Disinfectants, Deodorizers, Clothing, Shoes, Paints, and Personal Care Products

Environmental Health Strategy Center • Prevent Harm • Safer Chemicals, Healthy Families • Safer States

Breast Cancer Fund • Ecology Center • Healthy Babies Bright Futures • Women's Voices for the Earth

What Stinks? Toxic Phthalates in Your Home May 2016

Environmental Health Strategy Center and **Prevent Harm**

ENVIRONMENTAL HEALTH STRATEGY CENTER

PREVENT HARM

Maine is a national leader in protecting public health from dangerous chemicals in everyday products. In 2008, the Pine Tree State passed one of the first and strongest state-based chemical policy reform known as the Kid Safe Products Act. Similar chemical safety laws have since been enacted in California, Oregon, Vermont, and Washington, are pending in several other states.

Under Maine's law, manufacturers must disclose their use of high-priority chemicals of concern in consumer products sold in the state. They can be required to search for safer substitutes. The Kid Safe Products Act further authorizes the state to phase out chemical uses if safer alternatives are available, effective, and affordable.

In 2014, a grassroots campaign led by concerned Maine moms and health professionals petitioned the state to add four phthalates (THAL-eights) to its list of Priority Chemicals. Maine agreed, and some product manufacturers were required to report phthalate use by December 2015.

This report unveils those results, including some first-ever public data on the use of phthalates.

Chemical use reporting required by states shows them acting as the "laboratories of democracy" described by the late Supreme Court Justice Louis Brandeis. Consumers and federal agencies now have never-before-available information on dozens of dangerous chemicals used in thousands of products in our homes, schools, and daycare centers.

Yet, ensuring the public's right to know what's in the stuff we buy is just the first step. Next up, businesses need to switch to safer substitutes to ensure the safety of our products and protect our families.

Report Cosponsors:

Safer Chemicals Healthy Families

safer states

BREAST CANCER FUND
PREVENTION STARTS HERE.

ECOLOGY CENTER

Healthy Babies Bright Futures

WOMEN'S VOICES FOR THE EARTH

As a public health organization, the **Environmental Health Strategy Center** works to ensure that all people are healthy and thriving in a fair and healthy economy by reducing exposure to toxic chemicals in our homes and promoting products that are safe for people and the planet. In state and national campaigns, we use research and education to reform policies, change the marketplace, and advance science-based solutions that are socially just. **Prevent Harm** is our advocacy and political action partner.

Acknowledgements

This report would not have been possible without the achievements of the Alliance for a Clean and Healthy Maine, and the activism of thousands of Maine people committed to a government that works and businesses that care. We greatly appreciate the support for our Environmental Health Program provided by John Merck Fund, Marisla Foundation, Broad Reach Fund of Maine Community Foundation, Bingham Program, and Betterment Fund. We thank Kerri Malinowski and the Maine Department of Environmental Protection for their implementation of the Kid Safe Products Act and for their cooperation in providing copies of the chemical use data reports.

Authors

Mike Belliveau, Emma Halas O'Connor, and Elyse C. Tipton

Research Assistance

Collyn Baeder

Executive Summary

Industry information newly required by the State of Maine reveals that hormone-disrupting chemicals known as phthalates (THAL-eights) are found in more household products than previously known.

For the first time, the use of toxic phthalates has been reported in paints, cleaners, disinfectants and deodorizers. It also has been reported in clothing, shoes, and personal care products.

Strong science shows that even at very low levels of exposure, phthalates--a class of more than 40 closely related chemicals--are linked to reproductive harm, learning disabilities, and asthma and allergies.

Report Findings

According to data reports submitted to the Maine Department of Environmental Protection, 14 manufacturers reported the use of the four phthalates in 130 products. Maine requires manufacturers to publicly disclose the use of four types of phthalates: diethylhexyl phthalate (DEHP), diethyl phthalate (DEP), benzyl butyl phthalate (BBP), and dibutyl phthalate (DBP).

Although phthalates are mainly used as plastic softeners, much of the never-before-reported data shows phthalates as ingredients in fragrance for more than half of the products, including cleaners and household paints. "Fragrance" can include dozens of chemicals, and there is no requirement that companies must disclose these ingredients publicly.

In more than a third of the products, the reported use of phthalates is as a plastic softener in clothing, toys, and home maintenance products.

Other data reported point to use in reusable adhesive tabs for art projects.

State Disclosure Requirements

A growing number of states, including California, Maine, Oregon, Vermont and Washington, can require product manufacturers to disclose the use of chemicals that may harm the health of babies and children.

Data disclosed helps state and federal government agencies tasked with protecting public health, by providing information on sources of exposure to phthalates.

State-required data reporting makes more information available to consumers.

Public reporting of dangerous chemical use also can inspire industry leaders to abandon toxic chemicals in favor of safer alternatives, an option that can help brands earn and maintain a loyal customer base.

Conclusions

Because Maine's reporting requirement, like other states, exempts many types of common household products, the data reported represents just the tip of the iceberg for uses of phthalates in household products.

It also is likely that many manufacturers are illegally failing to disclose their uses of phthalates to the State of Maine.

In Maine and other states, the scope of reporting should be widened to provide more public information on sources of phthalate exposure and state officials should enforce strong reporting compliance.

To protect public health from harmful phthalates, this report points to the need for government regulators and corporate leaders to take greater responsibility for chemical safety. **Phthalates should be replaced by safer alternatives already in use.**

Key Findings: Widespread Use of Phthalates in Consumer Products

This report reveals new data—but it shouldn't.

Our nation's chemical safety system is badly broken. Chemical ingredients in most household products are kept secret, leaving consumers to wonder which products are actually safe.

Increasingly, states have played a key role in addressing this problem, by requiring product manufacturers to disclose their uses of harmful chemicals such as phthalates. California, Maine, Oregon, Vermont, and Washington all have state authority to gather never-before-seen information on chemicals of high concern in consumer products.

Reporting varies by state. In Washington, for example, manufacturers must report annually on certain products intended for children under the age of 12 that contain any of 66 high priority chemicals, including eight phthalates. Yet Maine has broader authority to gather information on priority chemicals in any consumer product used in homes, schools, or child care facilities. This broader scope reflects the best science that shows that any product may result in exposure to those most vulnerable, including pregnant women, young children, and teenagers.

Because of the breadth of reporting that Maine requires, the data reported includes never-before available information showing phthalates in products like paint and cleaners.

In total, the products reported represent just the tip of the iceberg of the widespread use of phthalates in the marketplace. Decision makers in government and commerce must proactively eliminate harmful exposure to toxic phthalates, what many call "the everywhere chemicals."

WHAT PRODUCTS ARE PHTHALATES IN?

5 Key Findings

A Total of 130 products containing phthalates were reported by 14 manufacturers

Product Categories	#
Household paints & primers	47
Cleaners, disinfectants & deodorizers	25
Clothing & footwear	19
Toys, games, dolls, jewelry	11
Hair care products	7
Plastic hardware fasteners	7
Reusable adhesive tabs	5
Caulking & sealants	5
Greeting cards	2
Auto body filler	1
Surface protection film for flooring	1

1 Phthalates are present in a wide variety of consumer products.

Fourteen manufacturers reported the use of four phthalates in 130 products sold in the State of Maine, including information never before disclosed to the public. Phthalates were reported in household paints and primers (47 products); cleaners, disinfectants, and deodorizers (25); clothing and footwear (19); toys, games, dolls, and jewelry (11); hair care products (7); and various other products (21).

2 The use of phthalates in consumer products may be significantly under-reported.

The State of Maine did not require reporting for all product categories. For some, such as clothing and accessories and personal care products, manufacturers were exempt from reporting if their products were not intended for use by children, even though pregnant women are particularly vulnerable to adverse health effects from phthalates. *It also is likely that many manufacturers failed to disclose their use of phthalates.* The companies that reported should be acknowledged for complying with Maine law, while some of their competitors may be selling their products in Maine illegally, without disclosing their uses of phthalates.

HOW ARE PHTHALATES USED IN PRODUCTS?

3 The report reveals first-time information on phthalates used in fragrance.

Phthalates in "fragrance" were most widely reported in household paints and primers sold by True Value hardware (38 products) and in cleaners, disinfectants, and deodorizers manufactured by 3M for home and school use (25

Three companies reported use of phthalates in FRAGRANCE in 70 consumer products.

Manufacturer	Brand Names	#	Product
GPM/True Value Manufacturing	X-0 Rust, Premium Décor, Start Right	38	Household paints and primers
3M	3M, Scotchguard, Scotch-Brite, Tami-Shield, TroubleShooter	25	Disinfectant, deodorizer, surface cleaners, surface care, other cleaner
The Procter & Gamble Company*	Clairol, Sebastian	7	Hair conditioner, hair styling

* *Procter & Gamble has pledged to eliminate this phthalate use by September 2016.*

4 Phthalates were reported to soften vinyl plastic in more than one third of the products.

Phthalates are primarily used by manufacturers worldwide as plasticizers, to soften rigid PVC plastic to make it flexible. The Gap reported the use of the phthalate DEP in the plastic tips of clothing drawstrings and shoe laces, which could lead to exposure from handling the tips or chewing on them. Other reported uses of phthalates to soften plastics included jewelry, dolls, and toys for children as well as specialty paints and sealants and other home maintenance products.

Nine companies reported using phthalates to SOFTEN PLASTIC in 46 products.

Manufacturer	Brand Names	#	Product
Gap, Inc.	Gap, Old Navy	17	In shoelace & drawstring aglets (plastic tubes) on footwear and clothing
Hallmark Cards	Hallmark	7	Necklaces, games, dolls
Hillman Group	Hillman	7	Plastic hardware fasteners, door keys
The Sherwin-Williams Co.	Glitter Spray	4	Decorative (faux) painting equipment
Tnemec Company, Inc.	Enduratone, Ultra-Tread S	3	Special purpose paints for wall and floor coatings
Homax Products, Inc.	Homax Caulk Strips, Wet Look Cure Seal	3	Caulking, sealants
3M	3M Scotchguard, 3M Bondo Plastic Metal	2	Surface protection film for flooring, filler for auto repair
PPG Architectural Coatings, Inc.	Top Gun 200	2	Sealants
PCP Group, LLC	Pellon Vinyl Fuse	1	Arts & crafts variety packs

5 Phthalates are also added to products for other reasons.

Phthalates are also added as a solvent in adhesive tabs used to mount photos, artwork, and paper to walls as well as for the screen printing and heat sealing of graphic images onto children's clothing, among other miscellaneous uses.

Five companies reported use of phthalates for OTHER PURPOSES

Manufacturer	Brand Names	#	Product
3M	Scotch Restickable	5	Reusable adhesive tabs
The Home Depot	Halloween LED Spooky Spinners, Rudolph Light Up Nose, Pumpkin Push Ins - Yoda	3	Fancy toy dress accessories & costumes, arts & craft variety pack
American Greetings	Papyrus	2	Greeting cards / Invitations
Garan Inc.	Garanimals	2	Clothing
GPM/ True Value Manufacturing	Premium Décor	2	Special purpose paints for wall and floor coatings

"As a mother, I find myself getting angry and scared about harmful chemicals in so many products, and not knowing which ones are safe. Why aren't manufacturers required to tell us what's in everything they make? Why are phthalates still in use in this country? Trying to protect my family shouldn't be this difficult."

Hormone disrupting chemicals pose serious risks to the health of babies and young children.

A silent epidemic may be unfolding due to the widespread use of hormone-disrupting chemicals such as phthalates in consumer products. Strong scientific evidence confirmed by human health studies, animal toxicity tests, and laboratory research shows that exposure to phthalates increases the risk of adverse health effects, especially during developmental windows of vulnerability such as pregnancy, infancy, or adolescence.[1]

Paige Holmes, a mother of two in Bangor, Maine, participated in a study in 2015 that showed high levels of toxic phthalates in her body.

- **Harm to the developing brain:** Exposure to phthalates is linked to lowered IQ, learning disabilities, and behavioral problems.
- **Reproductive harm:** Exposure to phthalates is linked to genital birth defects in baby boys, which is associated with decreased fertility in young men, and increased risk of prostate and testicular cancer.
- **Harm to the immune system:** Phthalate exposure also impairs immune function, associated with an increase in asthma and allergies.

Authoritative Sources:

[1] Dr. Deborah C. Rice, Ph.D., Phthalates: Maine Chemicals of High Concern, A Review of the Science on Toxicity and Exposure, March, 2014. pp 1-2. http://www.ourhealthyfuture.org/library/phthalates-review-science-toxicity-and-exposure

[2] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention Report on Human Exposure to Environmental Chemicals, Updated Tables, February 2015. See Phthalate and Phthalate Alternative Metabolites, pp. 354-434. http://www.cdc.gov/exposurereport

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[7] Meeker JD, Sathyanarayana S, and Swan SH (2009) Phthalates and other additives in plastics: human exposure and associated health outcomes. Philos Trans R Soc Lond B Biol Sci. 364(1526). 2097-2113. doi: 10.1098/rstb.2008.0268.

Product manufacturers should phase out the use of all phthalates, in favor of safer alternatives that already are available and affordable.

More than 90% of all phthalates are used to soften vinyl (PVC) plastic. One phthalate, known as DEP, is used primarily as a fragrance ingredient.

Those who are most vulnerable to harm from phthalates are disproportionately exposed.

More than 90% of all Americans are exposed to phthalates everyday.[2] Biomonitoring by the U.S. Centers for Disease Control and Prevention has documented that children have the highest total concentration of phthalates in their bodies, and that women of childbearing age are exposed to phthalates at higher levels than men.[1] A panel of scientists advising the U.S. Consumer Product Safety Commission warns that millions of American infants and women of childbearing age are exposed to phthalates every day, at levels that can cause reproductive harm.[3] Several studies have reported that communities of color and people of lower income status face disproportionate exposures to one or more phthalates, raising environmental justice concerns.[5]

What are the primary known sources of exposure?

Contamination of the food supply results in one of the greatest sources of exposure to phthalates. The chemicals enter fatty foods, especially dairy products, margarine and vegetable oils, from industrial food processing and food packaging.[6] Soft plastic products containing phthalates continually shed the chemicals into the home environment, where they build up in house dust. Toddlers especially, with their frequent hand-to-mouth activity, ingest phthalates from the dust on their hands. Additional exposure results from breathing in or absorbing phthalates through the skin from the use of personal care products, cleaners, and soft vinyl products.[7] Virtually everyone is exposed to phthalates, every day.

Safer alternatives for phthalates are available.

Many companies have already shown leadership in phasing phthalates out of their products. In the case of fragrance in cleaning supplies, both Clorox and Procter & Gamble have pledged to be phthalate-free. To soften plastic products, several safer alternatives are already on the market.[5] Major home improvement retailers including The Home Depot, Lowe's, Menards, and Lumber Liquidators have recently ended their use of phthalates in vinyl flooring, due to growing safety concerns.

In response to the growing body of scientific evidence linking phthalates to health risks, government restrictions continue to steadily mount around the world.

For example, six phthalates have been banned in toys and childcare articles in the United States since 2008, and the U.S. Consumer Product Safety Commission has proposed a rule to add five additional phthalates to that list. The European Union has phased out all uses of four phthalates, with an additional nine slated for similar restrictions. Some U.S. states restrict or require reporting on phthalate use, including California, Maine, and Washington.

Conclusions

- Our chemical safety system is badly broken. Phthalates remain widely used in consumer products, despite widespread human exposure, serious risks to the health of pregnant women and children, and increasing government scrutiny around the world.

- State chemical disclosure requirements remain a critically important tool for informing government leaders and consumers about the use of dangerous chemicals in everyday products that may be a source of human exposure and harm to health.

- Products that list "fragrance" as an ingredient often contain phthalates along with potentially hundreds of other undisclosed chemicals that could be hazardous to our health.

- This toxic fragrance isn't just in our perfume or personal care products we use day to day. We're often unknowingly exposed to it through cleaning products, disinfectants, deodorizers, and household paint in our homes, classrooms, and public spaces.

Recommendations

- **STATE GOVERNMENT:** State policymakers should expand disclosure requirements to include chemicals of high concern in all consumer products, because of the proven benefit and low cost of such policies. Maine needs to enforce full compliance with its reporting requirement, and expand the product list subject to reporting to include other sources of exposure. Other states should adopt disclosure policies that gather new data on sources of exposure to phthalates and other chemicals of high concern in consumer products and building materials.

- **FEDERAL GOVERNMENT:** The U.S. Consumer Product Safety Commission should adopt pending rule to expand the ban on phthalates in toys and childcare articles. The U.S. Food and Drug Administration (FDA) should approve the pending food additives petition to revoke its permission to use phthalates in food packaging and industrial food processing. Congress should enact meaningful reform of the Toxic Substances Control Act (TSCA) to give the Environmental Protection Agency the authority to require testing and restrict the use of chemicals like phthalates while preserving state authority to take more protective actions. Congress should also enact legislation to give the FDA the statutory authority to better regulate the safety of personal care products and cosmetics to restrict the use of phthalates and other harmful chemicals in these products.

- **BUSINESS:** Product manufacturers should phase out the use of all phthalates in favor of safer alternatives that are already available and affordable. Retailers should ask their suppliers to disclose all uses of phthalates in the products they sell and take action to eliminate phthalates from their supply chains.

- **CONSUMERS:** Consumers should demand that product manufacturers and retailers sell only phthalate-free products. Take action now to ask 3M to phase out phthalates in its products, just like Procter & Gamble.

  Consumers can seek to reduce pthahlate exposure in the home by avoiding products with "fragrance" and products made from soft vinyl plastic, and by reducing consumption of processed and packaged foods.

What's on Your List?

Toxic Chemicals In Your Shopping Cart

What's On Your List?
Toxic Chemicals in Your Shopping Cart

Sponsors

Washington Toxics Coalition

Washington Toxics Coalition uses ground-breaking research, top-notch advocacy, in-depth grassroots organizing and high quality consumer information to help create a healthier and just world by promoting safer products, chemicals, and practices, and a healthier future for the next generation.

Safer Chemicals, Healthy Families

Safer Chemicals, Healthy Families is a national campaign working to protect American families and the environment from toxic chemicals.

Safer States

At Safer States we believe families, communities, and the environment should be protected from the devastating impacts of our society's heavy use of chemicals. We believe that new state and national chemical policies will contribute to the formation of a cleaner, greener economy.

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Editorial Review

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Also available online at *www.watoxics.org*

What's On Your List?

Toxic Chemicals In Your Shopping Cart

Executive Summary

Parents want and expect the products they use to care for their children to be safe and free of harmful chemicals. But our nation's toxic chemical laws are weak and ineffective and many harmful chemicals get into everyday consumer products without the public's knowledge. Taking steps to remedy this problem, Washington State passed the Children's Safe Products Act in 2008 (CSPA). CSPA set up requirements for makers of children's products being sold in Washington to report to the state if these products contain chemicals on a list of 66 Chemicals of High Concern to Children. Manufacturer reporting began phasing-in in 2012. This document summarizes the chemicals and products reported from March 5 to September 6 of 2013.

Overall there were 4,605 reports of Chemicals of High Concern to Children reported in children's products such as toys, clothing, baby safety products, and bedding during this time period. A total of 78 companies such as Walmart, Target, Safeway, Walgreens, Nike, and Toys "R" Us reported products containing harmful chemicals. A total of 49 chemicals such as formaldehyde, bisphenol A (BPA), parabens, phthalates, heavy metals, and industrial solvents were reported. The health effects of reported chemicals include carcinogenicity, endocrine disruption, and developmental or reproductive toxicity. This time period of reporting showed new companies reporting and showed new products being reported such as children's tableware containing formaldehyde and toy vehicles containing antimony trioxide flame retardant.

Washington's reporting law is achievable for the business community. More states should be passing these laws so families have chemical information about products being sold where they live. Retailers should remove products containing toxic chemicals from their store shelves. Ultimately, companies should phase these chemicals out of use and Congress should strengthen and update the federal Toxic Substances Control Act. Families can help bring about these changes by taking action.

Washington State's Children's Safe Products Act of 2008 requires makers of children's products containing chemicals on a list of 66 Chemicals of High Concern to Children to report to the state when these products are sold in Washington. 4,605 reports of 49 chemicals by 78 companies were made to Washington State from March 5 to September 6 of 2013.

Safer Chemicals Healthy Families

WASHINGTON TOXICS COALITION

safer states

What's On Your List?

Toxic Chemicals In Your Shopping Cart

Car seats, tennis shoes, dolls, and sleeping bags. When you fill your shopping cart with items like these, you may be bringing home another list, too: carcinogens, endocrine disruptors, and developmental and reproductive toxicants.

Harmful chemicals are present in many of the products families use every day to care for their children. National laws that are supposed to protect us from these chemicals are outdated and ineffective, which means that unregulated and undisclosed toxic chemicals are in consumer products without the public's knowledge. Families are filling up shopping carts with the products they need to care for their children, but they may be bringing harmful chemicals home, too.

While the national law lags, the public is starting to get a window into some of the harmful chemicals present in children's products, thanks to Washington State's Children's Safe Products Act of 2008 (CSPA). Under CSPA, manufacturers of children's products are required to report to the state if their products contain chemicals on a list of 66 Chemicals of High Concern to Children. Washington State's CSPA is the most comprehensive chemical disclosure law in the U.S. today. See Appendix A for more information about CSPA.

What's On Your List? looks at information on harmful chemicals in children's products reported directly by manufacturers under Washington State's chemical disclosure law from March through the beginning of September of 2013 – the third round of reports during phase-in of reporting requirements. All health effects information given in *What's On Your List?* is based on information compiled by Washington's Department of Health (1) to create the reporting list of Chemicals of High Concern to Children.

Major Findings

1. Children's products may expose children to chemicals linked to harmful health effects.

Washington's 66 Chemicals of High Concern to Children were selected for reporting because scientific evidence links them to serious health effects and because children are likely to be exposed to them. The chemicals reported to Washington State over this six-month period include carcinogens, endocrine disruptors, and developmental and reproductive toxicants.

2. Toxic chemicals are widespread in children's products.

In this six-month period 78 manufacturers submitted 4,605 reports of 49 hazardous chemicals in children's products under Washington State's chemical reporting law. Products reported include children's tableware, toys, clothing and footwear, bedding, and baby products. This data is extensive and there is more to come.

3. Chemical disclosure provides important information and companies are able to provide it.

Chemical disclosure should spur policymakers and consumers to ask new questions about chemicals in everyday product and to identify priorities for action.

Phthalates in Children's Tops

- Endocrine disruptors
- Developmental or reproductive toxicants

Bisphenol A (BPA) in Dolls & Soft Toys

- Developmental or reproductive toxicant

Antimony Trioxide Flame Retardant in Toy Vehicles

- Carcinogen

TCEP Flame Retardant in Baby Car Seats

- Carcinogen
- Reproductive Toxicant

Formaldehyde in Children's Tableware

- Carcinogen

Parabens in Personal Care Products

- Endocrine disruptors

Major Health Effects of Chemicals of High Concern to Children

The three major health effects used by Washington to identify the reporting list of Chemicals of High Concern to Children are carcinogenicity, endocrine disruption, and reproductive and developmental toxicity.

Carcinogens

A carcinogen is a substance or exposure that is capable of causing cancer. Cancer has multiple causes, including exposure to carcinogenic chemicals or pollution (2).

Carcinogens reported in children's products through Washington's chemical disclosure system include:

- Formaldehyde
- Antimony trioxide
- Tris (2-chloroethyl)phosphate (TCEP)
- Decabromodiphenyl ether (deca or BDE-209)

Endocrine Disruptors

An endocrine disruptor is a chemical that can change the system of hormones (the endocrine system) in the body and disrupt how hormones are supposed to function. The endocrine system helps control and coordinates many of the body's functions such as reproduction, response to stress, and growth and development (3).

Endocrine disruptors reported in children's products through Washington's chemical disclosure system include:

- Phthalates
- Parabens
- 4-Nonylphenol
- Octamethylcyclotetrasiloxane (D4)

Developmental or Reproductive Toxicants

A developmental toxicant is a chemical that adversely affects the growth and development of a young child when a child is exposed prenatally. A reproductive toxicant is a chemical that interferes with reproductive ability or capacity.

Developmental or reproductive toxicants reported in children's products through Washington's chemical disclosure system include:

- Methyl ethyl ketone (MEK)
- Ethylene glycol
- Mercury
- Tetrabromobisphenol A (TBBPA)

Please see Appendix B for a list of all chemicals reported over this time period and the major health effects associated with them.

Might Want to Give Someone This Shirt Off Your Back

Phthalates in Children's Tops

Phthalates were reported in children's tops and upper wear. One or more reported phthalates may be present in a single top. The phthalates that were reported in tops are:

- Butyl benzyl phthalate (BBP)
- Di-n-octyl phthalate (DnOP)
- Dibutyl phthalate
- Diisodecyl phthalate
- Diethyl phthalate
- Diisononyl phthalate

Butyl benzyl phthalate and dibutyl phthalate must be reported under Washington's disclosure law because of scientific evidence that they are endocrine disruptors and developmental or reproductive toxicants. Di-n-octyl phthalate, Diisodecyl phthalate and diisononyl phthalate are developmental toxicants. Diethyl phthalate is an endocrine disruptor.

As surprising as it is to see phthalates reported in children's tops, it's even more surprising how many clothing products of all types are being reported under Washington's chemical reporting law. It's not just tops and upper wear, it's pants, shorts, skirts, dresses, nightclothes, jackets, socks, underwear, hats, etc., etc. Clothing items were the most often reported at 1,839 out of 4,605 total reports during this reporting period (see Figure 1). Many Chemicals of High Concern to Children in addition to phthalates were reported as being present in clothing, including endocrine disruptors, developmental or reproductive toxicants, and carcinogens.

Not So Cuddly

Bisphenol A (BPA) in Dolls & Soft Toys

Bisphenol A (BPA) in plastic in dolls and soft toys was reported. BPA must be reported under Washington's disclosure law because of scientific evidence that it a developmental and reproductive toxicant. BPA is used in polycarbonate as well as PVC plastic. BPA was also reported in surface coatings and other materials as a contaminant. Products reported as containing BPA also include jewelry, bath and pool water toys, outdoor games and play structures, and shoes.

BPA was phased out of baby bottles in Washington State in 2011 and out of sports water bottles in 2012. Action taken on BPA by a number of states including Washington spurred the Food and Drug Administration to ban BPA from baby bottles nationally. Here is an example of the makers of children's products going against the spirit of the national BPA ban in baby bottles by continuing to expose children to this chemical in other products.

Stamping Out Flame Retardant Fires

Even with public opinion swinging away from the use of ineffective yet toxic flame retardants in children's products and furniture, manufacturers not only are still using them, they are reporting some new and surprising uses.

Antimony Trioxide Flame Retardant in Toy Vehicles

Antimony was reported as a flame retardant in surface coatings on toy vehicles. Antimony compounds must be reported under Washington's chemical disclosure law because of scientific evidence that antimony trioxide is a carcinogen.

Antimony trioxide is used as a flame retardant in plastic. It can be used on its own or as a synergist with other flame retardants such as TBBPA or deca-BDE. Antimony was also reported to Washington State as a flame retardant in styling doll heads, changing mats, bath and pool water toys, false hair, and in clothing. Antimony used as a flame retardant was reported more often than in previous rounds of manufacturer reporting to Washington State.

TCEP Flame Retardant in Baby Car Seats

The chlorinated Tris flame retardant Tris (2-chloroethyl) phosphate, or TCEP, was reported in the textile of baby car seats and booster seats. TCEP must be reported under Washington's chemical disclosure law because of scientific evidence that it is carcinogenic and is a reproductive toxicant.

Deca Flame Retardant

Surprisingly, decabromodiphenyl ether (BDE-209, or deca) flame retardant was reported in the plastic of baby car and booster seats. It was also reported as a contaminant in some jewelry products. Washington passed legislation in 2007 banning deca for certain uses.

Following Washington's action, deca was voluntarily taken out of production nationally. Through Washington's chemical disclosure law, we can see that some manufacturers are willing to ignore the spirit of this voluntary ban and find sources overseas or to allow it to be present in children's products as a contaminant. Deca must be reported under Washington's chemical disclosure law because of scientific evidence that it is a carcinogen and a developmental toxicant. Without Washington's chemical disclosure law, we would not know about the continued presence of this very toxic chemical in children's products.

Tetrabromobisphenol A (TBBPA) Flame Retardant

Tetrabromobisphenol A (TBBPA) is reported as a flame retardant in plastic in toy vehicles, as a component of plastic jewelry and as an adhesive in jewelry craft materials. TBBPA was also reported as a pigment in surface coatings in toy vehicles. To our knowledge this is an unusual use of TBBPA. TBBPA must be reported under Washington's chemical disclosure law because of scientific evidence that it is a developmental and reproductive toxicant.

Serving Up Some Unsavory Ingredients

Formaldehyde in Children's Tableware

Formaldehyde was reported in children's plastic bowls, plates, and other tableware. Formaldehyde must be reported under Washington's chemical disclosure law because of scientific evidence that it is a carcinogen. But formaldehyde isn't the only unsavory ingredient being reported by manufacturers of children's tableware. Children's plastic plates, bowls, mugs and cups, drinking glasses and other tableware was reported as containing ethylbenzene, toluene, and phthalates as well as formaldehyde.

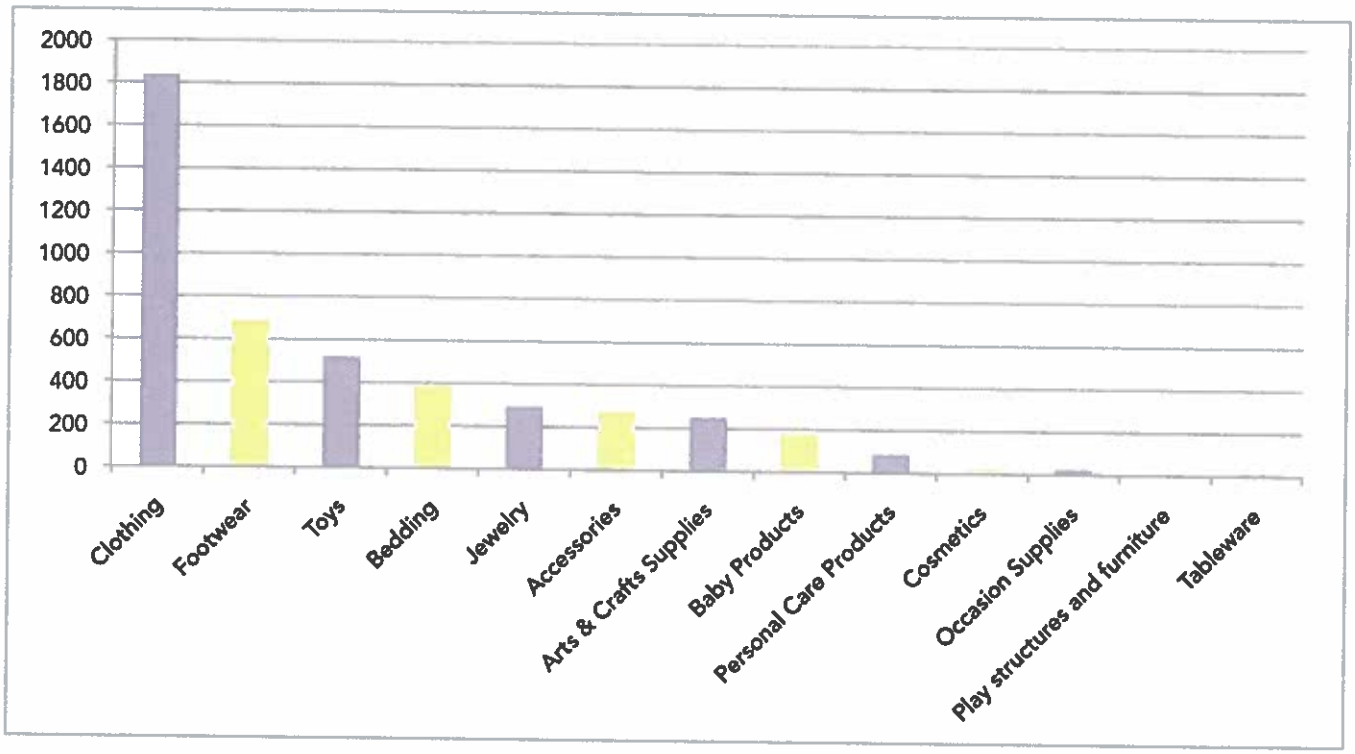
More Than Skin Deep

Parabens in Personal Care Products

Parabens were reported being used as preservatives in skin care/moisturizer products. One or more reported parabens may be present in the same product. The parabens reported in skin care and moisturizer products include butyl paraben, methyl paraben, propyl paraben and ethyl paraben. Parabens must be reported under Washington's chemical disclosure law because of scientific evidence that they are endocrine disruptors. Harmful chemicals present in skin care products are of special concern because of the exposure potential when these products are directly applied to the skin.

We expected to see parabens being reported in personal care products such as moisturizers and cosmetics. But it was surprising to see parabens also being reported as preservatives in clothing and toys.

Figure 1. Products Containing Chemicals of High Concern to Children
March 5, 2013 through September 6, 2013*

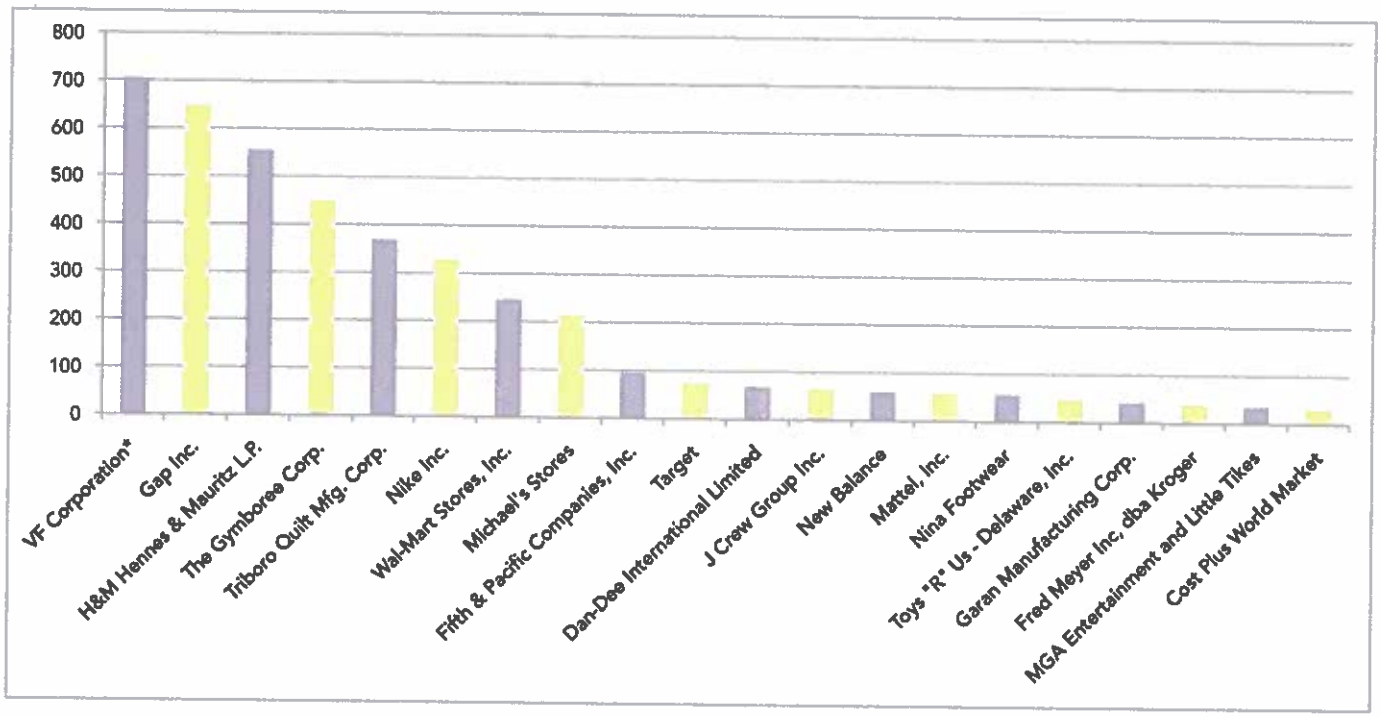


*Product categories are grouped for ease of understanding

What Products Are Reported the Most Often?

Figure 1 shows the breakdown of products reported over this time period. There were many specific product categories reported; these were grouped into larger product categories in this bar graph for ease of understanding. Clothing stands out as the product category reported much more often than any other; clothing items make up 40% of all reports. Footwear, toys, and bedding were the next several product groups reported most often.

Figure 2. The Top 20 Companies Reporting Products Containing Chemicals of High Concern to Children March 5 through September 6 of 2013



* VF Corporation includes brands such as Lee, JanSport, The North Face, Wrestler, Vans Off the Wall, etc.

What Companies are Reporting These Products?

Figure 2 shows the breakdown of the top 20 reporting companies over this time period. Washington's chemical reporting law is still phasing-in with only some medium-sized companies as well as larger companies being required to report. Smaller companies will be reporting in the future. So far we can see that companies of all sizes required to report make products containing hazardous chemicals.

So who are the bad guys here? Of course the largest companies reporting the largest number of products are potentially exposing the largest number of children to harmful chemicals. But at the same time, some of the largest reporters may be the companies that are trying to get control of toxic chemical use throughout their supply chain. They may just know more about their products at this time than other less proactive companies. Many of the highest reporters are also implementing toxic chemical reduction activities and have adopted chemical restriction lists. We say bravo to them for these actions! The bad guys? What's definite is that the bad guys include the harmful chemicals that children are exposed to every day due to their unregulated and undisclosed presence in common consumer products and the companies that defend the use of these chemicals.

Additional companies with 25 or fewer reports of Chemicals of High Concern to Children over this time period include Hasbro, Levi Strauss & Co., Hallmark Cards, Nordstrom, IKEA North America, J.C. Penney, Army and Air Force Exchange, Johnson & Johnson, LEGO, Claire's, Walgreens, Avon, and Radio Shack.

How Do I Protect My Family From Harmful Chemicals?

The widespread data makes it clear - there are too many toxic chemicals in too many of the products we use to take care of our families. So what is a shopper to do?

- Take a deep breath and don't panic. Then take some easy steps for making safer choices and you'll soon be on your way to reducing your family's exposure to toxic chemicals.

- Learn more and practice healthy home habits. Green cleaning recipes, product guides, label-reading advice; there are many great resources out there to help you reduce your use of and exposure to harmful chemicals. Here are a few resources to get you started:

  - Washington Toxics Coalition's Healthy Living resources at *http://watoxics.org/healthy-living*
  - Safer Chemicals, Healthy Families Tips to Keep Toxic Chemicals at Bay at *http://blog.saferchemicals.org/2011/02/top-tips-to-keep-toxic-chemicals-at-bay.html*
  - Women's Voices for the Earth website at *http://www.womensvoices.org*
  - Ecology Center's database of consumer products at *http://www.healthystuff.org*

- Take action. While the widespread problem of toxic chemicals is disturbing, there is good news. It is possible to pass laws restricting the worst toxic hazards. Parents, shoppers, and citizens have already made a big difference by demanding change – and change is coming. You can be a part of that change. Go to the Safer States website at *http://www.saferstates.com/states_in_the_lead/* to get involved in a campaign in your state, or to Safer Chemicals, Healthy Families at *http://www.saferchemicals.org* to get involved in efforts to pass a new federal law.

Recommendations

Washington's chemical reporting law, the Children's Safe Products Act of 2008, is giving us unprecedented information about harmful chemicals in children's products. Families are filling up their shopping carts with products that may be exposing their children to harmful chemicals. We must get toxic chemicals under control.

1. **Pass chemical disclosure laws in more states.** States should require companies to report when their products contain toxic chemicals. Washington State's system has clearly demonstrated that companies are capable of providing this important information and that states can manage the information and provide it to the public. Other states should follow suit, creating lists of priority chemicals of concern and requiring that companies disclose their use. Ultimately, states should require companies to phase out the use of toxic chemicals in products.

2. **States should take the lead in phasing out harmful chemicals.** Around our country states have shown leadership in restricting toxic chemicals including phthtalates, bisphenol A (BPA), heavy metals, and toxic flame retardants. States should adopt restrictions on harmful chemicals and ensure they are not replaced with others that are equally bad or worse. Chemicals that can cause cancer, learning disabilities or reproductive harm should be replaced with safer alternatives.

3. **Mind the Store.** Retailers should ensure that products on their shelves are free of toxic chemicals. The Mind the Store Campaign has asked major retailers to ensure that products they sell are free of the Hazardous Hundred, a list of 100+ chemicals that pose a threat to people and the environment. Major retailers and those that specialize in baby products should lead the way by making sure their products are free of these toxic chemicals.

4. **Broken federal laws must be fixed.** Congress should update the badly broken and outdated Toxic Substances Control Act with protections that eliminate the use of the most toxic chemicals, including those that cause cancer, reproductive harm or infertility, learning disabilities, or disrupt hormones. Congress must preserve the rights of states, which have been in the lead on creating protections from toxic chemicals, to take actions that go beyond federal law.

References

(1) Department of Health, State of Washington, Rationale for Reporting List of Chemicals of High Concern to Children, April 18, 2011.

(2) American Cancer Society, Known and Probable Human Carcinogens, retrieved December 13, 2013. *http://www.cancer.org/cancer/cancercauses/othercarcinogens/generalinformationaboutcarcinogens/known-and-probable-human-carcinogens*

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(4) Department of Ecology, State of Washington, Process Used to Generate Reporting List, Executive Summary, retrieved December 16, 2013. *http://www.ecy.wa.gov/programs/swfa/rules/pdf/CSPAexsum.pdf*

Appendix A

Washington State's Children's Safe Products Act of 2008

In 2008, the Washington State Legislature passed the Children's Safe Products Act (CSPA). This law requires manufacturers to report the presence of 66 Chemicals of High Concern to Children in products designed for children. Reporting requirements began phasing-in in 2012, starting with the largest manufacturers and with the products having the highest exposure potential for children. CSPA is the most comprehensive chemical reporting law in the U.S. today.

After the very first release of manufacturers' reports in 2012, Washington Toxics Coalition tested children's fragrance products for phthalates and found some companies that should have reported their products but did not. This information was released to the public in the report *Something Smells: What Tween Perfume Makers Don't Tell You, But Should* in October, 2012. Manufacturer reports covering over 5,000 products were summarized in Washington Toxics Coalition's and Safer States' May 2013 report, *Chemicals Revealed: Over 5,000 Kids' Products Contain Toxic Chemicals. What's On Your List?* picks up where *Chemicals Revealed* left off, taking a look at data reported between March 5 and September 6 of 2013. These two reports can be found at *http://watoxics.org/publications/something-smells-what-tween-perfume-makers-should-tell-you-but-dont* and *http://watoxics.org/publications/chemicals-revealed*.

How the List of Chemicals of High Concern to Children Was Established

There are 66 chemicals that must be reported to the state under Washington's chemical disclosure law. When the Children's Safe Products Act passed, Washington State's Department of Ecology (Ecology) compiled a long list of chemicals designated by authoritative sources as having certain health effects and cross-checked them with information on how children could be exposed. Ecology decided to prioritize three key health effects: carcinogenicity, reproductive or developmental toxicity, and endocrine disruption. Washington's Department of Health assisted in reviewing the list and the information (4), and University of Washington scientists developed the final prioritization scheme.

Since there are thousands of chemicals that could potentially be of concern to children and scientific knowledge about these chemicals increases every day, there is also a process by which additional chemicals can be added to the list. As of this writing, one additional chemical – Tris (1,3-dichloro-2-propyl) phosphate (TDCPP), a flame retardant linked to cancer and hormone disruption – has been added.

The database of information reported by manufacturers can be seen through Washington's Department of Ecology website at *http://www.ecy.wa.gov/programs/swfa/cspa/search.html*.

Washington State Information Helps People Everywhere

Washington State's chemical disclosure law is the first of its kind in the U.S. It helps us all because:

- Many of the companies that are required to report chemicals to Washington State (such as Target and Walmart) distribute and sell their products nationwide.

- Much of the information Washington State now collects about toxic chemicals in children's products has never before been made public. This allows consumers and regulators to ask new questions about chemicals in consumer products.

- The information provides a clearer picture of both the kinds of chemicals used and the products those chemicals are used in (e.g. clothing, tableware) helping guide overall consumer purchasing decisions.

But there are companies that sell products only in certain states or regions, so it is very important for other states to pass their own chemical disclosure laws.

Thanks to the Children's Safe Products Act, pieces are falling into place forming a picture of the true extent of hazardous chemicals in products used every day to care for children.

Appendix B

Major Health Effects Of Chemicals Reported Under Washington's Children's Safe Products Act March 5 though September 6 of 2013

Chemical	Number of Times Reported	Carcinogen	Endocrine Disruptor	Developmental or Reproductive Toxicant
Cobalt & cobalt compounds	948	X		X
Ethylene glycol	856			X
Antimony & antimony compounds	442	X		
Methyl ethyl ketone	420			X
Octamethylcyclotetrasiloxane	356		X	
Styrene	303	X		X
Molybdenum & compounds	225			X
Diisononyl phthalate (DINP)	93			X
Di-2-ethylhexyl phthalate	83	X	X	X
Formaldehyde	77	X		
Dibutyl phthalate	75		X	X
Methyl paraben	56		X	
Toluene	52			X
Butyl benzyl phthalate	50		X	X
Propyl paraben	50		X	
Ethylbenzene	48	X		X
C.I. Solvent Yellow 14	46	X		X
Di-n-Octyl phthalate (DnOP)	45			X
Diethyl phthalate	42		X	
Diisodecyl phthalate (DIDP)	42			X
4-Nonylphenol	39		X	X
Arsenic & arsenic compounds	30	X		X
Cadmium & cadmium compounds	30	X		X
Butyl paraben	27		X	
Mercury & mercury compounds	22	X		X
Phthalic anhydride	18			X
Ethyl paraben	17		X	
Di-n-Hexyl phthalate	16			X

Continued on page 16...

...Continued from page 15

Chemical	Number of Times Reported	Carcinogen	Endocrine Disruptor	Developmental or Reproductive Toxicant
Phenol	15			X
2-Ethylhexanoic acid	13			X
Bisphenol A	13			X
n-Butanol	9			X
Tetrabromobisphenol A	8			X
Vinyl chloride	8	X		
Acrylonitrile	7	X		
2,2',3,3',4,4',5,5',6,6'-Decabromomodiphenyl ether (Deca, BDE-209)	4	X		X
Acetaldehyde	3	X		X
2-Ethyl-hexyl-4-methoxycinnamate	2		X	
2-Methoxyethanol	2			X
Ethylene glycol monoethyl ester	2			X
Methylene chloride	2	X		X
p-Hydroxybenzoic acid	2		X	
1,4-Dioxane	1	X		
4-tert-Octylphenol; 1,1,3,3-Tetramethyl-4-butylphenol	1		X	
Carbon disulfide	1			X
Estragole	1			X
Hexachlorobutadiene	1	X		X
n-Methylpyrrolidone	1			X
Tris (2-chlorethyl) phosphate	1	X		X

WASHINGTON TOXICS COALITION

Washington Toxics Coalition uses ground-breaking research, top-notch advocacy, in-depth grassroots organizing and high quality consumer information to help create a healthier and just world by promoting safer products, chemicals, and practices, and a healthier future for the next generation.
www.watoxics.org

Safer Chemicals Healthy Families

Safer Chemicals, Healthy Families is a national campaign working to protect American families and the environment from toxic chemicals.
www.saferchemicals.org

safer states

At Safer States we believe families, communities, and the environment should be protected from the devastating impacts of our society's heavy use of chemicals. We believe that new state and national chemical policies will contribute to the formation of a cleaner, greener economy.
www.saferstates.com

Chemicals of High Concern to Children in Children's Clothing, Footwear, and Accessories

By Callie Mathieu and Sara Sekerak, Environmental Assessment Program

DEPARTMENT OF ECOLOGY
State of Washington

Overview

In 2014/2015, the Washington State Department of Ecology (Ecology) conducted a study to evaluate the presence of chemicals of high concern to children (CHCCs) in children's clothing, footwear, and accessories. Ecology carried out this study to provide data for enforcement of Washington State's Children's Safe Products Act (CSPA). The legislation restricts levels of cadmium, lead, and phthalates in children's products to levels of 40 ppm, 90 ppm, and 1000 ppm, respectively. The legislation also requires manufacturers to report to Ecology if a product contains a CHCC.

Ecology purchased 297 articles of children's clothing, footwear, and accessories and sent a subset of those products for laboratory testing of CHCCs. A total of 112 samples consisting of individual product components were analyzed for one or more target CHCC analyte suites. Product types and sample matrices selected for analysis are displayed in Figure 1.

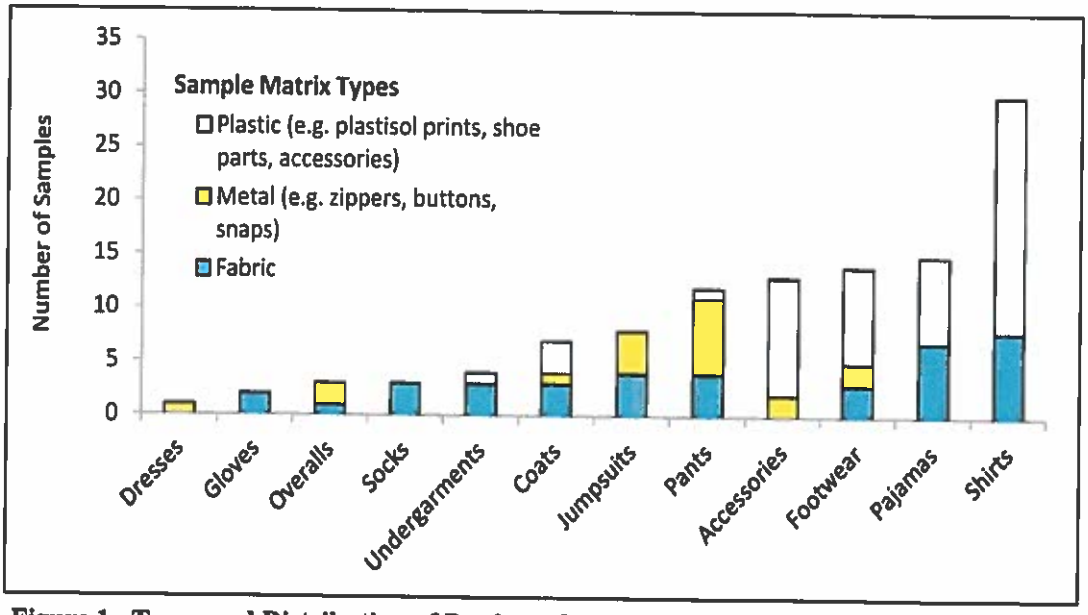

Figure 1. Types and Distribution of Products Submitted for Laboratory Testing.

Ecology selected samples for laboratory analysis of metals and phthalates based on X-ray fluorescence (XRF) screenings. Samples for solvents were selected based on a review of the CSPA manufacturer database and literature reviews.

- Fifty samples were analyzed for metals: antimony, arsenic, cadmium, cobalt, lead, mercury, and molybdenum.
- Fifty samples were analyzed for phthalates: butyl benzyl phthalate (BBP), di-2-ethylhexyl phthalate (DEHP), dibutyl phthalate (DBP), diethyl phthalate (DEP), dimethyl phthalate (DMP), di-n-hexyl phthalate (DnHP), diisodecyl phthalate (DIDP), diisononyl phthalate (DINP), and di-n-octyl phthalate (DnOP).
- Fifty samples were analyzed for solvents: ethylene glycol, styrene, methyl ethyl ketone, octamethylcyclotetra-siloxane (D4), and 4-nonylphenol.

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Methods

Sample Collection, Processing, and Selection

During October - December, 2014, Ecology purchased 297 children's products from 14 large retail stores within the south Puget Sound area. The practice of statewide distribution by most of the retail chain stores ensures that products purchased from Puget Sound area stores are representative of products sold across the state. Products collected included children's clothing (74% of samples), children's shoes (17%), and children's accessories (9%). The intended age for the products purchased ranged from newborn (infant) to 12 years.

Products were separated into 1,653 individual components, and screened for metals and chlorine using an XRF analyzer. Fifty component samples that contained the highest levels of XRF-measured metals were selected for analysis of metal analytes. Fifty components with XRF-measured chlorine greater than 15%, which this study used as an indication that the sample consisted of polyvinyl chloride (PVC) material, were selected for analysis of phthalates. Phthalates are added to PVC plastic and PVC-based inks to impart flexibility. Fifty additional components were chosen for analysis of solvents (ethylene glycol, styrene, MEK, D4, and 4-nonylphenol) based on product types identified through a literature review and the CSPA manufacturer reporting database as likely to contain these compounds. A total of 112 samples were sent to the laboratory for analysis, with some samples being sent for analysis of multiple target analyte suites.

Complete laboratory results for this study can be downloaded from Ecology's Product Testing Database https://fortress.wa.gov/ecy/ptdbpublicreporting/, by selecting Download Data/Study: *Chemicals of High Concern to Children in Children's Clothing, Footwear, and Accessories - 2014-2015.*

Laboratory Procedures

Table 1 outlines the sample preparation and instrumentation for all analyses. Manchester Environmental Laboratory (MEL) cryomilled, by means of cryogenically freezing and grinding, the laboratory samples prior to analysis. All samples were successfully cryomilled with the exception of 7 samples that consisted of metal matrices.

Table 1. Laboratory Methods.

Analyte	Preparation Method	Analysis Method	Analysis Instrument
Metals	EPA 3052	EPA 200.8	ICP-MS
Phthalates	EPA 3546 mod	EPA 8270D mod	GC-MS
Ethylene Glycol	n/a	EPA 8015C	GC-FID
Styrene	EPA 5030B mod	EPA 8260C	GC-MS
MEK	EPA 5030B mod	EPA 8260C	GC-MS
D4	ALS SOP SVM-D4SO	ALS SOP SVM-D4SO	GC-MS
4-Nonylphenol	EPA 3546 mod	EPA 8270D	GC-MS

Data Quality

Cryomill rinseate blanks were analyzed for the target parameters in this study. No analytes were detected above the reporting limit with the following exception: Two cryomill rinseate blanks contained trace levels of DBP (ppb). All concentrations in samples were greater than 10 times the level of the rinseate blank.

Quality control (QC) tests and measurement quality objectives (MQOs) are outlined in the project plan (Mathieu and McCall, 2014). All metal analyte data met MQOs. The solvent analyses met MQOs, with the following minor exceptions: The target method reporting limit (RL) for ethylene glycol could not be obtained due to extraction complications and matrix issues during analysis. A duplicate sample was inadvertently left out of a batch analysis of ethylene glycol samples; however, all other batch QC was analyzed within acceptable ranges and no qualifications were made.

Five DEHP samples were qualified "J", as estimates, for either back calculation or continuing calibration verification checks exceeding QC limits. Six DEHP results, as well as one sample for BBP, DBP, DHP, and DINP, did not meet isotope abundance ratio acceptance limits and were qualified "NJ", indicating that the presence of the analyte was

tentatively identified and the associated concentration is an estimate. Several QC tests were outside of MQOs, and the associated samples were qualified "UJ" instead of "U". The qualifier "U" indicates that the analyte was not detected at the quantitation limit, and "UJ" signifies that the quantitation limit is an estimate.

Many of the phthalate samples contained a large co-eluting peak from the non-target analyte bis-2-ethylhexyl terephthalate (DEHT), which prevented quantitation of DnOP at the method reporting limit. As a result of the interference, the reporting limit for DnOP was raised to the amount of the co-eluting peak. Because of the large amounts of DEHT in these samples, the reporting limits for DnOP were much higher than is useful for verifying compliance with CSPA restrictions. The project manager for this study determined that the DnOP results affected by the co-eluting peak did not meet data usability requirements, and she rejected the data.

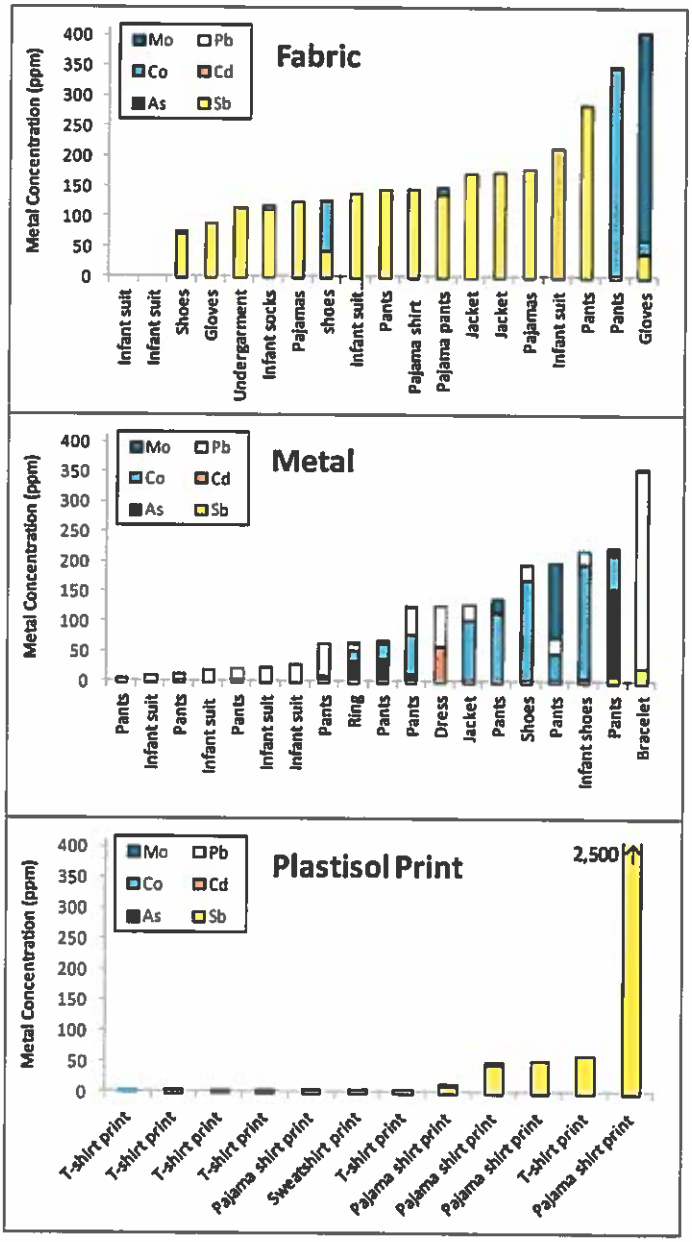

Figure 2. Metal Concentrations in Children's Products.

Metals

A total of 50 product component samples were analyzed by the laboratory for seven metal analytes. Figure 2 displays the results graphically. Mercury results were omitted from the figure.

Samples sent to the laboratory for metals were pre-screened by XRF and targeted for the highest levels of metal analytes across a range of the analytes. Ninety-six percent of samples (48 out of 50) selected for analysis contained one or more of the metals above the reporting limit.

Antimony had the highest detection frequency of any of the analytes, being present in 72% of samples. Antimony was primarily found in fabric and plastisol prints of children's clothing. Plastisol is a suspension of PVC particles in a liquid plasticizer. It is commonly used as a textile ink for screen-printing. Antimony concentrations ranged from <1 - 2,500 ppm, with a median of 5.9 ppm, for all sample types. In fabric samples alone, antimony was present in all but 2 samples, with a median of 126 ppm. Samples with concentrations from 50 to 300 ppm included primarily polyester clothing. This is in the range expected from the use of antimony trioxide as a catalyst in the process of making polyester.

The highest concentration, 2,500 ppm, was found in a pair of children's pajamas labeled as flame resistant. This sample also had an XRF-measured bromine level of 4.6%, which may be an indication of the presence of brominated flame retardants. More information about the relationship of antimony and flame retardants can be found in the 2015 report to the Washington State Legislature at: https://fortress.wa.gov/ecy/publications/documents/1404047.pdf.

Metals - *continued*

Lead was the second-most frequently detected metal analyte (48% of samples), with concentrations ranging from <1 - 329 ppm. Only one sample contained lead higher than Washington's restricted level of 90 ppm. This sample, a metal bracelet, contained 329 ppm of lead. Other samples that contained lead were of much lower concentrations (range = 1.03 - 68 ppm) and primarily consisted of buttons, zipper pulls, and snaps made from metal.

Cobalt was detected in 38% of samples, with higher concentrations (>50 ppm) found in 8 samples. Fabric from a pair of green pants contained the highest cobalt concentration, 344 ppm, and several metal components (i.e. zipper pulls and snaps) had levels ranging from 44 - 190 ppm.

Arsenic had a detection frequency of 34%, with most results near the reporting limit. One sample, a metal strap adjustment on a pair of overalls, contained arsenic at 147 ppm. Cadmium and molybdenum were detected infrequently, with two detections higher than 50 ppm in metal components of clothing. Mercury was not detected above 1 ppm in any of the samples. Summary statistics for all detected metals can be reviewed in Table 2.

Table 2. Summary Statistics of Detected Metals in Children's Products.

Analyte	Antimony	Arsenic	Cadmium	Cobalt	Lead	Mercury	Molyb-denum
n	50	50	50	50	50	50	50
# > RL	36	17	7	19	24	4	9
% > RL	72%	34%	14%	38%	48%	8%	18%
Minimum (ppm)*	1.1	1	1.08	1.24	1.03	0.026	1.24
Maximum (ppm)*	2500	147	59.3	344	329	0.05	343
Mean (ppm)*	137	15	11	66	31	0	56
Median (ppm)*	44.1	3.17	1.73	25.2	14.7	0.032	3.92

RL= Reporting (quantitation) limit.

** Statistic includes only detected results.*

Phthalates

Fifty product-component samples were analyzed by the laboratory for a suite of nine phthalates: BBP, DEHP, DBP, DEP, DMP, DnHP, DIDP, DINP, and DnOP. Components were selected for analysis if the XRF screening measured a chlorine content of 15% or greater, which this study used as an indication that the sample consisted of PVC material. Target samples included soft plastics, synthetic polymeric-fiber (faux fur), and plastisol prints.

Sixteen individual samples (32.1%) were found to contain phthalates, with 6 of the 9 phthalates detected across the sample set (Figure 3; Table 3). DEHP had the highest detection frequency, with 14 samples containing DEHP ranging from 7.4 - 36,000 ppm. DEHP was the only phthalate found in products at concentrations consistent with plasticizer use. Four samples contained DEHP at concentrations higher than 0.1% (1,000 ppm). One sample, the plastic covering of a boy's wallet, had a particularly high level of DEHP, at 3.6% (36,000 ppm).

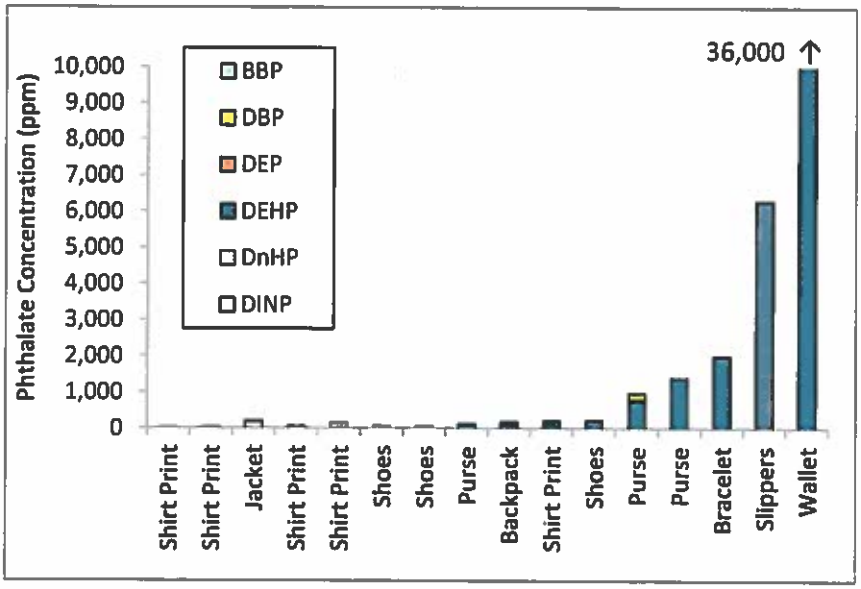

Figure 3. Detected Phthalate Concentrations in Children's Products.

Four samples contained DBP, with concentrations ranging from 5.3 ppm - 200 ppm, and a median concentration of 69.0 ppm. DEP and DnHP were found separately in two samples at levels of 26 ppm and 14 ppm, respectively.

One plastisol print on a set of pajamas was found to contain four separate phthalates, with detectable levels of DEHP, BBP, DnHP and DINP at low concentrations (12 ppm, 13 ppm, 5.3 ppm, and 14 ppm, respectively).

Forty-six samples contained the non-target analyte bis-2-ethylhexyl tereph-thalate (DEHT). DEHT is a non-ortho phthalate plasticizer used as a replacement for DEHP and DINP in plastics.

Table 3. Summary Statistics of Detected Phthalates in Children's Products.

Analyte	BBP	DEHP	DBP	DEP	DnHP	DIDP	DINP	DMP	DnOP
n	50	50	50	50	50	50	50	50	4**
# > RL	1	14	4	1	1	0	1	0	0
% > RL	2%	28%	8%	2%	2%	0%	2%	0%	0%
Min (ppm)*	13	7.4	5.3	26	14	---	200	---	---
Max (ppm)*	13	36,000	200	26	14	---	200	---	---
Mean (ppm)*	---	3,390	85.8	---	---	---	---	---	---
Median (ppm)*	---	200	69.0	---	---	---	---	---	---

RL = Reporting (quantitation) limit.
** Statistic includes only detected results. **Includes only DnOP results that were not rejected.*

Solvents

Fifty product-component samples were submitted for laboratory analysis of ethylene glycol, methyl ethyl ketone (MEK), 4-nonylphenol (including branched and linear isomers), octamethylcyclotetrasiloxane (D4), and styrene. One third of the samples tested consisted of a plastic matrix (including plastisol prints), and the remaining samples consisted of fabric material.

Twelve of the samples (24%) were found to contain one or more of the target analytes (Table 4). A single sample had detectable levels of ethylene glycol, MEK and D4, resulting in a combined solvent concentration of 140 ppm. Six additional samples contained ethylene glycol as the only solvent, and the remaining five samples had only D4 present. Figure 4 illustrates the combined detected solvent concentrations by type of children's product.

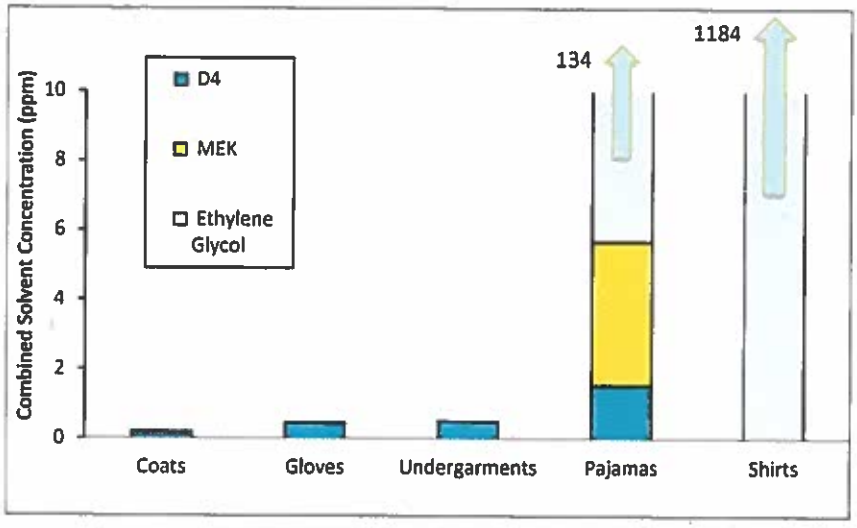

Figure 4. Combined Solvent Concentrations by Type of Children's Product.

The samples containing solvents were distributed equally between the plastisol print (n=6) and fabric (n=6) matrices. Children's pajamas (33%) and shirts (33%) accounted for a majority of the product types containing solvents. Solvents were also detected in two pairs of gloves, one coat, and one underwear garment.

Ethylene glycol was detected in concentrations ranging from 43 - 590 ppm, with a median of 91 ppm, across both matrix types. The two highest concentrations of ethylene glycol were found in fabric samples. The submitted fabrics were from two shirts, with concentrations of 370 and 590 ppm. The plastisol print samples with detectable ethylene glycol ranged in concentration from 43 - 92 ppm, with a median of 84 ppm.

Methyl ethyl ketone was detected in one of the samples, which also contained ethylene glycol. The plastisol print from the pajama set contained 4.14 ppm of methyl ethyl ketone

Table 4. Summary Statistics of Detected Solvents in Children's Products.

Analyte	Ethylene Glycol	MEK	4-NP**	D4	Styrene
n	50	50	50	50	50
# > RL	7	1	0	6	0
% > RL	14%	2%	0%	12%	0%
Min (ppm)*	43	4.14	---	0.21	---
Max (ppm)*	590	4.14	---	1.21	---
Mean (ppm)*	188	---	---	0.46	---
Median (ppm)*	91	---	---	0.30	---

*RL = Reporting (quantitation) limit. * Statistic includes only detected results.*
***Includes combined isomers of branched and linear 4-nonylphenol.*

Styrene was not detected above 1 ppm in any of the samples. The combined isomers of 4-nonylphenol (branched and unbranched) were not detected in concentrations above variable detection levels (4.7 - 130 ppm).

D4 was detected at low levels in six samples, with concentrations ranging from 0.211 - 1.21 ppm, with a median of 0.299 ppm.

Conclusions

In 2014, Ecology evaluated children's products for the presence of select chemicals from Washington State's Chemicals of High Concern to Children (CHCC) list to support enforcement of the Children's Safe Products Act. Ecology staff purchased 297 articles of children's clothing, footwear, and accessories from 14 large retail stores in Washington and screened the product components for metals and chlorine with an XRF analyzer. A subset of product samples were sent to laboratories for analysis of metals, phthalates, and solvents: ethylene glycol, MEK, styrene, D4, and 4-nonylphenol.

Laboratory results of this study include the following:

- One or more of the target metal analytes were detected above the reporting limit in 96% of samples (48 out of 50).
- Antimony was detected in 72% of samples, at concentrations ranging from <1 - 2,500 ppm. Antimony in fabric samples had a median concentration of 126 ppm. The highest antimony result, 2,500 ppm, was found in a pair of children's pajamas labeled as flame resistant; this sample also had an XRF-measured bromine level of 4.6%.
- Lead was the second-most frequently detected metal analyte (48% of samples), with concentrations ranging from <1 - 329 ppm. The sample containing 329 ppm of lead, a children's bracelet, was the only sample above the state's restricted level of 90 ppm. Lower concentrations of lead (1.08 - 68 ppm) were found in metal buttons, zipper pulls, and snaps.
- Cobalt was detected in 38% of samples, with concentrations above 50 ppm in 8 samples. Arsenic, cadmium, and molybdenum were detected less frequently, at low levels. No samples contained mercury above 1 ppm.
- One or more of the target phthalates were detected above the reporting limit in 32% of samples (16 out of 50). DEHP was detected at the highest frequency, with 14 samples ranging from 7.4 - 36,000 ppm. DEHP was the only phthalate found at concentrations consistent with plasticizer use. Four samples contained DEHP at concentrations higher than the state restriction of 0.1% (1,000 ppm).
- Ethylene glycol, MEK, and/or D4 were detected in 24% of samples (12 out of 50) submitted for solvent analyses. Ethylene glycol was detected the most frequently and at the highest concentrations, with detections ranging from 43 - 590 ppm. MEK and D4 were found at very low levels (0.21 - 4.1 ppm), and 4-nonylphenol and styrene were not detected above reporting limits in any sample.

Recommendations

The laboratory data for this project were submitted to Ecology's Children's Safe Products Act (CSPA) enforcement coordinator for assessment of compliance with Washington State laws. Responsible parties (manufacturers, distributors, and/or retailers) of products that appear to violate restrictions, or have not reported as required by the CSPA reporting rule, have been notified and enforcement actions are ongoing. Where violations are pre-empted by federal law, results have been provided to the Consumer Product Safety Commission for enforcement.

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Publication Information

This report is available on the Department of Ecology's website at: https://fortress.wa.gov/ecy/publications/1503039.html

The Quality Assurance Project Plan for this study is available on at:
https://fortress.wa.gov/ecy/publications/SummaryPages/1403125.html

Data for this project are available at Ecology's Product Testing Database at:
https://fortress.wa.gov/ecy/ptdbpublicreporting/
Select Study, *Chemicals of High Concern to Children in Children's Clothing, Footwear, and Accessories - 2014-2015.*

Websites

Children's Safe Products Act: http://www.ecy.wa.gov/programs/hwtr/RTT/cspa/index.html

List of Chemicals of High Concern to Children: http://www.ecy.wa.gov/programs/hwtr/RTT/cspa/chcc.html

References

Mathieu, C. and M. McCall, 2014. Quality Assurance Project Plan: Chemicals of High Concern to Children in Children's Clothing, Footwear, and Accessories. Washington State Department of Ecology, Olympia, WA. Publication No. 14-03-125. https://fortress.wa.gov/ecy/publications/SummaryPages/1403125.html

Van Bergen, S.; Davies, H.; Grice, J.; Mathieu, C.; Stone. A., 2015. Flame Retardants—A Report to the Legislature. Washington State Department of Ecology, Olympia, WA. Publication No. 14-04-047. https://fortress.wa.gov/ecy/publications/SummaryPages/1404047.html

(email attachment only)

Ernie Rosenberg, President and CEO

American Cleaning Institute

american cleaning institute®
for better living

June 22, 2016

Honorable Elliot F. Kaye
Chair
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Chairman Kaye:

The American Cleaning Institute® (ACI) welcomes the opportunity to comment on the U.S. Consumer Product Safety Commission's (CPSC) Public Hearing on Agenda and Priorities for Fiscal Years 2017 and 2018, which was held on June 15, 2016. ACI and its member manufacturers are actively engaged on implementing the ASTM International standard, F3159-15, Safety Specification for Liquid Laundry Packets.

As a part of the detergent industry's strong commitment to product stewardship, manufacturers have been and remain thoroughly engaged in efforts to reduce accidental exposures to laundry packets. Since 2012, manufacturers have made a series of packaging and labeling changes to reduce accidental exposures, including adding safety and precautionary language and safety icons to the front of packaging, transitioning from transparent to opaque packaging, and using packaging seals that are more difficult for a child to open.

As you are aware, in 2015, detergent manufacturers, working with the Consumer Product Safety Commission, consumer advocates, organizations representing the medical community, and other stakeholders developed this new safety standard for liquid laundry packets.

As you know, a new standard was published in December 2015 and will need time to be properly evaluated. Makers of liquid laundry packets are implementing or have already implemented changes to meet this standard. These include: (1) making packaging opaque, so kids cannot see the packets, and ensuring the closures are harder for kids to open; (2) adding a bitter taste on the outside of the packets' film; (3) designing packets to withstand the squeezing pressure of a child; and, (4) standardizing prominent warning labels along with clear direction to Poison Control Centers if accidental exposure occurs. ACI has joined with others in the ASTM process to commit to an evaluation of the effectiveness of the standard. We are not yet in the phase of post-standard evaluation since some of the changes called for in the standard require more time to bring to market. Recent reports of data from time periods prior to the standard should not be used as a predictor of the success of the standard. Instead, data from a time period prior to the implementation of the interventions called for in the standard should be identified and the period of transition to new products should be accounted for when identifying data that represents full implementation of the standard. These are critical steps in carrying out an evaluation of the standard.

ACI notes that the most important message for any household is to keep cleaning products, including liquid laundry packets, out of sight and out of reach of children. Simply put, safe and proper product storage can prevent accidental exposures. Consumer education remains an essential aspect of ACI's work to prevent accidental exposures. The KEY Pledge Laundry Safety Campaign, launched in 2013, continues to raise awareness and inspire action among parents and caregivers about the safe and proper use, storage, and handling of liquid laundry detergent packets. The integrated consumer education campaign has generated a groundswell of support by engaging partners and influencers that are driving audiences to campaign materials and safety messages. Cornerstones of the campaign outreach include an on-line safety pledge,

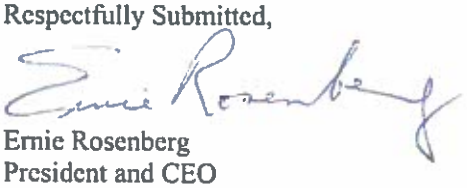
traditional and social media, bloggers, animated video, infographics, posters and a toolkit. CleaningInstitute.org/KeyPledge

The cleaning industry shares a responsibility with parents to keep kids safe from accidents with cleaning products. Detergent manufacturers are participating in a series of roundtables with CPSC, consumer advocates and physician and safety groups to share information and explore new practices and innovations that could further reduce the rate of accidents if the standard is shown not to be effective.

Millions of people, especially college students, busy families, and seniors make use of the convenience of laundry packets. ACI and laundry packet manufacturers continue to reach out to parents and caregivers to educate them about the importance of keeping laundry detergents and any other household cleaners away from children. The standards being implemented now, along with continued outreach to parents and caregivers about safe use and storage, represent important steps forward to keeping children safe.

Thank you for your attention to these comments.

Respectfully Submitted,



Ernie Rosenberg
President and CEO

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[i] The American Cleaning Institute (ACI) is the trade association representing the $30 billion U.S. cleaning products market. Our members include the formulators of soaps, detergents, and general cleaning products used in household, commercial, industrial and institutional settings; companies that supply ingredients and finished packaging for these products; and oleochemical producers. ACI and its members are dedicated to improving health and the quality of life through sustainable cleaning products and practices. ACI's mission is to support the sustainability of the cleaning products industry through research, education, outreach and science-based advocacy. Since 1926, ACI has promoted health through personal hygiene and effective cleaning. More information about ACI can be found at www.cleaninginstitute.org.