



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
Bethesda, Maryland

Public Hearing  
Commission Agenda and Priorities  
for FY 2014 and FY 2015

Wednesday, July 10, 2013  
10:00 a.m.

Oral Presentations (Questions from Commission after each panel)

Panel 1

1. Nancy Cowles, Kids in Danger
2. Jennifer Cleary, Association of Home Appliance Manufacturers
3. Robyn Grant, National Consumer Voice for Quality Long-Term Care
4. Michael McDonald, American Apparel & Footwear Association

Panel 2

5. Rachel Weintraub, Consumer Federation of America
6. Randall Hertzler, Handmade Toy Alliance
7. Rebecca Mond, Toy Industry Association, Inc.
8. Ami Gadhia, Consumers Union

Written Comments

1. Sally Greenberg, National Consumers League
2. Sue DeLoretto-Rabe, Carolyn Anderson, Concerned Families for ATV Safety
3. Jonathan Gold, National Retail Federation

# Agenda and Priorities FY 2014 & FY 2015

## Presentations

Nancy Cowles, Kids in Danger



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**Comments of  
Nancy Cowles, Executive Director  
Kids In Danger  
To the U.S. Consumer Product Safety Commission on  
“Agenda and Priorities FY 2014 and FY 2015”**

**July 10, 2013**

Thank you for the opportunity to submit comments and testify on CPSC’s agenda and priorities. Kids In Danger (KID) is a nonprofit organization dedicated to protecting children by improving children’s product safety. KID was founded in 1998 by the parents of Danny Keysar who was killed in a recalled portable crib in his Chicago childcare home.

**CPSIA Implementation**

The implementation of the Consumer Product Safety Improvement Act (CPSIA) remains a top priority for KID, and we applaud the Commission for its commitment to this process. Of particular interest to our organization is section 104 or the Danny Keysar Child Product Safety Notification Act – ***Danny’s Law***. This section requires strong mandatory standards for durable infant and toddler products, a product registration system for those same products and additional requirements applying to the use or sale of older, unsafe cribs. Each portion of this section had been introduced into Congress for years prior to their inclusion in the CPSIA.

*Standards setting process*

The process of setting mandatory standards as required in Section 104 or ***Danny’s Law*** is paramount to children’s safety. To date, mandatory standards have been adopted for Bath Seats, Bed Rails (Portable), Full-Size Cribs, Non-Full-Size Cribs, Infant Swings, Infant Walkers, Play Yards, and Toddler Beds. This has greatly increased parent and caregiver confidence in the products they buy to care for their infants and toddlers. The process is moving a little slower than the ambitious schedule set by the law, leaving many products without a mandatory standard. We urge CPSC to continue their thorough and thoughtful work in this process, working with the ASTM International subcommittees to produce strong standards as expeditiously as possible. CPSC should continue to prioritize their participation in the ASTM International standard setting process so emerging hazards can be incorporated into the mandatory standards as needed. In addition, we would urge CPSC to continue to monitor product development to see if other infant and toddler products should be added to the Section 104 standard setting process.

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Boaz Keysar, PhD

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Executive Director  
Nancy A. Cowles

### *Product Registration*

As part of **Danny's Law**, manufacturers of durable infant and toddler products are required to include postage paid registration cards and provide a way to register these products online. This is a proven system to assure that as many users of recalled products as possible are alerted in the event of a recall. We encourage CPSC to work with consumer groups and industry to broaden the awareness of this program and to highlight the online registration process. We believe the use of bar codes, QR codes and other online programs would encourage more parents and caregivers to register products – making it more likely they will not use a recalled product inadvertently. Our founders, Danny's parents, believe that had a card been included in the packaging of the PlaySkool Travel Lite Portable Crib that killed their son, he might be alive today.

### *Crib Safety*

**Danny's Law** also makes it illegal to sell or use in child care a crib that doesn't meet the new mandatory standard. While this will dramatically reduce the number of unsafe cribs in use, it still leaves many – some recalled – in consumers' homes. We ask CPSC to make it a priority to:

- Continue outreach to child care facilities as well as licensing agencies to assure unsafe cribs are no longer used in our child care homes and centers. KID continues to get calls from child care providers just learning of the provisions or not understanding how to comply. We must all work together to provide information, support and enforcement of this safety requirement.
- Continue to monitor online sales of cribs. In preparation for this testimony, KID searched online in just a few cities and saw dozens of examples of unsafe cribs for sale. While the internet may seem vast to police effectively, most of these are posting on well-known sites that could be pressured to do a better job keeping deadly products off their sites. It could be required that cribs for sale include the date of manufacture – required on all cribs that meet the standard.
- Encourage the manufacturers that recalled drop-side cribs and provided a method to immobilize the side to switch to a refund or at least a coupon for a portion of the cost of a new crib. This will encourage those with financial difficulties to stop using what we know to be an unsafe crib and move their children to a safer alternative.

### **Sleep Environment Safety**

Through the implementation of the CPSIA and Danny's Law, CPSC is working hard to make sure cribs, play yards, and bassinets are as safe as possible. Work is also beginning for incline sleep products and bedside sleepers. KID appreciates the measured approach CPSC is taking to assure each of these products is as safe as possible. Even non-sleep products such as swings and strollers are held to standards that attempt to address possible hazards if a child does fall asleep in one.

But still on the market are myriad products intended for infant sleep that are held to no standards. We have seen the devastating result of that with the deaths in the Nap Nanny and Peapod Travel Crib which later had to be recalled. But there are many other products still on the market. Parents assume, especially now that they have heard about new standards and testing requirements, that any product sold must have been tested for safety. That is still not the case. We would urge CPSC, in their continuing efforts to decrease sleep related deaths, to actively work to assure standards for all products intended for infant sleep. That way, products that cannot be made safe can be removed from the market.

We applaud CPSC's action to review the evidence on the dangers of crib bumper pads. These products have led to the suffocation deaths of dozens of babies, including two families we work closely with at KID. These families wish they had been aware of the risks before they bought this unnecessary and deadly product. We ask CPSC to carefully review the evidence as well as the almost universal opinion of safety organizations including the American Academy of Pediatrics, and move to remove bumper pads from use in cribs. In addition to the evidence of suffocation, CPSC should also consider the impact on the world-wide safe sleep message of a crib free from pillows, comforters or other padding. A parent is understandably less likely to take the message seriously when she sees stores filled with cribs lined with padded material.

### **Recall Effectiveness**

Recall effectiveness remains an extremely important area of focus for the agency. We mentioned earlier the importance of the product registration program for infant and toddler durable products. As stronger standards and testing lead to fewer recalls, more attention can be paid to removing recalled products from use.

KID suggests again that a publically available annual report of recall effectiveness rates of each recall would go far to encourage manufacturers, retailers and other stakeholders to work together to boost those numbers. As we all are aware, sometimes shining a little light on a problem helps to illuminate solutions that were overlooked in the dark.

### **Other Issues**

#### *Civil Penalty Settlements*

We support CPSC's recent actions of pairing civil penalties for failure to report incidents and other compliance issues with internal improvements to procedures, record keeping and product safety activities. This will encourage companies to put into place a strong compliance program to avoid penalties or CPSC required changes in the future.

#### *SaferProducts.gov*

KID is a strong supporter of SaferProducts.gov and we talk weekly to parents who find it useful in researching product purchases or reporting incidents. With the database well-established, we would ask that CPSC prioritize increasing awareness of the site, improve search functions on the site and review the forms and procedures to see if it can be made more user friendly both to

report and search. Opponents fears of gross misuse and false reports have proven empty and we hope it continues to grow and provide safety information to consumers.

### *Furniture Tip-Overs*

CPSC has done an admirable job highlighting these dangers and we suggest continued efforts to increase furniture safety as well as public awareness of the hazard.

### **Conclusion**

Again, thank you for the opportunity to provide comments. We look forward to working with CPSC in addressing these concerns and others that may arise.

## Stevenson, Todd

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**From:** Nancy A. Cowles <nancy@kidsindanger.org>  
**Sent:** Saturday, June 29, 2013 1:17 PM  
**To:** CPSC-OS,  
**Subject:** Agenda and Priorities FY 2014 and/or 2015

I am requesting to present oral testimony at the hearing on July 10, 2013 on CPSC agenda and priorities for FY 14 and 15. Contact information is below. I will submit by testimony to this same address by the end of the business day on Monday, July 1, 2013.


Nancy A. Cowles  
Executive Director  
Kids In Danger  
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Visit [KidsInDanger.org](http://KidsInDanger.org) on your smartphone or mobile device to search for recalls in addition to learning more about KID.



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Raise money for Kids In Danger by searching the Internet or shopping online with GoodSearch - [www.goodsearch.com](http://www.goodsearch.com) - powered by Yahoo!

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Jennifer Cleary, Association of Home Appliance Manufacturers



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July 1, 2013

Via E-Mail

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

[cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov)

Re: Agenda and Priorities FY 2014 and/or 2015

Dear Mr. Stevenson:

On behalf of the Association of Home Appliance Manufacturers (AHAM), I would like to make an oral presentation during the July 10, 2013, hearing to discuss the Consumer Product Safety Commission's (CPSC or Commission) fiscal year 2014 Operating Plan and fiscal year 2015 Congressional Budget Request. Accordingly, below is a written version of the presentation I plan to make, if permitted. As required by CPSC, I will limit my remarks to ten minutes or less.

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's membership includes over 150 companies throughout the world. In the U.S., AHAM members employ tens of thousands of people and produce more than 95% of the household appliances shipped for sale. The factory shipment value of these products is more than \$30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

AHAM is also a standards development organization, accredited by the American National Standards Institute (ANSI). The Association authors numerous appliance performance testing standards used by manufacturers, consumer organizations and governmental bodies to rate and compare appliances. AHAM's consumer safety education program has educated millions of consumers on ways to properly and safely use appliances such as portable heaters, clothes dryers, and cooking products.

AHAM believes that it is critical that CPSC remain engaged in voluntary standards activities, including those that involve home appliances. We thus support the Commission's proposal to continue its involvement in voluntary standards applicable to home appliances, including:

- UL 858 Electric Ranges
- UL 2158 Household Clothes Dryers
- UL 1042-UL 1287 Household Electric Portable Heaters

In addition, we agree with the Commission's strategic objective to minimize hazardous defects early in the manufacturing process through increased participation in such standards activities. We thus strongly encourage the CPSC staff to support the following voluntary standards activities by not only monitoring the relevant activities, but participating in them as well:

- UL 474 Dehumidifiers
- UL 507/705 Electric Fans
- UL 749 Household Dishwashers
- ANSI Z21/83 Gas Ranges and Gas Clothes Dryers
- UL 923 Household Microwave Ovens
- UL 1026 Household Countertop Cooking Appliances
- UL 2157 Household Clothes Washers

This request is consistent with the recent Government Accountability Office (GAO) report, *A More Active Role in Voluntary Standards Development Should Be Considered* (GAO-12-0339) which recommended that, "[t]o strengthen the adequacy of voluntary standards, CPSC should review the policy for participating in voluntary standards development activities and determine the feasibility of assuming a more active, engaged role in developing voluntary standards." The report acknowledges that CPSC agreed with that recommendation.

In addition to the voluntary standards activities listed above, AHAM also strongly encourages the CPSC to join and be an active member of the UL STP 250 Flammable Refrigerant Task Group.

AHAM members produce room air conditioners, dehumidifiers, portable air conditioners, and, most relevant to this letter, refrigerator/freezers, which use refrigerant gasses for temperature control and, in some cases, for product insulation foam blowing to increase energy efficiency. Historically in the United States, these refrigerants have been fluorocarbon-based compounds that are non-flammable, non-toxic, and energy efficient. But, for global environmental purposes, industry shifted, first to non-ozone depleting compounds and, subsequently, to low (and now there is interest in very low) global warming potential (GWP) alternatives to mitigate global climate change.

One very low GWP alternative is R600A, also known as Isobutane (part of the broader category of hydrocarbons), which is acknowledged to have flammable characteristics as a refrigerant. Products using hydrocarbon refrigerants have been produced around the world for many years, but have been limited in the United States in part because the Environmental Protection Agency (EPA) only recently approved Isobutane as an alternative for household refrigeration products

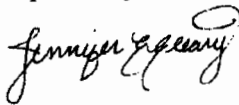
and Canada just approved its use last March. There are efforts underway to carefully review the technical safety issues with using more than the current 50 gram charge size limit for flammable refrigerants, such as Isobutane, particularly in the UL 250 Standard, in order to ensure that no environmental gains are achieved that result in a reduction of safety.

Currently, UL's charge size limit for flammable substances in household refrigerator/freezers is approximately 50 grams. The International Standards (IEC) have a limit of 150 grams. AHAM supports harmonization that is consistent with safety.<sup>1</sup> The UL Task Group is evaluating whether to raise the charge size. The UL Task Group's objective is to promote product-specific, objective, and transparent safety evaluations of flammable and low-GWP refrigerants to determine scientifically the amount, to what extent these refrigerants should be used and under what conditions. AHAM supports a rigorous, scientific, and safety-based review.

As the United States moves toward possibly increasing the charge size of refrigerants such as Isobutane in refrigerators & freezers, it is critical that safety regulators be involved. This UL Task Group is an important example of a voluntary standards committee in which CPSC should be involved. Accordingly, AHAM brought the UL Task Group's work to CPSC staff's attention in July 2011 and suggested that CPSC become a member of the Task Force, but staff did not respond. AHAM then wrote a letter in March 2012 to Chairman Tenenbaum again requesting CPSC's participation. CPSC staff responded that it would include the request as a candidate voluntary standard activity in developing the FY 2013 Operating Plan. It did not, however, appear in that plan. We are mindful of budget, statutory, and other resource constraints, but given the policy and potential safety significance of the UL activities on multiple products, AHAM again urges the Commission to join and be an active member of the UL STP 250 Flammable Refrigerant Task Group.

AHAM appreciates the opportunity to submit these comments on the Commission's fiscal year 2014 Operating Plan and fiscal year 2015 Congressional Budget Request and would be glad to further discuss these matters with you should you so request.

Respectfully submitted,



Jennifer Cleary  
Director, Regulatory Affairs

cc: Jay Howell, CPSC  
DeWayne Ray, CPSC  
Andrew Trotta, CPSC  
Arthur Lee, CPSC

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<sup>1</sup> The President's recently announced Climate Action Plan specifically mentions "curbing emissions of Hydrofluorocarbons" (HFCs). Isobutane is one such alternative, and this work at UL would help provide incentives for manufacturers to transition to Isobutane if the charge size was harmonized with other countries at the appropriate amount for both trading partners.

## Stevenson, Todd

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**From:** Cleary, Jennifer <jcleary@AHAM.org>  
**Sent:** Monday, July 01, 2013 2:36 PM  
**To:** CPSC-OS,  
**Cc:** McArver, Rob; Howell, Robert; Ray, DeWane; Trotta, Andrew; Lee, Arthur; Morris, Wayne; Williams, Matt  
**Subject:** AHAM Comments\_Agenda and Priorities FY 2014 and/or 2015  
**Attachments:** AHAM Comments\_2014-2015 Agenda and Priorities Hearing\_FINAL (00016898).pdf

Dear Mr. Stevenson:

Attached is a request from the Association of Home Appliance Manufacturers (AHAM) to make an oral presentation during the July 10 public hearing regarding the Commission's Agenda and Priorities FY 2014 and/or 2015.

Best regards,

**Jennifer Cleary**  
**Director, Regulatory Affairs**  
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Robyn Grant, National Consumer Voice for Quality Long-Term Care



# CONSUMER VOICE

formerly NCCNHR

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Statement of Robyn Grant, Director of Public Policy and Advocacy  
The National Consumer Voice for Quality Long-Term Care  
for the  
Consumer Product Safety Commission

Public Hearing on Agenda and Priorities for FY 2014 & FY 2015

July 10, 2013

The National Consumer Voice for Quality Long-Term Care (Consumer Voice) is a national non-profit organization that advocates on behalf of recipients of long-term care in all settings. Our membership consists primarily of consumers of long-term care services, their families, ombudsmen, individual advocates, and citizen advocacy groups. For more than 38 years, the Consumer Voice has promoted quality care and consumer protection through legislative reforms, policy advocacy, and consumer and public education. We appreciate this opportunity to comment on CPSC's priorities for FY 2014 and FY 2015.

For decades, Consumer Voice has been concerned about serious injuries and deaths from asphyxiation, entrapment, and falls caused by bed rails.

Bed rails - both adult portable bed rails and bed rails that are part of a bed system - are routinely used based on a pervasive myth that they are a safe, benign and effective means of fall prevention in the elderly. Many well-meaning family members of frail elders believe that the "security" of a bed rail will keep their loved one safe. The data show otherwise. Thanks to a review done by CPSC released in October 2012, we know that from January 2003 to September 2012 there were 155 fatalities, and that from January 2003 to December 2011 there were almost 37,000 adult portable bed rail-related injuries treated in U.S. hospital emergency departments. Statistics on hospital beds are also alarming. Between 1985 and 2009, the Food and Drug Administration received reports of 803 incidents of patients caught, trapped, entangled, or strangled in hospital beds. These included 480 deaths, 138 non-fatal injuries, and 185 near misses due to staff intervention.

While the Consumer Voice is deeply troubled by bed rails that are part of a bed system, we believe that CPSC should focus its attention on adult portable bed rails.

Our network is very concerned about the dangers of these bed rails. Here are just a few of the comments we have received on this issue:

*It's bad enough that our older adults face rampant ageism in our culture. Shouldn't we do our best to protect them from products that have, unfortunately, been proven to cause*

*harm?! Please develop mandatory safety rules to prevent injuries and death due to use of bed rails.*

*The gentleman I care for has Parkinson's, and when he became entangled in the rails could not call loud enough for help. Fortunately I found him in time, and before harm was done. But he is scared of them now.*

*When I buy a product I expect it has been manufactured and inspected with the type of use it is intended for .... I depend on the safety of using it in the manner described. I do not expect to be injured if the directions of use are followed.*

We thank CPSC for its work over the past year to begin addressing this public safety hazard. The data provided in its October 2012 memorandum and the formation of the ASTM committee on voluntary standards for adult portable bed rails are important first steps. We also greatly appreciate the docketing of the petition from the Consumer Federation of America, Consumer Voice, Gloria Black and 60 organizations, as well as the petition from Public Citizen.

But more needs to be done to end tragedies that result from bed rails. The Consumer Voice calls on CPSC to adopt a multi-faceted approach using the full range of options available to the agency. The Consumer Voice therefore recommends that both the FY 2014 and FY 2015 CPSC Operating Plan include the following five priorities:

- 1) Rulemaking to either create a mandatory standard for adult portable bed rails that reduces the unreasonable risk of asphyxiation and entrapment and includes warning labels, or to ban adult portable bed rails if it is determined that no feasible standard would adequately protect the public from an unreasonable risk of injury.
- 2) Continuation of support for and, if possible, expedition of the ASTM process to develop a voluntary standard that protects consumers. While we believe that mandatory standards are necessary, we feel that these dual tracks are important.
- 3) Public outreach to send a safety message to consumers about the possible dangers of bed rails. CPSC should use traditional media platforms such as print, radio, news releases, and videos, social media like its OnSafety blog and Twitter handle, and other social media avenues such as YouTube and Flickr.
- 4) Education about the possible risks associated with adult portable bed rails and steps consumers can take to reduce those risks. Consumer Voice urges CPSC to:
  - a. Create and disseminate an adult portable bed rail safety guide, similar in concept to its *Safe Nursery* guide for children's products; and
  - b. Develop an adult bed rail information center, comparable to the *Crib Safety Information Center*, which has tips such as emphasizing the importance of proper assembly and checking for gaps.



- 5) Recalls of any adult portable bed rail that poses an unreasonable risk of serious injury or death, with a refund to consumers who purchased this product.

Consumer products that are advertised as safe should not kill or injure people. Tragedies stemming from adult portable bed rails are likely to multiply as the population ages and more and more elderly receive care in their homes rather than in institutional settings. We applaud the forceful action CPSC has taken on children's cribs and children's bed rails. The Consumer Voice calls on CPSC to now focus the same level of attention on protecting vulnerable frail adults from unsafe adult portable bed rails.

Thank you again for the opportunity to comment.

*Contact: Robyn Grant, Director of Public Policy & Advocacy, Consumer Voice; 202-332-2275 or [rgrant@theconsumervoice.org](mailto:rgrant@theconsumervoice.org).*

*The National Consumer Voice for Quality Long-Term Care (formerly NCCNHR) is a 501(c) (3) nonprofit membership organization founded in 1975 by Elma L. Holder that advocates for quality care and quality of life for consumers in all long-term-care settings.*

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## Stevenson, Todd

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**From:** Robyn Grant <rgrant@theconsumervoice.org>  
**Sent:** Monday, July 01, 2013 3:09 PM  
**To:** CPSC-OS,  
**Subject:** Agenda and Priorities FY 2014 and/or 2015  
**Attachments:** CPSC Priorities FY 2014 and 2015 - Consumer Voice statement 7-1-2013.docx

Dear Secretary Stevenson:

The National Consumer Voice for Quality Long-Term Care requests the opportunity to make an oral presentation at the CPSC public hearing on July 10, 2013. The written text of our presentation is attached.

Please let us know if there is any other information you need.

Thank you for this opportunity.

Sincerely,

Robyn Grant

### ROBYN GRANT

Director, Public Policy and Advocacy



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***With your support, the Consumer Voice can continue to advocate for quality long-term care.  
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**Michael McDonald** for Stephen Lamar  
American Apparel & Footwear Association



**we wear<sup>SM</sup> compliance**

**Agenda and Priorities for Fiscal Year 2014 and 2015 Budget  
Written Testimony By  
Michael McDonald  
Manager, Government Relations  
American Apparel & Footwear Association  
Submitted to the Consumer Product Safety Commission  
Hearing Date: July 10, 2013**

Commissioners, thank you for holding today's hearing and providing this forum for constructive dialogue.

On behalf of the American Apparel & Footwear Association (AAFA), I appreciate the opportunity to testify regarding the Consumer Product Safety Commission's Priorities and Strategies for fiscal years 2014 and 2015.

AAFA is the national trade association representing the apparel and footwear industry including its suppliers, manufacturers, retailers, and service providers. Our members produce and sell products that touch every American – clothing and shoes. Our industry accounts for more than four million U.S. employees and more than \$350 billion in annual retail sales.

As you know, product safety is a top priority for AAFA. With many of our members engaged in the production and sale of children's clothing and footwear, we are on the frontlines of product safety. It is our members who design and execute the quality and compliance programs that stitch product safety into every garment and shoe we make. To support our members in this effort, AAFA has taken the lead in educating our industry on the development, interpretation, and implementation of new product safety standards and regulations instituted under the Consumer Product Safety Improvement Act (CPSIA).

AAFA supports the CPSC's mission to protect the public against unreasonable risks of injury from consumer products through consumer education, safety standards activities, regulations, and enforcement. AAFA shares the Commission's goal of improving product safety, particularly for our most vulnerable citizens and we look forward to building upon our long standing, collaborative relationship with the Commission in the coming year.

The Commission's strategic goals are commendable: (1) leadership in safety, (2) commitment to prevention, (3) rigorous hazard identification, (4) decisive response, and (5) raising awareness. All of these are areas in which AAFA supports the Commission's mantle.

It is because of the priority we place on product safety that we offer the following comments in response to the Commission's agenda and priorities:

**1. Ensure greater reliance on cost-benefit analysis in rule making:**

Echoing comments we've made in previous statements, we believe there needs to be a stronger emphasis on cost-benefit analysis in rulemaking. Proper cost-benefit analysis is a powerful tool to assist the agency, the regulated community, and other product safety stakeholders in focusing their energies on those rules and requirements that will have the greatest benefit for consumer safety and public health.

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Among other things, proper cost-benefit analysis directs scarce resources and targeted responses towards addressing the greatest risks and hazards. These are traditional areas of strength for the CPSC. As we've discussed in previous hearings, cost-benefit analysis was identified as a good hallmark of regulatory government by President Obama in Executive Order 13579 which states, "To the extent permitted by law, such decisions should be made only after consideration of their costs and benefits (both quantitative and qualitative)."

Although we understand that there are some concerns about the use of cost-benefit analysis –that it could lead to "paralysis by analysis" – we don't believe that this tool, if properly used, leads to that result. In contrast, cost-benefit analysis imposes important process disciplines that maximize the effectiveness of the final rules by making them more easily understood by the regulated community and enforceable by the CPSC.

With the proposed rule to 16 CFR 1110 on Certificates of Compliance out for public comment, the Commission stands to issue a sweeping rule that affects the regulated community. This is particularly troubling for the apparel and footwear industry that has, according to the CPSC's analysis, already incurred 1,375,000 estimated burden hours annually amounting to an estimated economic cost of \$51,342,500 – just under half of the total estimated cost the certification rule has imposed on **all** industries.

16 CFR 1110, if implemented as proposed, would contradict guidance and remove much needed flexibility that the Commission itself has previously issued in its *Statement of Policy: Testing and Certification of Lead Content in Children's Products* and *Statement of Policy: Testing of Component Parts With Respect To Section 108 of the Consumer Product Safety Improvement Act*. In doing this the Commission is adding an increased paperwork cost that we believe has zero added benefit. The Commission has already issued a determination in which it found that there is no lead in fabric and therefore having to certify what is already known is an unnecessary and unbeneficial expenditure.

## **2. Full Implementation of Public Law 112-28: Third Party Testing Burden Reduction**

We are just shy of the second anniversary of the enactment of P.L. 112-28, which provided the CPSC with greater authority and discretion in enforcing consumer product safety laws, and also set new mandates and requirements that the Commission must fulfill. Among other things, the law requires the CPSC to undertake an assessment of third party testing requirements for children's products to determine where the costs of such testing can be reduced but still ensure compliance with safety standards. In accordance with PL112-28 the CPSC issued a request for comments, seeking suggested ways to reduce the burden of third party testing, and provided several of its own suggestions in the staff recommendations

While there was bipartisan support for the underlying CPSIA, there was an equally strong bipartisan understanding that the CPSIA created an unattainable regulatory situation by imposing tight deadlines on the CPSC and impossible or excessively costly requirements on the regulated community. PL 112-28 was an effort to rebalance the equation. But in order for PL 112-28 to have the full positive impact that Congress intended we need the agency to identify and implement measures that can reduce testing burdens.

AAFA appreciates the work that the Commission has done in collecting suggestions and reviewing them, including its recent Request for Information on four individual suggestions. But as far as tangible burden reduction we have been, quite frankly, disappointed with the progress that has been made, and we adamantly believe that the four targeted areas included in the RoF must not be the only items to get attention. AAFA proposed a fulsome list of recommendations, having been encouraged to do so

by CPSC staff. Only one recommendation, the use of 3<sup>rd</sup> party XRF testing – which was part of a separate and on-going rulemaking – has so far been adopted in part. Most have seen no action. In some areas, CPSC appears to be moving in the opposite direction by proposing new burdens and costs.

### **3. Proper and fair enforcement of existing standards, such as the children's sleepwear standard**

Finally, the Commission must make sure that the existing standards, like the laws covering children's sleepwear, are properly and fairly enforced. We've brought this issue up repeatedly in the past and are pleased that there has been progress in the past few years. But many of the issues we identified in past years remain.

Uneven enforcement undermines the effectiveness of well-developed product regulations. In the case of children's sleepwear, we have provided the Commission with examples of non-compliant children's sleepwear that remains on the market and continues to be sold year after year. While we understand the Commission cannot publicly discuss enforcement actions, nor would we want the Commission to do so, we believe it can explain why apparent non-compliant products are still allowed to be marketed and sold. The presence of non-compliant product raises fundamental safety issues and creates unfair competitive advantages. It is for this reason that we strongly encourage the CPSC to look at its policies regarding industry communications. AAFA would like to be a helpful partner with the CPSC endeavors but in order for us to avoid being a hindrance to the professional staff working on textile matters we must know the process that the CPSC takes when it comes to finding and handling sleepwear violations. Armed with a greater knowledge of the process, AAFA and our entire industry can, and is more than willing, to do as much as possible to help relieve the burden on CPSC staff, and ensure that only safe sleepwear is worn by America's children.

We acknowledge the hard work CPSC staff does and are encouraged by the recent sleepwear recall announcements. We strongly encourage the Commission to continue to fully investigate all reports of non-compliant sleepwear to ensure that this standard is properly followed throughout the entire industry.

In conclusion, let me reinforce how delighted we are to have such a positive relationship with the Commission. I recognize that some of my comments today may have come off strong but that is only because AAFA feels we have such an open and honest relationship with the Commission and believe we are encouraged by the Commission to express our opinions freely. We truly believe the Commission strives to accomplish its goals of leadership in safety, commitment to prevention, rigorous hazard identification, decisive response, and raising awareness. We also know that AAFA has been on the forefront of supporting these goals and increasing dedication to product safety, not just in our industry, but in all consumer product industries around the world. We look forward to continuing to strengthen our partnership for the benefit of consumer product safety and public health.

I look forward to taking your questions.

Thank you.

## Stevenson, Todd

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**From:** Michael McDonald <mmcdonald@wewear.org>  
**Sent:** Monday, July 01, 2013 4:25 PM  
**To:** Stevenson, Todd  
**Cc:** Steve Lamar; Michael McDonald; Danielle Abdul  
**Subject:** CPSC open hearing/ Request to make an oral presentation

Dear Mr. Stevenson,

On behalf of the American Apparel & Footwear Association (AAFA) we would like to express our desire to make an oral presentation at the CPSC public hearing on July 10, 2013 concerning the Commission's agenda and priorities for fiscal years 2014 and 2015.

We anticipate addressing the following questions put forth by the Commission as published in the June 24, 2013 Federal Register notice:

1. What are the priorities the Commission should consider emphasizing and dedicating resources toward in the fiscal year 2014 Operating Plan and/or the fiscal year 2015 Congressional Budget Request?
2. What activities should the Commission consider deemphasizing in the fiscal year 2014 Operating Plan and/or the fiscal year 2015 Congressional Budget Request?
3. Should the Commission consider making any changes or adjustments to its education, safety standards activities, regulation, and enforcement efforts in fiscal years 2014 and/or 2015

In answering the stated questions, our presentation will specifically include testimony on the following subjects:

- Reliance on cost-benefit analysis in rule making
- Implementation of Public Law 112-28 and;
- Proper and fair enforcement of existing standards, such as the sleepwear standard

We look forward to participating in the hearing. Thank you for your time and consideration.

Regards,  
Stephen Lamar  
Executive Vice President  
American Apparel & Footwear Association  
[slamar@wewear.org](mailto:slamar@wewear.org)

Rachel Weintraub, Consumer Federation of America





## **Consumer Federation of America**

July 10, 2013

Statement of Rachel Weintraub,

Legislative Director and Senior Counsel, Consumer Federation

Before the

U.S. Consumer Product Safety Commission

Addressing

Agenda and Priorities FY 2014 and 2015

I appreciate the opportunity to provide comments to you on CPSC's FY 2014 and 2015 priorities. I am Rachel Weintraub, Legislative Director and Senior Counsel at Consumer Federation of America. Consumer Federation of America is a non-profit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education.

### **I. CPSIA Implementation**

The implementation of the Consumer Product Safety Improvement Act should continue to be of the highest priority for the Consumer Product Safety Commission. The CPSC has been effectively prioritizing CPSC implementation and we congratulate the Agency for its work thus far. Never in CPSC's history have more rules been promulgated and in such a short time period. Not only have many rules been promulgated but the rules themselves will have an important and positive impact on consumers.

Because of the rules promulgated by CPSC, infant durable products including bath seats, portable bed rails, full-size cribs, non-full-size cribs, infant walkers, toddler beds, play yards, and infant swings must now meet new robust mandatory standards. The crib standard which went into effect in June of 2011 is of particular significance as it is the strongest crib standard in the world and offers our nation's infants a safe sleep environment, which their parents have a right to expect. For all of these products, third party testing and certification requirements are required. We congratulate CPSC on their leadership of and commitment to this important process.

CPSC has additional infant durable product rules to promulgate under section 104; the Danny Keysar Child Product Safety Notification Act, which includes bassinets and cradles, strollers, and highchairs. We urge CPSC to continue to commit the staff time and resources necessary to prioritize the promulgation of these rules. This is a critical component of the CPSIA that consumers recognize as necessary to ensure the safety of their infants when they are using products designed for their use. In addition, we urge CPSC to consider increasing its role in

voluntary standards proceedings to ensure that voluntary standards for products under CPSC's jurisdiction adequately address hazards.

Another high priority for CPSC should continue to be the consumer incident database required by the CPSIA. We recognize CPSC's current commitment to this important consumer tool and urge the CPSC to maintain that commitment and to research reports that appear to indicate trends. Numerous studies and reports on saferproducts.gov have indicated that the database is being used by numerous consumers, is useful to consumers, and it is not being abused in any way. For example, CFA and KID conducted a study of the database that was released in April of 2012.<sup>1</sup> We found that the database is being used as intended. Of the 6,080 reports we analyzed, almost all were submitted by consumers. While consumers made up 97% of the reporters to the database, medical professionals made up .46%; medical examiners and coroners made up only .2%; and other public safety entities made up 1%. Our report also documented that eighty-four percent of all reports included a serial number or model name or number. We also found that manufacturers exercised their right to post additional comments on 53% of reports and that most reports (70%) involved products purchased in the last five years, not older products.

In addition, Deloitte conducted an analysis of the data from saferproducts.gov<sup>2</sup> in early 2013 and found that saferproducts.gov provides "a learning opportunity for manufacturers in their attempt to bring safe products to the market place and allow[s] them to gain a better understanding of consumer behavior in regard to their interaction with products."<sup>3</sup> The Deloitte analysis, like other studies, identified that kitchen products and appliances in particular, make up the largest percent of reports on saferproducts.gov.<sup>4</sup>

Further, the Government Accountability Office (GAO) found, in a report, *Awareness, Use and Usefulness of Saferproducts.gov*, released in March 2013 that "[m]any consumers in GAO's usability tests thought the sight generally was easy to use and had helpful information, but identified areas for improvement"<sup>5</sup> as well. We urge CPSC to address these issues.

We recommend that CPSC continue to explore how to make saferproducts.gov more useful and accessible to consumers including increasing consumer access to saferproducts.gov through the use of "apps" as a means for reporting risks of harm to the database.

## II. Emerging hazards

There are numerous emerging hazards that CPSC should prioritize.

### 1. Furniture Tip Overs

According to the CPSC's most recent data, each year, more than 43,200 children are injured as a result of a piece of furniture, appliance or television tipping over. Fifty nine percent of those

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<sup>1</sup> <http://www.consumerfed.org/pdfs/CPSCDatabase1YearAnniversary3-29-12.pdf>

<sup>2</sup> [http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/AERS/us\\_aers\\_foct\\_FPS\\_saferproductsgov\\_03082013.pdf](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/AERS/us_aers_foct_FPS_saferproductsgov_03082013.pdf)

<sup>3</sup> [http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/AERS/us\\_aers\\_foct\\_FPS\\_saferproductsgov\\_03082013.pdf](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/AERS/us_aers_foct_FPS_saferproductsgov_03082013.pdf), page 1.

<sup>4</sup> Deloitte found that reports of kitchen products accounted for 39% of total reports on saferproducts.gov.

<sup>5</sup> <http://www.gao.gov/assets/660/652916.pdf> at 22.

injuries occurred to children 18 years old and younger. Between 2000 and 2011, there were 349 tip-over related deaths. Eighty-four percent of those deaths involved children eight years old and younger. While the ASTM standard for furniture is in the process of being strengthened, it is currently being delayed. Further, much more must be done to bring all of the stakeholders together to collectively address this increasingly problematic, multifaceted and dangerous injury pattern.

## 2. Button Cell Batteries

Button cell batteries pose serious and potentially fatal ingestion hazards to children. According to the most recent data reported to the national Poison Data System, in 2012 there were 3,435 button battery ingestion cases. According to a study released last year in the American Academy of Pediatrics Journal,<sup>6</sup> *Pediatrics*, an estimated 65,788 children less than 18 years of age were injured by button cell batteries – serious enough to require emergency room treatment – from 1990 to 2009, averaging 3,289 battery-related emergency room visits each year.

The number and rate of visits increased significantly during the study period, with substantial increases during the last 8 study years. Of the emergency room visits caused by button cell batteries, battery ingestion accounted for 76.6% of emergency room visits, followed by nasal cavity insertion (10.2%), mouth exposure (7.5%), and ear canal insertion (5.7%). Button batteries were implicated in 83.8% of patient visits caused by a known battery type. Most children (91.8%) were treated and released from the emergency room. We urge CPSC to continue its work to strengthen the relevant voluntary standards to include a provision to securely enclose all button cell batteries<sup>7</sup> and also to work in support of design changes that would eliminate the serious health hazard, if ingested.

## 3. Window Coverings

This past May, Consumer Federation of America, along with Kids In Danger, Consumers Union, Parents for Window Blind Safety and others filed a petition with the CPSC requesting that the CPSC promulgate mandatory standards to make operating cords for window coverings inaccessible.

The CPSC has long recognized window covering cords as a hidden strangulation and asphyxiation hazard to children and continues to identify it on its website as one of the “top five hidden hazards in the home.” Due to the documented and persistent hazard that cords on window coverings pose to children, the petition filed specifically asked the CPSC to prohibit accessible window covering cords when feasible, and require that all cords be made inaccessible through passive guarding devices when prohibiting them is not possible.

A strong mandatory standard to address the hazards posed by corded window coverings is necessary because, according to data from the CPSC, 293 children have been killed or seriously injured by accessible window covering cords between 1996 and 2012, and the rate of injuries and deaths has not been significantly reduced since 1983<sup>8</sup>, despite six industry attempts at developing adequate voluntary standards. The voluntary standards process, starting from the first standard in

<sup>6</sup> <http://pediatrics.aappublications.org/content/early/2012/05/09/peds.2011-0012>

<sup>7</sup> <http://pediatrics.aappublications.org/content/early/2012/05/09/peds.2011-0012>

<sup>8</sup> CFA 2011 Press Release. <http://www.consumerfed.org/pdfs/WindowCoveringsStandardPressRelease.pdf>

1996 and including the most recent standard in 2012, has failed to eliminate or even significantly reduce the risk of strangulation and asphyxiation by window covering cords to children. In addition, window covering manufacturers' have failed to comply with existing voluntary standard.

Deaths and injuries can be eliminated by designs *that already exist*:

- **Cordless Technology:** Window coverings which eliminate pull cords, thereby addressing both outer and inner cord hazards, are available, add minimum costs to the manufacture, and can be used on the vast majority of blinds and shades.
- **Cord Cover Designs:** Designs that render the pull cords of window coverings inaccessible have been available since the 1990's but were never sold in the marketplace because the CPSC allowed separated cord tassels to serve as a compliant design.

We urge CPSC to grant the petition and move forward with a mandatory rulemaking process that effectively addresses the hazards posed by window covering cords.

#### 4. Adult Bed Rails

Last May, Consumer Federation of America (CFA), the National Consumer Voice for Quality Long-Term Care (Consumer Voice), bed rail activist Gloria Black, and 60 other organizations<sup>1</sup> filed a petition with the U.S Consumer Product Safety Commission (CPSC) requesting a ban or an effective mandatory standard of adult portable bed rails. The petition also requested CPSC to recall dangerous bed rails and refund consumers.

CPSC has been aware of deaths and injuries involving bed rails since 1985. In an October 11, 2012 report from CPSC, "Adult Portable Bed Rail-Related Deaths, Injuries, and Potential Injuries: January 2003 to September 2012," CPSC documented that in that nine year period there were an estimated 36,900 visits to hospital emergency wards due to incidents related to both portable and non-portable bed rails. CPSC also reported 155 portable bed rail deaths for that same time period. These statistics represent only a fraction of the actual number of alleged bed rail related deaths. According to CPSC's 2012 report, these deaths and injuries most commonly occur when the victim is "caught, stuck, wedged, or trapped between the mattress/bed and the bed rail, between bed rail bars, between a commode and rail, between the floor and rail, or between the headboard and rail."

We urge CPSC to move forward with a ban, effective mandatory standard, recall and refund dangerous bed rails as well as a meaningful and effective voluntary standard.

#### 5. Baby Bumpers

We urge CPSC to take strong action to ban baby bumpers. The state of Maryland has recently taken strong action to ban baby bumpers as has the city of Chicago. Last month, CPSC voted unanimously to grant the petition of the Juvenile Products Manufacturers Association (JPMA) to begin rulemaking to address hazards that may be posed by bumpers. While JPMA had requested codification of an ineffective voluntary standard simply supports the safety of one type of bumper, the CPSC indicated that it will not merely codify the existing voluntary standard but

will go much further and review the science, and evaluate testing procedures and performance standards that might lead to safe bumpers and then make a decision about what a mandatory standard or ban should include. We are encouraged that CPSC will evaluate the role that bumper pads have played in 48 bumper related infant deaths.

We urge CPSC to take quick action, consistent with the action taken by Maryland and Chicago to protect infants from hazards posed by bumper pads.

## 6. Inflatable Amusements

We urge CPSC to address hazards posed by inflatable amusement products such as bounce houses. According to CPSC's most recent data,<sup>9</sup> which we urge CPSC to update; from 2003 to through 2007 there were an estimated 31,069 inflatable amusement injuries serious enough to require emergency room treatment. Ninety-one percent of those injuries were caused by moon bounces. Most of the injuries (62%) were in the 5 to 14 age group, and almost all the estimated injuries (85%) involved children under the age of 15.<sup>10</sup> CPSC documented, in its report released in 2009, that it was aware of four deaths involving inflatable amusements from 2003 through 2007.

News reports<sup>11</sup> have indicated that bounce houses and other types of similar products can pose various hazards to consumers. For example, reports have indicated sudden deflation, entrapment of children as well as falling by children. Reports have also shown that such products have blown away and injured children. These incidents cause great concern. There is no voluntary standard for these products. We urge the CPSC to investigate this emerging hazard and to work with ASTM International in the development of voluntary standards for inflatable amusements that are intended for recreational use by consumers.

## III. Enforcement

### 1. Recent Important Enforcement Efforts

We applaud CPSC for enforcement efforts this past year to recall the bumbo seat, ultimately recall the Nap Nanny, and take strong action to protect children from hazards posed by rare earth magnets. These strong actions protected children, effectively informed the public about hazards posed by these products, and gave all entities regulated by CPSC a clear indication of how seriously CPSC takes its mission to protect consumers and how effectively CPSC uses its enforcement authority.

### 2. Recall Effectiveness

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<sup>9</sup> <http://www.cpsc.gov/library/inflate2007.pdf>

<sup>10</sup> <http://www.cpsc.gov/library/inflate2007.pdf>

<sup>11</sup> [http://journalstar.com/news/local/article\\_6d1e2610-ca92-11df-8850-001cc4c03286.html](http://journalstar.com/news/local/article_6d1e2610-ca92-11df-8850-001cc4c03286.html),  
<http://news.lalate.com/2011/06/06/bounce-house-terror-as-bouncy-house-blows-away/>.

The vast majority of consumers who own a recalled product never find out about the recall. Most recall return rates, if publicized at all, hover around the 30% mark. While there are now requirements for recall registration cards and online mechanisms for a subset of infant durable products, much more must be done to ensure that consumers find out about recalls of products which they own and to ensure that consumers effectively remove the potentially hazardous product from their home. We urge CPSC to continue to prioritize this issue. Specifically we urge the CPSC to work with manufacturers of infant and toddler durable products to maximize awareness about product registration. Further, we urge CPSC to engage in a dialogue with all stakeholders about the factors that are essential to the most well publicized recalls to replicate that success with all recalls.

### 3. Civil Penalties

Based on numerous past recalls, we understand that there are numerous civil penalties that are currently pending but have not yet been assessed. In 2013, thus far, CPSC has assessed 6 civil penalties, ranging from \$450,000 to \$987,000; and zero criminal penalties. In 2012, CPSC assessed 9 civil penalties, ranging from a consent decree, \$214,000 to \$1.5 million dollars; and zero criminal penalties. In 2011, CPSC assessed 15 civil penalties, ranging from a consent decree for permanent injunctions, \$40,000 to \$960,000; and one criminal penalty for \$16,000. In 2010, CPSC assessed 7 civil penalties, ranging from \$25,000 to \$2.05 million; and no criminal penalties. In 2009, CPSC assessed 37 civil penalties, ranging from \$25,000 to \$2.3 million; and no criminal penalties. Civil penalties serve an important deterrent effect to non compliance with CPSC laws and we urge CPSC to prioritize this important element of its enforcement responsibilities.

### 4. Import Surveillance

We applaud CPSC's current commitment to enforcing its safety mission at the ports of entry to the United States. With the profound increase of imported products into the United States, CPSC's efforts at the ports in cooperation with U.S. Customs and Border Protection is critical to preventing unsafe products from entering the United States marketplace. We further support the CPSC's efforts to prioritize enforcement at both the ports of entry as well as the United States' domestic marketplace to ensure compliance with the Consumer Product Safety Improvement Act as well as other CPSC mandatory standards and regulations.

## IV. Critical Ongoing Safety Issues

### 1. Infant Suffocation- Sleep Environment

The Center for Disease Control and Prevention (CDC) analyzed 2000–2009 mortality data from the National Vital Statistics System. CDC found that from 2000 to 2009, the overall annual unintentional injury death rate decreased among all age groups except for newborns and infants younger than 1 year; in this age group, rates increased from 23.1 to 27.7 per 100,000 primarily as a result of an increase in reported suffocations.<sup>12</sup> Suffocations were the second highest cause of

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<sup>12</sup> [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm61e0416a1.htm?s\\_cid=mm61e0416a1\\_w](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm61e0416a1.htm?s_cid=mm61e0416a1_w)

death (motor vehicles ranked first). As part of CPSC's work on safe sleep environments, CPSC must continue to prioritize this issue, educate consumers about the importance of safe sleep environments and understand why data indicates that suffocations have been increasing for infants.

## 2. ATV and ROHV Safety

According to the most recent data released by CPSC,<sup>13</sup> at least 107,500 people were injured seriously enough to require emergency room treatment in 2011, and the estimated number of all-terrain vehicle (ATV)-related fatalities was 726 in 2010, though the 2010 data is not considered complete.

In 2011, ATVs killed at least 57 children younger than 16, accounting for 17 percent of ATV fatalities. Forty seven percent of children killed were younger than 12 years old. Children under 16 suffered an estimated 29,000 serious injuries in 2011, an increase from 28,300 serious injuries in 2010. This represents 27 percent of all injuries. In 2010, serious injuries to children made up 25 percent of all injuries. The 2011 emergency department treated injury estimate for children younger than 16 years of age represents a 2.5% increase over the 2010 estimate, although this is not a statistically significant increase.

CPSC must prioritize the issue of ATV safety. While CPSC's rulemaking was required to be finalized on ATVs last August, we applaud CPSC for holding an ATV Safety Summit last fall and urge CPSC to complete the rulemaking which should include a serious analysis of the safety hazards posed to children by ATVs, the adequacy of existing ATV safety training and training materials, and efforts to ensure that children are not riding ATVs that are too large and powerful for them.

Recreational off highway vehicles (ROHVs) pose hazards to consumers and have been associated with more than 170 deaths from 2003–2012. The current voluntary standard fails to address hazards in five significant areas: 1) the stability standard is inadequate; 2) the occupant protection measures are insufficient; 3) the draft standard does not sufficiently address handling of recreational off-highway vehicles; 4) there is no maximum speed established for these vehicles; and 5) the measures to ensure seat belt use by occupants of the vehicles are inadequate. We urge the CPSC to move forward with the promulgation of a mandatory standard to address these critical safety issues.

## 3. Upholstered Furniture

We urge CPSC to prioritize the completion of the Upholstered Furniture rulemaking. In May of 2008, CFA filed comments in support of the rulemaking along with other consumer and environmental public interest organizations. In that letter, we stated that,

“We strongly support a smoldering ignition performance standard for fabrics and other upholstery cover materials and urge you to move forward with implementation of this standard. The adoption of this standard will not only result in superior fire safety for

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<sup>13</sup> <http://www.cpsc.gov/Global/Research-and-Statistics/Injury-Statistics/atv2011.pdf>

consumers, but will also discourage the use of fire retardant chemicals (FRs) in furniture filling materials, which have been associated with serious health impacts to humans, wildlife, and the environment.”<sup>14</sup>

In this letter, we also raised concerns about the continued use of halogenated fire retardants even after this rule is promulgated and urged CPSC to require labels indicating such use. We reaffirm the statements made in our 2008 letter and urge CPSC to promulgate the final rule which will improve fire safety standards and will not lead to the use of potentially toxic fire retardant chemicals.

#### 4. Low Income Child Safety

Last month, CFA released a report demonstrating that children from low-income families are at greater risk for unintentional injuries and foodborne illnesses than children from higher-income families. Over two-fifths of children (44%) in the United States, according to the National Center for Children in Poverty, live in low-income families.

The report, *Child Poverty, Unintentional Injuries and Foodborne Illness: Are Low-Income Children at Greater Risk?*, drew from incomplete statistical information and dozens of academic studies, also concluded that, to more fully understand these risks, it is essential to begin collecting better data on the relationship of family income to product related unintentional injuries and deaths as well as to incidence of foodborne illness.

The report identified the following about unintentional injuries suffered by children:

- Unintentional injuries represent the leading cause of death and injury for children between the ages of one and fourteen. Each year, such injuries are responsible for about 5,000 child deaths, about 5 million child emergency room visits, and millions more unreported injuries.
- These injuries are suffered disproportionately by children from low-income families. In fact, several studies show that income is a better predictor of risk than either race or ethnicity.
- The death rates of several important types of unintentional injuries may be considerably higher for low-income children – at least double for deaths from motor-vehicle accidents, fires, and drownings – than for higher-income children, according to a study that reviewed child deaths reported in Maine.
- Non-fatal injury rates were also much higher for low-income children. One study found the highest rate among low-income children and the lowest rate among high-income children. Another study found that children receiving Medicaid had injury rates double those of the national average.
- Higher injury rates are related both to environmental factors – e.g., more hazardous streets, unsafe playgrounds, older and less safe houses and appliances – and to human factors – e.g., higher incidence of smoking, less income to afford safety precautions, less parental supervision in single-parent families, and less knowledge about product safety and prevention.

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<sup>14</sup> <http://www.cpsc.gov/LIBRARY/FOIA/FOIA08/pubcom/flamm4.pdf> at pages 144-148.



We look forward to working with the CPSC to explore how to better identify the correlation between unintentional injury and socioeconomic status as well as how to reduce deaths and injuries associated with consumer products that impact low-income children.

## V. Conclusion

We support the CPSC's existing priorities to strengthen its regulatory and enforcement efforts to fulfill its mission to protect consumers from hazards posed by consumer products. We urge the CPSC to consider including the additional priority issues that we outlined in our statement today. We urge the Commission to address these issues as soon as possible as many pose urgent hazards to consumers. We look forward to working with the Commission to address these issues.

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<sup>i</sup> These groups include: Georgia Office of the Long-Term Care Ombudsman, Resident Councils of Washington, California Advocates for Nursing Home Reform, Ombudsman Services of San Mateo County, Inc., Delaware Office of the State Long-Term Care Ombudsman, Centralina Area Agency on Aging, Senior Care Cooperative, Regional Long-Term Care Ombudsman Program – Area Agency on Aging, PSA 3, Barren River Long-Term Care Ombudsman, Council on Aging - Orange County, District 9 Long-Term Care Ombudsman, San Francisco Long-Term Care Ombudsman Program, The Alliance for Better Long Term Care, Maryland Office of the State Long-Term Care Ombudsman, Center for Advocacy for the Rights and Interests of the Elderly (CARIE), Rainbow Connection Community, Michigan Campaign for Quality Care, King George County Social Services, Catherine Hunt Foundation, Inc., ABLE Ombudsman Program, Kansas Advocates for Better Care, Family Council of Ellicott City Health and Rehabilitation Center, NICHE (Nurses Improving Care for Healthsystem Elders), Detroit Area Agency on Aging, Indiana Association of Adult Day Services, Massachusetts Advocates for Nursing Home Reform, Our Mother's Voice, New York City Long Term Care Ombudsman Program, Kentuckians for Nursing Home Reform, Areawide Aging Agency, Ohio Office of the State LTC Ombudsman, Ombudsman Program, Alamo Area Agency on Aging, California Office of the State Long-Term Care Ombudsman, Terence Cardinal Cooke Health Care Center, Long Term Care Community Coalition, Nursing Home Victim Coalition, Inc, PA State LTC Ombudsman Office, NY Office of the State Long Term Care Ombudsman, New Hampshire Office of the Long Term Care Ombudsman, Levin & Perconti, Chicago, Bethany Village Senior Action, Snohomish County Long Term Care Ombudsman Program, DC Coalition on Long Term Care, Legal Assistance Foundation (LAF), Friends of Residents in Long Term Care, Our Mother's Voice (NC Chapter), Advocacy, Inc., California Long-Term Care Ombudsman Association, Montgomery County Long-Term Care Ombudsman Program, Long-Term Care Ombudsman Program, Central Ohio Area Agency on Aging, OWL – The Voice of Older and Midlife Women (national), PHI – Quality Care through Quality Jobs (national), National Association of States United for Aging and Disabilities (national), National Association of State Long-Term Care Ombudsman Programs (national), National Senior Citizens Law Center (national), Service Employees International Union (SEIU) (national), Direct Care Alliance (national), United Spinal Association (national), Center for Medicare Advocacy (national), National Research Center for Women and Families (national)

## Stevenson, Todd

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**From:** Rachel Weintraub <rweintraub@consumerfed.org>  
**Sent:** Monday, July 01, 2013 4:09 PM  
**To:** CPSC-OS,  
**Subject:** Priorities Testimony from CFA and request to Testify  
**Attachments:** cpsc priorities testimony 7 1 13 final.pdf

Mr. Stevenson,

Please accept the attached testimony for the 2014/2015 Priorities Hearing scheduled for July 10, 2013.

Please also consider this email a request to testify at the hearing on that date.

Thank you very much for your consideration.

Sincerely,  
Rachel Weintraub

Rachel Weintraub | Legislative Director and Senior Counsel  
Consumer Federation of America  
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Randall Hertzler, Handmade Toy Alliance



July 1, 2013

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

## **CPSC Fiscal Year 2014 Operating Plan Priorities and Fiscal Year 2015 Budget**

Thank you for the opportunity to comment on the agenda and priorities for the CPSC in fiscal year 2014 and during the planning process for the fiscal year 2015 budget.

As you know, the 787 small business members of the Handmade Toy Alliance (HTA) continue to be considerably affected by the Consumer Product Safety Improvement Act (CPSIA) and the subsequent rulings of the CPSC. There is still much to be done to restore small businesses and reestablish the prominence of low volume and handmade toys in the United States. We appreciate the efforts of the staff and commissioners to work towards additional solutions to this problem and we hope these comments can move us all closer to that goal.

### **Develop a List of Materials Determined Not to Contain the Eight Heavy Elements Listed in ASTM F963-11**

On August 29, 2012 CPSC Staff issued a document describing this opportunity for reducing third party testing costs. Subsequently the Commission has issued a request for information.

The determinations list in 16CFR1500 is a primary method used by members of the HTA to reduce the cost of compliance. The requirements of ASTM F963-11 with limits placed on concentrations of heavy metals other than lead complicate this pathway to compliance with additional tests that are superfluous.

Since low volume toys often use natural materials, the reduction in testing cost here is significant. For all manufacturers who use natural materials that already receive a lead exemption, this additional determination is a useful course to pursue while at the same time not compromising safety. We ask for the CPSC to allocate resources in FY 2014 and to utilize their state-of-the-art testing laboratory to complete whatever analysis is necessary to make these determinations.

### **Investigate Adding Manufactured Woods to Lead Determinations List – and also to a determinations list for ASTM F963-11 Heavy Metals**

On August 29, 2012 CPSC Staff issued a document describing this opportunity for reducing third party testing costs. Subsequently the Commission has issued a request for information.



The determination that wood does not contain lead is frequently used by low volume manufacturers to reduce the cost of compliance with the CPSIA regulation. “Manufactured woods” or laminated woods are frequently used in children’s products when any dimension of the product increases above 10 cm (like a wooden puzzle) or if the product includes a cavity (such as a shape sorting box or dollhouse). For larger wooden components, manufactured wood is more stable and thus safer than wide pieces of solid wood, which can crack or splinter over time.

Adding manufactured woods to both the lead determinations list and a new determination list for ASTM F963-11 heavy metals allows low volume manufacturers to resume using this material without the substantial burden of additional testing while at the same time not compromising safety. We ask for the CPSC to allocate resources in FY 2014 and to utilize their state-of-the-art testing laboratory to complete whatever analysis is necessary to make these determinations.

### **Determinations for Phthalate Concentrations**

The CPSC, in August of 2012, indicated that these materials do not inherently contain phthalates and so do not require third party testing: untreated/unfinished wood, metal, natural fibers, natural latex, and mineral products.

Plastic parts are only occasionally used in handmade children’s products and the HTA encourages the CPSC to investigate the potential to expand this list to include:

- paper and paperboard;
- printing inks;
- textiles with manufactured fibers;
- screen printing inks;
- plant and animal derived materials; and
- manufactured wood products.

We urge the CPSC to allocate resources in FY 2014 and to utilize their state-of-the-art laboratory to investigate this issue as a means to continue to reduce the burden and expense of third party testing.

### **Product Specific Guidance**

The CPSC should publish basic guidance for common types of handmade toys and children’s products on how the myriad of safety laws applies to each specific product type. This helps a small business get started and to understand the minimum amount of effort required to meet safety standards. The CPSC can work with the Handmade Toy Alliance (HTA) and other small business groups to identify common products. Neal Cohen, the small business Ombudsman, has already done a webcast specifically targeting doll clothing which was excellent and could be used as a model for other product types

Specific guidance can be presented as web pages, PDFs, or handbooks as these are all searchable media. Webcasts can be created to aide the user and answer common questions.

Some product types are:

- Infant and children’s clothes
- Wood toys with no moving parts that are painted or finished
- Wood toys with moving parts like wheels and axles with or without coatings
- Children’s jewelry



- Stuffed or plush toys
- Cloth dolls
- Vinyl dolls

### **Investigate CPSC Acceptance of Other Accreditation Bodies to Accredit Testing Laboratories to ISO/IEC 17025:2005**

On August 29, 2012 CPSC Staff issued a document describing this opportunity for reducing third party testing costs. The Commission has not issued a request for information or indicated a desire to move forward with this issue.

The HTA urges the Commission to re-examine this possibility. The effort to increase the number of testing bodies certified to test for CPSIA compliance - especially where this expands the reach within the EU to make a third party testing laboratory more accessible when that laboratory is already testing compliance with EN71.

### **Define a Periodic Testing Option Based on Volume of Products Manufactured Rather than Solely on a Time Period**

The periodic testing rule sets the periodic testing timeframe based solely on time. The HTA believes there needs to be a periodic test for low volume manufacturers based on quantities rather than time. The a low volume manufacturer that performs a third party test can experience an economic savings by performing fewer tests within a fixed period of time.

The current rule overwhelmingly favors large manufacturers at the expense of smaller manufacturers. The amount of theoretical risk which accumulates between periodic testing of an unchanging product is directly related to the number of units produced, not to the amount of time which has passed. We urge the commission to revisit possibilities of a rule which allows manufacturers to retest based on the number of units produced.

### **Harmonization of Standards**

The differences in toy safety standards in the US and Europe continues to suppress the supply of small batch toys from Europe to specialty retailers in the US. In many cases the differences in regulations are small and in some cases even insignificant. But the small differences create a large economic hurdle for low volume manufacturers that must be cleared by completing multiple tests that are nearly redundant.

On August 29, 2012 CPSC Staff issued a document describing this opportunity for reducing third party testing costs. The Commission has not issued a request for information or indicated a desire to move forward with this issue.

We suggest in FY 2014, the CPSC work to identify and resolve discrepancies in the safety standards in a manner that helps to reduce the current extended testing costs and at the same time preserves toy safety in the US and the EU.

### **Conclusion**

The Handmade Toy Alliance greatly appreciates the efforts the CPSC has taken to accommodate our membership with respect to toy safety standards and third party testing. However, it important to note that we are still on this journey and there continue to be many opportunities where burdens can be reduced and even eliminated without compromising the safety of consumers.

The Handmade Toy Alliance



The CPSC has shown an inclination for working with small business through creation of the Small Business Ombudsman office and through requests for comments like this one. The HTA greatly appreciates this relationship and the suggestions presented here are an effort to continue and strengthen the CPSC's connection to small business. Thank you for your time and consideration while creating your 2014 operating plan and the 2015 budget requests.

Respectfully,

A handwritten signature in black ink, appearing to read "Randall Hertzler".

Randall Hertzler,

Vice President of Handmade Toy Alliance Board of Directors – [www.handmadetoyalliance.org](http://www.handmadetoyalliance.org)

The Handmade Toy Alliance:

Jolie Fay – President, Board of Directors  
Randy Hertzler – Vice President, Board of Directors  
Erika Hickey – Secretary, Board of Directors  
Mary Newell – Treasurer, Board of Directors  
Adam Frost – Board of Directors  
Lynn Persson, Board of Directors  
Stephanie Stewart, Board of Directors

## Stevenson, Todd

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**From:** Randall Hertzler <[rhertzler@eurotoyshop.com](mailto:rhertzler@eurotoyshop.com)>  
**Sent:** Monday, July 01, 2013 2:38 PM  
**To:** CPSC-OS,  
**Subject:** RE: Comments on Agenda and Priorities FY 2014 and 2015

We would like to be able to present directly to the commissioners but here is our dilemma: since we have only a volunteer board of directors and none of us is in Washington DC, we have to plan for someone to take time from their job to travel to DC and also come up with the funds to cover the costs. Right at this moment, I cannot guarantee we can make all of this fall into place before the tenth. So I don't know what is better; to say we will present and risk not showing, or to not present and only submit written comments.

Is it possible to hold a slot till early next week and allow us some time to attempt arrangements with the knowledge that we may not be able to send a representative?

Regards,  
Randall Hertzler

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**From:** CPSC-OS, [<mailto:CPSC-OS@cpsc.gov>]  
**Sent:** Monday, July 1, 2013 1:53 PM  
**To:** Randall Hertzler  
**Subject:** RE: Comments on Agenda and Priorities FY 2014 and 2015

Is just a written comment, no presentation?

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



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**From:** Randall Hertzler [<mailto:rhertzler@eurotoyshop.com>]  
**Sent:** Monday, July 01, 2013 1:03 PM  
**To:** CPSC-OS,  
**Subject:** Comments on Agenda and Priorities FY 2014 and 2015

Mr. Stevenson,



Please find attached comments from the Handmade Toy Alliance regarding the CPSC's fiscal year 2014 operating plan and 2015 budget in preparation for the hearing on July 10<sup>th</sup>.

Kind regards,  
Randall Hertzler  
Vice President  
Handmade Toy Alliance

\*\*\*\*\*!!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page: <http://www.cpsc.gov/en/Newsroom/Subscribe> \*\*\*\*\*!!!

Rebecca Mond, Toy Industry Association, Inc.



July 1, 2013

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

Dear Mr. Stevenson:

On behalf of the Toy Industry Association (TIA), thank you for the opportunity to comment on the agency's budget priorities for fiscal years 2014 and 2015.

TIA and its more than 600 members – from toy manufacturers, importers and retailers to toy inventors, designers and testing labs – are all involved in creating and bringing fun and safe toys to children. Our members account for roughly 85% of the three billion toys sold in the United States each year ... which generates nearly \$22 billion in annual retail sales. Additionally, the toy industry supports more than 530,000 U.S. jobs that generate nearly \$26 billion in wages for American workers each year. Overall, the toy industry has an annual economic impact of nearly \$81 billion in the U.S.

Toy safety has long been the top priority for TIA and its members. Since the 1930s, TIA has been a leader in the development of standards such as ASTM F963, the toy safety requirements that were mandated as law under the Consumer Product Safety Improvement Act (CPSIA).

TIA congratulates CPSC on its past accomplishments and ongoing efforts to affect meaningful improvements in consumer product safety through education, safety standards activities, regulation and enforcement. The toy industry values the mission and role of the Commission and our past opportunities to work together in support of our shared missions of promoting safe play; we hope to strengthen this relationship in the future as we cooperatively seek to accomplish our common objectives of protecting consumers from unreasonable risks of injury from consumer products.

Looking ahead, we applaud CPSC's future strategic goals: leadership in safety, commitment to prevention, rigorous hazard identification, decisive response and raising awareness. Overall, we support efforts in line with these strategic goals and highlight the following areas as particularly impactful priorities for the toy industry:

1. **Education Initiatives:** Educating industry about requirements for producing safe products and educating consumers about their role in consumer product safety are important priorities. TIA and CPSC have, for many years, collaborated in such educational outreach and we look forward to continuing this work with the agency. In addition to these external-focused education initiatives, we propose that CPSC create new internal-focused educational programs for agency staff and leadership on topics such as: consumer product manufacturing in general, industry operating procedures, supply chain logistics, manufacturing quality control and other realities of production.

These sessions would provide a valuable background and refresher for CPSC staff and would help regulators understand how companies operate, resulting in better, more efficient and more effective regulations.

- 2. Import Surveillance:** TIA continues to support the CPSC's enforcement efforts, in cooperation with Customs and Border Protection (CBP), to stop unsafe and counterfeit toys from entering the U.S. We reiterate our offer to assist in the development and refinement of procedures that will effectively identify and stop violative products before they enter U.S. ports while facilitating trade for compliant products from responsible companies. Any refinements to requirements or practices that impact supply chain logistics should be coordinated with CBP and take into account importers' various standard operating procedures (SOPs), timing and volume cycles. As the CPSC continues to develop its Risk Assessment Methodology and increase its presence at the ports, we also recommend that the agency implement a Customs Advisory Committee (similar to CBP's Advisory Committee on Commercial Operations) and that it maintain its focus on products that pose the most significant risk to consumers.
- 3. Regulatory cooperation:** As a long-time supporter of initiatives to promote cooperation among international markets, TIA is pleased to see regulatory alignment as one of the CPSC's defined strategic objectives. We encourage the CPSC to continue sharing information and best practices with international counterparts, and promoting greater alignment of international consumer product safety standards. This will result in a stronger global safety framework, and facilitate companies' goals of producing safe, compliant products.
- 4. Reducing Testing Burdens:** An area of key emphasis and priority for TIA is the need for CPSC to dedicate resources to the analysis and implementation of the approved recommendations to reduce the costs of third-party testing – particularly in relation to the recently issued "*Request for Information Regarding Third Party Testing for Lead Content, Phthalate Content, and the Solubility of the Eight Elements Listed in ASTM F963-11.*" TIA supports testing that will help to assure the safety of toys, but under current requirements many companies are conducting unnecessary third-party testing on materials that, by their very nature, cannot exceed the defined chemical content limits. Streamlining testing requirements will provide a *significant* benefit to toy and other children's product manufacturers – particularly smaller companies – by facilitating compliance and reducing redundant costs ... which means safer products at better prices for consumers.

With competing priorities and limitations on funds due to the federal government's sequestration as well as the nation's current economic climate, TIA encourages the CPSC to maintain a keen focus on priorities that further its stated objectives during the 2014 and 2015 fiscal years. To that end, TIA is concerned that the CPSC's proposal to amend 16 CFR 1101 will take scarce agency time and resources away from recognized priorities. Section 6(b) of the Consumer Product Safety Act (CPSA) – which protects consumers by encouraging companies to voluntarily report potential product hazards and defects – is critically important. Any efforts to diminish the privacy protections afforded under Section 6(b) could negatively impact the voluntary reporting system due to the potential for a public response based on a *perception* of danger during an investigation ... even if there may be no *actual* risk of harm. We therefore request that the current statutory protections be maintained and that CPSC not devote time or resource to amending 16 CFR 1101 in a way that would negatively impact the relationship between the Commission and companies reporting to the agency.

Thank you again for the opportunity to submit these comments on the CPSC's budget and priorities for fiscal year 2014 and 2015.

Finally, to Chairman Tenenbaum and Commissioner Nord, TIA and its members express our appreciation for your service at the Consumer Product Safety Commission and the protections you have helped to enable for consumers in the U.S. and around the globe. We have enjoyed working with you both and wish you many future successes. We will look forward to continuing to work with Commissioner Adler and to developing an equally strong relationship with the incoming commissioners and chairman.

Should you have any questions regarding these comments, please contact Rebecca Mond, TIA director of federal government affairs ([rmond@toyassociation.org](mailto:rmond@toyassociation.org)).

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Desmond". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ed Desmond  
Executive Vice President, External Affairs

## Stevenson, Todd

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**From:** Mond, Rebecca <RMond@toyassociation.org>  
**Sent:** Monday, July 01, 2013 4:49 PM  
**To:** CPSC-OS,  
**Cc:** Stevenson, Todd; Lawrence, Joan; Kaufman, Alan  
**Subject:** Agenda and Priorities FY 2014 and 2015  
**Attachments:** 07-01-13 - TIA - Comments on CPSC budget.pdf

**Importance:** High

Dear Mr. Stevenson,

Please see the attached comments from the Toy Industry Association to be submitted for the record regarding the Consumer Product Safety Commission's budget priorities for fiscal years 2014 and 2015.

Feel free to contact me if you have any questions.

Sincerely,

**Rebecca Mond**

Director, Federal Government Affairs  
Toy Industry Association, Inc.  
1200 G St. NW, Ste 450  
Washington, DC 20005  
Phone: 202-459-0352  
Email [rmond@toyassociation.org](mailto:rmond@toyassociation.org)

**Visit our website for more information:**

[www.toyassociation.org](http://www.toyassociation.org)

Ami Gadhia, Consumers Union

**Comments of Consumers Union to the U.S. Consumer Product Safety Commission on**

**“Agenda and Priorities FY 2014 and FY2015”**

**Presented by Ami Gadhia**

**July 10, 2013**

**Introduction**

Thank you for the opportunity to comment on CPSC’s agenda and priorities. My name is Ami Gadhia, Senior Policy Counsel for Consumers Union, the public policy and advocacy arm of Consumer Reports.

I would like to make the following comments regarding CPSC’s agenda and priorities:

**CPSIA Implementation**

*Durable Infant and Toddler Products (Section 104)*

The implementation of the 2008 Consumer Product Safety Improvement Act (CPSIA) remains a top priority for our organization, and we appreciate the Commission’s ongoing efforts to complete this process. Over the past year, we have seen a proposed rule on soft infant carriers and strollers, as well as a final rule on infant swings. We appreciate the fact that CPSIA implementation is a lengthy and complex process that takes up a significant portion of the CPSC’s time. We believe that the agency’s activities so far have significantly increased protections for consumers, and we support and applaud the CPSC’s efforts on this front.

Going forward, we hope to see final rules on high chairs, bassinets, bedside sleepers, and handheld carriers, among others. In our testing, we have continued to see problems with some



stroller models, which create a risk of strangulation if a child's body slips under the front bar but the child's head gets stuck under the bar (an accident known as "submarining").<sup>1</sup> In our testing we have also found high chairs that have crotch posts but that still have leg openings large enough to permit passage of a torso probe, which we have found could also allow the child to slip under the tray and be injured (and which therefore still fails the voluntary standard).<sup>2</sup> We will be including these concerns in our comments to the Commission regarding its proposed stroller safety rule, and its eventual proposed high chair safety rule. We urge CPSC to continue working closely with the ASTM Juvenile Product Subcommittees to develop strong standards for durable infant and toddler products in order to address hazards like those enumerated above.

### *Public Database*

The two-year-old product safety database, [www.saferproducts.gov](http://www.saferproducts.gov), has been a successful result of the CPSIA. With the help of this important public information tool, consumers are better informed about the safety hazards associated with products available on the marketplace. Industry can also receive valuable feedback regarding hazards associated with their products. In addition, consumer representatives and government officials can better track and address developing hazard trends. We encourage the agency to continue focusing on making this tool as up-to-date and consumer-friendly as possible. The Commission should keep up with consumer postings, and should continue to use this valuable resource to track trends and identify emerging hazards. We encourage the agency to conduct follow-up investigations of recurring consumer complaints.

With regard to the National Electronic Injury Surveillance System (NEISS) database, however, we would like to see the public web interface upgraded to allow for multiple-year queries, and the ability to graph data over time. Presently, this must be done by hand, and can be quite tedious. In addition, the NEISS database should explain in detail, in understandable language, what methods are used to extrapolate from data provided by the 100 reporting NEISS hospitals

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<sup>1</sup> "Manufacturer recalls BumbleBride Indie and Indie Twin strollers," *ConsumerReports.org*, Feb. 3, 2012. Available at: <http://news.consumerreports.org/baby/2012/02/manufacture-recalls-bumblebride-indie-and-indie-twin-strollers.html>

<sup>2</sup> "Consumer Reports calls Dream on Me Bistro high chair a "Don't Buy: Safety Risk," *ConsumerReports.org*, Feb. 7, 2012. Available at: <http://news.consumerreports.org/baby/2012/02/consumer-reports-calls-dream-on-me-bistro-high-chair-a-dont-buy-safety-risk.html>

in calculating national estimates. Finally, there should be public access to the Injury and Potential Injury Incidents (IPII) and In-Depth Investigations (IDI) database, as well as product-related mortality statistics.

### *Surveillance and Enforcement*

In addition, as CPSC's activities begin shifting from rulemaking towards enforcement of CPSIA-mandated standards, we urge the agency to continue closely monitoring imports of children's products. Many countries currently producing toys and other such products sold in the United States do not follow the same rigorous standards mandated by the CPSIA. The Commission must take a proactive role in limiting the entry of dangerous children's products into the U.S. marketplace. We know that this issue is a stated priority for the Commission, and we support the agency's activities to further the safety of imported children's products.

CPSC must also continue to monitor the marketplace to ensure that older unsafe products, including cribs with drop-sides, are removed from the second-hand market and childcare facilities.

### **Other Areas of Concern**

#### *Laundry Detergent Pods*

Consumers Union and *Consumer Reports* have been warning the public of the dangers of detergent pod ingestion for over a year now.<sup>3</sup> Poison control centers around the country are reporting an increase in calls about children ingesting or otherwise being exposed to highly concentrated laundry detergent packaged in small, single-dose packets. Some toddlers and young children who swallowed these detergent pods have become extremely ill and have required hospitalization. The laundry detergent pods are very colorful and can often look like toys or candy to small children.<sup>4</sup> In light of the injuries associated with this hazard, we continue to urge

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<sup>3</sup> "Laundry detergent pods remain a health hazard," *Consumer Reports*, March 2013. Available at:

<http://www.consumerreports.org/cro/2013/03/laundry-detergent-pods-remain-a-health-hazard/index.htm>

<sup>4</sup> "Tide Pod laundry detergent packaging gets makeover due to safety concerns," *ConsumerReports.org*, May 25, 2012. Available at: <http://news.consumerreports.org/home/2012/05/tide-pod-laundry-detergent-packaging-gets-makeover-due-to-safety-concerns.html>.

CPSC to investigate this product and adopt stricter standards that will ensure this product does not harm children. We appreciate the agency's education and outreach work on this issue, and hope manufacturers will step up and take measures to better ensure that the pods stay out of the hands of young children.

### *Appliance Fires*

Appliance fires continue to be source of concern, and CPSC data estimates that between 2006 and 2008, there have been over 150,000 residential fires per year involving major appliances, resulting in 3,670 injuries and 150 deaths. Moreover, an analysis of consumer reports submitted to SaferProducts.gov shows that appliances account for 36% of all reports, with electric ranges and ovens representing 9.7% of all complaints.<sup>5</sup>

*Consumer Reports* conducted an in-depth analysis of federal fire data, and published its findings in a feature article in the March 2012 issue of the magazine.<sup>6</sup> The findings showed that only half of the appliance fires could be blamed on human mistakes or natural causes. Much of the rest appeared to have been caused by problems with the appliances themselves, such as electrical, mechanical, or design defects. We also found some cases of devices that caused fires because they turned on by themselves. For example, certain cooktops and ranges were recalled by the manufacturer after it was discovered that the devices could unexpectedly auto-start if liquids pool under their control knobs. Incidents have also been attributed to microwave ovens, dishwashers, and dryers.

For a follow-up story to our initial investigation, published in the March 2013 issue of *Consumer Reports*<sup>7</sup>, we examined reports of self-starting microwaves from KitchenAid and GE. Whirlpool, which owns KitchenAid, initially told us that they didn't have a single verified report of a microwave turning on by itself. However, after the investigation came out, Whirlpool told us that they have identified a design flaw that could cause microwaves to turn on by themselves. In

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<sup>5</sup> "Unsafe Kitchen Appliances Account For 1 In 3 Consumer Complaints," *The Consumerist*, March 9, 2012. Available at: <http://consumerist.com/2012/03/unsafe-kitchen-appliances-account-for-1-in-3-consumer-complaints.html>.

<sup>6</sup> "Appliance Fires: Is Your Home Safe?" *Consumer Reports*, Vol. 77, No. 3 (March 2012).

<sup>7</sup> <http://news.consumerreports.org/appliances/2013/02/whirlpool-acknowledges-malfunctions-are-possible-with-kitchenaid-khms155lss-microwave.html>

addition, electromagnetic interference from mobile devices may also cause certain appliances to turn on. We were disappointed to learn that the Commission's kitchen appliances investigation is no longer active. Consumers Union continues to urge the CPSC to address appliance fire hazards, and to pay particular attention to the risk of self-starting appliances.

### *Crib Bumpers*

Consumers Union continues to urge the Commission to ban all crib bumpers. These products are unnecessary, and pose a significant risk of suffocation and death to infants. In fact, crib bumpers were featured in Consumer Reports' June 2012 ShopSmart list of "13 Dangerous Baby Products to Avoid."<sup>8</sup> Maryland recently became the first state in the country to ban crib bumpers, a move that CU strongly supported.

However, the Juvenile Products Manufacturers of America (JPMA) has recently petitioned the CPSC to permit what it claims are non-hazardous, "traditional" bumpers. Consumers Union strongly disagrees that even so-called "traditional" bumpers are safe, and we urge the agency to reject the JPMA petition. Maryland rejected this approach, given the evidence that showed that even these "traditional" bumpers pose a suffocation hazard to babies. It would appear that JPMA is trying to circumvent what Maryland has done to protect infants through the trade association's petition to the CPSC. We now urge the Commission to extend this same protection to all babies, and to permanently ban all crib bumpers.

### *Glass Cookware*

We continue to receive complaints from consumers regarding exploding glass cookware. In October 2011, *Consumer Reports* revealed that between January and October 2011, the magazine received 121 new reports of exploding glass bakeware from consumers, which resulted in 18 consumers being injured. So far, we have analyzed over 300 such incidents.<sup>9</sup> In addition, the CPSC product safety database, SaferProducts.gov, has logged 111 incidents involving Pyrex, four of which have required emergency room treatment. We urge the Commission to investigate this issue thoroughly and address any safety concerns.

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<sup>8</sup> <http://www.consumerreports.org/cro/2012/05/13-dangerous-baby-products-to-avoid/index.htm>

<sup>9</sup> "Shattered Glass," *ConsumerReports.org*, October 2011. Available at: <http://www.consumerreports.org/cro/magazine-archive/2011/october/home-garden/bakeware/overview/index.htm>.

### *Bike Helmets*

According to the National Highway Traffic Safety Administration, 677 cyclists were killed and 48,000 were injured in motor vehicle crashes in 2011.<sup>10</sup> Although fewer people have been dying from bicycle accidents in recent years, plenty of crashes are still fatal, and helmets can save lives. *Consumer Reports* recently tested a number of bike helmets and found that some transferred slightly more force to the head than the limit set by the CPSC bike-helmet standard.<sup>11</sup> However, there were many helmets that exceeded the current CPSC standard. This illustrates that many of the bicycle helmets currently on the market perform far better than CPSC's standards require. CPSC's bicycle helmets standard has not been revised since it was adopted in 1998 - at which time it was modeled on the existing ASTM standard. Since then, the ASTM standard has evolved in important ways. It now specifies variable mass head forms, and has become more explicit on a number of items in order to increase testing consistency and reduce lab-to-lab variability. To ensure increased safety of these critically important products, CPSC should undertake a similar upgrade of its bicycle helmet standard, including more stringent thresholds for impact testing.

### *Window Coverings and Other Cord-Related Hazards*

The injuries from corded window coverings can often be severe and are sometimes fatal. Some children suffer permanent and debilitating brain damage after getting entangled in window blind cords. CPSC's most recent data on window covering incidents indicates that since 1999, there have been 135 fatalities and 140 non-fatal incidents as a result of a child's getting tangled in a cord of the window covering. The voluntary standard currently in place is inadequate and does not properly address this hazard; industry has lagged in the creation of effective standards. We urge the CPSC to continue pushing industry to develop a new window coverings standard that actually eliminates – and not simply reduces – the risk of strangulation associated with all window coverings. To this end, in May of this year Consumers Union joined a petition requesting that the CPSC promulgate mandatory standards to make operating cords for window

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<sup>10</sup> U.S. Department of Transportation, National Highway Traffic Safety Administration, "Traffic Safety Facts: 2011 Data." Available at: <http://www-nrd.nhtsa.dot.gov/Pubs/811743.pdf>.

<sup>11</sup> "Best Bike Helmets," *Consumer Reports*, Vol. 77, No. 7 (July 2012).

coverings inaccessible.

### *Furniture Safety*

We continue to be extremely concerned about deaths and injuries suffered by young children as a result of furniture tip-overs. CPSC statistics show that over 22,000 children 8 years and younger are injured every year as a result of furniture, appliances, or televisions tipping over. The current ASTM standard for furniture is being strengthened. However, more needs to be done to ensure that this safety risk is addressed, and we strongly urge the agency to actively monitor and take a firm safety stance on this important issue.

### *Flame Retardants*

We also continue to be concerned about flame retardant chemicals in baby products, upholstered furniture, and mattresses. As *Consumer Reports* published in our February 2013 article, “How safe are flame retardants?”, recent peer-reviewed scientific studies provide new evidence that Americans are widely exposed to flame retardants that may pose worrisome health risks and may not even provide much fire protection.<sup>12</sup> The agency should make regulating these chemicals a priority and wherever possible, provide options for physical fire blocking. We urge the CPSC to begin by supporting the new furniture flammability standard proposed by California, which would steer fire protection measures away from use of these chemicals. We would also urge the CPSC to take further action itself to stop their use. As the CPSC noted in its own March 2008 NPRM on upholstered furniture flammability, the right kind of effective standard could already be met by an estimated 85 percent of upholstered furniture currently on the market, without the use of chemical flame retardants, and the rest could readily adapt.<sup>13</sup> Eliminating these chemicals would not be an undue burden on manufacturers. The CPSC should act to accomplish this important step for consumer safety and health as quickly as possible.

### *Heavy Metals*

We urge the agency to continue to address the harms associated with heavy metals that may be in

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<sup>12</sup> “How Safe Are Flame Retardants,” *Consumer Reports*, February 2013. Available at: <https://www.consumerreports.org/cro/magazine/2013/02/how-safe-are-flame-retardants/index.htm>

<sup>13</sup> Notice of Proposed Rulemaking, “Standard for the Flammability of Residential Upholstered Furniture,” Consumer Product Safety Commission, 16 CFR Part 1634, Mar. 4, 2008, p.11734, available at <http://www.cpsc.gov/PageFiles/96693/furnflamm.pdf>.

consumer products. In particular, we urge CPSC to also investigate and address lead and other heavy metals in consumer products other than just toys and paint. For example, the European Consumer's Organization (BEUC) last year revealed that soccer jerseys of teams competing at Euro 2012 contained toxins and harmful substances.<sup>14</sup> We urge the Commission to work diligently with ASTM International in the development of heavy metals standards for children's products, but also for other consumer products.

#### *Generator Safety*

We are concerned about injuries and deaths resulting from carbon monoxide poisoning caused by portable generators used indoors and in partially-enclosed spaces, such as garages. We applaud the CPSC for making generator safety a top priority, and urge the agency to continue developing solutions for reducing and eliminating generator-related hazards.

#### *ATVs and ROVs*

We are particularly concerned about the hazards associated with use of all-terrain vehicles (ATVs) and recreational off-highway vehicles (ROVs). CPSC's most recent data on ATV injuries shows that at least 55 children 16 and under lost their lives and 28,300 were injured seriously enough to require treatment in a hospital emergency department in 2010 as a result of using an ATV.<sup>15</sup> We urge the CPSC to prioritize ATV and ROV safety, and to issue mandatory standards that protect consumers, and especially children, from these risks.

#### *Button-Cell Batteries*

We appreciate CPSC's efforts to push industry towards creating a safer product design for button-cell batteries. We encourage the agency to continue focusing on this significant health hazard. Ingestion of these products is a particular hazard for small children. Button-cell battery ingestion causes rapid and severe gastrointestinal tissue damage and perforation, due to formation of caustic substances by a battery's low voltage, and can result in devastating injuries to consumers and can even cause death. The batteries are ubiquitous in consumer products, and

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<sup>14</sup> "Toxic Poland shirt should be banned-consumer group," Reuters, June 8, 2012. Available at: <http://in.reuters.com/article/2012/06/08/soccer-euro-shirts-idINL5E8H88Z420120608>.

<sup>15</sup> U.S. Consumer Product Safety Commission, "2010 Annual Report of ATV-Related Deaths and Injuries," December 2011. Available at: <http://www.cpsc.gov/library/foia/foia12/os/atv2010.pdf>.

manufacturers must ensure they are safely secured within the battery compartment so that they are not accidentally ingested. The agency should also push for the redesign of button cell batteries so that they are nonhazardous if swallowed.

In conclusion, we applaud the Commission's efforts to address hazards associated with consumer products, and look forward to our continued work with the agency to help it fulfill its mission.



**Stevenson, Todd**

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**From:** Ami Gadhia <agadhia@consumer.org>  
**Sent:** Monday, July 01, 2013 4:36 PM  
**To:** CPSC-OS;; Stevenson, Todd  
**Cc:** George Slover; Eric Mallow  
**Subject:** Consumers Union Request to Present Oral Testimony/Written Testimony for July 10th hearing  
**Attachments:** CPSC Comments - FY 2014 and FY2015 Agenda & Priorities 0 7.10.13.pdf

Dear Mr. Stevenson,

Consumers Union would like to present oral testimony at the July 10, 2013 hearing regarding the CPSC's FY2014 and FY2015 agenda and priorities. Please find attached to this email our written testimony. Please let me know if you require additional information for CU to sign up to testify at the hearing.

Thank you,

Ami Gadhia

--

Ami V. Gadhia  
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Consumers Union, Policy & Action from Consumer Reports  
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# Agenda and Priorities FY 2014 & FY 2015

## Written Comments

Sally Greenberg, National Consumers League



## NATIONAL CONSUMERS LEAGUE

1701 K Street, NW, Suite 1200 Washington, DC 20006  
Main: (202) 835-3323 Fax: (202) 335-0747 [www.nclnet.org](http://www.nclnet.org)

June 28, 2013

Chairman Inez Tenenbaum  
Commissioners Robert Adler and Nancy Nord  
U.S. Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, Maryland 20814

SUBJECT: Agenda and Priorities FY 2014 and/or 2015

Dear Chairman Tenenbaum and Commissioners Adler and Nord:

I am submitting these comments on behalf of the National Consumers League.

Last year, NCL submitted comments urging the CPSC to place the following issues among its top priorities for fiscal year 2014:

Table Saw Safety  
All-Terrain Vehicle Safety  
Fire and Carbon Monoxide Hazards

NCL continues to support these projects as important priorities for the Commission in fiscal years 2013, 2014 and 2015.

I would like to focus my comments today on the issue of table saw safety. Table saws are among the most hazardous products that CPSC regulates. According to the agency's statistics, there are roughly 40,000 emergency room-treated table saw injuries every year, about 4,000 of which are amputations. *That's more than 10 amputations every day.*

Active injury mitigation technology exists on table saws today that could eventually prevent almost 100 percent of these injuries if the technology was part of every table saw sold in the U.S. The Commission was petitioned in 2003 – ten years ago – to enact a safety standard to require this technology on new table saws. It took over eight years for the Commission staff to begin work on a Notice of Proposed Rulemaking on a table saw standard. While NCL applauds the Commission for voting unanimously to begin this process, we are concerned that ten amputations occur every day while consumers wait for a safety standard.

We understand that a table saw NPR is on track to be published early in fiscal year 2014. NCL strongly urges the Commission to ensure that deadline is met. Furthermore, we urge you to publish a Final Rule in 2014 so that the Commission can move into the implementation period for the standard in fiscal year 2015.

On a personal note, I have met a number of individuals who suffered serious lacerations and amputations from table saw injuries. You were also very gracious in taking the time to meet with individuals injured by table saws and I know that you share our concerns. These injuries are devastating to the individuals and to their families, causing lifelong physical and emotional pain and disability, and often, the loss of a beloved livelihood. I ask you to act as quickly as possible to make table saws safer and put an end to these preventable and heartbreaking tragedies.

Thank you for considering our views.

Sincerely,

Sally Greenberg  
Executive Director

Sue DeLoretto-Rabe & Carolyn Anderson

Concerned Families for ATV Safety

July 1, 2013

Office of the Secretary  
U.S. Consumer Product Safety Commission  
Washington, DC 20207

Regarding: July 10, 2013 Priorities Hearing

Dear Secretary Stevenson:

We, the undersigned, write to ask that you consider making All Terrain Vehicles (ATV's) a priority in the fiscal years 2014-2015. Based upon the growing and horrifying statistics on injuries and deaths it is clear that the system in place is not effectively protecting people, especially children under 16 years old. The increasing death and injury statistics demand that the CPSC take strong action and make demonstrable changes to the current manner in which ATVs are regulated for health and safety to protect the public. We feel the new standard is not helpful nor effective in protecting consumers, especially children. We also feel the outcome of this rulemaking doesn't reflect the views of the medical groups, injury prevention groups, consumer groups or families of victims killed from ATV crashes.

While ATV regulation and usage is complex, we propose several rather straightforward steps that we believe will significantly reduce the serious risks of injury and deaths from ATVs. In no particular order, we respectfully offer the following recommendations:

- I. To the fullest extent of the CPSC's legal jurisdiction, the sale or rental of adult-sized ATVs to anyone under 16 should be prohibited. This should be effective towards **All** ATV dealers, manufacturers, and rental agencies operating in the U.S. Continuing undercover visits to manufactures should remain in force.
1. In connection with the purchase or rental of an ATV, it should be mandatory that any prospective buyer or renter be advised **IN ADVANCE** of the death and injury statistics regarding ATV's, including and especially as it relates to children under the age of 16. Don't rely on the stickers that are placed on the machines to do this. The ATV laws for that state should also be included. Such disclosure should be done both orally and in writing, and it should be done in a very straightforward and conspicuous manner. Compliance will be critical to the success of this recommendation and so it should be mandatory that a formal signature -be secured from the purchaser or renter on a document containing such disclosures and that document should be maintained by the dealer or rental agency for compliance testing. Furthermore, there should be very stiff consequences and penalties imposed on any entity that fails to comply with the mandatory disclosure requirement.
2. Concerning the marketing of ATVs, a national and regionally-targeted public awareness campaign should be undertaken that promotes safe and responsible ATV operation and such campaign should advise of the prohibition of children under age 16 riding adult-sized ATV's. In addition, it should be made mandatory that all print, broadcast and internet-based sales and marketing materials **for manufacturers, dealers, rental agencies and trade associations** include disclosures of the extreme safety risks from ATV operation, including the most recent death and injury statistics and especially noting those involving children under the age of 16. The material should overtly and responsibly advocate safe ATV operation and moreover, all related ad copy for such should be very conspicuous, clearly written, and the font size and holding should be comparable to all the other language included in the ad copy. State laws for ATV usage needs to be included and discussed in detail.
3. More focus on the new Transitional machines for youth riders. These so called "youth" machines are still too big, too fast and too heavy for most children under the age of 16 to handle properly, resulting in more deaths and injuries. We would like to see more emphasize placed on holding the ATV Manufactures accountable for producing unstable machines, both ATV's and UTV's/ROV's. To this date testing for regular ATV stability hasn't gone far enough.

The A TV manufactures have continually gotten away with ignoring there are serious flaws to the design of ATV's. With more than half of ATV fatalities associated with rollovers it is very apparent something needs to change. Instead they infuse doubt among legislators, who consider regulation that would potentially cost the industry millions of dollars in research and development to find a solution. Such doubt has been shown to be effective in delaying the inevitable legislation that mandates safety or restricts harmful products. Maybe CPSC should follow Australia's lead in this area.

The present voluntary system is failing. The death and injury totals continue to climb despite the lower preliminary numbers that are reported in the CPSC's annual ATV report. Far too many people, mainly children are suffering from what is a preventable situation if only there were more restrictions put on the ATV manufactures regarding these dangerous and deadly machines.

A large, unaware and unsuspecting public needs the federal agency with authority over ATV s to step up and take a leadership role in protecting them. The fact that over a hundred thousand deaths and injuries occur every year demands it. The CPSC must take strong, meaningful, and demonstrable actions to stem the epidemic of ATV deaths and injuries. The CPSC must implement steps that are compulsory, not voluntary, and steps that, as appropriate, are required of ATV manufacturers, dealers, rental agencies and trade associations.

**ATV's are NOT TOYS and it's up to the government ( CPSC) and manufactures to make sure parents understand this.**

Thank you for the opportunity to comment and provide suggestions regarding this important matter. We appreciate that in the past few years CPSC has at least taken the time to see that ATV's do pose a HUGE risk, especially to children and that something meaningful definitely needs to be done soon.

Respectfully,

Sue DeLoretto-Rabe  
Carolyn Anderson

Cofounders of Concerned Families for ATV Safety

[www.atvsafetynet.org](http://www.atvsafetynet.org)

Jonathan Gold, National Retail Federation





July 1, 2013

Todd Stevenson  
Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**RE: NRF Comments on “Agenda and Priorities FY 2014 and/or 2015”**

Dear Mr. Stevenson:

The National Retail Federation (NRF) appreciates the opportunity to provide written comments and suggestions regarding the current and future agenda and priorities of the U.S. Consumer Product Safety Commission (CPSC).

As the world’s largest retail trade association and the voice of retail worldwide, NRF represents retailers of all types and sizes, including chain restaurants and industry partners, from the United States and more than 45 countries abroad. Retailers operate more than 3.6 million U.S. establishments that support one in four U.S. jobs – 42 million working Americans. Contributing \$2.5 trillion to annual GDP, retail is a daily barometer for the nation’s economy. NRF’s [This is Retail](#) campaign highlights the industry’s opportunities for life-long careers, how retailers strengthen communities at home and abroad, and the critical role that retail plays in driving innovation.

In the almost five years since enactment of the Consumer Product Safety Improvement Act (CPSIA), the CPSC has undertaken many challenges and undergone many changes. NRF commends the leadership and staff of the agency for all of its accomplishments in this regard, under often tight deadlines and with limited resources, and for its continued and obvious commitment to fulfill its important mission of product safety.

The CPSC has historically been one of the most open and accessible of the federal agencies, and for good reason. Given the thousands of product types and almost limitless variety of potential product hazards and incidents, the CPSC by necessity must directly engage and seek information and input from all of its regulated and other stakeholders in the complex and rapidly evolving global supply chain environment of the 21st century. It is in this spirit and with this intention that NRF offers the following specific comments, in direct response to the questions posed by the CPSC public notice and with specific reference to the CPSC’s existing Strategic Goals:

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## Strategic Goal One: Leadership in Safety

Stakeholder partnerships are not just helpful, but are in fact critical for the CPSC to function effectively. While the culture of the agency is certainly one that encourages informal input, more direct, regular and formal mechanisms should be established with stakeholders and stakeholder organizations. Nowhere is this need more pronounced than with regard to U.S. import entry processes. As highlighted by the recently proposed new “1110 Rule”<sup>1</sup> regarding the production of product certificates, the CPSC is taking an ever more direct role in screening, inspecting and, indeed at times, stopping imports of potentially violative or harmful consumer products. Given the continued growth of U.S. consumer products imported from other countries, this is of course logical and necessary.

However, considering the many and growing complexities of US and international regulatory requirements, as well as the ever-increasing complexity of the global supply chain, NRF believes it is imperative that the CPSC more directly engage stakeholders with regard to importation and other supply chain issues. Specifically, NRF suggests the CPSC **consider committing sufficient agency resources in FY 2014 to establish a formal trade advisory group**, perhaps modeled after (or even as an outgrowth of) the Advisory Committee on Commercial Operations (COAC) established by U.S. Customs and Border Protection (CBP). Such an advisory group, presumably consisting of a diverse group of industry and consumer stakeholder groups and individuals, could provide direct, ongoing and “real world” suggestions and recommendations to the CPSC, especially with regard to import issues, and particularly with regard to direct logistical import questions like those raised by the proposed new 1110 Rule. The agency should focus efforts on ways to simplify and facilitate legitimate trade and prevent truly bad actors from importing products that present a danger to consumers.

In addition, NRF recommends that the CPSC undertake a **renewed leadership commitment to promoting the intra-U.S and international harmonization of product safety substantive standards and procedural requirements**. While we realize that the challenges faced by the agency in this regard are significant, there really is no better positioned entity in the world than the CPSC to promote this objective. Harmonization, as well as various modes of mutual regulatory recognition (*e.g.*, mutual recognition of testing to support product compliance/certification), is of benefit to consumers as well as regulators, and of course promotes efficient domestic and international trade. The ever more complex and sometimes contradictory web of both US and international product safety standards and other requirements (including those of other federal regulators, *e.g.* new conflict minerals and Lacey Act requirements) is quickly becoming unmanageable for US retailers, the vast majority of whom seek only to sell safe and compliant products. But if it becomes impossible to do so in more than one state (or country) at a time, neither consumers nor American workers benefit. The CPSC must use its unique global status to promote both US and international standards harmonization. While NRF realizes this is not a new ambition of industry stakeholders, it is rapidly becoming a critical necessity to ensure both the safety and adequate supply of consumer products in the U.S.

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<sup>1</sup> NRF intends to submit formal and detailed comments on this proposed rule during the current public comment solicitation period.

## Strategic Goal Two: Commitment to Prevention

The CPSC has historically been a key contributor to the development of many extra-governmental (“voluntary”) product safety standards. Despite understandable staff resource constraints in the years immediately following enactment of the CPSIA, NRF recommends that the CPSC now **undertake a renewed commitment to the development of key product safety voluntary standards**. Leadership from the agency in this area helps both to inform and promote the development and implementation of standards that both protect consumers and assist in guiding retailers with regard to specific product requirements.

Another area with regard to product hazard prevention that NRF suggests should be prioritized by the CPSC is to **provide more direct guidance on various CPSC compliance questions**. The product safety, interpretive and procedural regulations and requirements of the CPSC are numerous and complex. Historically, CPSC staff, particularly including the Office of General Counsel (OGC), have provided formal guidance and advisory opinions to retailers and other companies seeking to maximize their ability to comply with these complex rules. Such interpretive guidance, publicly posted, not only helps the individual company in question, but of course provides guidance to all agency stakeholders as to what in fact the CPSC requires. And with the recent implementation of the many new CPSC mandatory product safety standards and detailed procedural requirements (especially with regard to product testing and certification), such formal guidance is needed now more than ever. Therefore, NRF urges the agency to renew its commitment to **provide direct and publicly available stakeholder guidance regarding all aspects of CPSC standards and procedural requirements**.

Finally in this regard, the CPSC should continue to increase its commitment to directly addressing product safety issues at their source, manufacturing, and especially with respect to overseas manufacturers. While U.S. port enforcement is also of course necessary, eliminating violative products before they arrive in the U.S. is always preferable. Thus, while NRF recognizes that CPSC has made significant strides in this regard in recent years, **the agency needs to commit additional resources to directly educate overseas manufacturers and other supply chain firms on evolving CPSC substantive and procedural product safety requirements**. CPSC regulations are difficult enough for U.S. firms to understand; they can be virtually undecipherable for many foreign companies and personnel.

## Strategic Goal Three: Rigorous Hazard Identification

The CPSC continues to aggressively and appropriately pursue its import inspection and enforcement agenda. NRF applauds these efforts, since preventing violative and/or unsafe products from reaching consumers is far preferable than having to pursue a product recall after the fact. However, and with specific reference to the proposed new Product Certification (1110) Rule, NRF strongly recommends the **CPSC to commit sufficient resources to facilitate existing and any new demands on importers and retailers with respect to product certification and related requirements**.

The proposed 1110 Rule would require the affirmative filing with other customs entry documents of CPSC product certificates. This new mandate alone would presumably generate

hundreds of thousands if not millions of individual (electronic) documents supplied to the agency and/or U.S. Customs and Border Protection (CBP) on an annual basis. (Such certificates are of course now required to be produced and supplied to the CPSC/CBP upon request). Yet NRF is aware of no existing or planned new resource commitment of the CPSC (or CBP) to actually facilitate this massive undertaking. Relatedly, the proposed 1110 Rule would require that all certificates be “electronically” produced, maintained and supplied, “without password protection” via a “unique identifier” to the federal government and to others in the supply chain entitled to receive/obtain those. All of these proposed new terms and mandates imply a number of complex technical questions and issues, and all beg the question of how, in fact, they will be implemented and resourced.

NRF is greatly encouraged by recent public comments from CPSC and CBP officials expressing a desire to establish a “Trusted Trader Program,” perhaps encompassing and improving the existing Importer Self-Assessment-Product Safety (ISA-PS) program. Such a program has the promise and potential to streamline the entry of consumer products from US companies that have a demonstrated commitment to ensure the safety and compliance of consumer products, resulting in a true win-win-win, for consumers, the agency and U.S. firms. Again, however, the success of such a program is directly depending on the CPSC’s ability to commit the necessary resources to make such a program achievable... NRF therefore suggests **adequate funding of implementation of the ISA-PS and/or Trusted Trader Program** to ensure that the potential benefits of such programs to both consumers and efficient international trade are fully realized. CPSC needs to continue its close cooperation with CBP in this regard, and specifically with regard to continued development and implementation of risk-based product targeting systems and detention policies.

### **6(b) Revisions vs. Third Party Testing Mitigation**

Finally, NRF observes that the CPSC recently modified its current fiscal year (2013) Operating Plan to include a staff resource commitment to revise the existing agency interpretive rules regarding Section 6(b) of the Consumer Product Safety Act (CPSA), which governs the release of product-specific information by the agency to third parties. This action by the Commission occurred on the heels of formal votes to not fund Congressionally directed efforts to mitigate the economic impacts of the third party testing mandates imposed by the CPSIA, save for an agency Request for Information regarding substances that do not typically contain heavy metals and phthalates (the potential benefits of which with regard to testing burdens NRF further notes would be undermined by the proposed new 1110 Rule’s requirement for certification of all children’s products, regardless of whether or not the product in fact requires third party testing).

In 2011, Congress enacted HR 2715, a carefully crafted and bipartisan effort to remedy many of the widely acknowledged flaws in the CPSIA. Central to this federal law was a mandate by Congress to the CPSC to promptly review the third party testing mandates for children’s products imposed by the CPSIA and to reduce those where possible, consistent with the protection of children’s and other consumer protection and safety. However, after a lengthy staff review and recommendation process, the Commission chose this year to authorize only a small number of the staff-recommended efforts to even explore this Congressional mandate to the CPSC. Even more surprising, the Commission voted to actually fund only one of these staff

recommendations--the aforementioned RFI—which NRF understands will not even be funded in terms of staff exploration until the next fiscal year, 2014.

The reason stated by the Commission in failing to pursue all but one of the staff recommendations to mitigate the economic impact of third party testing was that the agency lacks sufficient resources to do so. Yet very soon after the Commission apparently found sufficient resources to dedicate to a formal (and presumably very staff-intensive) rewrite of the 6(b) interpretive rules. Without belaboring this obvious inconsistency, NRF strongly urges the CPSC to **fully fund all existing agency staff-recommendations pursuant to HR 2715 to mitigate the costs of CPSIA testing burdens, consistent with full protection of consumers.** NRF and its members endorse and embrace the federal requirement to test and certify all consumer products that are subject to mandatory CPSC safety standards, but continue to encourage that this mandate be carried-out in a sensible and least burdensome manner.

Thank you for the opportunity to provide comments and suggestions with regard to the CPSC regarding its upcoming public hearing on its fiscal year 2014/2015 Agenda and Priorities. NRF looks forward to continuing to work closely with the CPSC to promote our mutual goal of making products safe for all American consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Gold". The signature is fluid and cursive, with a large initial "J" and "G".

Jonathan Gold  
Vice President, Supply Chain & Customs Policy

## Stevenson, Todd

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**From:** Gold, Jon <GoldJ@NRF.com>  
**Sent:** Monday, July 01, 2013 5:00 PM  
**To:** Stevenson, Todd; CPSC-OS,  
**Subject:** Agenda and Priorities FY 2014 and/or 2015 - NRF Written Comments for the Record  
**Attachments:** NRF Final Comments on CPSC Priorities and Agenda.pdf

Mr. Stevenson,  
Attached please find comments for the record for the July 10 meeting to discuss the CPSC's Agenda/Priorities for FY 2014 and 2015. We will not be presenting at the meeting, but wanted to submit comments for the record. Please let me know if you have any questions. Thanks.

Jon

**Jonathan E. Gold**  
Vice President, Supply Chain and Customs Policy  
National Retail Federation  
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