



U.S. CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, Maryland

Public Hearing
Commission Agenda and Priorities
for FY 2017 and FY 2018

Wednesday, June 15, 2016
10:00 a.m.

EDT		Presenter	Affiliation
10:00 AM	Opening	Chairman Elliot F. Kaye	
10:05 AM	Panel 1	1 Linda Kaiser	Parents for Window Blind Safety
		2 Heather Dautrich	Parent
		3 Nancy A. Cowles	Kids in Danger
		4 Lisa Siefert	Shane's Foundation, NFP
		5 Daniel Penchina	Breast Cancer Fund and Washington Toxics Coalition
10:55 AM	Panel 1 Questions	Commission	
11:35 AM	Panel 2	6 Mark S. Fellin, MPS	Juvenile Products Manufacturers Association
		7 Randall Hertzler	euroSource LLC
		8 Charles Samuels	Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
		9 John F. Kuppens	Nelson Mullins Riley & Scarborough LLP
		10 Kerrie Campbell	Chadbourne & Parke LLP
12:25 PM	Panel 2 Questions	Commission	
1:05 PM	<< L U N C H B R E A K >>		
2:05PM	Panel 3	11 Karin Bolte, JD	National Consumers League
		12 Rachel Weintraub	Consumer Federation of America
		13 William Wallace	Consumers Union
		14 Joyce Davis	Keeping Babies Safe
		15 Sarah Denny, MD, FAAP	American Academy of Pediatrics
2:55 PM	Panel 3 Questions	Commission	
3:35 PM	Panel 4	16 Danielle Iverson	American Apparel & Footwear Association
		17 Al Silverberg	SelectShops.com
		18 Ted Alcorn	Everytown For Gun Safety
		19 Liz Hitchcock	Safer Chemicals Healthy Families
		20 Stephanie Fox-Rawlings, PhD	National Center for Health Research
4:25 PM	Panel 4 Questions	Commission	
5:05 PM	Adjourn	Chairman Elliot F. Kaye	

Panel 1

Linda Kaiser

Parents for Window Blind Safety



Parents *for* Window Blind Safety

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1 June 2016

US Consumer Product Safety Commission
Office of the Secretary
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My name is Linda Kaiser and I am founder of Parents for Window Blind Safety. I spoke last year on this subject and today I come before all of you pleading to keep window covering safety a top priority in the 2017-2018 fiscal year. I am asking the Commission to move the mandatory rulemaking process forward and secondly to consider funding a window covering safety campaign to educate the public.

Last year, I refuted many arguments that the industry had with our petition. I talked about the issues related to people with disabilities and the elderly and showed how it is unreasonable to think that all disabled people, especially those in wheelchairs, would be able to use a window covering with a cord safely due to hand dexterity functioning and height restrictions. Has anyone received any data from the WCMA showing that their argument that cordless products are problematic for the disabled and elderly communities is accurate?

I talked about how there were no restrictions on how many cords were used on window covering products in the ANSI Standard leaving today's products so hazardous that even putting them in a cord cleat would not help. I explained that safety cleats won't be used by consumers and even if they are, they do not put the cord out of a young child's reach. This may help an infant or young toddler if they are not climbers, but an older child can climb and reach anything. Kids can climb on top of refrigerators if they want.

It is a foregone conclusion that corded window covering products will continued to be misused by children and adults. It can also be proven that consumers misuse cord cleats or don't use them at all. Cords on window covering products are a predictable, unreasonable, foreseeable risk that manufacturers should be held accountable for especially after 30 years of injuries and deaths occurring in the same exact way regardless of what type of safety device is used.

Imagine having to turn your oven knob 8 times before you turn off your oven. How many fires do you think we would have in the United States due to consumer misuse? I spoke last year about how busy we were in this generation. Who is going to wind and unwind window cords from a cleat everyday to open the window? Which is faster—cordless or cleats? Cordless is preferred both for safety and convenience purposes.

As of today children continue to die on stock and custom products that comply with the current standard. The voluntary standard remains unchanged despite industry promises. In their August 2014 letter, WCMA stated that they would begin the process of opening the standard. Now 22 months have gone by and the only thing that has been done is one canvass a few months ago. How long do we have to wait? As I stated last year, WCMA intends to stall the process until they get their desired outcome. As they stall, children continue to die on products that comply with today's standard.

We must ask ourselves whether it is reasonable for a company to sell a household product that can kill a child in her own bedroom or in any room of the house. I will never understand how this industry can continue to sell something that kills children when they have the option to sell something that cannot.

When first graders are dying in their own homes that is when the arguments must stop. These are children we do not supervise continuously. First graders are told to put on their shoes, brush their teeth, get dressed, make their beds, bring you their homework, help you fold clothes, and take out the trash. First graders are independent children who play on their own and even go outside in the yard to play without mom or dad batting an eyelash as long as the yard is fenced. Are we still bathing seven year olds or are they old enough to take baths or showers on their own? They may need a little help here and there, but in general, children at this age are very independent.

In Maryland, the state in which both CPSC offices are located, in the past two years, two first graders have died. Take it personally. Be angry. To me, when 6 and 7 year old children are dying we are not dealing with a supervisory issue. You have seen the battles that have taken place between the industry and the advocates. I have said for 14 years this is not a supervisory issue but a product issue. When first graders die, all arguments die.

Sargent Bailey lost his 7 year old son just a few months ago, outside of DC on Fort Dietrich Air Force Base. Adam loved riding his bike. He was a special brother to his siblings. He would walk them to school, help make breakfast. He told them that when he grew up, he would take them to Disney. Adam had a very caring nature. He was not instructed to be caring, it was just who he was. One of Adam's chores was to take out the trash. Mom found out after his death that he was taking out the neighbor's trash also just to be kind. This is the kind of child the world lost

all because of an unnecessary blind cord. We still don't know why he was playing with the blind cords but one day his five year old brother will be able to tell us because he witnessed the entire incident. He had no idea that his brother was in trouble. He had no idea that his brother's body shaking and spinning was his way of trying to survive the accident. They were playing when they were supposed to be in bed sleeping. You would think that a 65 pound child would have weight to pull an aluminum blind off the window, but not this one. The blind in this case was compliant with the current ANSI standard. No warning labels or cord cleats would have made a difference here. What would have saved Adam's life? A cordless blind. His life might have been saved if the Department of Defense would have gone cordless on all military housing in the USA when Camp Lejeune had its 3rd incident causing Ashely Cabbage to no longer walk, talk or play again.

This doesn't just happen to parents. The scope should not just be if you have children, Go Cordless. Grandparents care for their children, aunts and uncles care for their nieces and nephews, and other friends and family members also participate in the care of children.

Forty minutes away from the Commission in 2014, Shelia Godwin was getting breakfast ready for her granddaughter. She called for her sweet granddaughter to join her and got no response. She called out her name, Trinity. Trinity. Trinity? Trinity, a 1st grader died on a cord that had a new cord consolidator breakaway device that Home Depot and other retailers are promoting to the public as a safe alternative. It's promoted as safe to consumers which gives a false sense of security. The blinds in Trinity's home were professionally installed. Again we have a child who is at the age that parents give instruction. Go get your hairbrush. Go make your bed. Feed the dog. Put your plate in the sink. Put your clothes away. These are small tasks that we give 1st graders. Small 5 minute tasks. Trinity was up early playing. Grandma thought she had safe products in her home. They were installed professionally. No one thinks that a first grader will end up dead from a breakaway blind cord.

There was nothing wrong with these two children that lived less than an hour from the Commission. They were healthy. They were smart. They were kind. They were going to impact the world someday. But their lives were cut short because of an unnecessary blind cord that is no longer necessary to be on window covering products to make them operate.

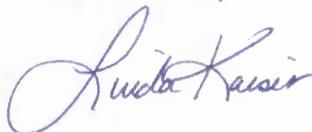
I've heard the argument, not everyone has children so not everyone needs to "Go Cordless." What can you tell Shelia who was caring for her grandchild and lost Trinity while in her care? Please know that grandparents also lose children. Parents have lost children while at the homes of friends who didn't have children. The scope should not be restricted to consumers with children; the scope should include all environments in which children live, visit, play and sleep; all environments which should be safe from hazards so that children can be safe.

My request for the 2017-1018 fiscal year is that the CPSC continues to keep window coverings a top priority. I also ask that CPSC staff consider a Window Covering Safety Campaign similar to Anchor It and incorporate similar funding into the campaign to help educate consumers on the hazards of window coverings. Public Service Announcements, social media education, and working with advocates could help tremendously spread the #GoCordless message in addition to a strong mandatory standard. I plead with all of the Commissioners. It is vital that the mandatory rulemaking process for inaccessible operating cords on stock and custom products moves forward.

Lastly, Bobby Dautrich is very special to me. Bobby is also from Maryland. He has lived most of his life in a wheelchair with this mother taking care of him. He didn't get a fair chance at this world because of a blind cord. Bobby is not the only survivor of window covering cords in a wheelchair or with a severe injury. All incidents are relevant when it comes to window covering strangulation, whether it's a child who was nearly killed with a mark around his neck needing no hospitalization or a child who can no longer see or play because of a window blind cord. Injuries are just as relevant as deaths. It is a matter of seconds between life and death with these types of near death incidents.

Thank you for your tireless work on product safety in this country.

With Gratitude,

A handwritten signature in blue ink that reads "Linda Kaiser". The signature is written in a cursive, flowing style.

by Linda Kaiser

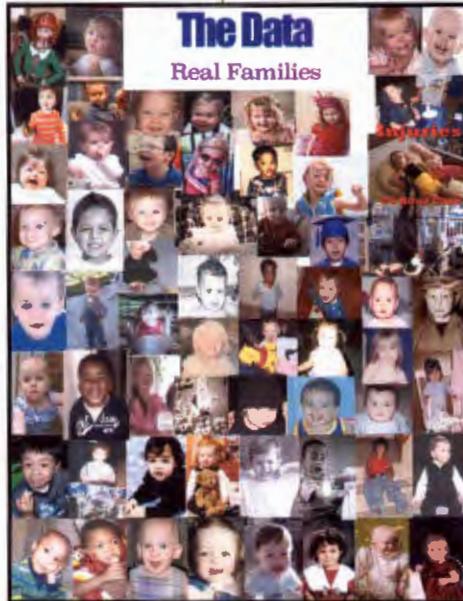
Parents for Window Blind Safety

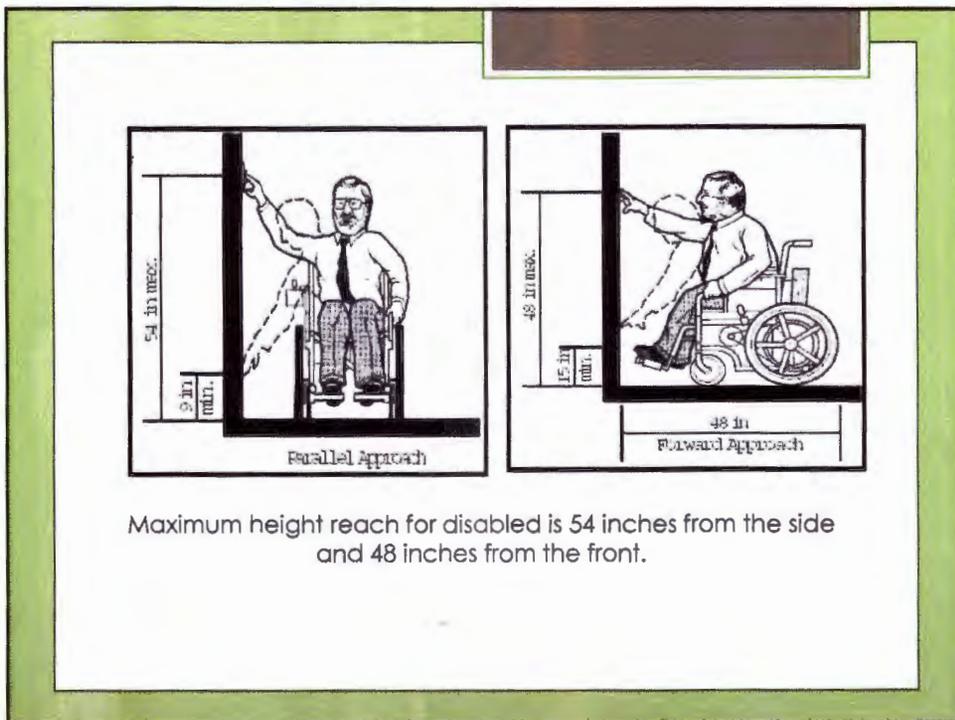
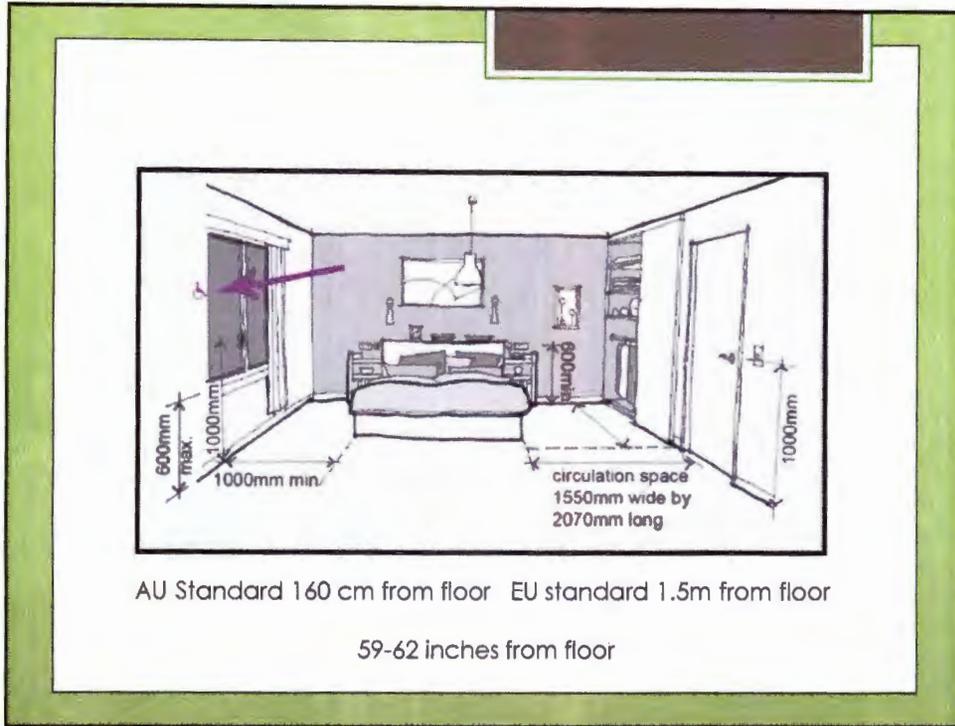
#GoCordless

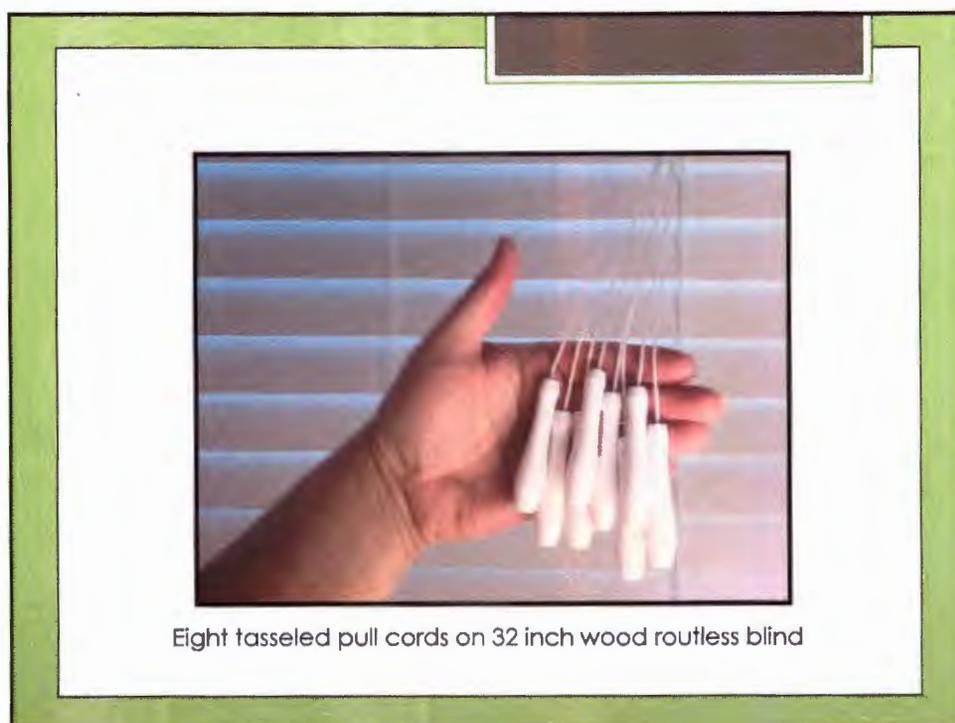


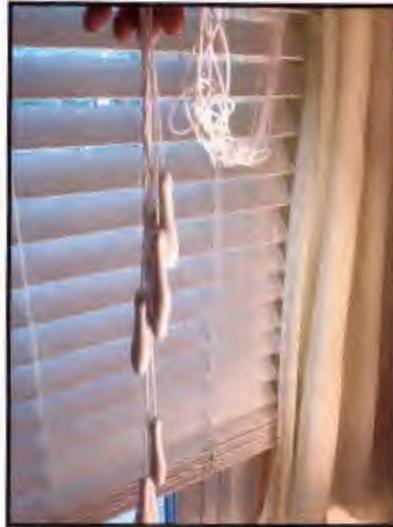
Parents for
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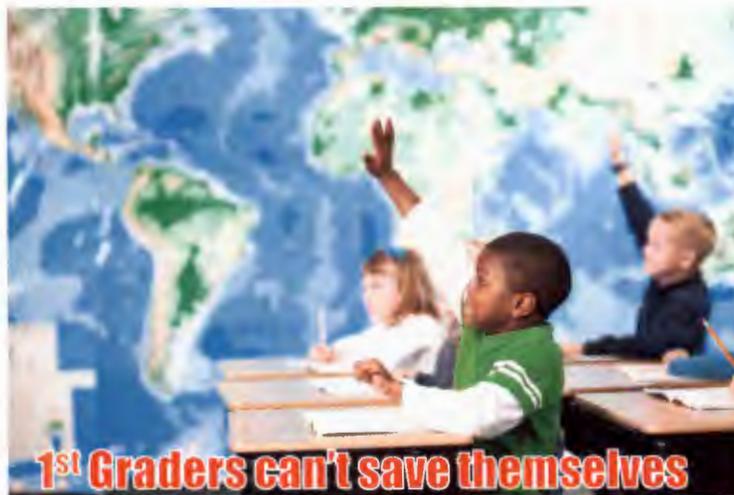
No requirements for cord lengths or amount of cords used



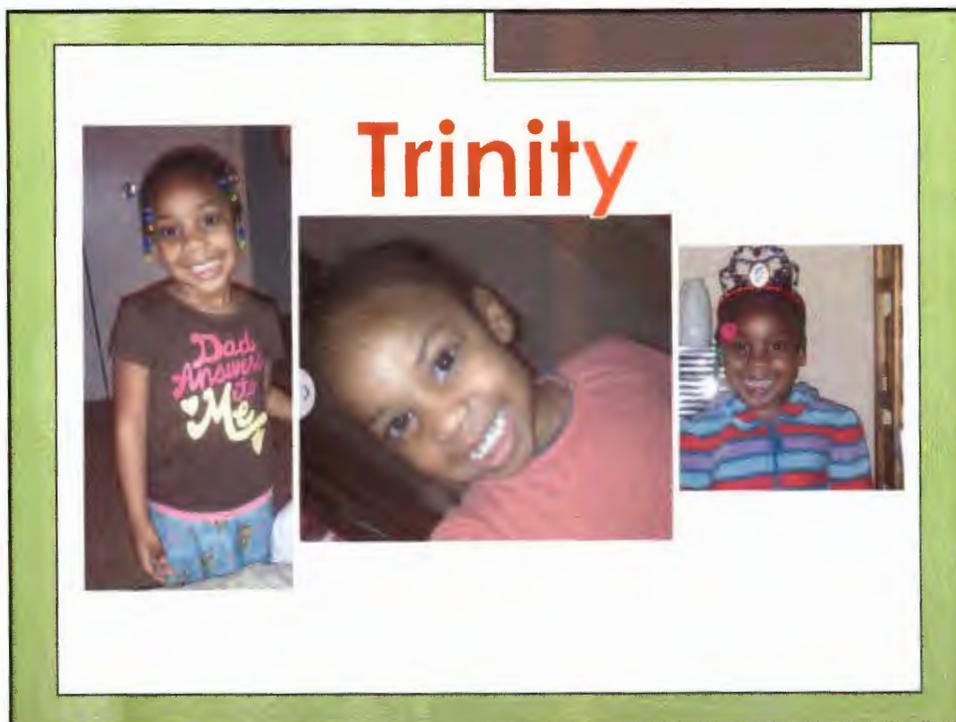
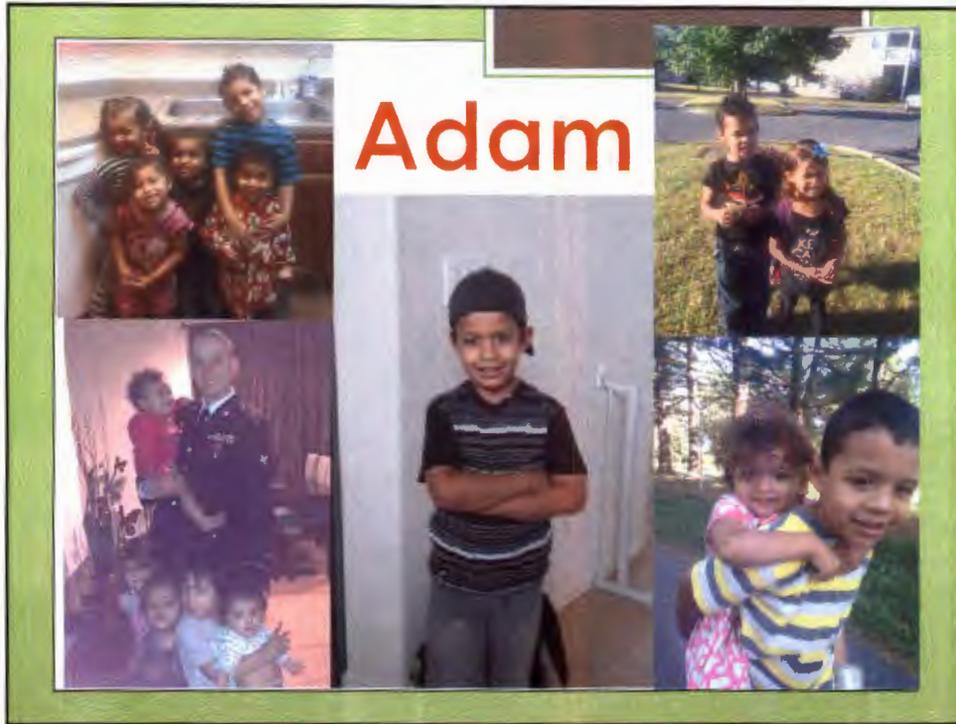
**Children can reach cords placed
"out of reach"**



2016 Makeover: Consumers trust designers will create a safe environment for children.



1st Graders can't save themselves from Blind Cords



Heather Dautrich



Date: June 1, 2016

US Consumer Product Safety Commission
Office of the Secretary
4330 East-West Highway
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Robert Dautrich "Bobby" was born in September 2004 and was completely healthy. Bobby remained completely healthy until the morning of his accident on October 11, 2005. Prior to his injuries Bobby was walking, talking and doing everything that a normal 13 month old would be doing.

On the morning of October 11, 2005 I had got both Bobby and his older brother up fed them breakfast, changed diapers and placed them into a room to play that we thought was safe. The only items in the room were the boy's toys. We lived in old farmhouse at the time and the boys liked to watch the dogs play in the yard so I had gone in the room and put the mini-blind up so the boys could look outside and watch the dogs playing. I placed the cord across the top of the window so they would not play with it. As I left the room I put a baby gate in the door way to contain the boys as I went a few feet down the hall and washed breakfast dishes. A few moments later I turn around to my 2 year old standing in the kitchen with me saying "Mama Mama" (He is also a Special Needs Child) I remember picking him up and saying "Come on lets go get back in the room with your brother". As I placed the 2 year old back over the baby gate that is when I saw Bobby hanging the cord wrapped around his neck and just his heels touching the floor. I tried to untangle him and couldn't so I ran and grab a kitchen knife and cut the cord. At the point Bobby was barely breathing. I started CPR on him and ran to call 911.

When the first arriving Police Officer arrived he took over CPR the next thing I knew a Fire Fighter ran in and grabbed his almost lifeless body and ran out. When the Medics put him on a monitor his heart was 23 and he was still barely breathing. He was rushed to the closest ER. I called his dad and my mom and told them what happened and to come to the hospital. Bobby's Dad worked at the hospital he was taken to and met the ambulance at the entrance. 6 months prior to Bobby's injury we learned that his old brother had Epilepsy. I remember getting to the hospital and being in the code room and hearing people saying watch what you give him he has seizure and say no it's the baby.

Bobby was finally stabilized enough to attempt a transfer to a Children's Hospital. It was raining so he could not be airlifted and the transport team from the hospital could not get to him in time. So a local Fire Department transport us to Children National Medical Center. Bobby was not expected to survive the transfer to the other hospital. Upon arriving at CNMC we were told he was not expected to survive the next 24 hrs. Bobby was placed on life support and placed in the PICU with a special Crisis Nurse that was not allowed to leave Bobby unattended. The next day Bobby was still here. Bobby remained on Life Support for a total of 20 Days coming off and going back on life support 4 times before being able to breathe on his own enough. Bobby spent 5 days on a regular floor before being transferred to a rehab hospital in Baltimore. At this point Bobby was unable to anything on his own. He was not able to eat unless through a feeding tube and was on all types of monitors. We were told he would need a trach and a gtube to survive. Bobby spent a month in a rehab hospital before coming home. When he came home he was on a Feed Pump, Oxygen, Cardiac Monitor and Apneic Monitor around the clock. The Doctors told us that there was no hope and what we were taking home was all we were getting back.

Through a lot of hard work Bobby was able to come off the pumps and machines and learned to eat without the Feeding Pump. As a result of the injuries that Bobby sustained that day he has serve irreversible brain damage. He is 11 years old and currently is about 6 to 7 months in his abilities. Bobby is unable to sit up, stand up, walk or do anything a normal 11 year child can do. Bobby is 100% dependent on an adult for

his care and needs around the clock. He is considered to be have Cerebral Palsy, quadriplegic, legal blind. Bobby is wheelchair bound. Bobby does attend a specialized program through our local school system. Bobby has been able to learn how to do things that doctors said he would never do however will always remain 100% dependent on a care giver for his daily needs.

I am testifying today on behalf of my son to ask the commission to move the Corded Window Covering Petition for Mandatory Rulemaking forward and to keep window coverings a top priority in 2017-2018. Bobby is not alone. There are many other children just like him. Many parents just like me. We want manufactures to produce safe cordless products and cover the cords on products that can't be cordless. We want to see deadly hazardous cords on window coverings something of the past. It is only through the CPSC rulemaking that real change will happen. Asking retailers to go cordless is not enough. Mandatory rulemaking **MUST** happen in order to create a fair market and raise awareness on the issue. I believe in this commission. I know what it can do. I know you are here to protect children and I ask that you protect the future children of America by moving this process forward. Thank you.

Sincerely,

Heather Dautrich

Nancy Cowles

Kids in Danger



IMPROVING
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PRODUCT
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June 8, 2016

Office of the Secretary
Consumer Product Safety Commission
Room 502
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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 2017 and FY 2018”**

Thank you for the opportunity to submit comments on the CPSC’s agenda and priorities. Kids In Danger (KID) is dedicated to protecting children by improving children’s product safety. KID was founded in 1998 by the parents of Danny Keysar who died in a recalled portable crib in his Chicago childcare home. We urge the CPSC to consider prioritizing activity in the following areas.

CPSIA Implementation

Mandatory Standards

Through the implementation of the Consumer Product Safety Improvement Act (CPSIA) and Danny’s Law, the CPSC has put much time and energy into developing mandatory standards for durable infant and toddler products. However, there is still more to do. Currently the CPSC has a mandatory standard for 16 of the 25 durable infant and toddler products currently planned for standards, including portable Hook-On Chairs that will be effective in the fall. This does not include three products – high chairs, children’s chairs and stools, and infant bouncer seats that have proposed rules. We urge CPSC to continue to prioritize this work, giving staff the time and resources they need to develop strong standards that will reduce injuries and deaths from nursery products.

This section of the CPSIA, Danny’s Law or Section 104, was intended to give parents and caregivers the confidence when they purchase products for the care of their infants and toddlers, that someone, somewhere has done all they can to make sure they are safe. This list was originally created in 2001, and updated in 2008 with other products. We would ask the Commission to consider adding new products to the list as they become more common in our nurseries and childcare facilities. Let’s make sure we give parents that confidence for all the durable infant and toddler products – not just those that were commonplace when the bill was adopted.

SaferProducts.gov

The CPSIA also charged the CPSC to create a product database for consumers and manufacturers. *SaferProducts.gov* is the result of this mandate. Tens of thousands

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of consumers have filed reports with the database and many more use it to review product reports that provide key information for research and buying decisions. It is an invaluable resource for safety, and will be even more useful when it is more widely used. The CPSC should prioritize using low-cost efforts to increase the database's visibility and use.

The development of SaferProducts.gov was in part, a compromise on transparency in the Consumer Product Safety Improvement Act. Consumer advocates and others were calling then for a repeal of section 6(b) of the Consumer Product Safety Act. Simply put, 6(b) is a gag order – restricting CPSC's ability to warn the public about product hazards and keeping consumers in the dark about dangerous products they have in their homes and use daily with their families.

While SaferProducts.gov was set up to require public posting of consumer reports of product incidents and injuries, repealing 6(b) would allow many other reports and safety issues to be made public. For example, parents using the Tommee Tippee Sippee cups might have been surprised by the late afternoon – right before the holiday weekend – recall announcement that the lids conceal mold growth – over 3,000 reports and 68 children suffered illness before it was announced publically. The Chairman has recently cited 6(b) in limiting his ability to talk openly about furniture tip-over information. While proponents of 6(b) might point to media reports that share some of this information, consumers should be able to depend on their governmental agencies to talk openly and provide definitive information about product safety – not hear 'we can't say' or 'no comment' on safety. We urge the CPSC to continue to look for ways to weaken section 6(b)'s impact on public information and safety and to join us in calling on Congress to consider a repeal.

Safe Sleep Environments

Among children's product safety issues, a safe sleep environment is an overriding concern to KID. Suffocation – most of it in a sleeping environment – is the leading cause of unintentional death in infants. Danny Keysar died in a recalled portable crib. It was not the recall that made the crib dangerous, but the faulty design that has led to almost 20 eerily similar deaths in cribs of the same design. Whether they are bassinets, portable cribs, play yards, cribs, or some newly designed product or accessory, sleep products must meet the highest standards for safety. It is the one place we leave infants alone – to get some sleep ourselves or do one of the 27 thousand things we cannot get done while the baby is awake. I know that the CPSC also prioritizes the safety of these products. The number of sleep related deaths in infants is too high and is not showing signs of decreasing – it is a public health emergency.

Crib Bumper Pads

Crib bumper pads are an unnecessary risk to sleeping infants. The American Academy of Pediatrics warns against the use of crib bumper pads in their safe sleep guidelines. Because of that and the history of suffocation and possible link to SIDS, almost all hospitals tell parents not to use crib bumpers in the crib. A report last year in the Journal Pediatrics noted that not only was an earlier report – criticized by CPSC staff – correct, but that the suffocation rate from bumper pads was increasing. Retailers such as Target and IKEA have removed bumpers from their shelves. Almost every childcare facility in the country is prohibited from using bumpers. Yet – the CPSC, the agency tasked with safe product use, is silent on the issue -- leaving a huge gap in consumer understanding and putting thousands of babies at risks. As long as the CPSC is silent and bumpers

are still on store shelves, they will continue to be used despite every other health and safety organization warning against their use. The longer the CPSC stays silent, the greater the confusion.

The CPSC has been petitioned to accept the ASTM standard for infant bedding that covers crib bumper pads. Adopting that standard, which only limits bumpers to two inches of thickness – more than twice what most bumpers are already -- simply means that the very type of bumpers we know have suffocated children –would now be labeled by the CPSC as safe. In addition to the direct risk of suffocation from crib bumper pads, there is also the issue of contributing to SIDS by reducing airflow in the crib AND confusing parents on the safe sleep message that encourages a bare crib. It is hard to convince parents to remove padded items such as pillows from the crib when you are selling them a two-inch thick pad to wrap around the crib at the same time. While the CPSC says “bare is best,” we urge you to follow the lead of major retailers, Maryland, and the City of Chicago to stop the sale of padded bumpers.

As the CPSC considers the current petition, we would ask that if a mandatory standard is developed that it prohibit padded bumpers. As more mesh liners enter the market, if they are exempted from the prohibition, the CPSC should include performance requirements that assure their safety. While there is no evidence of a suffocation hazard currently with these products, data should be closely watched.

Inclined Products

Products such as car seats, swings, bouncers, etc. are often used as alternative sleeping equipment by caregivers. However, recent research has thrown this practice into question. Researchers have found that it can take as little as four minutes for an unattended infant to suffocate in these inclined products. A young baby, Shepard Ali, died in Oklahoma on April 6, 2015 when he was left to sleep in a car seat at childcare. Caregivers should be warned of the danger.

Products are marketed that mimic this reclined, but not flat, sleeping position and it has great appeal to parents whose babies seem to have trouble sleeping. The CPSC has added infant inclined sleep products to the Section 104 list to promulgate a mandatory standard. The CPSC should carefully monitor incidents with these sleep products which leave the baby sleeping on an inclined surface for extended periods of time and consider enhancements to the standard to protect against the unique hazards. Best practice is for babies to sleep flat on their backs.

Mesh Play Yard Mattresses

Play yard standards currently warn against using a supplemental play yard mattress. Yet some companies still produce and sell them. Any supplemental padding in a mesh play yard can lead to entrapment and suffocation deaths. A product whose only use is an unsafe one has no place in the marketplace. CPSC has a petition, which KID has signed onto to ban these products. Supplemental mattresses for mesh play yards should be banned or prohibited by a standard.

Other sleep products

Beyond safety and health, there are two main concerns of all new parents – is my baby eating and growing and is my baby sleeping? Products that help parents achieve either of these flood the

market. Nevertheless, they are not all safe – especially sleep products. From cushions to prop babies up, to specific products such as the Nap Nanny, to products intended to help babies share an adult bed: these products enter the market with little or no testing. There are no standards for these products. The CPSC has been working through the ASTM International standard setting process to attempt to find ‘homes’ for different types of products to make sure they have to meet a standard – or can be kept off the market if they can’t. Right now, it is a little bit of the Wild West out there. Entrepreneurs are struck with great ideas – usually in the middle of the night when they are sleep deprived and up with their own babies and rush to market. The CPSC should continue their work to develop standards for all sleep products and make it a priority within the Small Business Ombudsman’s office to provide outreach and vital product safety information to companies producing these products.

Product-Specific Issues

Laundry Packets

Liquid laundry packets are filled with concentrated chemicals strong enough to cause permanent damage or death. Therefore, it is necessary that the CPSC continue to participate in and monitor the ASTM standard-making process. Now that a voluntary standard has been published, CPSC should monitor compliance and work with the ASTM Committee to review data to see the impact on injuries. The CPSC should consider using a Section 104 model to adopt and strengthen the standard.

Furniture Tip Overs

KID is proud to be a campaign advocate of the CPSC’s #AnchorIt education campaign. We believe that increasing the public’s awareness of this deadly, latent hazard is crucial. A lot of time, effort and funding went into developing the program and materials. It should remain a priority to fund #AnchorIt adequately to fully use those resources. The CPSC should also prioritize a strong safety standard.

KID’s TEST program has produced some interesting engineering prototypes that address this very serious issue. These furniture prototypes were designed to resist tipping as effectively as a restraint strap. Other alternative routes should be explored and manufacturers should be challenged to innovate safer products. We did not stop making cars safer once we had safety belts and we should not stop pushing for safe furniture that resists tipping. We cannot ignore the fact that most furniture in America is not anchored to the wall. We can work to both increase the use of anchoring devices and focus on improving furniture design.

Pacifiers

Pacifiers are an integral part of baby care — a soothing product that is beneficial to infants. The American Academy of Pediatrics (AAP) has even suggested pacifiers may [reduce the risk of SIDS](#). Yet a look at SaferProducts.gov reports shows incident and injury reports that raise questions as to whether a review of pacifier safety standards is required.

Because of their potential for choking, pacifiers were one of the only children’s products required to meet a CPSC [standard](#) prior to the passage of [Danny’s Law](#) in 2008. Yet, with continuing reports and recalls, we ask CPSC to begin a review of the pacifier standard and compliance.

Ingestion Hazards

Parents are usually well aware of choking hazards. Ingestion hazards are less understood but present clear dangers. These include button cell batteries, small powerful magnets, liquid nicotine and certain polymer balls that expand with fluid. Serious internal injuries, poisoning and death can be the result. In addition, as wearable technology and smart products multiply, there could be emerging hazards we have yet to identify. The CPSC should encourage manufacturers to use technologies that eliminate or further ameliorate the ingestion risk of these hazards.

Window Coverings

The CPSC has been working to reduce the strangulation risk inherent in window coverings for decades. Yet, the voluntary standard has produced no discernible results. It is time for an effective mandatory standard to take over. It is good that some retailers and manufacturers are heeding the call to #GoCordless. Now CPSC must continue to develop a mandatory standard and promulgate it.

Recall Effectiveness

All the work the CPSC does to investigate, plan and announce recalls is wasted effort if the recall is not effective. We have to lose the mentality that recalling a product is an end goal. Getting it fixed so it is safe to use or back from the consumer is the end goal. KID reviews children's product recalls each year. As part of that report, we look at the recall effectiveness numbers we are able to obtain through Freedom of Information (FOIA) requests for monthly corrective action plan reports. So in our most recent report, looking at recall effectiveness numbers from 2014, we found that 14% of recalled children's products were listed as corrected or destroyed. But for products already with consumers? Just over 1% could be accounted for. To be sure, it is not a complete dataset. Some of the recalls have no reports filed. Other information is redacted. Some we just never receive. I am sure the CPSC can provide a much clearer picture of the numbers from the redacted or missing copies. If it were not for Section 6(b).

Much of the burden from recalls falls on consumers – listening to the news, filling out forms, waiting for and installing repairs. However, consumers are not the ones responsible for recalled products. This imbalance of burden and responsibility should be corrected.

Benchmark requirements for notification measures such as using registration card data and social media and outcome measures such as capture rate should be developed and enforced. Consumers also deserve to know how effective companies are at retrieving dangerous products. KID continues to recommend an annual report to Congress on all open recalls with the current capture rate and action taken outlined. That simple step will encourage manufacturers to improve their own numbers in those reports.

I encourage the CPSC to continue efforts to improve both the corrective action process and the process of maintaining and sharing that data. As new standards, stronger compliance programs and other actions by manufacturers, CPSC, retailers and others ensures fewer recalls, we should make sure those which are announced, are as effective as possible. We look forward to the CPSC's workshop on recall effectiveness to hear other innovative ideas for getting these already identified as dangerous products out of homes.

Staffing

While I am sure it is a matter of much discussion and action behind the scenes, I would also urge that filling empty positions should be a priority. Director of Compliance, General Counsel, Small Business Ombudsman are the most noticeable vacancies. It has to have an impact on performance and outcomes.

Conclusion

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

Lisa Siefert

Shane's Foundation NPF



Shane's Foundation, NFP

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Agenda and Priorities FY 2017

Oral Presentation

Lisa Siefert, Shane's Foundation, NFP

I am Lisa Siefert. I am a mom. I have a 9 year old daughter and my son, Shane, is 2 forever. On March 14th 2011 I put Shane down for his afternoon nap. I later went to wake him and found him under his dresser. I can tell you about the horrors of that day but no words can describe what our family has been through and will be living with the rest of our lives. I can tell you how we had to tell Shane's sister that the doctors couldn't fix Shane and leaving the hospital without him. I can tell you about walking into the funeral home and seeing Shane, so tiny in his little white casket. But words will never describe the pain. Words can't describe waking up every morning to the shock realizing once again Shane isn't here. Trying to answer the questions my daughter asks when we don't understand it ourselves. I can't possibly describe the torment we endure while we live out our lives.

However, I can share Shane's story to help educate people about tip-over dangers. Tip-overs are a hidden danger in our homes, but it's preventable. Through the Anchor It campaign, we can reduce injuries and death. Awareness and education is key to have people take action securing their TV's and furniture. I am proud to be one of the moms in the Anchor It video, and I believe more funding to the Anchor It campaign is necessary. Anchor It had a good start but can reach many more people with a stronger push by getting the video and advertisements national attention. Reaching more people by marketing this message is imperative and will reduce injuries and death from furniture and TV tip-overs. Had a message like Anchor It made us aware of this danger, Shane would have just finished second grade. Anchor It has the power to save lives. Anchor It has the power to save families the same nightmare we went through.

Working with furniture manufacturers for safe furniture is another step in saving children. Enforcing a stronger standard for manufacturers can also have a large impact on reducing tip-over injuries and death.

Recalling furniture that doesn't meet the current voluntary standard now, as well as taking additional steps will:

- 1) bring awareness to the millions of families that own furniture that has already tipped and killed children
- 2) alert the public of tip-over dangers in general and
- 3) send a message to manufacturers to be conscientious of making safe furniture

Here's the statistic: tip-overs send over 22,000 children to the hospital per year and one child dies every two weeks. Is this enough to warrant further funding of the Anchor It campaign?

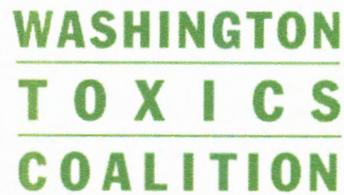
Shane, Chance, Meghan, Braydon, Curren, Ted, Camden, Nick, Katie, Jacob... These children are not just statistics. They are our sons and daughters, our babies, taken away from loving families. We need this message to reach families and save innumerable children. Anchor It has the power to do this.

Member:



Daniel Penchina

Breast Cancer Fund and Washington Toxics Coalition



June 7, 2016

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

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

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

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

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

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

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

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

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

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

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

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

Chemicals in the Broader Scope of Consumer Products

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

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

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

Sincerely,

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

Laurie Valeriano
Executive Director
Washington Toxics Coalition

Also supported by:

Sarah Doll
National Director
Safer States

Panel 2

Mark S. Fellin, MPS, Director of Regulatory & Legislative Affairs
Juvenile Products Manufacturers Association, Inc.

Statement of Mark S. Fellin, MPS
Director of Regulatory & Legislative Affairs, JPMA
Before The US Consumer Product Safety Commission on
“Agenda and Priorities FY 2017 and/or 2018”
June 15, 2016



Thank you Chairman Kaye and Commissioners for the opportunity to provide testimony on your priorities for Fiscal Years (FY) 2017 and/or 2018.

The Juvenile Products Manufacturers Association (JPMA) has a long and proud history of ensuring that juvenile products are built with safety in mind. JPMA members, who are comprised of parents, grandparents and caregivers, design products that help parents care for and protect their children. As an industry, we personally understand the importance of ensuring that our children are safe in all environments and that parents and caregivers are educated about the importance of juvenile product safety and best practices when choosing and using products for their babies and children.

On behalf of the JPMA members I have the honor of submitting and presenting the juvenile product industry’s perspective of the ongoing working relationship between our industry and the CPSC and to provide our suggestions for priorities in the upcoming fiscal years. Since 2012, I have acted in the role of Director of Regulatory and Legislative of Affairs for JPMA. JPMA has a tremendous appreciation for the work CPSC has done since the implementation of the Consumer Product Safety Improvement Act (“CPSIA”) and related amendments thereto. Our Association has a long history of working with state and federal governments to advance JPMA’s core mission to be an information source and to provide leadership for all stakeholders related to the production and safe use of infant products.

CPSC’s engagement with all external stakeholders, including manufacturers, retailers, consumer advocates and safety experts, is key to the agency’s ability to fulfill its safety mission. Regulated industries should be viewed as partners in safety as they have vital information on product specifications, consumer behavior, global supply chains business practices and the real-life impact of regulations on businesses. Consistent stakeholder engagement will aid the CPSC in making better informed decisions and rulemaking, help guide the retroactive review of inefficient and burdensome regulations and perhaps most importantly, address emerging safety risk and hazards. We believe this engagement should be ongoing and formalized. Therefore, we are supportive of the development of Federal Advisory Committees to address ongoing issues that have a significant contribution to CPSC’s mission: import surveillance, recall effectiveness and information collection/management.

My testimony today, on behalf of JPMA, will focus on four areas: (1) Maintaining flexibility and openness as it relates to Section 104 of the CPSIA, more commonly referred to as the “104 rules” and CPSC staff involvement throughout the ASTM process; (2), initiate rulemaking on JPMA’s crib bumper petition to adopt the ASTM standard; (3), proper-

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ly allocating resources to measure and evaluate recall effectiveness ; and (4) continuing to look at ways to reduce third party testing burdens placed on manufacturers and ensure resources are available to industry.

I. 104 Rulemaking

The Danny Keysar Child Product Safety Notification Act, section 104(b) of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”; Pub. L. 110-314, 122 Stat. 3016), requires the United States Consumer Product Safety Commission to promulgate consumer product safety standards for durable infant and toddler products. These standards must be substantially the same as applicable voluntary standards or more stringent than the voluntary standard if the Commission determines that more stringent requirements would further reduce the risk of injury associated with a product.

JPMA has been instrumental in the development of many key standards that have advanced public safety, with participation by expert engineers and product design consultants from our members in ASTM Subcommittees under F15.18 involved in the development of standards on cribs, toddler beds, play yards, cradles and changing tables and other durable infant products. This group received former Chairman Inez Tenenbaum’s inaugural **Chairman’s Circle of Commendation** award for its work as “**crucial** to the development of CPSC’s new mandatory crib standards - the strongest in the world.¹” JPMA and CPSC staff have worked collaboratively throughout the ASTM process. Relying on each others expertise, we have been able to enhance safety through the ASTM consensus process by facilitating the creation of effective standards based upon hazard data.² Unlike most federal standards, such standards do not remain static and are subject to periodic review and update.³ JPMA appreciates all the time and energy that career agency staff expend by attending meetings and providing constructive feedback.⁴ Like any relationship, it is not always without complications. Let me be very clear, our industry appreciates uniform national safety regulations. Our members take time out of their schedules, voluntarily and at their own cost in both time and money, to attend ASTM meetings, chair F.15 subcommittees, perform product testing to investigate whether proposed enhancements to standards improve safety, and provide feedback to the appropriate ASTM subcommittees. The ASTM process is the backbone of many advances in product safety.

¹ <http://www.cpsc.gov/Newsroom/News-Releases/2012/CPSC-Chairman-Inez-Tenenbaum-Awards-Her-First-Safety-Commendations-to-Five-Individuals-and-Groups/>

² Once a standard has successfully cleared the three levels of peer review provided by ASTM (subcommittee, main committee, and Society), it is assigned a fixed alphanumeric designation and receives an official approval date. An ASTM standard is capable of being cited in contractual language, referenced by a code body, or mandated by government as Congress did for toy safety specifications under ASTM F-963 et. Seq. and for Section 104 rules when CPSIA was enacted.

³ Review and potential updates are required every five years at minimum, but often revisions occur more frequently.

⁴ CPSC January 27, 2016 Final Rule to Amend 16 C.F.R. Part 1031 to expand participation of CPSC staff in voluntary standard setting processes.

However, this process is based upon consensus agreement, *only* after consideration of data and sound hazard analysis. In this regard, we do not favor regulating simply for the sake of regulating.

A. ASTM Provides an Effective Forum for Standard Setting.

Over the years, our members have taken CPSC input into account when developing and revising the ASTM juvenile product standards. We believe in the collaborative nature of the process, and that the CPSC plays an important and vital role in that process. As part of this process, CPSC staff must better understand and appreciate the realities of implementing standards for the design and production of actual products. We remain concerned that CPSC staff not arbitrarily change language, placement or dynamic performance requirements within a standard without adequate justification. The ASTM process relies on individual **participants'** ability to comment on draft proposals, initiate revisions to a standard and review a final document before approval to ensure that all issues are vetted appropriately. While this process may take time from a CPSC standpoint, this approach assures that **everyone's** voice is heard and that the **"best standard"** is available for publication and consequently CPSC staff reference during Final Rulemaking as required for durable juvenile products.

In connection with development of ASTM Standards, participants often rely on CPSC staff to provide summaries of verified incident data and engineering analysis as part of the process of risk hazard analysis and development of performance requirements. Historically, such data has been provided while also maintaining confidentiality in accordance with CPSA Section 6 requirements. Unfortunately, such data has not recently been as forthcoming as required.⁵ We urge the Commission to provide such data as is available to ensure all parties have the necessary informed to make informed decisions.

JPMA also agrees with the Commission's recent recognition in its Strategic plan to address this shortfall when it noted "Difficulty in identifying emerging risks, as compared to known hazards, is another data- related area of vulnerability for the CPSC. Each of the strategic goals in the new strategic plan involves strategies and specific initiatives aimed at improving data systems and increasing data-based decision making."⁶

Finally, JPMA urges the Commission to work with Congress to address any potential shortfalls in the timing of 104 rules. On multiple occasions, Congress has provided the Agency with the opportunity to request changes to this process if necessary. To date, the Commission has not taken them up on that offer. Too often it seems that a standard is

⁵ IE: October 19, 2015 letter from ASTM Gate Subcommittee Chair Jon Robinson to staff requesting incident data to support proposed changes to the gate standard and subsequent CPSC response letter dated November 24, 2015 that did not provide requested data or information.

⁶ CPSC Strategic plan 2016-2020 Section 2.1

rushed through the ballot process at ASTM, only to be changed during the final rule. This dynamic leads to the perception that the CPSC is the only expert in the room.

To that end, and as we all are aware, the CPSC has the authority to enforce current ASTM standards. In order to fully evaluate all data and make necessary changes, we would encourage the Agency to request flexibility in that process if the current rate is unattainable or compromising of the process.

Like the CPSC, we share the mutual objective of advancing product safety. Many of us dedicate significant personal time, and resources at ASTM meetings. We appreciate CPSC's dedication to the process and believe staff play a valuable role in the standards setting process.

II. Initiate Rulemaking on JPMA Crib Bumper Petition

JPMA appreciates the Commission's recent February 16, 2016 Federal Register request, "Agency Information Collection Activities; Proposals, Submissions, and Approvals: Crib Bumpers" (CPSC Docket No. CPSC-2012-0034). JPMA and our members submitted comments and data that we believe will be helpful in your efforts to make a scientific determination on the use of this product. As the proper government agency with regards to this product category, we would urge the Commission to initiate rulemaking and make a determination regarding the use of this product.

III. Recall Effectiveness

JPMA believes strongly in the importance of an effective recall combined with government cooperation. Our manufacturers pride themselves on their ability to reach consumers and educate care-givers when a recall occurs. For years, the CPSC has been a tremendous asset in getting potentially unsafe products off the store shelves. The award winning voluntary recalls program⁷ has saved manufacturers countless hours of negotiations and ensured that recalled products are voluntarily removed from the shelves as quickly as possible. Additionally, this program affords the CPSC the opportunity to save staff time and resources by not having to investigate defective product claims. From our perspective, the proposed changes to the voluntary recalls rule are significantly problematic. As the oft used adage asks, "If it isn't broke, why are we looking to find ways to fix it"? The proposed changes will not change the way "bad actors" are currently engaging with the CPSC, but could reduce the efficacy such recalls by responsible actors and lead to conflict in the efficient implementation of voluntary recalls as bureaucratic requirements are imposed and required to be extensively reviewed and negotiated.- Many of our

⁷ <http://www.cpsc.gov/en/Business--Manufacturing/Recall-Guidance/Innovations-in-American-Government-Award-Fast-Track-Recall-Program/>

manufacturers are small “mom and pop” entities who might not have resources to engage in extensive negotiations of formal voluntary recalls as prescribed in the proposed rule.⁸

As you know, recall effectiveness is a top priority for our industry as well as the Commission. We were encouraged by the Chairman’s remarks at ICPHSO regarding a workshop on this very topic. JPMA believes that all stakeholders play an important role in improving recall effectiveness. We would encourage the Commission to allocate the necessary funds to conduct this workshop with stakeholders. Additionally, JPMA would encourage the Commission to set forth its expectations of what is considered an “effective recall.”

By properly measuring results with quantifiable metrics such as consumer understanding of a recall and what it means to their product, customer choice in reacting to that recall, and price point recalls; rather than measuring results based solely on return rates, we can more effectively understand consumer behavior and better target messaging to ensure that all parties are notified of a recall and feel empowered to take the appropriate steps based upon their personal choice.

IV. Third Party Testing Reduction and Manufacturer Resources

Testing is a critical component to product safety assurance. However, small companies are still struggling with crippling costs associated with unnecessary and redundant third party tests, an unintended consequence of the requirements under the Consumer Product Safety Improvement Act of 2008. As mandated by P.L. 112-28, the amendment to the CPSIA, the agency has spent significant time identifying opportunities to reduce unnecessary testing burdens. However, to date, with limited exceptions these funds have gone to efforts that have resulted in very little relief for the manufacturing community. We urge the CPSC to continue to look for meaningful ways to reduce costs while still ensuring compliance.

A. Continue to Fund Ombudsman Office

The CPSC created an Office of the Small Business Ombudsman in 2010 which has proved to be an invaluable resource for small businesses who have CPSC compliance questions. The Ombudsman also spoke to businesses around the world educating companies about how to comply with product safety regulations. Most recently, the Office recently created a tool, the Regulatory Robot which is helpful for small companies to better determine what CPSC regulations would apply to their products. We urge the CPSC to

⁸ In November 2013, the CPSC issued a proposed rule (78 Fed. Reg. 69793) that could negatively impact the Commission’s voluntary recall process and would place significant burdens on manufacturers and retailers. Despite extensive opposition to the proposed rule, and Statements that it was not a priority it remains in the Commission operating plan.

continue to invest resources to this position so that small businesses can continue to have a direct line into the CPSC.

Conclusion

Regulations and legislation play an important and vital role in ensuring that only the safest products make it to market, and JPMA will continue to support and advocate for regulation that is meaningful and beneficial to consumers. The CPSC leadership and staff continue to state that there is an open door policy at the agency for all stakeholders. JPMA and its members take advantage of the opportunity and engage on a regular basis to ensure all information and positions are considered in any decisional matters by the Commission. It is paramount that this policy be maintained and respected for all issues that affect the regulated community and that considerations of thoughtful, insightful and expert industry information is considered during each stage of any process. Without this process, consumers will not be well served.

Finally, as you and your fellow Commissioners look at your individual staff plans for the upcoming year, we would like to encourage and invite you to JPMA's inaugural industry event in the spring of 2017 to be held in Anaheim, CA. This event will bring manufacturers, consumers, retailers, and industry stakeholders together to view new products, discuss safety improvements, and educate consumers about our industry. The event will incorporate and expand upon the programming traditionally offered at the JPMA Washington Summit, to enable a wider industry audience to benefit from direct access to information about the most current regulatory updates and priorities. We believe this is a great opportunity for you to speak to, and meet with, the regulated community and view the new products and innovations in the marketplace. As always, we look forward to our continuing engagement with CPSC and the ability to provide feedback and help in a meaningful way.

Thank you Chairman Kaye and Commissioners for the opportunity to provide JPMA's suggestions as you evaluate your priorities. I look forward to your questions.

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Randall Hertzler
euroSource LLC

June 1, 2016

Todd A. Stevenson
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
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United States of America

CPSC Agenda and Priorities FY 2017-2018 – Concerns for Small Businesses

Introduction

Thank you for the opportunity to comment on the issue of the Consumer Product Safety Commission (CPSC) agenda and budget priorities for fiscal years 2017 – 2018. I'd like to take the opportunity to make clear the concerns of small businesses of which euroSource is one. This community continues to struggle against the economic burden created by the Consumer Product Safety Improvement Act (CPSIA.) The unintended consequences linger and negatively affect small business and stifle the efforts of entrepreneurs. This is especially true for businesses which import or sell products from Europe and those that are not helped by the small batch rule.

Small businesses bring unique and diverse perspectives regarding compliance with CPSC regulations as we work with significantly constrained budgets, low production volumes, and an immense assortment of items.

Burden Reduction Progress

Congress passed Public Law 112-28 in August of 2011 which provided a small batch exemption to third party testing for micro businesses and a pathway for the CPSC to provide burden reduction from third party tests. But it wasn't until January of 2016 that we began to see some results and an actual burden reduction ruling. This delay is largely due to the previous Commission's policy of placing a low priority on burden reduction.

The initial burden reduction covers solid trunk wood and is an expansion of the lead determination to include eight additional heavy metals regulated through the adoption of ASTM F963-11 as a mandatory standard. Even though there is some debate over the usefulness of a determination that specifies where on a tree the wood must come from, it is at least a step in the right direction – albeit a small one.

Achieving Meaningful Burden Reduction

Burden reduction plays a crucial role in the viability of a small business producing children's products. Therefore, it is imperative to turn that first step into one of many. Meaningful burden reduction for the small business community truly centers around determinations used in combination with the component part rule.

The opportunity is before the Commission to set a course responsive to small business by ensuring that burden reduction receives a much higher priority and that the forward progress continues. To this end,

it is necessary that burden reduction be included in the fiscal year 2017 Operating Plan and in the fiscal year 2018 Congressional Budget Request.

For small businesses, the priorities for test burden reduction are as follows:

- 1) Continue to expand the lead determination for natural materials to include the eight heavy elements listed in ASTM F963-11 beyond untreated solid trunk wood.

The research that brought us the trunk wood determination was unable to find sufficient 2nd party data on the following materials: bamboo, beeswax, undyed and untreated fibers and textiles (cotton, wool, linen, and silk), and uncoated or coated paper and paperboard (wood or other cellulosic fiber). I encourage the CPSC to allocate funds for 1st party research on these materials that are unlikely to include any heavy metals. This effort should mirror the efforts used to create the original lead determination in 2009, which was issued within one year of the CPSIA becoming law. This should provide confidence among the Commission that CPSC staff have the knowledge and ability to perform and complete the analysis in an efficient manner.

- 2) Investigate adding manufactured woods to the lead determinations list – and also to a determinations list for ASTM F963-11 heavy metals.

Manufactured woods are a very common raw material for toys. Therefore, first party research to place manufactured wood on a heavy metal determination list has potential to significantly reduce the testing burden for small businesses.

- 3) Examination of international toy safety standards to determine areas where commonality exists and which standard is most rigorous. Testing cost can be reduced by testing once to the most rigorous standard.

Small toy makers in Europe, many who formerly sold to the US market, continue to be excluded from entry because of the cost of meeting multiple and unaligned safety standards. Unfortunately, testing laboratories, for various reasons, are reluctant to perform a single, combination test certification to multiple standards. A compilation of requirements that identifies a single test, significantly reduces testing costs for all children's products businesses that must meet requirements from more than one jurisdiction.

Resolution of these issues reduces the testing burden on children's product manufactures while ensuring compliance with existing standards – exactly what was directed by Congress in 2011. Safety is not compromised. A productive journey down this path:

- 1) reopens the US market to a wide variety of safe toys and children's products,
- 2) sustains small businesses that provide jobs and economic activity,
- 3) and, levels the playing field for businesses with low product volumes.

Conclusion

Small businesses are hindered by excessive costs in their efforts to comply with the Consumer Product Safety Improvement Act. There often is not an economically viable route to compliance. Remedies were identified years ago, Congress provided the directive, CPSC staff demonstrated they are up to the task,

but CPSC policy has de-emphasized burden reduction and there has been little progress towards accommodating small businesses.

I ask that the Commission allocate sufficient funds and resources to the fiscal year 2017 Operating Plan and the fiscal year 2018 Congressional Budget Request to continue burden reduction research and rulings in the areas identified:

- 1) determinations for heavy metals in natural materials,
- 2) a determination for manufactured woods,
- 3) and international standards equivalence and comparison.

Together, these efforts help to keep children's product businesses viable and healthy.

Respectfully,



Randall Hertzler,
President, euroSource LLC – www.eurosourcecellc.com – Lancaster, PA

Charles Samuels

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

June 7, 2016

SUMMARY OF COMMENTS BY CHARLES SAMUELS, MINTZ LEVIN, AT JUNE 15 HEARING ON AGENDA AND PRIORITIES

Critical to effective operation of our federal product safety regulatory regime and to consumer protection is a robust system of Section 15 reporting by regulated entities and appropriate penalties for late or no reporting. The system is under stress in an era of both heightened penalties and increasing scrutiny of less obviously and more minor hazardous patterns of product failures. The situation is exacerbated by an unclear law and regulations, thin guidance, and staff reluctance to communicate regarding the basis for the amount of a civil penalty.

This situation creates an environment of distrust and concerns about arbitrary and inconsistent government action. Fortunately, actions can be taken to improve the CPSC's transparency and ability of the regulated community to understand the reporting and civil penalty regimes without constraining the CPSC from carrying out its critical mission. Use of standard government and stakeholder communication techniques should be explored (e.g., workshops, advisory committees, hearings, outside neutral expert input). This would possibly lead to enhanced guidance and/or new methods consistent with the law and more effectively promoting compliance with the law.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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John Kuppens

Nelson Mullins Riley & Scarborough LLP

John Kuppens
Nelson Mullins Riley & Scarborough LLP
Outline of Presentation

1. Manufacturers of consumer products are entitled to predictability regarding the manner in which the CPSC interprets the CPSA in regulating the conduct of manufacturers.
2. There is currently insufficient transparency about the way the CPSC determines if a Section 15 report has been timely made, and the way the CPSC calculates its recommendations as to civil penalties. As a result, there is insufficient guidance to manufacturers about how to comply with these laws and accompanying regulations.
3. The CPSC's efforts to protect the public and effectively regulate the manufacturing community will be improved if the CPSC is more transparent about:
 - a. the criteria it considers and the weight it gives them in determining whether to initiate a timeliness investigation; and
 - b. the manner in which it applies the subjective factors in the CPSA to arrive at its determination of an appropriate civil penalty.
4. If there is greater transparency and resulting guidance, manufacturers who strive to maintain regulatory compliance will be better able to do so, allowing the CPSC to focus its regulatory efforts on other issues. This will allow the CPSC to better protect the public, and it will improve communication and cooperation between the CPSC and the manufacturing community.
5. To achieve these positive changes, the CPSC should study the way the CPSC currently handles these issues, compare them to other statutory schemes (and their application by other agencies), and assess the pros and cons of possible changes.
6. The CPSC's goals should include providing clear guidance on the issues noted above. Even if the agency were to decide not to issue formal public guidance, more fulsome penalty discussions would at a minimum help add some clarity to the understanding of these issues.

Kerrie Campbell
Chadbourne & Parke LLP

**TESTIMONY OF KERRIE L. CAMPBELL
ATTORNEY, CHADBOURNE & PARKE, LLP**

BEFORE THE UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION

**PUBLIC HEARING
COMMISSION AGENDA AND PRIORITIES FOR FY 2017 and FY 2018**

WEDNESDAY, JUNE 15, 2016

1. Introduction

Chairman Kaye and Commissioners Adler, Buerkle, Mohorovic and Robinson, thank you for this opportunity to comment on CPSC's agenda and priorities. I am pleased to be here today to ask the Commission to make a commitment in Fiscal Year 2017 to establish a framework for transparency, fairness and accountability regarding the Commission's civil penalty determinations.

For the record, my name is Kerrie Campbell. I am a Washington, DC-based attorney in private practice and have served as outside counsel in what we locally refer to as "the CPSC bar" for almost three decades, through many administrations. As most of you and many of the senior Staff are aware, my practice is focused on consumer product safety, compliance and enforcement matters before the Commission, and also representing companies, brands and individuals whose reputations have been wrongfully harmed by the publication of inaccurate or misleading information by the media, competitors or the government.¹ Simply put, over 29 years, I have

¹As one example, I have engaged in an ongoing dialogue with the Commission and Staff regarding the due process protections mandated by Section 6(b) of the Consumer Product Safety Act, but that is different topic for another day.

built a career focused on advocating for the truth, accuracy, fairness and due process.

To be clear, I am not speaking today on behalf of any company, industry or advocacy group. There is no partisan political agenda behind my comments. To eliminate any notion that my advocacy for the truth, fairness and even-handed justice is driven by party politics, I chose some time ago not to be affiliated with a political party. From my perspective, as an officer of the court and tax-paying citizen, truth, fairness and due process are core values in our democracy that do not change depending on the party affiliation of who occupies the White House or is appointed to lead this or any other federal agency.

There has been a lot of talk over the years about protecting our children from harm, and rightly so. We can all agree that keeping kids and others out of harm's way from unreasonable risks of serious injury or death is a paramount objective. I can assure you that the health and well-being of children and young people is near and dear to my heart. That is because I am a working mom who has raised kids into young adulthood as a single parent - three kids of my own and several other teenage boys who needed a safe and loving environment while they worked some things out. I am happy and blessed to share with you that they have all grown up into caring, compassionate, independent, confident, responsible and service-oriented young adults. They do not hesitate to stand up for and protect those who cannot stand up for themselves.

While we talk a lot about keeping kids safe, there has been very little, if any, discussion about the hallmarks of democracy and principles underpinning good governance. This is a subject that warrants fulsome discussion and debate. Truth, transparency, even-handed enforcement and accountability are essential to good governance, to ensure fairness to the regulated community, establish credibility, and foster trust between the government and the

governed. In the plain and succinct words of late Supreme Court Justice Stewart Potter, “[f]airness is really what justice is.”

2. Important Principles Underpinning the Rule of Law in Our Democracy

It’s worth reminding ourselves, those who govern, the people who are governed and, of course, our kids, that democracy is a system of rule by laws, not individuals. The rule of law protects the rights of all citizens, maintains order, and limits the power of government. While the government is empowered to enforce the rule of law, it also serves the people and has a sacred duty to exercise its enforcement power fairly, impartially and consistently. It’s worth reminding ourselves that in our democracy, no one may be punished with civil or criminal penalties arbitrarily and without due process.

I hope we can all agree that enforcing the law fairly, impartially and consistently rises above partisan politics, personal agendas and media attention. I hope we all share the belief that enforcing the law fairly, impartially and consistently serves the people, this agency’s mission and sound public policy.

3. Transparency is Essential to Good Regulatory Governance

The Commission has made clear that the agency has been empowered with great authority to levy severe civil penalties for non-compliance with the law. I submit that this enhanced discretion to demand more severe civil penalties calls for greater transparency regarding the Commission’s decision-making process. There is no shortage of authorities discussing the hallmarks of good regulatory governance. Based on my review of the literature, certain aspects of transparency are consistently emphasized across various government agencies in the United States and other countries, including the following observations:

- Transparency fosters investment and competition by providing a regulatory framework that clearly and predictably defines the regulated community's rights, obligations and risks;
- Transparency reassures the regulated community and consumers that sensitive civil penalty decisions are fair, impartial and consistent;
- Transparency reduces arbitrariness by requiring regulators to publish and justify their decisions;
- Transparency fosters well-reasoned decisions;
- Transparency reduces suspicion of any improper governmental, political or individual motives;
- And, perhaps most important, transparency fosters credibility and trust.

4. Key Elements of Regulatory Transparency

My review of the relevant literature consistently reveals that there are certain key principles to abide by in order to establish good regulatory governance. As one example, four core principles are succinctly described in the "Regulatory Enforcement Policy" of the Petroleum and Gas Inspectorate of the Queensland, Australia Government:

- **Consistency:** "While each situation varies and local factors must be considered, wherever possible a common approach should be sought when dealing with comparable circumstances. This provides greater certainty and fairness for stakeholders."
- **Transparency:** Regulatory Staff "shall demonstrate impartiality, balance and integrity at all times and communicate clearly when compliance activities are undertaken."
- **Accountability:** "Decision making is made at appropriate levels with adequate checks

and balances including explanation, review and documentation.”

- **Proportionality:** “Compliance activities are commensurate with the level of risk, the seriousness of the non-compliance and the public interest.”

Other authorities identify and discuss additional elements of good regulatory compliance, including:

- **Predictability;**
- **Autonomy and Accountability;**
- **Participation; and**
- **Open Access to Information.**

5. Collaborative Process to Establish a Framework for Transparency Regarding the Commission’s Civil Penalty Determinations

The Commission has been empowered with a range of enforcement tools to ensure compliance with the Consumer Product Safety Act and other laws enforced by the CPSC. Civil penalties – and evermore severe civil penalties – appear to be one of the Commission’s top priorities. In order to advance the important principles and objectives discussed in my previous comments today, I respectfully ask and urge the Commission to make transparency regarding the Commission’s determination of civil penalties a priority for Fiscal Year 2017.

To this end, I ask the Commission to consider taking the following affirmative steps in collaboration with the regulated community:

- Make a public commitment to exercise the Commission’s power to pursue civil penalties transparently, fairly, impartially and consistently.
- Study informative data and authorities on the essential features of good regulatory

enforcement policy.²

- Identify a framework to evaluate the current level of transparency regarding the Commission's determination of civil penalties.
- Survey and openly discuss Staff's and Commissioners' views regarding transparency in civil penalty determinations.³
- Identify existing barriers to improving regulatory transparency.
- Is there any legitimate argument against the need for transparency?
- Invite seasoned CPSC practitioners and thought leaders in the private sector to meet and openly discuss the need for a transparent framework regarding the determination of civil penalties.
- In collaboration with stakeholders, develop an institutional model of transparency regarding the Commission's determination of civil penalties.

6. Conclusion

Based on my experience and learning over three decades of working and communicating with the agency, I believe it is imperative to good governance for the Commission to engage in a conversation and collaborative process with the regulated community to establish a framework for transparency regarding the Commission's determination of civil penalties. Making a

² Information informing these comments is drawn from research and concepts discussed in several publications, with particular attribution to PPIAF's [Public-Private Infrastructure Advisory Facility] June 2006 *Gridlines* article, "How to Improve Regulatory Transparency: Emerging lessons from an International Assessment," by L. Bertolini.

³ There are innovative tools readily available to collect and analyze such data and narratives.

commitment to establish a framework for transparency will foster trust, credibility, consistency and fairness that would surely advance the safety mission of the CPSC. I am committed to working collaboratively with the Commission to establish a framework for transparency and welcome the opportunity to do so.

I thank the Commission for the opportunity to present my comments concerning the agency's priorities for Fiscal Years 2017 and 2018.

Panel 3

Karin Bolte, JD, Director, Health Policy

National Consumers League



NATIONAL CONSUMERS LEAGUE

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June 1, 2016

Chairman Elliot Kaye
Commissioners Robert Adler, Marietta Robinson, Ann Marie Buerkle and Joseph Mohorovic
U.S. Consumer Product Safety Commission
4330 EastWest Highway
Bethesda, Maryland 20814

SUBJECT: Agenda and Priorities FY 2017 and 2018

Dear Chairman Kaye and Commissioners:

The National Consumers League (NCL) appreciates the opportunity to submit these comments to you today. NCL is a private, nonprofit advocacy group representing consumers on marketplace and workplace issues. Founded in 1899, we are the nation's oldest consumer advocacy organization.

NCL is focusing its comments today, as we have since 2012, on the issue of table saw safety. Table saws are among the most hazardous products that CPSC regulates. They cause tens of thousands of emergency room-treated injuries each year, including more than 10 amputations every day.

It doesn't have to be that way. Safety technology exists that has been proven to virtually *eliminate* all of these devastating injuries. The Commission was petitioned in 2003 to enact a safety standard to require table saws to meet that level of safety. NCL became involved with this issue in 2010, when we discovered that the agency had done nothing about the petition for seven years. We were gratified the next year when the Commission voted unanimously to begin an ANPR on table saw safety.

Incredibly, however, five years have gone by, and the Commission has yet to issue a proposed rule on table saws. Not even a proposal, let alone a final rule. That is unbelievable to us. NCL has a simple message today: CPSC must act with urgency to finally put an end to the devastating injuries caused by table saws.

Injuries from table saws happen in a split second, but they last a lifetime. NCL has met a number of these victims. They suffer debilitating pain, disfigurement and career-ending, life-altering disabilities. These brave victims came to Washington, DC to meet with you and with their Congressional representatives to urge the CPSC to act as quickly as possible to protect others from the unnecessary suffering they are enduring. Each time, you have given them your time, attention and sympathy. Unfortunately, what you haven't done is enact a safety standard.

As you may recall, last year NCL's Executive Director Sally Greenberg appeared with one of these victims – Joshua Ward from Sisters, Oregon. In 2012, when he was a high school junior in wood shop class, Josh was making cuts to a piece of plywood using an older model table saw. Unfortunately, the plywood caught and kicked back, violently drawing his left hand into the spinning blades, severing three of his fingers, and breaking multiple bones in his hand. He had to undergo numerous surgeries, suffered from recurring infections, and after all of that, he was forced to give up his lifelong dream of becoming a firefighter.

Tens of thousands of people suffer similar injuries every year working on table saws that are more dangerous than they need to be. The CPSC has the power to put an end to these unnecessary tragedies. But you must move quickly because every day brings 10 more avoidable amputations.

As you know, Underwriters Laboratories (UL) has been working for nearly four years on a voluntary safety standard for table saws that would include a requirement for an Active Injury Mitigation System (AIMS). This approach to table saw design has been demonstrated in the field for more than 12 years to greatly reduce the unreasonable risks that manifest tens of thousands of serious injuries each year, including some 3,500 amputations.

NCL sits on UL's Consumer Advisory Council, and we are a big supporter of the work it has done in the past on numerous product safety standards. However, we are deeply disappointed to learn that UL has been unable to produce a UL table saw standard with an AIMS requirement. The UL Standards Technical Panel (STP) used for table saws is heavily dominated by industry members who have voted NO each time UL has proposed an AIMS requirement. UL says it is powerless to overrule the committee's vote. Frankly, we don't understand why UL cannot include requirements it deems necessary to create an adequate safety standard under the UL banner. Unfortunately, as this case illustrates, unless the industry agrees voluntarily to adopt adequate safety measures to protect consumers, the change simply does not occur and consumers remain at serious risk—an unreasonable risk.

We have waited a long time to give the voluntary standards system a chance to bring needed protection to the market, and it has failed to deliver. Since UL cannot do the job to protect users of table saws from these horrendous injuries, consumers must rely on CPSC to take prompt and affirmative action. We urge you to give this project your highest priority.

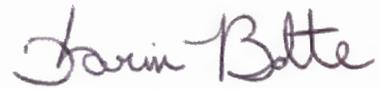
CPSC's operating plan for FY2016 included the expectation that a Notice of Proposed Rulemaking for table saws would be issued by the end of the fiscal year. The Commission's budget request for FY2017 says the Commission expects to issue a final rule within the fiscal year, which ends on September 30, 2017. This rule is long overdue. NCL can't urge you strongly enough to adhere to this schedule. Please put an end to these preventable and heartbreaking tragedies.

Thank you for considering our views.



Sally Greenberg
Executive Director

Sincerely,



Karin Bolte
Director, Health Policy

Rachel Weintraub, General Counsel,
Consumer Federation of America



Consumer Federation of America

June 8, 2016

Testimony of Rachel Weintraub,

Legislative Director and General Counsel, Consumer Federation

Before the

U.S. Consumer Product Safety Commission

Hearing

Commission Agenda and Priorities FY 2017 and 2018

I appreciate the opportunity to provide comments to you on the Consumer Product Safety Commission's (CPSC) FY 2017 and 2018 priorities. I am Rachel Weintraub, Legislative Director and General Counsel at Consumer Federation of America (CFA). CFA 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.

The CPSC has been working hard to fulfill its mission to protect the public from unreasonable risks of injury or death associated with the use of consumer products. The CPSC has effectively been implementing the Consumer Product Safety Improvement Act (CPSIA) as well as addressing other hazards. We also believe that the CPSC should be further prioritizing other safety issues as well.

I. CPSIA Implementation

The implementation of the CPSIA has been and should continue to be of the highest priority for the CPSC. The CPSC has been effectively prioritizing CPSIA implementation. The CPSC has promulgated more rules that it ever has in its history and has done so in a relatively short period. The rules are substantively strong and have an important and positive impact on consumers.

Because of the rules promulgated by the CPSC, 16 infant durable products including full-size cribs, non-full-size cribs, infant walkers, play yards, and strollers 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.

The CPSC has an additional 10 infant durable product rules to promulgate under section 104, the Danny Keysar Child Product Safety Notification Act. The CPSC is currently working on mandatory standards for high chairs, folding chairs and stools, bouncer seats and infant bathtubs. We urge the 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 safety when using children's products.

Another high priority for the CPSC should continue to be the consumer incident database-saferproducts.gov- required by the CPSIA. We recognize the CPSC's current commitment to this important consumer tool and urge the CPSC to maintain that commitment and to research and release information about trends in that incident data. We know that 29,000 reports¹ have been posted to saferproducts.gov and that the database continues to be an important and useful tool for consumers, researchers, doctors, coroners and the CPSC.

We recommend that the CPSC explore how to increase incident reports and use of saferproducts.gov by making it more accessible to consumers with tools such as mobile device applications, website widgets and other means for reporting risks of harm and researching incident reports. Social media and cross marketing could help to raise the profile of saferproducts.gov. As more consumers report more information to CPSC about product hazards, CPSC will be better equipped to respond more quickly to emerging hazards and trends.

II. Product Safety Hazards

While the CPSC is working on the following issues currently, we urge the CPSC to prioritize these issues.

1. Emerging Hazards

A. Hoverboards

Incidents on hoverboards are increasing daily. The CPSC is actively investigating at least 62 fires in 24 states. Fires due to faulty wiring as well as fall related injuries have appeared in the media across the country. Universities across the country have banned these products on their campuses. In January, the CPSC sent out a useful and important statement on hoverboards, warning consumers of potential risks, announcing that the agency is conducting investigations about the growing incidents and providing recommendations for consumers. The CPSC announcement has been relied upon by the many entities who have sought to protect their students or citizens from these hazards. The CPSC also issued a statement indicating that an online retailer will allow full returns for the return of hoverboards and provided a list of manufacturers of hoverboards being actively investigated. The CPSC also urged companies that are continuing to import, manufacture and distribute hoverboards that do not comply with the new voluntary standard, UL 2272, to stop doing so and has indicated that recalls of unsafe products are expected.² We urge the CPSC to follow up on their strong statements and recall hoverboards that pose risks to consumers.

¹ Accurate as of May 31, 2016.

² Letter from Acting Director of Office of Compliance and Field Operations to Manufacturers, Importers and Retailers of Self-Balancing Scooters, February 18, 2016, available on the web at <http://www.cpsc.gov/Global/Business-and-Manufacturing/Business-Education/SelfbalancingScooterLetter.pdf?epslanguage=en>

Unfortunately, we know that there is still consumer confusion about whether the hoverboard they own poses risks to their families. We urge consumers to return their hoverboards bought on Amazon and other entities that will accept them and urge CPSC to issue recalls as soon as possible.

B. Crumb Rubber

Potential safety concerns have been raised about the crumb rubber from tire scraps that is used in the mats and padding for playground surfacing and synthetic field surfacing. Health risks posed by these materials could include lead exposure and cancer risks. In 2008, CPSC issued a statement indicating that artificial turf made from crumb rubber was “ok to install and ok to play on.”³ CPSC has distanced itself from that release indicating potential uncertainty about the safety of these materials. Consumers are uncertain and concerned.

The state of California’s Office of Environmental Health Hazard Assessment is conducting a comprehensive review of crumb rubber and the CPSC is monitoring this work and providing technical assistance. The CPSC is also working with other agencies which have jurisdiction over this product. We applaud the CPSC’s recent announcement about its work with the Environmental Protection Agency and the Centers for Disease Control to conduct research on recycled tire crumb rubber.⁴ CFA agrees that the uncertainty over the safety of crumb rubber is problematic and looks forward to obtaining more information about the safety of this material.

2. Long Standing Hazards

A. Window Coverings

In May of 2013, CFA, 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.

At least 285 children have been killed or seriously injured by accessible window covering cords between 1996 and 2012, despite six industry attempts at developing adequate voluntary standards. The voluntary standard process, starting from the first standard in 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.

³ Available on CPSC’s website at: <http://www.cpsc.gov/en/newsroom/news-releases/2008/cpsc-staff-finds-synthetic-turf-fields-ok-to-install-ok-to-play-on/>.

⁴ Chairman Kaye’s statement on Federal Research Action Plan on Recycled Tire Crumb, available online at <http://www.cpsc.gov/en/About-CPSC/Chairman/Kaye-Biography/Chairman-Kayes-Statements/Statements/Press-Statement-from-US-CPSC-Chairman-Elliott-F-Kaye--Praising-the-Federal-Research-Action-Plan--On-Recycled-Tire-Crumb-Used-On-Playing-Fields-and-Playgrounds/>

In a tragic twenty-two day period in 2014, four children were strangled to death by cords on a window covering: a 6-year-old girl in Maryland on February 8th; a 3-year-old girl in Texas on February 15th; a 4-year-old boy in Georgia on February 17th; and a 2-year-old boy in Maryland on March 1st. Each of these children died after the cord of a window covering strangled them. In 2014, we know of 9 deaths and in 2015, we are aware of 6 deaths, though that number is likely to increase as additional data is released.⁵

Deaths and injuries can be eliminated by designs that already exist and that are already available in the market.

A strong mandatory standard by the CPSC is necessary to protect children. For almost 20 years, the voluntary standard has failed to address the strangulation threat posed to children. We appreciate that the CPSC has granted the petition we filed with other groups and has moved forward with an Advanced Notice of Proposed Rulemaking. We further urge the CPSC, in light of the history of the voluntary standard and the documented and persistent hazard that cords on window coverings pose to children, to continue to move forward with the mandatory rulemaking process that will effectively address the hazards posed by window covering cords. Time is of the essence as these products pose risks to children every single day.

B. Flame Retardants in Consumer Products

Flame retardants can be found in numerous types of consumer products and are chemicals that have been associated with serious human health problems, including cancer, reduced sperm count, increased time to pregnancy, decreased IQ in children, impaired memory, learning deficits, hyperactivity, hormone disruption and lowered immunity. These chemicals migrate continuously out from everyday household products into the air and onto dust. As a result, 97 percent of U.S. residents have measurable quantities of toxic flame retardants in their blood. Children are especially at-risk because they come into greater contact with household dust than adults do. Studies show that children, whose developing brains and reproductive organs are most vulnerable, have three to five times higher levels of flame retardants than their parents.

The CPSC is considering a petition filed by the American Academy of Pediatrics, American Medical Women's Association, Consumer Federation of America, Consumers Union, Green Science Policy Institute, International Association of Fire Fighters, Kids in Danger, Philip J. Landrigan, M.D., M.P.H., League of United Latin American Citizens, Learning Disabilities Association of America, National Hispanic Medical Association, Earth Justice and Worksafe.

The petition urges the CPSC to adopt mandatory standards under the Federal Hazardous Substances Act to protect consumers from the health hazards caused by the use of nonpolymeric, additive form, organohalogen flame retardants in children's products, furniture, mattresses and the casings surrounding electronics.

The CPSC has clear authority under the Federal Hazardous Substances Act to regulate potentially toxic chemicals and there is clear legal precedent for the CPSC to regulate a class of chemicals.

⁵ These 2015 deaths occurred in Montana in January, Oregon in February, California in March, Georgia in March, Florida in August and Virginia in August.

There is strong scientific evidence documenting the hazards posed to consumers by these chemicals and we urge the CPSC to take action on this issue soon. We also urge the CPSC to prioritize this issue and to take effective steps to protect consumers from the health hazards posed by flame retardants, while not diminishing fire safety protections.

C. OHV Safety: ATVs and ROVs

(1) All-Terrain Vehicles (ATVs)

According to the most recent data released by the CPSC,⁶ at least 93,700 people were injured while riding all-terrain vehicles (ATVs) seriously enough to require emergency room treatment in 2014. The estimated number of ATV related fatalities was 638 in 2013, though the 2013 data is not considered complete and the number of fatalities will almost certainly grow as more data is received. In 2014, ATVs killed at least 61 children younger than 16, accounting for 16 percent of ATV fatalities. Fifty-four percent of children killed were younger than 12 years old. Children under 16 suffered an estimated 24,800 serious injuries in 2014. This represents 26 percent of all injuries.

The CPSC must prioritize the issue of ATV safety. The CPSC's ATV rulemaking was required to be finalized in August of 2012, and we applauded the CPSC for holding an ATV Safety Summit in October of 2012, but that was almost 4 years ago. We urge the 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.

In March 2014, CFA released a report, "ATVs on Roadways: A Safety Crisis." CFA evaluated laws from all fifty states and the District of Columbia and found that, in spite of warnings from manufacturers, federal agencies, and consumer and safety advocates that ATVs are unsafe on roadways, for several years an increasing number of states have passed laws allowing ATVs on public roads. In April of 2015, we updated the report to include recreational off-highway vehicles (ROV) and found that all states that allow ATVs on roads also allow ROVs on roads.

The design of ATVs makes them incompatible with operation on roads. ATVs have a high center of gravity, and narrow wheel bases, which increase the likelihood of tipping when negotiating turns. The low-pressure knobby tires on ATVs are explicitly designed for off road use and may not interact properly with road surfaces.

Data from the CPSC and from the National Highway Transportation Safety Administration's (NHTSA) Fatality Analysis Reporting System (FARS) documents that a majority of ATV deaths take place on roads.

⁶ 2014 Annual Report of ATV-Related Deaths and Injuries Statistics <http://www.cpsc.gov//Global/Research-andStatistics/Injury-Statistics/Sports-and-Recreation/ATVs/2014atvannualreport.pdf> in 2014. The estimated number of ATV related fatalities was 638 in 2013, though the 2013 data is not considered complete and the number of fatalities will almost certainly grow as more data is received.

- According to the CPSC's data from 2007, as analyzed by the Insurance Institute for Highway Safety, 492 of the 758 deaths for which location was identified, or 65% of ATV fatalities, occurred on roads.
- According to the CPSC's data, ATV on-road deaths have increased more than ATV off road deaths.
- According to NHTSA's FARS database, as analyzed by the Insurance Institute for Highway Safety, 74% of ATV deaths occurring on roads occurred on paved roads.

In spite of the fact that a majority of ATV deaths occur on roads and that ATVs are incompatible with road use, CFA found that:

- 36 states, or 71%, allow ATVs on certain roads under certain conditions.
- Of these 36 states, 23 states, or 64%, have passed laws allowing or expanding ATV access on roads since 2004. Four states passed such laws in 2013 alone and New Mexico became the 36th state in 2016.
- 32 of the 36 states, or 89%, that allow ATVs on roads delegate some or all of the decisions about ATV access to local jurisdictions with authority over those roads.
- While not a complete list, CFA is aware of at least 64 state and local proposals to increase ATV access to roads since 2013.

In 2015, we documented 504 OHV fatalities and 473 could be identified as on or off road. Of those 473 fatalities, 272, or 58%, took place on roads. In 2014, 282 or 57% of those fatalities identified as on or off road, took place on roads. We urge the CPSC and Congress to prioritize this issue, to be a strong voice in opposing the operation of OHVs on roads, and to be a leader in educating consumers about the dangers of on-road OHV use. Additionally, the CPSC could improve ATV death data by including how many deaths occur on private versus public roads.

(2) Recreational Off-Highway Vehicles

ROVs pose hazards to consumers and the CPSC's staff is aware of 335 deaths and 506 injuries related to ROV crashes from January 2003 to April 2013. An analysis of ROV crashes reviewed by the CPSC found that 68% of the crashes involved rollovers and 52% of these rollovers occurred while turning the ROV. Where seat belt use is known for fatal victims, 86% of victims were ejected from an ROV, and 91% of those victims were not wearing a seat belt.

CFA and its partners documented at least 75 fatalities associated with ROVs from January 2015 through December 2015. This number may grow as more data becomes available about additional deaths.⁷

The standard goes further than it has in the past by addressing vehicle handling requirements and the mandatory driver side seat belt reminder and speed limiter. We did not oppose the draft standard, however, we believe additional issues should be addressed as well, including an increase of the

⁷ CFA Press Release, January 7, 2016, available on the web at http://consumerfed.org/press_release/more-than-500off-highway-vehicle-deaths-in-2015/.

stability tilt table test angle to 37 degrees (if a trip rail is required, 35 degrees if no trip rail is required), a maximum speed based on requirements for designed use and rider ability, full doors, and a focus group tested hang tag design so that consumers will be aware of and understand the tilt table test results, and standard placement and easy access to VIN and PIN numbers and information.

CFA also strongly supports the CPSC's proposed rule for ROVs because it seeks to strengthen the voluntary standard by effectively addressing key issues that pose potential hazards to consumers and we oppose legislative efforts that render CPSC unable to move forward with the rulemaking.

D. Furniture Tip-Overs

According to the CPSC's most recent data, every two weeks, a child dies as a result of a piece of furniture, appliance or television falling on him or her. Further, each year, more than 38,000 children are injured as a result of a piece of furniture, appliance or television tipping over. Between 2000 and 2011, there were 363 tip-over related deaths. Eighty-two percent of those deaths involved children younger than 8 years old.⁸ While the ASTM standard for furniture has recently been strengthened, much more needs to be done to improve the standard. Further, increased efforts are necessary to bring all of the stakeholders together to collectively address this increasingly problematic, multifaceted and dangerous injury pattern. We applaud the launch of the #anchorit campaign. Further, we urge the CPSC to continue to work to decrease these tragic deaths and injuries by undertaking compliance efforts that remove hazardous products from the market and from consumer's homes.

E. Button Cell Batteries

Button cell batteries pose serious and potentially fatal ingestion hazards to children. In January, a 2 year-old in Oklahoma died after swallowing a button cell battery.⁹ According to the National Capital Poison Center, every year more than 3,500 people ingest button batteries.¹⁰

According to a study released in June of 2012 in the American Academy of Pediatrics Journal,¹¹ *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.

We urge the CPSC and others to continue their work to strengthen the relevant voluntary standards to include a provision to enclose securely all button cell batteries.¹² We understand that progress has been made but that there is more work to do. We also urge the CPSC to work in support of design changes that would eliminate the serious health hazard posed by ingestion. While the CPSC has indicated that they are encouraged by efforts that have resulted in new safety warnings and

⁸ CPSC Report, Preliminary Evaluation of Anchoring Furniture and Televisions Without Tools, May 2015.

Available on the web at: <http://www.cpsc.gov/PageFiles/182505/Tipover-Prevention-Project-Anchors-withoutTools.pdf>

⁹ <http://www.nydailynews.com/news/national/oklahoma-2-year-old-dies-ingesting-battery-article-1.2482468>

¹⁰ National Poison Center, Swallowed a Button Battery? Battery in the Nose or Ear? <http://www.poison.org/battery/>

¹¹ Samantha J. Sharpe, BS, Lynne M. Rochette, PhD, and Gary A. Smith, MD, DrPH, Pediatric Battery-Related Emergency Department Visits in the United States, 1990–2009, *Pediatrics*, Volume 129, Number 6, June 2012

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

¹² Id.

packaging changes in the United States, we hope that those changes do successfully reduce button cell battery ingestions.

F. Laundry Packets

Highly concentrated single-load liquid laundry detergent packets pose a serious risk of injury to children when the product is placed in their mouths. According to the American Association of Poison Control Centers (AAPCC):

“Some children who have put the product in their mouths have had excessive vomiting, wheezing and gasping. Some get very sleepy. Some have had breathing problems serious enough to need a ventilator to help them breathe. There have also been reports of corneal abrasions (scratches to the eyes) when the detergent gets into a child’s eyes.”¹³

In 2016, thus far, 4,900 kids 5 and younger were exposed to laundry packets.¹⁴ In 2015, there were 12,594 exposures and in 2014 there were 11,714.¹⁵ In 2013, poison centers received reports of 10,395 exposures to highly concentrated packets of laundry detergent by children 5 and younger.¹⁶ Thus, exposures are increasing.

According to a 2016 *Pediatrics* study,¹⁷ child exposures to laundry detergent packets rose 17% from 2013 to 2014. Children exposed to laundry detergent packets were 5 to 23 times more likely to be hospitalized and 8 to 23 times more likely to have a serious medical outcome than children exposed to other detergent types or forms. In addition, the deaths of two children were associated with laundry detergent packets.

Based on two years of data, the National Poison Data System (NPDS) reported that 769 children required hospitalization for injuries that included seizures, vomiting blood, fluid in the lungs, dangerously slow heartbeats, respiratory arrest, gastric burn, and comas, as a result of ingesting the contents of these packets. An analysis of this data published in the November 14, 2014, edition of *Pediatrics*¹⁸ found that in

¹³ Laundry Detergent Packets, American Association of Poison Control Centers, <http://www.aapcc.org/alerts/laundry-detergent-packets/>

¹⁴ Laundry Detergent Packets, American Association of Poison Control Centers, <http://www.aapcc.org/alerts/laundry-detergent-packets/>

¹⁵ Laundry Detergent Packets, American Association of Poison Control Centers, <http://www.aapcc.org/alerts/laundry-detergent-packets/>

¹⁶ American Association of Poison Control Centers <http://www.aapcc.org/alerts/laundry-detergent-packets/>

¹⁷ Pediatric Exposures to Laundry and Dishwasher Detergents in the United States: 2013-2014; Gary A. Smith Mallory G. Davis, Marcel J. Casavant, Henry A Spiller, Thiphalak Chounthirath ; OI: 10.1542/peds.2015-4529 *Pediatrics* 2016;137; originally published online April 25, 2016; Available on the web at: <http://pediatrics.aappublications.org/content/pediatrics/137/5/e20154529.full.pdf>

¹⁸ Pediatric Exposure to Laundry Detergent Pods, Amanda L. Valdez, Marcel J. Casavant, Henry A. Spiller, Thiphalak Chounthirath, Huiyun Xiang and Gary A. Smith, *Pediatrics*; originally published online November 10, 2014; <http://pediatrics.aappublications.org/content/early/2014/11/05/peds.2014-0057>

900 NPDS cases, 42% involved packets that were stored within sight or left out, 11% of cases involved temporarily open outer packages, and another 9% of cases involved improperly stored packets.

In a policy statement issued by the AAPC on laundry packets they stated: “The American Association of Poison Control Centers (AAPCC) supports rigorous safety efforts pertaining to single-load liquid laundry packets (Laundry Packets), e.g., through packaging, labeling, product design, information dissemination, storing, handling and usage education, or otherwise.”¹⁹

While the voluntary standard addresses the packaging container of the packets to some degree, the burst strength and flavor of the packets and includes warning labels, more should be done. Our organizations have urged that the voluntary standard not only ensure that the outer packages are child resistant, but also require that the packets are individually wrapped to prevent ingestion or eye injuries and that there be comprehensive requirements for addressing the taste and burst strength of the film covering the packets (based on current European Union (EU) requirements). Multiple layers of safety are needed to protect children from hazards posed by laundry packets – particularly given that a significant number of children have gained access to loose detergent packets, and when they do, injury can be almost immediate. Critically, all relevant data should be reviewed to determine whether the voluntary standard is effectively reducing incidents.

In addition, CFA believes that the most effective way to prevent laundry packet incidents is to require child-resistant packaging to cover liquid detergent packets; address the design and color of the packets, so that they aren't as attractive to children; address the composition of the packets, so that the consequences of exposure are less severe; and ensure the adequacy of the warning labels, to properly inform consumers about the risk.

While the voluntary standard has been finalized, we appreciate the active role that the CPSC has played in the voluntary standard process and urge the CPSC to continue to prioritize this issue to ensure that the voluntary standard effectively addresses the hazards posed by laundry packets. We further urge the CPSC to carefully monitor the incident data to ensure that incidents are in fact decreasing. If the data indicates that the voluntary standard is not successfully addressing the hazard posed by laundry packets, we urge the CPSC to move forward with an effective mandatory standard.

G. Adult Bed Rails

In May of 2013, CFA, the National Consumer Voice for Quality Long-Term Care (Consumer Voice), bed rail activist Gloria Black, and 60 other organizations¹ filed a petition with the CPSC requesting a ban on or an effective mandatory standard for adult portable bed rails. The petition also requested that the CPSC recall dangerous bed rails and refund consumers.

The CPSC has been aware of deaths and injuries involving bed rails since 1985. In an October 11, 2012 report from the CPSC, “Adult Portable Bed Rail-Related Deaths, Injuries, and Potential Injuries: January 2003 to September 2012,” the 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-

¹⁹ AAPCC Position Statement on Single-Load Liquid Laundry Packets
https://aapcc.s3.amazonaws.com/files/library/AAPCC_Laundry_Packet_Position_Statement.pdf

portable bed rails. The 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 the 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."

While we are engaged in the voluntary standard effort to address this issue, we urge that this process move more quickly and continue to urge the CPSC to move forward with a ban, an effective mandatory standard, and a recall of and refund for dangerous bed rails as well as a meaningful and effective voluntary standard.

H. Baby Bumpers

We urge the CPSC to take strong action to ban baby bumpers. In 2013, the state of Maryland took strong action to ban baby bumpers as has the city of Chicago in 2009 and the state of New York is considering the issue now. In 2013, the 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 that 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. The CPSC will review the science, 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 the CPSC will evaluate the role that bumper pads have played in at least 48 bumper related infant deaths.

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

I. 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.²⁰ Suffocations were the second highest cause of death (motor vehicle deaths ranked first). As part of the CPSC's work on safe sleep environments, the 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.

In addition, CFA supports the petition filed by Keeping Babies Safe regarding supplemental mattresses and urges the CPSC to initiate a rulemaking to ban supplemental mattresses for play yards and other similar products with non-rigid sides.

The petition included an analysis of CPSC fatality data from 2000 through 2013, which documented that at least 15 children died while sleeping on supplemental mattresses. These deaths involved a child being

²⁰ CDC, Vital Signs: Unintentional Injury Deaths Among Persons Aged 0–19 Years — United States, 2000–2009 http://www.cdc.gov/mmwr/preview/mmwrhtml/mm61e0416a1.htm?s_cid=mm61e0416a1_w

wedged between gaps created when the supplemental mattress was added to the play yard or portable crib. Thus, supplemental mattresses pose an unreasonable risk of injury to children.

The current standard for Non-Full-Size Baby Cribs/Play Yards (ASTM F406-13) acknowledges the known suffocation hazard posed by additional mattresses in a non-full-size crib or play yard through including a warning label that warns consumers never to use a supplemental mattress. However, the fact that stores sell supplemental mattresses for play yards even though the voluntary standard warns that consumers shouldn't use them confuses parents and contradicts the intent and meaning of the warning label. Significantly, the sale of supplemental mattresses undermines the strength of the warning labels on play yards.

A ban on supplemental mattresses is necessary and consistent with the current mandatory standard. Further, the standard, alone, cannot address the sale of these products. While the standard acknowledges the suffocation hazard posed by supplemental mattresses and warns consumers not to use them, additional changes to the standard cannot impact the availability of these products to consumers. A ban by the CPSC is the only effective mechanism to protect children from this known hazard.

We urge the CPSC to act as quickly as possible to ban these products as their availability in the market place undermines the intent of the warning on the voluntary standard, confusing consumers and putting children at risk every day.

J. Upholstered Furniture

CPSC should continue 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 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.”

In that letter, we also raised concerns about the continued use of halogenated fire retardants even after this rule is promulgated and urged the CPSC to require labels indicating such use. We reaffirm the statements made in our 2008 letter and urge the 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.

K. Low Income Child Safety

In 2013, 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?*, which was based on dozens of academic studies as well as the available, but incomplete, statistical data, 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 incidences 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.

We urge the CPSC to consider including information indicating socio-economic status collected through the National Electronic Injury Surveillance System (NEISS). 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.

III. Enforcement

1. Recall Effectiveness

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 that they own and to ensure that consumers effectively repair or remove the hazardous product from their home. We urge the 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 the 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. We support the CPSC's proposed Voluntary Recall Rule and urge the CPSC to finalize this rule which will increase recall effectiveness.

2. Import Surveillance

We applaud the CPSC's current commitment to enforcing its safety mission at the ports of entry to the United States. The CPSC is seeking user fees to establish a self-sustaining full-scale Import Surveillance program. This funding mechanism is similar to that of CBP and FDA. With the profound increase in imported products coming into the United States, the CPSC's efforts at the ports, in cooperation with U.S. Customs and Border Protection, are 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 CPSIA as well as other mandatory standards and regulations under the purview of the CPSC.

3. Civil and Criminal 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 FY 2016, thus far, the CPSC has collected 2 civil penalties, ranging from a record \$15,450,000 to \$2,000,000; and no criminal penalties. In FY 2015, the CPSC collected 10 civil penalties, ranging from \$4,300,000 to \$700,000 and no criminal penalties. In FY 2014, the CPSC collected 4 civil penalties, ranging from \$600,000 to \$3,100,000; and no criminal penalties. In FY 2013, the CPSC collected 7 civil penalties, ranging from \$400,000 to \$3,900,000; and one criminal penalty of \$10,000. In FY 2012, the CPSC collected 10 civil penalties, ranging from a consent decree, to monetary penalties ranging from \$214,000 to \$1,500,000 million dollars; and no criminal penalties. In FY 2011, the CPSC collected 14 civil penalties, ranging from a consent decree for a permanent injunction, to monetary penalties ranging from \$40,000 to \$960,000; and one criminal penalty for \$16,000. In FY 2010, the CPSC collected 7 civil penalties, ranging from \$25,000 to \$2,050,000 million; and no criminal penalties. In FY 2009, the CPSC collected 37 civil penalties, ranging from \$25,000 to \$2,300,000; and no criminal penalties.

Civil and criminal penalties serve an important deterrent effect to non-compliance with the laws enforced by the CPSC and we urge the CPSC to prioritize this important element of its enforcement responsibilities and applaud the CPSC for collecting a civil penalty in 2016 that will act as a deterrent to failing to comply with CPSC rules and laws. We urge the CPSC to continue to collect significant penalties when the violations represent problematic disregard for the CPSC's laws.

IV. Conclusion

In conclusion, the CPSC plays a critical role ensuring that consumers are safe from product hazards. 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.

ⁱ 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)

William Wallace, Policy Analyst

Consumers Union



POLICY & ACTION FROM CONSUMER REPORTS

Written Comments of Consumers Union to the U.S. Consumer Product Safety Commission
on "Agenda and Priorities FY 2017 and/or 2018"
Submitted to the Office of the Secretary: June 8, 2016
William C. Wallace, Policy Analyst

On behalf of Consumers Union, the policy arm of Consumer Reports,¹ thank you for the opportunity to testify about the CPSC's agenda and priorities. The following comments highlight several areas of work that we hope the agency will emphasize.

Durable Infant and Toddler Products

We strongly support and applaud the CPSC's ongoing efforts under Section 104 of the Consumer Product Safety Improvement Act (CPSIA). As a result of the robust safety standards developed through this process, numerous infant and children's products are manufactured to be far safer than they once were, and compliance must be tested and certified by a third party.

As the CPSC's work continues in this area, we hope we will soon see strong final rules on high chairs, infant bath tubs, infant bouncer seats, sling carriers, and children's folding chairs and stools. We also understand that CPSC staff plans to propose rules over the next six months regarding gates and other enclosures, residential changing tables, infant inclined sleep products, stationary activity centers, and booster seats. We look forward to reviewing these proposals.

Consumer Reports has offered consumers guidance on selecting and using several of the products that are the subject of current Section 104 rulemaking efforts, and has provided specific safety recommendations including which types of products to avoid for safety reasons.² Of

¹ Consumers Union is an expert, independent, nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. It conducts this work in the areas of food and product safety, telecommunications reform, health reform, financial reform, and other areas. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

² See, e.g., "High chair highlights from Consumer Reports' tests," Consumer Reports Online (June 8, 2015) (online at www.consumerreports.org/cro/news/2015/06/high-chair-highlights-from-consumer-reports-tests/index.htm). See also "Bouncer Seat Buying Guide," Consumer Reports (online at www.consumerreports.org/cro/bouncer-seats/buying-guide.htm); "Baby bathtub buying guide," Consumer Reports (online at www.consumerreports.org/cro/baby-bathtubs/buying-guide.htm); "Baby Carrier Buying Guide," Consumer Reports (online at www.consumerreports.org/cro/baby-carriers/buying-guide.htm).

course, as the Commission knows from its own education efforts, recommendations are no substitute for enforceable rules setting a minimum level of safety for infant and children's products. With that in mind, we urge the Commission to continue, in fiscal years 2017 and 2018, to make its Section 104 activities a top priority.

Emerging Product Hazards

We appreciate that the Commission considers it a priority to detect consumer product safety risks in a timely and accurate manner, and understands the importance of its data analysis and research capabilities in doing so. Its public communications about new, previously unknown hazards and its related work with manufacturers and retailers can help keep consumers safe from hazards in new products or existing products that present new hazards. For instance, we credit the CPSC's outreach on self-balancing scooters, or "hoverboards," with helping consumers and retailers learn that many of these products presented a risk of fall and of electrical fire. We at Consumer Reports are committed to doing our part, too, as demonstrated by our testing, our coverage of CPSC statements and actions, and our warnings to consumers about misleading claims by hoverboard brands.³

We also appreciate that the agency recognizes—including in its draft strategic plan⁴—that identifying emerging product hazards and taking action on them presents unique challenges. We are concerned that it sometimes takes too long for the CPSC to meaningfully respond to new hazards when they emerge. For example, despite the agency's commendable public outreach and work with standards-setting bodies on hoverboards, we are concerned that the hazards were not identified until consumers had bought hundreds of thousands or even millions of the products, and many dangerous products remain both in homes and on the market, leaving consumers at risk. We understand that this is a multifaceted issue, and we look forward to working with the agency during fiscal years 2017 and 2018 to address any and all barriers that may exist to quicker action.

We note one additional point. When a product with an emerging hazard is overseen not just by the CPSC, but also by another federal agency, we urge the Commission to nevertheless assert its essential role in protecting consumer safety. We hope this is now the case in the CPSC's joint work with the CDC and the EPA to assess possible risks related to crumb rubber, and also urge the Commission to assert its role to address consumer safety issues that may exist related to unmanned aircraft systems, more commonly called drones. The CPSC is the agency with the expertise to address potential product safety hazards, and we urge it not to hesitate to get involved, even when another agency is wielding oversight of a product.

³ See "Hoverboard Safety: Consumer Reports Puts Self-Balancing Scooters to the Test," Consumer Reports (Dec. 15, 2015) (online at www.consumerreports.org/electronics/hoverboard-safety-consumer-reports-puts-self-balancing-scooters-to-the-test); "Safety Agency Wants Retailers to Stop Selling Hoverboards," Consumer Reports (Jan. 21, 2016) (online at www.consumerreports.org/electronics-computers/cpsc-wants-retailers-to-stop-selling-hoverboards); "Beware Misleading Claims from Hoverboard Brands," Consumer Reports (Feb. 2, 2016) (online at www.consumerreports.org/electronics-computers/beware-misleading-safety-claims-from-hoverboard-brands).

⁴ U.S. Consumer Product Safety Commission, *2016-2020 Draft Strategic Plan* (Jan. 25, 2016) (online at www.cpsc.gov/Global/About-CPSC/Strategic-Plan/DraftCPSC20162020StrategicPlan.pdf).

Furniture and Television Tip-Overs

We appreciate the agency's work to improve public awareness of the hazard from furniture and television tip-overs. This includes the agency's excellent "Anchor It!" campaign to encourage parents and caregivers to securely anchor furniture and TVs. However, we remain very concerned about the continued risk of injury or death to young children.⁵ With a child injured every 24 minutes, on average, as a result of a TV or furniture tip-over incident, we continue to urge the Commission to use every tool at its disposal to ensure hazardous products are addressed in a manner that eliminates known risks. We also look forward to working with the CPSC, our non-profit and public health partners, and all stakeholders to improve the inadequate voluntary industry standards covering some of these products.

Corded Window Coverings

We believe that hazardous, accessible window covering cords present an unreasonable risk of injury to young children. In May 2013, we and eight other groups petitioned the CPSC to promulgate a mandatory safety standard for window coverings.⁶ We are glad the Commission has advanced the petition since that time, and appreciate the work commissioners have done to raise awareness about the hazard, engage retailers, and push manufacturers toward constructive action.

We urge the Commission to keep moving forward as expeditiously as possible. To prevent future tragedies, we continue to support the development by the CPSC of a mandatory standard to eliminate the risk of strangulation.⁷ We urge the CPSC to propose such a rule without delay.

Liquid Detergent Packets

In light of the unique risks posed to children by liquid laundry detergent packets—which are much more appealing and toxic to children than regular detergent, and which have generated more than 45,000 calls to U.S. poison control centers since 2012—Consumer Reports no longer recommends these products, and will not do so until safety standards lead to a meaningful drop in injuries. We also strongly urge households where children younger than 6 are ever present to skip these laundry pods altogether.⁸

⁵ See "Letter to CPSC regarding IKEA furniture tipping from Kids in Danger, Consumer Federation of America, Consumers Union, and the National Center for Health Research," Consumers Union (Apr. 26, 2016) (online at consumersunion.org/news/letter-to-cpsc-regarding-ikea-furniture-tipping).

⁶ Parents for Window Blind Safety et al., *Petition for Rulemaking: Eliminating Accessible Cords on Window Covering Products* (May 2013) (docketed by CPSC as CP13-2 at www.regulations.gov).

⁷ See "Safety standards for window blinds and shades need to be tougher," Consumer Reports (June 5, 2015) (online at www.consumerreports.org/cro/news/2015/06/window-covering-safety/index.htm).

⁸ See "The problem with laundry detergent pods," Consumer Reports (July 16, 2015) (online at www.consumerreports.org/cro/magazine/2015/07/the-problem-with-laundry-detergent-pods).

We applaud CPSC for its education and outreach work on the hazard posed by liquid laundry packets, and its influential participation in the ASTM International process to establish a voluntary safety standard for them. We are hopeful that this standard will lead to a meaningful drop in injuries, and are currently working closely with all stakeholders to ensure that there is adequate data to measure the standard's effectiveness. However, given the demonstrated ongoing threat to young children, we continue to urge CPSC to consider promulgating enforceable standards if the voluntary standard is not effective.

Safe Sleep

We remain very concerned by the continued risk to infants from padded crib bumpers. As we wrote in joint comments to the CPSC in April, the current voluntary standard requirements for padded bumpers have not decreased the risk to babies, and the only way to truly prevent bumper-related injuries and deaths is to completely remove them from the marketplace.⁹ We urge the Commission to promulgate rules that would ban padded crib bumpers from sale.

We also are concerned by the availability in the marketplace of supplemental mattresses specifically designed for use in play yards.¹⁰ The continued sale of these products enhances children's risk of suffocation and plainly undermines the current mandatory safety standard for play yards, adopted by the CPSC in 2012. We support the pending petition by the organization Keeping Babies Safe to ban supplemental mattresses for play yards, and urge the Commission to initiate a rulemaking to do so. It should start this rulemaking without delay, rather than postponing action until 2017 as proposed by the FY 2016 Midyear Review.

Phthalates

We remain concerned about the serious health risks posed by certain phthalates and were pleased to see the agency publish a proposed rule last year. We strongly support the majority of the rule's provisions, though in crafting a final rule, we continue to urge CPSC to revise the proposed rule to make permanent the interim bans on DIDP and DNOP, and to permanently ban DIOP.

Other Areas of Concern

Surveillance and Enforcement

We commend the CPSC for its commitment to monitor imports of children's products as rigorously as possible, and at as many ports of entry as possible, to prevent, to the fullest extent possible, entry of dangerous children's products into the U.S. marketplace. CPSC should also continue to more broadly monitor the marketplace to ensure that older unsafe products, including

⁹ Kids In Danger, Consumer Federation of America, and Consumers Union, *Consumer comments on CPSC request on crib bumper pads* (Apr. 18, 2016) (online at www.regulations.gov/#!documentDetail;D=CPSC-2012-0034-0017).

¹⁰ See "Play Yard Safety Tips for Traveling Families," Consumer Reports (Dec. 9, 2015) (online at www.consumerreports.org/play-yards/Play-Yard-Sleep-Safety-for-Baby).

drop-side cribs, are removed from the second-hand market and childcare facilities.

Effective implementation of product recalls remains a challenge. We urge the CPSC to continue to make this a priority, working with manufacturers to increase public awareness of the importance of product registration and to better ensure effective public notice of recalls.

SaferProducts.gov

We have long supported, and continue to strongly support, the *SaferProducts.gov* public database. Thanks to this tool, consumers, medical providers, and safety professionals are better informed about potential safety hazards in the marketplace. Industry also receives valuable feedback regarding hazards associated with their products.

In FY 2017 and 2018, we encourage the agency to continue its efforts to make *SaferProducts.gov* as up-to-date and consumer-friendly as possible, to increase public awareness and use of this tool, and to use consumer postings to help track trends and identify emerging hazards. We also encourage the agency to conduct frequent follow-up investigations of recurring types of consumer complaints.

Flame-Retardant Chemicals

As a co-petitioner, Consumers Union strongly supports the request by Earthjustice, the Consumer Federation of America, and nine other groups for CPSC to promulgate rules on certain flame retardant chemicals.¹¹ Consumers rightly expect products in their homes to meet flammability standards—but not at the expense of being exposed to potentially toxic chemicals. CPSC should ban the use of non-polymeric, additive organohalogen flame retardants in children’s products and the other specified product categories under the Federal Hazardous Substances Act (FHSA), and encourage manufacturers to instead use barriers and inherently non-flammable materials. This authority under FHSA is not altered by the recent passage of chemical safety reform by Congress. We urge you to grant the petition to protect consumers from the documented health risks of the specified flame retardants in household products.

Liquid Nicotine

We support the expeditious implementation of the Child Nicotine Poisoning Prevention Act, which directs CPSC to require child-resistant packaging for the most accessible kinds of liquid nicotine containers.¹² We urge the agency to use all its available tools to reduce the risk to children of poisoning from highly toxic liquid nicotine.

¹¹ Earthjustice et al., *Petition HP 15-1 Requesting Rulemaking on Products Containing Organohalogen Flame Retardants* (July 1, 2015) (online at www.regulations.gov/#!docketDetail;D=CPSC-2015-0022).

¹² See “New Packaging Law Aims to Protect Kids From E-Cig Liquid Nicotine Exposure,” *Consumer Reports* (Jan. 28, 2016) (online at www.consumerreports.org/children-s-health/new-packaging-law-aims-to-protect-kids-from-e-cig-liquid-nicotine-exposure)

Bike Helmets

Consumer Reports will soon release its newest story and updated ratings on bike helmets.¹³ We will stress that biking presents a greater risk of head injury than many consumers may think. We thank the CPSC for speaking with us during the development of this story, and look forward to working with the agency and all stakeholders to ensure that the CPSC bicycle helmet standard continues to drive the market toward helmets that provide greater protection from impact.

Outdoor Equipment

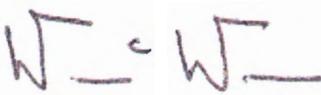
We remain concerned about injuries resulting from outdoor equipment, including pressure washers, which we scrutinized in a story published this March. An analysis of CPSC data showed that pressure washers sent several thousand consumers to the emergency room last year. Due to an extreme potential risk of laceration, we are no longer recommending pressure washers that come with nozzles that produce sprays of less than 15 degrees, and are asking manufacturers to stop including tips and settings that produce streams finer than 15 degrees.¹⁴

We are also concerned about carbon monoxide poisoning caused by portable generators used indoors and in partially-enclosed spaces, such as garages. We are pleased that CPSC makes generator safety a priority, and we urge the agency to consider a briefing package before the end of this fiscal year that includes solutions for reducing and eliminating generator-related hazards.

Conclusion

In conclusion, we greatly appreciate CPSC's important efforts to address hazards associated with consumer products, and applaud the Commission for its leadership and achievements over the past year. We look forward to continuing to work with the agency to fulfill its mission in FY 2017 and 2018.

Respectfully submitted,



William C. Wallace
Policy Analyst
Consumers Union

¹³ "A Head Start on Safety," *Consumer Reports*, Vol. 81, No. 8 (Aug. 2016).

¹⁴ "Pressure Washer Safety Alert," *Consumer Reports* (Mar. 8, 2016) (online at www.consumerreports.org/pressure-washers/safety-alert-under-pressure).

Joyce Davis, PhD., President

Keeping Babies Safe

DRAFT Testimony

Good morning. My name is Joyce Davis and I am a founder of Keeping Babies Safe, a non-profit, national organization that is committed to ensuring every baby in America sleeps safely, with the safest products on the market.

It has been 16 painful years since my four-month-old son, Garret, was killed when we added a supplemental mattress to his play yard. He rolled over and suffocated. This mattress was advertised as suitable and safe.

Many of you already know my story. That terrible day changed my life, and the lives of my family and friends. This tragedy was the reason I founded “Keeping Babies Safe,” with the hopes and prayers that other families won’t face the same tragedy.

Over the past year, I felt some of my prayers were to be answered. The U.S. Consumer Products Safety Commission unanimously agreed to docket our petition to ban the sale of this awful product, as it has been so misused across America.

I am disheartened to learn that the CPSC may not consider this ban in its 2016 fiscal year – even after the public comment you received was 99 percent in favor of a ban.

Today, and on every other day in America, there is one painful reality: the same supplemental mattress that killed my baby is still regularly sold in stores and online.

While the CPSC still considers this petition, and may push off a decision until the 2017 fiscal year, the rest of us can’t wait for another baby to die.

We continually reach out to retailers to show how this product has proven fatal for babies. We send links to a short KBS video that demonstrates what can happen to a baby when he or she is wedged between the side of a supplemental mattress and the mesh of a soft-sided play yard and how easy it is for this to happen. We send certified letters to these retailers; we rally the local media to recognize this paramount issue. We have made some headway.

Such superb companies as Toys R Us, Sears, Kmart, buy buy Baby and Wayfair are working closely with us to ensure these products are never sold in their stores or online.

Yet it is amazing to me that other major retailers, such as Walmart, Target and Amazon continue to sell deadly supplemental mattress. They tell us that they are waiting for you to make a decision - even though so many organizations and individuals tell them the product they are selling is causing babies to suffocate.

They don’t argue or even hint to us that they believe supplemental mattresses are safe. They provided no evidence to the contrary.

We have repeatedly attempted to remind these retailers that there are *mandatory* hazard labels printed on all play yards - in accordance with ASTM F406-13 disclosing the risks of using supplemental mattresses. Parents are told not to use these mattresses, and are instructed to only use the original mattress pad contained in the play yard package. Still, these major retailers and others – in direct contravention of their own warning labels - continue to sell these dangerous mattresses creating confusion in the marketplace. In 2014, KBS was asked to present our findings at the ASTM play yard mattress meeting. We showed the warning labels, various supplemental mattresses, photos of an entrapped baby and then asked all the retailers and manufacturers in the room if they would allow any of their family members to use these products. The answer was unanimously “NO.”

Confusion remains. Because this risk is not readily apparent when shopping for products separately or together, many young families innocently buy products that are so dangerous to little ones – they mistakenly rely on the idea that a major retailer wouldn't sell something unsafe. That is why we have filed this petition with the Consumer Product Safety Commission. The warning labels have failed.

Without your action, these supplemental mattresses will remain available to consumers. Putting off a decision until 2017, sends the wrong message about the severity of this issue and rewards manufacturers and retailers which are violating their own standard. That is why we so desperately need you to finally act. Please. In fiscal '16 to ban these mattresses.

As you wait, retailers and manufacturers are acting with reckless disregard to these hazard labels by intentionally ignoring these warnings and choosing to manufacture and market these supplemental mattresses. Such retailers and manufacturers are profiting on families who trust the brands; it has been very distressing to watch.

In December, we were not surprised to learn that the American Academy of Pediatrics (AAP) has joined in our effort to urge this commission to ban the sale of supplemental baby mattresses. According to AAP, supplemental mattresses for play yards do not have a place in a safe sleep environment. These products pose a suffocation hazard to infants.

We hope this support from the AAP and many health care experts nationwide will help encourage you to vote on this ban. In April, the CPSC released its latest fatality reports of babies suffocating in soft-sided play yards; it proves, yet again, that we continue to lose infants while our petition is debated and discussed. The causes of infant death that occur during sleep have increased in incidence, including suffocation, asphyxia and entrapment.

The updated data from 2014-16 shows the number of infants who lost their lives. I can read you the numbers. But I think we all agree that any number is unacceptable when it comes to easily preventing these deaths. We seek a ban on a product - supplemental mattresses – that fulfils no greater good; but instead, is a product that industry has already determined to be unsafe as set forth in warning labels that they have adopted themselves years ago.

We simply seek to remedy a loophole in commerce that allows manufacturers and retailers to put into commerce a product that they themselves know to be unsafe. Warning labels are important, but in this case the warnings are being circumvented by certain manufacturers and retailers for pure profit. For all of these reasons, a total ban on the sale of supplemental mattresses is necessary.

No other mother should have to suffer the way I have, as there is a clear and obvious way to prevent further tragedy. I urge and implore you to approve our petition that calls for the banning of the sale of supplemental mattresses in retail establishments and online in the United States.

Please, please, please. Make this ban a priority in fiscal 2016. There is absolutely no reason to wait.

Thank you.

end

Sarah Denny, MD, FAAP, Member AAP Counsel on
Injury, Violence and Poison Prevention, Executive Committee
American Academy of Pediatrics

American Academy
of Pediatrics



DEDICATED TO THE HEALTH OF ALL CHILDREN™

June 15, 2016

Comments of

Sarah Denny, MD, FAAP

Member, AAP Council on Injury, Violence and Poison Prevention

Executive Committee

On behalf of the

American Academy of Pediatrics

Comments before the

U.S. Consumer Product Safety Commission

“Commission Agenda and Priorities, FY2017”

Good morning Chairman Kaye, and Commissioners Adler, Buerkle, Mohorovic, and Robinson:

My name is Dr. Sarah Denny, and I am here today on behalf of the American Academy of Pediatrics (AAP). The AAP is a non-profit professional organization of 64,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults.

I am a pediatrician and currently serve on the AAP's Council on Injury, Violence, and Poison Prevention Executive Committee. I am an Associate Professor of Pediatrics at The Ohio State University College of Medicine, and an attending physician in the Division of Emergency Medicine at Nationwide Children's Hospital in Columbus, Ohio.

The AAP appreciates the opportunity to make recommendations to the U.S. Consumer Product Safety Commission (CPSC) on its agenda and priorities for the 2017 fiscal year.

Unintentional injuries are still the number one cause of death in children 1-19, and the fifth leading cause of death for newborns and infants under 1.¹ The AAP strongly supports all efforts to reduce the incidence of child unintentional injury and related morbidity and mortality.

Pediatricians look to the guidance of CPSC in communicating to parents the safety of durable infant and toddler products and toys, environmental hazards, and household dangers. Parents and caregivers trust that the products they provide for their children are safe because CPSC monitors hazards to proactively prevent harm to children. The AAP appreciates the large jurisdiction that the CPSC has, and the many different hazards it must address. All children deserve a safe environment in which to live, grow, and play, and the agency's work is vital to ensuring that.

Below are the areas that the AAP believes the CPSC should prioritize in the coming fiscal year in order to protect children's health and safety.

Safe Sleep Messaging

The AAP appreciates CPSC's ongoing work to promote safe sleep, but much work remains to reduce the high incidence of sudden unexplained infant death (SUID). While much progress was made on SUID early in the government efforts, we have seen very little progress in reducing SUID in a decade or more, and in some high-risk groups the rates are going in the wrong direction. The U.S. Centers for Disease Control and Prevention (CDC) estimate that there are nearly 3,500 SUID cases in the U.S. each year.ⁱⁱ The CPSC is in a unique position to help address the public health problem of SUID through its jurisdiction over infant products and opportunities to communicate with families, caregivers, and health care providers. We call on CPSC to use its position to promote improved understanding of how best to promote safe sleep among high-risk families, and to reduce the hazard posed by certain infant sleep products.

CPSC should strengthen its safe sleep messaging by banning crib bumpers. The CPSC's awareness campaign has been a useful tool for pediatricians seeking to help parents understand what constitutes a safe sleep environment for babies, and we are glad to see that the information is available in Spanish as well as English. The Commission should continue its work promoting safe sleep behaviors and removing unsafe sleep products from the marketplace including work with other federal agencies and stakeholder groups, including the AAP. Crib bumpers have no place in a safe sleep environment, and we urge the CPSC to ban them. There is no evidence that

bumper pads prevent injuries, and there is a potential risk of suffocation, strangulation or entrapment.

In addition, the AAP supports a ban on supplemental mattresses in play yards with non-rigid sides. Supplemental mattresses for play yards with non-rigid sides do not have a place in a safe sleep environment. These products pose a suffocation hazard to infants. The availability of supplemental mattresses is contradictory to the safety standard for cribs and play yards and undermines efforts to promote a safe sleep environment. These regulatory actions, investigation of optimal safe sleep messaging, and sustained public health communication will be central to CPSC efforts to address SUID.

Laundry Detergent Packets

Research carried out by Dr. Gary Smith and colleagues at Nationwide Children's Hospital in Columbus was published in the journal *Pediatrics* in April of 2016 and found that laundry detergent packets pose a uniquely dangerous threat to children when compared to non-packet laundry detergent and both packet and non-packet dishwasher detergent. This national study looked at data from the National Poison Data System, and found that child exposures to laundry detergent packets rose 17 percent from 2013 to 2014, and child exposures to these products totaled 22,064 over that period. In addition, children exposed to laundry detergent packets were 5 to 23 times more likely to be hospitalized and 8 to 23 times more likely to have a serious medical outcome than children exposed to other detergent types or forms. Laundry packets were

associated with two deaths and were the only detergent products tied to coma, cessation of breathing, and excess fluid in the lungs.

This April 2016 study followed an article from November 2014, also published in *Pediatrics*, which found that children younger than 3 years accounted for 73.5% of cases examined.ⁱⁱⁱ As a pediatrician, I am keenly aware that the developmentally appropriate behaviors of 1- and 2-year olds can put them in danger of poisoning; they can walk, climb, are good with their hands, and put everything into their mouths. To a young child, these products look delicious. From the published research, we know that most of time, children ingest these colorful products or otherwise burst them open, and expose their mouths, stomachs, skin, and eyes to the detergent's powerful chemicals.

These products are uniquely hazardous to children and exposures to them are rising, necessitating strong standards to prevent child poisonings. The AAP has participated in the ASTM process, but we have concerns about the ASTM F3159-15 voluntary standard published last fall, as it does not include a number of elements urged by pediatricians. For example, the ASTM voluntary standard does not require the laundry packets to be individually wrapped to keep children from easily accessing them if a caregiver drops one or if a container is left open momentarily. This is important for ensuring that children are not exposed to these dangerous products when their parents or caregivers are transporting their laundry within the house or to a laundromat.

We urge CPSC to stay engaged in the ASTM process, and to ensure that follow-up of the implementation of the standards entails public health surveillance tracking of the number of child exposures to laundry detergent packets to assess the standard's effectiveness. If the ASTM standard does not do enough to protect children from laundry packet hazards, the AAP supports passage of the "Detergent PACS Act," which would require the CPSC to create a mandatory standard to make these packets child-resistant, like many other hazardous cleaning materials. The bill would also require CPSC to ensure that the packets are less attractive and less likely to cause harm to children if children ingest them or are otherwise exposed to them.

Liquid Nicotine

Liquid nicotine poses a serious child poisoning hazard. This product comes in a variety of strengths, with some varieties containing up to 36 mg of nicotine per milliliter of liquid. A standard-sized bottle of liquid nicotine at this strength would be enough to kill four toddlers. Even when absorbed through the skin, it can cause serious harm. It is also attractive to children, with bright colors and candy flavors that appeal to children such as cotton candy and gummy bear. These products are also easily accessible, as there is no current federal requirement for child-resistant packaging. With the rising popularity of e-cigarettes, liquid nicotine refills are becoming increasingly common in households across the country.

Given the hazard this product poses, its easy accessibility, and ubiquity, it is not surprising that liquid nicotine poisonings are increasing at a rapid rate. The AAP strongly supported the enactment of the *Child Nicotine Poisoning Prevention Act of 2015*, which requires

CPSC to enforce a mandatory child resistant packaging standard starting in July. We urge the Commission to thoroughly examine this issue and prepare for prompt enforcement. Pediatricians stand ready to work with CPSC compliance staff to support your critical enforcement efforts.

Window Coverings

Window covering safety is another area that we believe should be a priority for the CPSC. Window covering cords present an avoidable home hazard. Infants placed in cribs near a window may reach out, grab the dangling pull cord, pull it into the crib and become entangled. Toddlers playing on a bed near a window cord are also at risk of becoming entangled.

The AAP strongly supports CPSC's efforts to advance a proposed rule to protect children from this avoidable threat. Voluntary standards have failed to effectively address this issue for nearly 20 years. We applaud the steps that the CPSC has taken to recall corded window coverings, but believe that a mandatory standard prohibiting accessible window covering cords is the only way to ensure that children are protected from this avoidable hazard in all homes going forward. We understand that action on this issue is on the Commission's Regulatory Agenda for this fall. We are eager to hear what progress the Commission has made on window covering injury prevention since the comment period closed on the Advanced Notice of Proposed Rulemaking (ANPRM) last summer. We urge CPSC to expeditiously promulgate a mandatory rulemaking on window coverings, in concert with a robust public education campaign to eliminate these products from homes in which they are already installed.

TV and Furniture Tip-Overs

The AAP is eager to see CPSC and industry do more to prevent furniture and TV tip-overs. This issue was most recently in the news when it was reported that tragically, three toddlers have died in separate incidents since 2014 when IKEA “Malm” dressers tipped over on them.^{iv} These deaths should have been prevented, and we join a number of other organizations in questioning why the Malm dresser has not been recalled.

A study in the October 2009 issue of the journal *Clinical Pediatrics* found that forty children were taken to U.S. emergency departments each day because of injuries involving furniture tipping over.^v Between 1990 and 2010, an estimated 300 furniture-related deaths were reported, mostly from televisions and dressers falling on children.^{vi} Death can result from injury to the head or suffocation from the weight of the item on the child.

Like furniture tip-overs, TV tip-overs can result in horrific injuries or even death. A July 2013 *Pediatrics* article found that between 1990 and 2011, an estimated 380,885 patients under eighteen were treated in emergency departments for a TV-related injury; this equals an average of 17,313 children a year, or 2 children every hour. The median age of patients was 3 years, children under five represented 64.3% of patients, and boys comprised 60.8%.^{vii} Despite previous studies identifying the risks of TV tip-over injuries, newspaper articles highlighting local tragedies,^{viii} and the CPSC itself listing TV and furniture tip-overs in their top five hidden hazards,^{ix} safety standards for TV stability do not include the requirement that TVs be sold with anti-tip or anchoring devices.

Both furniture and TV tip-overs are entirely preventable events. Restraints securing these items to the wall can make all the difference, but strengthening the stability performance requirements in the relevant safety standards would be the most effective solution. This may require a mandatory standard from CPSC to ensure that all manufacturers comply and that all consumers have an opportunity to keep their children safe from this hazard.

Button Cell Batteries

Since 2003, there has been a significant rise in the incidence of severe injuries involving children who ingest button batteries. Injury can occur rapidly with few or non-specific symptoms until serious injuries develop over a period of hours. To mitigate these life-threatening injuries, AAP has participated in a national Button Battery Task Force, including experts from medicine, public health, industry, poison control, and government.

More than 3,500 incidents of button battery ingestion are reported to U.S. poison control centers each year, and these incidents may be vastly under-reported. The number of children with serious injury or death more than quadrupled in the five years between 2006 and 2010, compared to the five years prior. A study published in the May 2012 issue of *Pediatrics* found that between 1990 and 2009, an estimated 65,788 patients under eighteen years of age presented to U.S. emergency departments (EDs) due to a battery-related exposure.^x

The most serious injuries are usually associated with 20 mm diameter 3-volt lithium batteries, about the size of a nickel, because they are more powerful than button batteries used in

years past. If a lithium battery becomes lodged in the esophagus, it can cause tissue injury and necrosis within hours, leading to perforation or death if not removed urgently.

Unfortunately, these batteries are easily accessible to children via common household products, such as small remote controls, garage door openers, bathroom scales, cell phones, flameless candles, watches, cameras, greeting cards, and digital thermometers. We therefore urge CPSC to continue its work to strengthen the relevant voluntary standards to include a provision to securely enclose all button cell batteries, and also to work in support of design changes that would eliminate this serious health hazard, even if ingested.

Flame Retardants

The AAP is a party to the petition led by EarthJustice and Consumer Federation of America urging CPSC to use its Federal Hazardous Substances Act authority to ban organohalogen flame retardants in four product categories: durable infant or toddler products, children's toys, child care articles, and other articles intended for use by children; furniture sold for use in residences; mattresses and mattress pads; and the plastic casing of electronic articles. Organohalogen flame retardants are widely present in the environment and human exposure is extensive. These chemicals pose serious public health concerns, particularly for children. They are associated with adverse effects including: reproductive impairment; neurological effects, including decreased IQ in children, learning deficits, and hyperactivity; endocrine disruption and interference with thyroid hormone action; genotoxicity; cancer; and immune disorders. The AAP urges CPSC to

advance a rulemaking to ban these chemicals in all four product classes to protect children from their harmful effects.

Microwave Safety

We would also like to highlight an emerging or lesser-known hazard for the Commission: child burns related to easy access to microwaves. Microwave doors can be easy for children to open, placing the child at unnecessary risk of burns from liquids as they are removed from the microwave. In fact, recent research has shown that two-thirds of microwave-related scalds in 1-4 year olds occur when the young child accesses the microwaved contents themselves. Nearly 700 young children this age are treated in US emergency departments each year for burns suffered in exactly this mechanism. There are simple microwave design changes which may help alleviate these severe injuries to children. We urge the Commission to examine this hazard and ascertain what steps the Commission and manufacturers can take to make microwave doors less easily accessible to children.

Recreational Off-Highway Vehicles

Recreational Off-Highway Vehicles (ROVs) have become increasingly popular over the past few years for both recreational and work purposes. Our pediatricians see first-hand the tragedies and disabilities that can result from children on ROVs. The mechanism in the majority of ROV crash events causing injury and/or death is a vehicle rollover. When this happens, an occupant can easily be struck or pinned by the vehicle, especially if they are not using the ROV's restraint system. According to Dr. Charles Jennissen, director of Pediatric Emergency Medicine

at the University of Iowa Hospitals and Clinics and the University of Iowa Children's Hospital, of the 33 victims seen at the University of Iowa Emergency Department from 2008-2013, two-thirds had been in a rollover and nearly half had been struck or pinned by the ROV. Of course, many patients that die at the scene never make it to an Emergency Department. Of the victims he and his colleagues identified in a nine state newspaper report study from 2009-2011, 42% were documented as being struck or pinned by the vehicle, and those that had been pinned were much more likely to have been killed in the crash. Pediatric victims are frequently ejected from ROVs because they are too small to reach the pedals and use a seatbelt.

It is clear that children are not developmentally capable of operating these heavy, complex machines. CPSC's own data show that from 2003 to 2011, children under 16 represented one-quarter of all injured ROV operators and more than one-third of passengers. Seat belt use among youth operators was 12 percent, and eighty percent of youth-operated crashes were rollovers. The AAP always has and will continue to advocate for the safety of all children. No child under the age of 16 should operate an ROV, and we must do all we can to ensure children do not operate these vehicles. Children should not even be passengers in ROVs, as safe methods of securing children in these vehicles have not been established.

However, despite our best efforts to prevent child use of these machines, children continue to suffer injuries and deaths while driving or riding on them. We urge CPSC to continue prioritizing this issue through ongoing monitoring of morbidity and mortality associated with ROVs to assess the effectiveness of the current voluntary safety standard. If that standard is not

sufficient to prevent these injuries and deaths, CPSC should move expeditiously to advance a strong mandatory standard that reduces the known injury and fatality hazards associated with these vehicles.

Conclusions

The CPSC is an important agency whose work impacts the lives of infants and children every day. We urge the Commission, as it moves forward into the next fiscal year, to prioritize work on the issues and products laid out herein. We are grateful for the opportunity to comment, and look forward to assisting the Commission in protecting the health of all children. If you have any questions, please do not hesitate to contact Ami Gadhia in the Washington, D.C. office at 202/347-8600 or agadhia@aap.org.

ⁱ <http://www.cdc.gov/safekid/nap/index.html>; see also http://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_02.pdf

ⁱⁱ U.S. Centers for Disease Control and Prevention (2016). About SUID and SIDS. Retrieved from <http://www.cdc.gov/sids/aboutsuidandsids.htm>

ⁱⁱⁱ Pediatric Exposure to Laundry Detergent Pods. <http://pediatrics.aappublications.org/content/early/2014/11/05/peds.2014-0057>

^{iv} <http://fortune.com/2016/05/06/ikea-recall-dresser-malm/>

^v <http://aapnews.aappublications.org/content/31/1/30.7.full>

^{vi} *Ibid*

^{vii} <http://pediatrics.aappublications.org/content/132/2/267.full>

^{viii} Breckenridge MB. Anchoring furniture can prevent tragedy. *Beacon Journal*. January 14, 2012. Available at: www.ohio.com/news/local/mary-beth-breckenridge-anchoring-furniture-can-prevent-tragedy-1.255040. See also: Toddler dies after TV falls on her. *Times of Trenton*. May 10, 2007. Available at: http://blog.nj.com/timesupdates/2007/05/post_71.html. See also Eldeib D, Stoffel M. TV tips over, kills 6-year-old boy. *Chicago Tribune*. November 1, 2011. Available at: http://articles.chicagotribune.com/2011-11-01/news/ct-met-child-tv-safety-20111101_1_flat-screen-televisions-tvs-head-injuries. See also Williams-Harris D. "We just need to learn from this." Girl, 4, dies after TV set falls on her. *Chicago Tribune*. January 16, 2012. Available at: http://articles.chicagotribune.com/2012-01-16/news/chi-officials-girl-4-killed-after-tv-falls-on-her-in-university-park-20120115_1_gianna-share-custody-boyfriend.

^{ix} US Consumer Product Safety Commission. Top 5 hidden hazards in the home. 2007. Available at: www.cpsc.gov/PageFiles/116304/hidden.pdf.

^x <http://pediatrics.aappublications.org/content/129/6/1111.abstract?sid=c30da399-4e6a-479a-941d-3b5d4cd274fd>

Panel 4

Danielle Iverson, Government Relations Manager,
American Apparel & Footwear Association



June 1, 2016

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

RE: AAFA Recommendations for the Consumer Product Safety Commission's (CPSC) Budget Priorities for Fiscal Years 2017 and 2018

Dear Mr. Stevenson,

On behalf of the American Apparel & Footwear Association (AAFA), thank you for the opportunity to comment on the Commission's budget priorities for fiscal years 2017 and 2018.

AAFA is the national trade association representing the apparel and footwear industry including its suppliers, manufacturers, retailers, and service providers. Our industry accounts for more than four million U.S. employees and more than \$361 billion in retail sales each year.

Product safety is of the utmost importance for AAFA member companies. To support our members, many of whom are engaged in the production and sale of children's clothing and footwear, AAFA has taken the lead in educating the industry on the development, interpretation, and implementation of product safety regulations.

AAFA offers the following recommendation on the priorities the Commission should consider emphasizing and dedicating resources toward in the fiscal year 2017 Operating Plan and the fiscal year 2018 Congressional Budget Request:

International Testing Harmonization & Mutual Recognition of Standards

AAFA firmly believes in the need for international testing harmonization as well as mutual recognition of testing to support product compliance and certification. When testing for compliance with a particular regulation, duplicative testing is counterproductive as it does not provide any greater assurance of compliance. Presently, the Commission has the opportunity through the Transatlantic Trade and Investment Partnership (TTIP) negotiations between the European Union and the United States to promote global harmonization and mutual recognition of standards.

European negotiators have signaled their interest in pursuing regulatory harmonization initiatives with respect to textiles and apparel in the forthcoming TTIP trade agreement. Such an initiative could include provisions related to labeling, safety, market driven standards, and bilateral cooperation. AAFA has long recommended including regulatory harmonization for both footwear and apparel in the TTIP, most recently at a stakeholders meeting during the 13th round of talks in New York in April. We strongly support the intention to harmonize technical regulations and approaches to guarantee product safety and consumer protection. Ideally, the

U.S. and the EU should work to remove unnecessary and duplicative testing by expanding of acceptance of conformity assessment bodies and moving towards a single international standard test method.

Lastly, we note that an amendment to the CPSC's Fiscal Year 2014 Operating Plan which passed 3-1, calls for guidance to be issued to the regulated community to ease unnecessary, burdensome, duplicative testing. "The Commission also directs staff to draft a statement of policy that sets forth a protocol for the submission of requests for determinations of equivalency **between tests administered in CPSC's regulations and comparable tests administered in international standards.** Such protocol, at a minimum shall require requests for equivalency determinations to establish that the testing requirements of any alternative tests administered in an international standard will assure compliance with **all applicable children's product safety rules, regulations, standards, or bans** and are as stringent, or more so (including third party testing where required), as the current CPSC testing requirements..."

We urge the Commission to revisit the aforementioned amendment and recommend that the Commission dedicate resources toward international harmonization of product safety standards in the fiscal year 2017-2018 Operating Plan.

CONCLUSION

Thank you for the opportunity to provide comments and suggestions. AAFA looks forward to working with the Commission and furthering our collaborative relationship of ensuring product safety. Please contact Danielle Iverson of my staff at 202.853.9350 or by email at diverson@aafa.global.org if you have questions or would like additional information.

Sincerely



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Al Silverberg, CEO

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To: Todd A. Stevenson, Secretary. U.S. Consumer Product Safety Commission
Email cpsc-os@cpsc.gov

Fr: Al Silverberg, CEO. SelectBlinds.com
Email asilverb@selectshops.com

Re: Text of presentation

Date: May 31, 2016

SelectBlinds.com is an on-line retailer of window coverings, and we have made the trip from Phoenix to make a request for 2017 priorities to include, and emphasize the need for cord free legislation in the window covering industry.

The reason is very simple. Window blinds with cords have killed or seriously injured, on average, twenty children a year. This is not new. This has been going on, and has been documented since 1983. Thirty-three years. There is no magic associated with that date. It just happens to be when this preventable hazard began being tracked.

It's amazing to me that there are so many people that have no idea about these risks. I didn't know about it for years. A mandate to go cordless is only part of what we are requesting. We urge you to allocate sufficient funds to create, launch, and maintain a public awareness campaign.

SelectBlinds is a small business, and because of that, it might be easier for us to make the move to only cordless. But it doesn't take decades. We made the decision known to our suppliers in November of 2015. At that time, we had targeted January 2017 as the transition timing. As soon as we announced, I knew there was no way we could wait that long.

As I mentioned earlier, we cut the cords on March 31st of this year. Five months from notice to implementation. There are now three cordless only retailers. SelectBlinds.com, Target, and IKEA.

SelectBlinds is the only retailer that is 100% cordless, including custom product. Target and IKEA have limited their offering to stock, or what is referred to as cut-down product. Either way, there is one simple reason why the three of us were able to make the change. Commitment.

SelectBlinds made the decision because we believe it to be the right decision. While we cannot force another retailer, or the manufacturing community to follow suit, we feel that with the right coordination of efforts, this issue can be resolved to the satisfaction of all concerned parties.

Three more retailers will join the cord free commitment. Home Depot, Lowes, and Wal-Mart. The date that I heard was Jan 2018. That's 19 months from now. Although this is a significant move, it leaves all custom products out of the equation.

Upgrading to cordless is not a cost prohibitive move. First of all, there are three categories that have \$0.00 cost impact. Shutters, Vertical Blinds, and Roller/Solar shades. These three categories account for ~ 30% of on-line sales. It's probably higher with in-home design consultants. Beyond those three categories, every blind or shade category can readily be made with a cordless lift, or cord inaccessible

lift. The big guys already have the technology. There are also products, like the Fashion Wand from Safe-T-Shade, that transforms a corded shade to a cord inaccessible shade.

Our most popular product is the cell shade or honeycomb shade. It can't be that expensive to make them cordless. We buy a stock cordless cell shade for well under \$40 on the most used sizes. The vendor from whom we source this product is making money. So the real cost of an entire cordless shade, including freight, to get it anywhere in the lower 48, is less than \$30. That is the finished product, delivered. So it can be done by every custom manufacturer.

SelectBlinds has made the move. We are optimizing our product assortment daily. We would be in a more competitive landscape, if we had every product on our site that our competition can offer. Even so, we are succeeding as a business entity with a 100% cordless self-imposed mandate.

I've been in the window covering business for almost eleven years. Prior to that, I ran a company called Uniden. We were the #1 market share brand in the cordless phone business. I bring this up for a few reasons.

1. I understand the way to develop products. I know how to communicate with the engineers, whether electrical, mechanical, or other.
2. I have been able to get products that product development teams don't believe can be brought to market, from concept to mass production, scores of times.
3. New products are the life blood of any organization. They give the consuming public a reason to buy. This is a beautiful thing. It adds jobs in the industry.

The time for discussion is over. The hope for industry self-regulation has come and gone. A mandate is needed, and that is what we are here to ask for. The industry is capable of doing this. Perhaps they just need to approach it in a new way.

I'd like to suggest a mandate for all product to be cord free by Jan 1, 2018.

I'd like to suggest that the mandate includes corroboration between retailers and manufacturers, and a committee is formed by Sep 1st 2016 to oversee the progress. This is needed in order to get the focus where it should be. Put my name in the mix.

Let's quit playing Russian roulette with the lives of our kids. Issue a mandate. Do it now. Do it before this tragedy touches one of you, one of our congressional members, or one of the key executives at the helm of a window covering company. Because that eventuality is very real, and then it will be too late for you to say that the reason you are issuing a mandate is because it's the right thing to do.

Thank you for allowing me this opportunity to speak.

Ted Alcorn, Research Director,
Everytown for Gun Safety



Testimony of Ted Alcorn
Research Director, Everytown for Gun Safety
Presented at a Hearing of the Consumer Product Safety Commission
Entitled
Agenda and Priorities FY2017 and/or 2018
Bethesda, Maryland
June 15, 2016

Good morning, Chairman Kaye, and thank you for the opportunity to present my testimony this morning. My name is Ted Alcorn, and I am the research director for Everytown for Gun Safety. Everytown is the largest gun violence prevention organization in the country with more than three million supporters and more than 100,000 donors including moms, mayors, survivors, and everyday Americans who are fighting for public safety measures that respect the Second Amendment and help save lives.

I am here today to address the burden of injuries inflicted by children who gain access to and unintentionally discharge firearms — an area of great concern to the public and one that the Commission has authority to address — and to urge the Commission to use its authority to enhance the surveillance of unintentional shootings of children.

In 2013, consistent with the Commission’s authority to regulate safe storage devices such as trigger locks and gun safes, the President of the United States asked the Commission to review and enhance the standards for those devices, a process I understand is now underway.ⁱ

We know that effective, evidence-based interventions rely on a comprehensive and detailed understanding of the problem they are addressing. Unfortunately, current surveillance of unintentional shootings by children is woefully inadequate. In 2013, employing press reports, Everytown identified 100 children 14 and under who died due to unintentional firearm injuries — nearly fifty percent more than reflected by national data from the Centers for Disease Control and Prevention.ⁱⁱ Furthermore, even our count was limited since it did not capture incidents in which a child fired a gun but harmed someone older, nor incidents in which the victim was injured but did not die.

So last year, again using press reports, Everytown created and has since maintained an open-source index of all incidents in which a child 17 or under unintentionally fired a gun and harmed or killed someone. We consult with local law enforcement to confirm details as necessary. The data we collect are publicly available on our website, EverytownResearch.org. And the patterns they illustrate could inform further approaches to reduce these injuries:

In 2015, Everytown identified 278 unintentional child shootings, which resulted in 88 deaths and 194 injuries. As of June 1 this year, we had already identified 100 more such



shootings.ⁱⁱⁱ

Three-year-olds pull the trigger more than children of any other age. And unlike shootings involving older children, who typically harm another child, the vast majority of toddlers shoot themselves.

We observed enormous variation across states in the rates of unintentional child shootings. Controlling for population, Alaska experienced these tragedies 30 times more frequently than did California.

Most important from the standpoint of prevention was the apparent role played by the responsible storage of firearms. Whereas fewer than 15 percent of gun-owning households with children report storing their firearms unlocked and loaded or with ammunition, these households accounted for more than two-thirds of the unintentional child shootings we observed.

Though the public sometimes refers to shootings like this as “accidents” — a word that suggests they occur by chance, unforeseen, without reason — Everytown is deliberate in describing these as “not an accident.” Because these tragedies are eminently preventable, if our society increasingly adopts norms of storing guns responsibly, and evaluates our success at doing so.

To promote that change in behavior, Everytown developed the public education campaign Be SMART, which gives gun owners and non-gun owners alike a way to share information about responsible storage of firearms in their communities.^{iv} Organizations across the political spectrum run similar programs, from the Brady Center's ASK campaign to the firearm trade industry's Project ChildSafe.

But to measure the effectiveness of any individual law or campaign, it is essential to have an accurate measure of the outcome of interest. The Commission plays an important role estimating rates of non-fatal injuries of all types through the National Electronic Injury Surveillance System (NEISS)^v. But more accurate information about unintentional child shootings will be critical for assessing the effect of current public health approaches. The Commission should adopt measures to improve surveillance of unintentional shootings of children through the NEISS system. The Commission might also consider establishing an open-source measure of these shootings. Everytown's index demonstrates the reach of online media for supporting these efforts, and the Bureau of Justice Statistics recently adopted similar tools for tracking law-enforcement-involved shootings.^{vi}

To be sure, one agency alone cannot solve this complex problem, and other agencies must also play a role. It is essential to measure how gun storage behavior has changed over time state by state, and the CDC ceased measuring this in 2004, when questions relating to firearm storage were dropped from their national Behavioral Risk Factor Surveillance System (BRFSS). The BRFSS coordinators should reintroduce these questions.

Unintentional child shootings account for just a fraction of the tens of thousands of firearm-related injuries that occur in the United States each year, but few cry out so strongly for prevention. Even one preventable firearm injury or death of a child is one too many, and I believe the Commission has an opportunity to make a meaningful contribution to addressing this problem — and save lives.



- ⁱ The White House, "Progress Report on the President's Executive Actions to Reduce Gun Violence," available at: <http://1.usa.gov/1r2LvNh>
- ⁱⁱ Everytown for Gun Safety, "Innocents Lost: A Year of Unintentional Child Gun Deaths," June 24, 2014, available at: <http://every.tw/1Uhg35a>
- ⁱⁱⁱ Everytown for Gun Safety, "Not An Accident Index," available at <http://everytownresearch.org/notanaccident>
- ^{iv} Be Smart for Kids, available at: <http://besmartforkids.org/>
- ^v Consumer Product Safety Commission, National Electronic Injury Surveillance System, available at: <http://1.usa.gov/1TY48xk>
- ^{vi} U.S. Department of Justice, "Attorney General Lynch: Use-Of-Force Data is Vital for Transparency and Accountability," October 5, 2015, available at: <http://1.usa.gov/1UeF15F>

Liz Hitchcock, Legislative Director
Safer Chemicals Healthy Families



June 8, 2016

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

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

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

Thank you for the opportunity to share our views on the Consumer Product Safety Commission's ("the Commission's") agenda and priorities for fiscal years (FY) 2017 and 2018. I would like to provide testimony on behalf of both organizations touching on the following concerns when the Commission meets on June 15.

Over the remainder of FY 2017 and 2018, we urge the Commission to expand its oversight and regulation of consumer products containing harmful and potentially harmful chemicals, making full use of its authority under the Federal Hazardous Substances Act, the Consumer Product Safety Act and the other statutes enforced by the agency. In addition, we urge the Commission to make it a priority to move forward with the rulemaking banning consumer products containing a class of toxic flame retardant chemicals as requested in the Petition submitted in June 2015 (Docket No. CPSC-2015-0022).

Safer Chemicals Healthy Families is a nationwide coalition representing more than 450 organizations and businesses, including parents, health professionals, advocates for people with learning and developmental disabilities, reproductive health advocates, environmentalists, organized labor and businesses from across the nation. **Safer States** is a network of diverse environmental health coalitions and organizations in states across the country that believe families, communities and the environment should be protected from the devastating impacts of our society's heavy use of chemicals.

Our diverse coalitions are united by our common concern about toxic chemicals in our homes and workplaces, and in products we use every day. We work for reform of our outdated toxic chemical laws, work with retailers to phase out hazardous chemicals from the marketplace, and educate the public about ways to protect our families from toxic chemicals.

While we appreciate the Commission's work over the past several years to implement the Consumer Product Safety Improvement Act's regulation of toxic lead and phthalates in children's products (though we urge the Commission to finalize its proposed phthalates rule as soon as

possible), the American public is more aware than ever that toxic chemicals are found in products in our children's playrooms, in our living rooms and kitchens, in hospitals and health care facilities and in our workplaces, with ongoing and irreparable harm to our families' health.

The presence of toxic chemicals in child care products and children's products is one of many exposures to hazardous chemicals as a result of contact with consumer products. The Consumer Product Safety Commission should broaden the scope of consumer products it reviews for the presence of and risk from hazardous chemicals and then take necessary action to protect public health, accounting for the vulnerability of certain populations such as children and pregnant women.

Thanks to state chemical reporting requirements in Maine, Oregon, Vermont and Washington State, our state partners have and will continue to produce reports identifying toxics in consumer products that we urge the Commission to take note of and begin to use its authority under the Federal Hazardous Substances Act, the Consumer Product Safety Act and the other statutes enforced by the agency to protect the public from these dangerous chemicals.

In 2008, the Maine legislature passed one of the first and strongest state-based chemical policy reform known as the Kid Safe Products Act. Under Maine's law, manufacturers must disclose their use of high-priority chemicals of concern in consumer products sold in the state. In 2014, the law was expanded to require the reporting of phthalates by some manufacturers. The report linked here -- [*What Stinks? Toxic Phthalates in Your Home*](#) -- prepared by our partners at the Environmental Health Strategy Center, analyzes the results of that public reporting, including data on the use of phthalates, showing that hormone-disrupting chemicals are used in a broader range of household products than previously known.

In 2008, Washington State passed the Children's Safe Products Act (CSPA), setting requirements for makers of children's products being sold in Washington to report to the state if these products contain chemicals on a list of 66 Chemicals of High Concern to Children. Manufacturer reporting began phasing in in 2012. In 2014, an analysis of that reporting by our partners at the Washington Toxics Coalition -- [*What's on Your List? Toxic Chemicals in Your Shopping Cart*](#) -- summarized the chemicals and products reported over a six month period in 2013. Overall there were 4,605 reports of Chemicals of High Concern to Children reported in children's products such as toys, clothing, baby safety products, and bedding during this time period. A total of 78 companies such as Walmart, Target, Safeway, Walgreens, Nike, and Toys "R" Us reported products containing harmful chemicals. A total of 49 chemicals such as formaldehyde, bisphenol A (BPA), parabens, phthalates, heavy metals, and industrial solvents were reported. The health effects of reported chemicals include carcinogenicity, endocrine disruption, and developmental or reproductive toxicity.

We anticipate that manufacturer reported data required by the 2014 Vermont law will become available later this year. Manufacturers of products for children under 12 are required to report on the presence of 66 chemicals of concern (same as the Washington list) down to the individual product level. This new level of data will provide valuable information that can help prioritize products and categories of products for review.

The Commission should use the data generated by these state programs as a roadmap to additional products that require further evaluation and potential action to protect the health of children from these dangerous chemicals.

In addition, we urge the Commission to exercise its authority under the Federal Hazardous Substances Act to ban products containing toxic chemical flame retardants. In spite of the fact that these chemicals have been associated with serious human health problems, including cancer, reduced sperm count, increased time to pregnancy, decreased IQ in children, impaired memory, learning deficits, hyperactivity, hormone disruption and lowered immunity, they continue to be used at high levels in consumer products. The comments and testimony submitted to the Commission provide a strong basis for moving forward with the requested rulemaking.

These chemicals migrate continuously out from everyday household products into the air and dust, when we sit on a sofa or put a baby to sleep on a crib's mattress. As a result, more than 97 percent of U.S. residents have measurable quantities of toxic organohalogen flame retardants in their blood. Children are especially at risk because they come into greater contact with household dust than adults. Studies show that children, whose developing brains and reproductive organs are most vulnerable, have three to five times higher levels than their parents.

In conclusion, we urge you to act on the petition to regulate products containing toxic flame retardant chemicals and to consider dangerous chemical exposures from other consumer products.

We again thank the Commission for this opportunity to comment on your future activities and priorities and look forward to continuing to work with you on your important mission.

Sincerely,

Elizabeth Hitchcock, Legislative Director
Safer Chemicals Healthy Families

Sarah Doll, Director
SAFER States

Stephanie Fox-Rawlings, Ph.D
(Presenting for Diana Zuckerman, President)
National Center for Health Research

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

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

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

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

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

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

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

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

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

Bans on flame retardants

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

We agree with others groups commenting today that the CPSC should propose and finalize regulations that would ban additive, non-polymeric organohalogen flame retardants in four categories of household products as proposed in Petition No. HP 15-1.(5) Like phthalates, these chemicals move from products to our daily environment and from there into consumers' bodies where they can cause irreparable harm. All of the organohalogen flame retardants studied have been associated with chronic health effects.

The most well-studied organohalogen flame retardants are the polybrominated diphenyl ethers (PBDEs), which have been phased out in part due to their effects on human health.(18) The alternatives in the same class are proving to have similar problems. These alternatives found in a large percentage of people tested in various communities (#). They have been linked to cancer, reproductive problems, neurotoxicity, developmental toxicity, endocrine disruption, and behavioral changes in models and/or humans.(#)

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

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

Thank you for your time and consideration of our views.

1. National Health and Nutrition Examination Survey (NHANES) (October 2014). Phthalates and Plasticizers Metabolites- Urine (PHTHTE_G); years of content 2011-2012.
http://wwwn.cdc.gov/Nchs/Nhanes/2011-2012/PHTHTE_G.htm

OTHER SURVEYS

2. Federal Register (December 30, 2014). Consumer Product Safety Commission. Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates. Docket No. CPSC-2014-0033.
<http://www.gpo.gov/fdsys/pkg/FR-2014-12-30/pdf/2014-29967.pdf>

3. Federal Register (December 30, 2014). Consumer Product Safety Commission. Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates. Docket No. CPSC-2014-0033.
<http://www.gpo.gov/fdsys/pkg/FR-2014-12-30/pdf/2014-29967.pdf>

4. Consumer Product Safety Commission (July 2014). Chronic Hazard Advisory Panel On Phthalates and Phthalate Alternatives.

5. Earthjustice and Consumer Federation. (July 2015) Petition HP 15-1 Requesting Rulemaking on Products Containing Organohalogen flame Retardants. <https://www.cpsc.gov/Global/Regulations-Laws-and-Standards/Petitions/PetitionHP151RequestingRulemakingProductsContainingOrganohalogenFlameRetardants.pdf>

18. US EPA. Polybrominated Diphenyl Ethers (PBDEs). <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/polybrominated-diphenyl-ethers-pbdes>

Written Comments

1. Gerene M. Denning, PhD., and Charles A. Jennissen, PhD., Research Scientists, Emergency Medicine, University of Iowa - Iowa ATV Injury Prevention Task Force, CFA OHV Safety Coalition
2. Eve Gartner, Staff Attorney, Earthjustice, and a Coalition of Organizations
3. Sonia Gill, Public Citizen
4. Jonathan Stewart, National Electrical Manufacturers Association
5. Charles Jeffrey Duke, General Counsel and Corporate Secretary, Zippo Manufacturing Company
6. Greg Knott, Vice President, Regulatory Affairs, Outdoor Power Equipment Institute
7. Andrew Pappas, Government Affairs Coordinator, Outdoor Industry Association
8. David French, Senior Vice President, National Retail Federation
9. Stephen Pasierb, President, CEO, Toy Industry Association, Inc.
10. Daniel Rosenberg, Senior Attorney; Jennifer Sass, Ph.D, Senior Scientist; Veena Singla, Ph.D, Staff Scientist, Natural Resources Defense Council

Gerene M. Denning, PhD., and Charles A. Jennissen, PhD., Research Scientists,
Emergency Medicine, University of Iowa – Iowa ATV Injury Prevention Task
Force, CFA OHV Safety Coalition

WRITTEN TESTIMONY FOR HEARING ON THE CPSC 2017-2018 AGENDA AND PRIORITIES

To the Consumer Product Safety Commission,

Please consider our comments related to all-terrain vehicle (ATV) and recreational off-highway vehicle (ROV) safety. Three topics will be covered:

1. Increasing educational and public awareness efforts related to ATV and ROV safety
2. Standardizing ATV seat design to reduce pediatric deaths and injuries
3. Need for safety research to inform injury prevention efforts and recommendations related to youth off-highway vehicles (OHV)

TOPIC 1: INCREASING EDUCATIONAL AND PUBLIC AWARENESS EFFORTS RELATED TO ATV AND ROV SAFETY

Education and public awareness materials and efforts for ATV and ROV safety are particularly critical, as safety knowledge and public awareness and understanding are extremely limited, including among vehicle users. In fact, many misperceptions are heard in arguments used to justify unsafe riding practices and to undermine evidence-based safety legislation.

Risk Factor: Riding on the Road

Research over the last 10-15 years has provided some key evidence to better inform educational and public awareness materials and efforts on this topic. This research strongly supports changes in CPSC-mandated warning labels, safety information in owner's manuals, and website content related to the risk of riding these vehicles on the road. A growing trend toward legalizing recreational roadway riding also calls for a more intense national outreach and public awareness response. The problems and recommended CPSC actions are:

Problem. Many warnings and safety materials specifically include the term "paved" when referring to staying off the road.

- a) Whereas it is valid to warn against riding on paved roads, recent studies using the CPSC fatality database suggest that riding on unpaved roads may also represent increased hazards relative to off-road riding.¹
- b) By explicitly mentioning paved roads, there is a danger that users and policy makers will conclude that unpaved roads are safe.

Problem. Warnings and safety materials related to roadway riding often mention the risk of a collision with another vehicle.

- a) Again, whereas there is an increased likelihood of a motor vehicle collision (MVC) on the road versus off,^{2,3} MVC are a small percentage of ATV and ROV roadway crashes.
- b) On the road, 71% of fatal ATV crashes,² 87% of non-fatal Iowa ATV crashes,³ and 93% of ROV crashes (CPSC ROV database, unpublished results) were single-vehicle. This is in sharp contrast to farm equipment crashes where 85% were collisions with another vehicle.⁴
- c) By explicitly mentioning MVC, there is a danger that users and policy makers will conclude that low traffic roads are safe; that safety rules, like speed recommendations, used for other off-road vehicles (e.g. farm equipment) are appropriate; and that traffic safety study methods for other vehicle types are valid for ATVs and ROVs. Evidence would not support these conclusions.

Problem. There is a rapidly growing trend to pass laws and ordinances that legalize recreational roadway riding by OHVs.

- a) A report by the Consumer Federation of America documents this growing movement.⁵
- b) In Minnesota, a recently passed county ordinance will allow riding on roads up to 55 mph by children as young as 12 years old (<http://www.duluthnewtribune.com/news/st-louis-county/4038464-despite-industry-warnings-st-louis-county-opening-roads-all-terrain>).
- c) A CFA-led national coalition is addressing this problem (<http://consumerfed.org/off-highway-vehicle-safety/>).
- d) However, CPSC materials for educational and advocacy purposes are needed. These materials should reflect current research on the topic,¹⁻³ and should speak more explicitly and forcefully in support of proper use of these products.

Recommended Actions (2017-2018): To address this serious and growing consumer safety problem and to aid in injury prevention efforts, we urge the CPSC to:

1. Mandate changes in wording on future warning labels and in owner's manuals sections on safety to reflect current evidence about roadway crashes.
2. Make similar changes on the CPSC website and in CPSC safety materials.
3. Encourage the ATV Safety Institute (ASI), the Specialty Vehicle Institute of America (SVIA), the National Off-Highway Vehicle Conservation Commission (NHOVCC), the Recreational Off-Highway Vehicle Association (ROHVA), and all ROV and ATV manufacturers to make similar changes to their website and safety materials.
4. Release a strongly worded Safety Alert to be used for advocacy purposes that emphasizes and helps consumers understand the major contribution of vehicle design to roadway crashes and that includes the messages ... *roadway riding is dangerous on all roadway surface types ... roadway riding is dangerous on both high and low traffic roads ... promoting recreational roadway riding is not consistent with responsible use of ATVs and ROVs.*
5. Develop additional strategies, including partnerships, to increase national educational and public awareness efforts regarding roadway crashes and their prevention.
6. Include information about the number of roadway deaths in the CPSC Annual Report of ATV-related deaths and injuries
7. Create a similar annual report for ROV-related deaths and injuries including the number of roadway deaths.

Risk Factor: Children as Operators and Passengers in ROVs

Results from the CPSC ROV database show that one-quarter of ROV operators and one-third of passengers were children under the age of sixteen. Only 35% of child passenger victims (<16 years old) and only 12% of child operators were belted. Over 80% of unbelted children were ejected during the crash, the strongest predictor for death and serious injury.

Some safety information is available to the public. However, the continuing number of pediatric ROV-related deaths and injuries suggest that more education and outreach is critically needed to help parents and the public understand the dangers to children as both operators and passengers of ROVs.

Recommended Actions (2017-2018): Because pediatric deaths and injuries in ROV crashes are an emerging public health and consumer safety issue, we urge the CPSC to:

1. Identify and assess CPSC educational and public awareness materials and efforts related to children and ROVs.
2. Develop additional strategies, including partnerships, to increase these efforts based on best evidence.
3. Report the number of ROV-related deaths based on age (children and adults) as part of an annual ROV report.

TOPIC 2: STANDARDIZING ATV SEAT DESIGN TO REDUCE PEDIATRIC DEATHS AND INJURIES

There is significant variability in ATV seat design in terms of both seat length and distance from the handle grips.⁶ Longer seats with seat fronts closer to the handle grips permit and may even encourage carrying of passengers and operation by children. Studies show that 25% of all ATV-related deaths involved vehicles with multiple riders, that children are more likely than adults to be passengers in both fatal and non-fatal ATV crashes, and that 95% of children killed on ATVs (operators and passengers) were on adult-size vehicles.^{2,3} No evidence suggests that ATVs with the shortest seats starting farthest from the handle grips are less safe.

Recommended Actions (2017-2018): Because “engineering out” a hazard is the most effective way to reduce deaths and injuries, we urge the CPSC to:

1. Facilitate identifying an ATV seat design that reduces the likelihood of carrying passengers and of operation by children.
2. Pursue standards based on this design.

TOPIC 3: NEED FOR SAFETY RESEARCH TO INFORM INJURY PREVENTION EFFORTS AND RECOMMENDATIONS RELATED TO YOUTH OHV

As previously stated, almost all pediatric ATV-related deaths and injuries occur in crashes of an adult-size vehicle. Thus, it is critical that we use education, research and advocacy to get children off of adult ATVs. However, we know little or nothing about the safety of youth ATVs and ROVs and cannot make recommendations to parents that are grounded in evidence.

Problem: There is little evidence to guide parents or other care providers in decisions related to youth ATVs and ROVs or to create evidence-based standardized design:

- a) Preliminary studies by our group comparing Y6+ and Y14+ models show that the differences in key measurements of fit, including distance from the center of the seat to the handlebars and from the footrest to the top of the seat, between these models are in some cases as little as 1 inch.
- b) Since the size of children from 6 to 14 years old increases much more dramatically than that, it is highly likely that youth models on one end of the spectrum or the other are poorly designed to fit the children in the recommended age range. Additional research is underway to test this hypothesis.
- c) Poor fit could contribute to the likelihood of an ATV crash, as could children operating vehicles that fit their size but are beyond their physical and mental maturity to operate safely.

May 25, 2016

Denning and Jennissen

- d) In addition, seat lengths on youth ATV models are not much different from some adult models and so the design permits or even encourages carrying passengers, a highly common and dangerous practice among youth.^{7, 8}

Problem: Youth ATVs are getting heavier over time creating greater hazard of crush-related deaths and injuries.

- a) For all ages, the increasing ATV size and weight over time has been associated with an increasing proportion of deaths due to being pinned under the vehicle.
- b) Current youth models weigh from 200 to 400 pounds. If the heavy vehicle landing on top of him/her does not immediately kill a child, no child is capable of pushing these vehicles off if they are trapped underneath.

Problem: Current recommendations based on speed have no basis in evidence. In fact, they are inconsistent with the limited physical, cognitive and emotional maturity of children and adolescents.

- a) Recommendations based on unregulated and regulated speeds have no grounding in safety research and make little sense relative to how we think about and treat other motorized vehicles. Name another motorized vehicle that can go up to 30 mph that we allow 12 year olds to operate.
- b) Although speed limiters are present on youth models, there is no research determining the relative risk of regulated and maximum speeds for different ages to guide parental decision-making or safety-based recommendations.
- c) Similarly, little or nothing is known about the safety of youth ROVs, which can weigh well over 400 pounds and can travel at 30 mph or more. National data show that almost two-thirds of ROV crashes (63%) occur at estimated speeds of 20 mph or less with both adult and youth operators.

Recommended Actions (2017-2018): Because we have little or no evidence addressing youth ATV and ROV safety, we urge the CPSC to:

1. Facilitate research on the safety of youth OHV.
2. Until data are available, provide parents with warning information that youth ATV and ROV designs are not based on evidence that they have not been proven to be safe or appropriate for children of any age.

Thank you for this opportunity to provide our comments about the CPSC agenda and priorities. As you know, ATVs remain among the most deadly products regulated by the CPSC, including to children. Also, we have seen that as ROV sales rapidly increase, so too do deaths and injuries. Currently, little or no safety culture surrounds these vehicles, either from the manufacturer or user perspective. This creates significant challenges for preventing deaths and injuries, challenges that require a robust, coordinated national response.

Sincerely Yours,

Gerene M. Denning, PhD

Charles A. Jennissen, MD

Iowa ATV Injury Prevention Task Force

<https://www.uichildrens.org/atv-safety/>

CFA OHV Safety Coalition

<http://consumerfed.org/off-highway-vehicle-safety/>

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Eve Gartner, Staff Attorney
Earthjustice
and a Coalition of Organizations

June 8, 2016

Via email: cpsc-os@cpsc.gov

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

RE: *Agenda and Priorities FY 2017 and/or 2018*

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

Thank you for the opportunity to share our views on the Consumer Product Safety Commission's ("CPSC" or "Commission") agenda and priorities for fiscal year 2017 and 2018. The undersigned organizations urge the Commission to prioritize its efforts to protect consumers from toxic flame retardants in a wide range of household products. The Commission has two opportunities to dramatically reduce consumers' exposure to flame retardants and maintain fire safety, and we ask it to move forward with both actions in fiscal years 2017 and 2018. First, we urge the CPSC to propose and finalize regulations under the Federal Hazardous Substances Act ("FHSA"), in accord with Petition No. HP 15-1, to ban household products in four categories that contain any additive, non-polymeric organohalogen flame retardant. Second, we urge the CPSC to adopt the State of California Department of Consumer Affairs' Technical Bulletin 117-2013 ("TB 117-2013") as a mandatory national flammability standard under the Flammable Fabrics Act ("FFA").

Banning products containing additive, non-polymeric organohalogen flame retardants should be a priority for Commission action

Protecting consumers, and especially children, from products containing additive flame retardant chemicals is fully consistent with the CPSC's "Policy on establishing priorities for Commission action."¹ Under that policy, the Commission must prioritize action on:

- products where the probability of exposure to the hazard is high due to "the number of units of the product that are being used by consumers, the frequency with which such use occurs, and the likelihood that in the course of typical use the consumer would be exposed to the identified risk of injury";²

¹ 16 C.F.R. § 1009.8.

² 16 C.F.R. § 1009.8 (c)(7).

- preventing product-related injury to children, the handicapped, and senior citizens;³ and
- “products, although not presently associated with large numbers of frequent or severe injuries, [where] ... there is reason to believe that the products will in the future be associated with many such injuries.”⁴

Household products containing additive, non-polymeric organohalogen flame retardants fall squarely within the Commission’s prioritization criteria: 1) the affected products are ones that most people use daily, such as chairs, sofas, mattress pads, computers and other electronics; 2) children are at particular risk for several reasons: they tend to spend more time on or near the floor (crawling, playing, and so on) where they are exposed to hazardous dust; they have hand-to-mouth behaviors that result in their ingestion of this material; they may be exposed during critical developmental windows of rapid growth and brain development during which they are particularly vulnerable to these toxins; and children’s products in particular are known to contain flame retardants; and 3) there is strong reason to believe that continued use of additive organohalogen flame retardants will result in future illness and injury, just like the now-banned or discontinued polybrominated diphenyl ether (“PBDE”) flame retardants.⁵

An additional reason that the CPSC should prioritize protecting consumers, and especially children, from products containing additive organohalogen flame retardants is the disproportionately high exposure levels of these chemicals in communities of color and low-income communities.⁶ Pursuant to

³ 16 C.F.R. § 1009.8 (c)(6).

⁴ 16 C.F.R. § 1009.8 (c)(3).

⁵ Organohalogen PBDEs have been shown to present a range of very serious human health risks, including immune and endocrine disruption, and adverse reproductive and neurodevelopmental effects. Stapleton, H.M.; Eagle, S.; Anthopolos, R.; Wolkin, A.; & Miranda, M.L. (2011). Associations between polybrominated diphenyl ether (PBDE) flame retardants, phenolic metabolites, and thyroid hormones during pregnancy. *Environmental Health Perspectives*, 119(10), 1454-59. doi: 10.1289/ehp.1003235; Betts, K.S. (2010). Endocrine damper? Flame retardants linked to male hormone, sperm count changes. *Environmental Health Perspectives*, 118(3), A130. doi: 10.1289/ehp.118-a130b; Chevrier, J.; Harley, K.G.; Bradman, A.; Gharbi, M.; Sjödin, A.; & Eskenazi, B. (2010). Polybrominated diphenyl ether (PBDE) flame retardants and thyroid hormone during pregnancy. *Environmental Health Perspectives*, 118(10), 1444-49. doi: 10.1289/ehp.1001905; Gascon, M.; Vrijheid, M.; Martínez, D.; Forn, J.; Grimalt, J.O.; Torrent, M.; & Sunyer, J. (2011). Effects of pre and postnatal exposure to low levels of polybromodiphenyl ethers on neurodevelopment and thyroid hormone levels at 4 years of age. *Environment International*, 37(3), 605-11. doi: 10.1016/j.envint.2010.12.005; Herbstman, J.B.; Sjödin, A.; Kurzton, M.; Lederman, S.A.; Jones, R.S.; Raugh, V.; Needham, L.L.; Tang, D.; Niedzwiecki, M.; Wang, R.Y.; & Perera, F. (2010). Prenatal exposure to PBDEs and neurodevelopment. *Environmental Health Perspectives*, 118(5), 712-19. doi: 10.1289/ehp.0901340; Eskenazi, B.; Chevrier, J.; Rauch, S.A.; Kogut, K.; Harley, K.G.; Johnson, C.; Trujillo, C.; Sjödin, A.; & Bradman, A. (2013). In utero and childhood polybrominated diphenyl ether (PBDE) exposures and neurodevelopment in the CHAMACOS study. *Environmental Health Perspectives*, 121(2), 257-62. doi: 10.1289/ehp.1205597; Costa, L.G., & Giordano, G. (2007). Developmental neurotoxicity of polybrominated diphenyl ether (PBDE) flame retardants. *Neurotoxicology*, 28(6), 1047-67. doi: 10.1016/j.neuro.2007.08.007.

⁶ Quirós-Alcalá, L.; Bradman, A.; Nishioka, M.; Harnly, M.E.; Hubbard, A.; McKone, T.E.; & Eskenazi, B. (2011). Concentrations and loadings of polybrominated diphenyl ethers in dust from low-income households in California. *Environment International*, 37(3):592-96. doi: 10.1016/j.envint.2010.12.003.

Executive Order 12898, the CPSC must act to “achiev[e] environmental justice . . . by . . . addressing . . . [the] disproportionately high and adverse human health or environmental effects of its programs [and] policies . . . on minority populations and low-income populations.”⁷

Given the known toxicity of all studied organohalogen flame retardants, the chemical characteristics of this class, and the abundant evidence that these chemicals are pervasive in the homes and bodies of people across the country, especially in people of color and of lower incomes, the continued use of household products containing organohalogen flame retardants is a serious public health concern.

Petition No. HP 15-1, and the administrative record developed for that Petition, establish that the criteria for regulation under the FHSA have been met. We urge CPSC to take action to protect the public from the hazards of additive, non-polymeric organohalogen flame retardants as soon as possible.

Adopting a smoldering source flammability standard should be a CPSC priority

We also urge the CPSC to take action in fiscal years 2017 and 2018 under the FFA to adopt a mandatory smoldering source flammability standard for residential furniture, such as TB 117-2013 – a flammability standard that would add meaningful fire safety benefits without the use of flame retardant chemicals. Under the FFA, the CPSC is “authorized and directed” to prescribe rules and regulations, including regulations “needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage.”⁸ However, no federal standard protects the public from smoldering ignition sources like cigarettes, which are the leading cause of upholstered furniture fires.⁹ As shown by the CPSC’s data and confirmed elsewhere, smoldering sources are the predominant source of upholstered furniture fire deaths and injuries.¹⁰ The economic and social costs of furniture fires started by smoldering materials are significant. The CPSC’s own data shows that

⁷ Exec. Order No. 12,898 (Feb. 11, 1994), at 1.

⁸ 15 U.S.C. § 1194(c); *id.* § 1193(a).

⁹ According to CPSC’s own analysis, between 2010 and 2012, when upholstered furniture was the first item ignited in a fire, smoking material was responsible for the ignition approximately twice as often as an open flame. U.S. Consumer Product Safety Commission, 2010-2012 Residential Fire Loss Estimates (2015) (“2015 CPSC Report”), at 10 (Table 2a).

¹⁰ 2015 CPSC Report, at 11 (Table 2b) (on average, between 2010 and 2012, residential fires starting from upholstered furniture that were caused by smoking materials resulted in 170 annual deaths compared to 50 annual deaths from fires that were caused by open flame sources); *id.* at 12 (Table 2c) (on average, between 2010 and 2012, residential fires starting from upholstered furniture that were caused by smoking materials resulted in 220 annual injuries compared to 120 annual injuries from fires that were caused by open flame sources); Nat’l Fire Data Center, U.S. Dep’t of Homeland Sec., Smoking-Related Fires in Residential Buildings (2008-2010) (“the fatality rate . . . was more than seven times greater in smoking-related fires”).

the cost of property losses due to furniture fires started by cigarettes is approximately twice as much as the losses from small open flames.¹¹

We urge CPSC to move forward expeditiously to adopt a flammability standard that would protect against smoldering sources of furniture fires. The blueprint for how to do so *without increasing use of flame retardant chemicals* has already been drafted and the feasibility of this approach is established. California TB 117-2013 was developed through an open and transparent rule making process involving a broad and diverse group of stakeholders including consumers, public health groups, consumer groups, firefighters, environmental NGOs, labor advocates, social justice NGOs, upholstered furniture manufacturers, and component suppliers. California developed the TB 117-2013 standard because the original TB 117 was not effective and led to the use of harmful and potentially harmful flame retardant chemicals in various components of upholstered furniture, *i.e.*, foam, fabric, and decking materials.¹²

The new TB 117-2013 standard significantly improves on its predecessor. It protects the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage by:

1. Focusing on, and providing protection from, the major cause of upholstered furniture fires: smolder ignition.
2. Facilitating compliance options that do not require the use of flame retardant chemicals.
3. Providing a cost effective solution that will benefit households at all income levels.
4. Using composite test methods to recognize the pivotal role of fabrics and the interactions of all covered components.

The CPSC has an opportunity to fulfill its legal obligations under the FFA and bring closure to the longstanding issue of upholstered furniture flammability by adopting the revised TB-117-2013 as a mandatory national standard. By taking this step, the CPSC will adequately protect consumers from the

¹¹ 2015 CPSC Report, at 13 (Table 2d) (on average, between 2010 and 2012, residential fires where upholstered furniture was the first item ignited that were caused by smoking material ignition resulted in \$64.4 million in annual property loss, while fires caused by open flame ignition resulted in \$32.2 million in annual property loss).

¹² The U.S. Department of Commerce, National Bureau of Standards (now NIST), the CPSC, and independent fire engineers and scientists have found that TB 117 foam treated with flame retardant chemicals was not effective in reducing fire hazard, and CPSC reported that foam treated with flame retardant chemicals rendered upholstered furniture more prone to cigarette smolder ignition, which, as discussed, is the leading cause of upholstered furniture fires. *See, e.g.*, Vytenis Babrauskas, *Upholstered Furniture Heat Release Rates: Measurements and Estimation*, 1 J. Fire Sciences 9 (1983); Memorandum from Weiyang Tao, Textile Technologist, CPSC, to Dale Ray, Project Mgr., CPSC (May 12, 2005) (“Evaluation of Test Method and Performance Criteria for Cigarette Ignition (Smoldering) Resistance of Upholstered Furniture Materials”) CPSC, Upholstered Furniture Flammability: Regulatory Options for Small Open Flame & Smoking Material Ignited Fires (1997), *available at* <https://www.cpsc.gov/PageFiles/80986/3458ca2d.pdf>; T.H. Talley, Phases 1&2, UFAC Small Open Flame Tests and Cigarette Ignition Tests, Annual AFMA Flammability Conf. (1995).

dangers associated with upholstered furniture flammability and eliminate the need for flame retardant chemicals. We urge CPSC to make this a priority in fiscal years 2017 and 2018.

Sincerely,

Pamela Miller, Executive Director
Alaska Community Action on Toxics

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

Nathan Donley, PhD, Staff Scientist
Center for Biological Diversity

Judy Levin, MSW, Pollution Prevention Director
Center for Environmental Health

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Mark S. Rossi, PhD, Executive Director
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Sarah Doll, National Director
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Russell Long, Founder and President
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June 15, 2016

Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: Comments of Public Citizen on the topic of Consumer Product Safety Commission Agenda and Priorities for FY 2017 & 2018

Public Citizen is grateful for the opportunity to submit comments to the Consumer Product Safety Commission (CPSC or Commission) for the CPSC Agenda and Priorities Hearing for Fiscal Years 2017 and 2018. Public Citizen is a national non-profit organization with more than 400,000 members and supporters. We represent the public interest through lobbying, litigation, administrative advocacy, research and public education on a broad range of issues that include product safety and consumer rights in the marketplace.

At the outset, we express our support for the Commission's Draft Strategic Plan 2016-2020 (Strategic Plan). We understand the CPSC FY 2017 & 2018 priorities will rightly align with the Strategic Plan. It is clear the Commission put a great deal of deliberation and resources into developing the Strategic Plan, and we are appreciative of the CPSC's efforts. We further understand that the CPSC is currently in the process of preparing its FY 2017 Operating Plan and FY 2018 Congressional Budget Request, which are the subject of the CPSC's call for comments. With this in mind, we submit the following comments and recommendations regarding the CPSC FY 2017 & 2018 priorities.

Data-Driven Agency

We believe the CPSC's strategic vision of being a data-driven agency is unequivocally the correct approach. We also agree with placing emphasis on the need for greater sources of data to better identify emerging risks as well as known hazards. The consumer product safety database SaferProducts.gov, which was created by Section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), is central to this effort. We appreciate the CPSC's commitment to this critically important consumer tool and encourage the Commission to enhance its utility. If administered correctly, it can serve as a central national repository for critical product safety information, thereby serving as a highly impactful CPSC tool to avert death or injury to the public.¹

For this reason, we urge the Commission to strengthen the SaferProducts.gov by increasing its visibility and use by the public. We recommend that the CPSC make the website's visibility a top priority and dedicate resources to advertising it in social media and in any media statements or responses issued by the Commission and further encourage the CPSC small business ombudsman to promote the data base to small entities interfacing with the CPSC. We also encourage the Commission to promote its availability through more partnerships with state consumer protection agencies. The Commission should also work with consumer advocacy organizations and industry to ensure the website is promoted through major consumer hubs, such as external websites and social media.

Prioritize Well-Documented Product Hazards

Again, we appreciate the Commission's commitment to being a data-driven agency. We believe the first step in meeting this commitment is aggressive action on well-documented dangers posed to the public. Below is a non-exhaustive list of priority hazards that should be quickly addressed by the Commission.

¹ To this end, in 2013 Public Citizen Litigation Group represented consumer groups as intervenors in a case against a company attempting to block the CPSC from publishing a consumer product report about one of its products on SaferProducts.gov. After a district court order granted the company's motion to seal the case and proceed under a pseudonym, Public Citizen Litigation Group appealed the order to the U.S. Court of Appeals for Fourth Circuit, which held that the district court's sealing order violated the public's right of access under the First Amendment and that the court abused its discretion in allowing Company Doe to proceed under a pseudonym. *Company Doe v. Public Citizen*, 749 F.3d 246 (4th. Cir. 2014). In June 2014, the district court ordered the entire record in the case, including the district court's opinion, unsealed. The court also amended the caption to name the plaintiff, "The Ergo Baby Carrier Inc." *The Ergo Baby Carrier, Inc. v. Tenenbaum et al.*, No. DKC 11-2958 slip op. (D. Md. 2014).

Window Coverings – The CPSC has documented the strangulation and asphyxiation hazard to children caused by window covering cords for decades. Industry attempts at voluntary standards failed to eliminate or even reduce the risk of strangulation, despite 20 years and 6 attempts. The CPSC should act as swiftly as possible to adopt the strongest possible mandatory standard to protect children from continued injury and death caused by window covering cords, fully incorporating the information and recommendations submitted by consumer groups in their petition to the CPSC on this life-or-death issue.²

Furniture and TV Tip-overs – The CPSC must commit itself to act aggressively to address the hazards to children caused by furniture and TV tip-overs. Though educational efforts are helpful, they are not nearly enough. Most immediately, the CPSC must issue a formal recall and stop sale demand of the IKEA Malm Dresser without further delay. As the CPSC is aware, the Malm Dresser does not meet the ASTM voluntary standard and the product has resulted in the death of at least 3 children, one of which occurred after a non-recall corrective action plan was issued by the CPSC on the dresser.

This is unacceptable. Furniture and TV tip-overs are a long-standing, well-documented, and completely avoidable hazard. We call on the CPSC to move toward mandatory standards that all manufacturers must comply with to protect and prevent the thousands of child injuries and deaths that continue to occur from furniture and TV tip-overs.

Flame Retardants – Toxic flame retardants pose a grave health risk to the public. Children are particularly susceptible to the health hazards posed by retardants given their widespread presence in infant and children's products, and exposure to these chemicals is associated with serious health, developmental, neurological, and genetic disorders. Public Citizen strongly supports, and urges the Commission to act on, the petition submitted by Consumer Federation of America, Earth Justice and other advocacy organizations to ban organohalogen flame retardants pursuant to the CPSC's Federal Hazardous Substances Act authority. We were encouraged by the CPSC's public hearing

² 16 CFR § 1051 Petition for Rulemaking Eliminating Accessible Cords on Window Covering Products, *available at* <https://www.cpsc.gov/Global/Regulations-Laws-and-Standards/Petitions/WindowCoveringPetition.pdf>. *See also* Staff Briefing Package In Response to the Petition CP 13-2, Requesting Mandatory Safety Standards for Window Coverings, *available at* <http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/PetitionRequestingMandatoryStandardforCordedWindowCoverings.pdf>.

held on December 9, 2015, which plainly demonstrated that the great weight of medical and scientific opinion associates exposure to flame retardants with negative health outcomes and supports strong regulation.

Liquid Laundry Packets – Since a new voluntary standard for liquid laundry packets was published in October 2015, we have learned even more about the dangers posed by the packets. A study published in April this year in *Pediatrics* concluded that laundry detergent packets are far more dangerous to children than non-packet detergents.³ Analyzing data from the National Poison Data System, the study found that, for children exposed to detergent products, laundry detergent packets were the only detergent product tied to serious clinical health risks of coma, respiratory and cardiac arrest, and death. The upward trend of child exposure to this toxic substance is equally alarming. The same study found that the number of child exposures to detergent packets exceeded the number of traditional detergent exposures. The National Poison Data System has also reported an explosive increase in child exposure to laundry packets every year since 2012, *doubling* from 6,300 exposures in 2012 to 12,500 in 2015.⁴ As of May 31st, almost 5,000 laundry detergent packet exposures have been reported this year alone. In April of this year, it was also reported that poison control centers receive a call about a child who has ingested or been exposed to a laundry detergent packet every 45 minutes.⁵

The continued health risks of laundry detergent packets to children require the CPSC to closely monitor the implementation of the voluntary standard and to continue consideration of a more protective rule to shield children from this enduring hazard, including consideration of a mandatory standard.

³ Mallory G. Davis et al., *Pediatric Exposures to Laundry and Dishwasher Detergents in the United States: 2013-2014*, PEDIATRICS (2016), <http://pediatrics.aappublications.org/content/pediatrics/early/2016/04/21/peds.2015-4529.full.pdf>.

⁴ American Association of Poison Control Centers, Laundry Detergent Packets, <http://www.aapcc.org/alerts/laundry-detergent-packets/>.

⁵ Tara Haelle, 'Pretty Poison' Laundry Detergent Pods Cause Increase in Poisonings, Serious Effects, FORBES (Apr. 25, 2016, 03:56 PM), <http://www.forbes.com/sites/tarahaelle/2016/04/25/pretty-poison-laundry-detergent-pods-cause-increase-in-poisonings-serious-effects/#2b4afbd5da7>.

CPSC Procedural Improvements

As the result of the CPSIA, the Commission has been able to issue more rules than ever before to safeguard consumers from dangerous products. We believe there are several key areas the Commission should continue to prioritize in order to sustain its ability to quickly address consumer product hazards. Chief among these procedural improvements are enhancing recall effectiveness and a greater commitment to developing mandatory standards.

Additionally, we place particular significance on strengthening information disclosures issued pursuant to section 6(b) of the Consumer Product Safety Act (CPSA). Since the Commission issued an NPRM in February 2014 to amend the 30-year old rule implementing section 6(b), the rulemaking has seen little traction.⁶ We urge the Commission to continue with the proposed rulemaking without further delay.

As currently written, section 6(b) restricts the CPSC from publicly disclosing any information from which the public can readily ascertain the identity of a manufacturer or private labeler of a consumer product, unless the Commission takes reasonable steps to ensure the information is accurate, that disclosure is fair in the circumstances, and the disclosure is reasonably related to effectuating the purposes of the CPSA and other laws administered by the Commission.⁷

Section 6(b) has unfortunately meant that the CPSC is uniquely restrained in its ability to proactively disclose safety hazards to the public. To our knowledge, no other federal agency that deals with public health and safety is subject to similar public disclosure restrictions. 6(b) negatively affects consumers by unnecessarily shielding critical product safety information from public view. Section 6(b) is outdated, anti-consumer, and intended solely to protect the reputation of businesses that put harmful products on the market. Landmark right-to-know laws like the Freedom of Information Act do not have a similar, overbroad restriction for information disclosures and instead have tightly-focused exemptions focused on real business interests such as protected trade secrets. There is no legitimate justification for this law, and Congress should eliminate it. We encourage the CPSC to make the case to Congress. Public Citizen intends to do the same.

⁶ Information Disclosure Under Section 6(b) of the Consumer Product Safety Act, 79 Fed. Reg. 10712 (proposed Feb. 26, 2014)(to be codified at 16 C.F.R. pt. 1101).

⁷ 15 U.S.C. §2055(b).

Until Congress eliminates Section 6(b), the CPSC must prioritize the rulemaking process to increase proactive disclosures by the Commission. Section 6(b)'s equally outdated implementing regulations, which are overly pro-industry as they allow manufacturers to weigh in on – or outright object to – product safety information before the Commission may disclose such information to the public.⁸ Essentially, 6(b) requires the Commission to negotiate every recall announcement with the manufacturer or company.

The 30-year old CPSA rule is emblematic of the avoidable obstacles that thwart the Commission's ability to modernize and advance consumer safety. Advances in technology and communication since the rule's adoption in have gone unaddressed. Unnecessary delays swallow up efficient dissemination of public safety information. One obvious example is the Commission's inability to publicly disseminate information that has already been publicly disclosed, which simply gives business and manufacturers another built-in opportunity to influence the process before releasing critical product safety information.

Section 6(b) puts American lives and health at risk with burdensome procedures and delays that block public disclosure of crucial information on dangerous products. Section 6(b) is a relic that handcuffs the CPSC's core regulatory function of warning the public about potentially defective products and compels the CPSC to waste already scarce budgetary resources on procedures that do no serve any consumer protection or product safety goal.

Public Citizen supports the goals of the proposed rule, which would greatly serve consumers and maximize transparency and openness by: (i) ensuring the information subject to the 6(b) Information Disclosure Regulation conforms with, and does not go further than, the statutory language of Section 6(b), thereby ensuring the regulation is not more restrictive of public disclosure of product information than required by current law; (ii) exempting publicly available information from the 6(b) Information Disclosure Regulation, including information posted on the consumer product safety information website; (iii) eliminating redundant notice requirements to manufacturers regarding information that is substantially similar to a previous disclosure; and (iv) eliminating the restriction on public disclosure of manufacturer comments.

⁸ 16 C.F.R. 1101

Conclusion

Public Citizen is acutely aware of the CPSC's enormous jurisdictional obligations and the challenges posed by disproportionately modest resources. Despite this, we believe if the Commission proceeds with a mandate to prioritize consumer safety above all else – and prioritize it high above the interests of business and industry – the CPSC can fulfill its decree to advance product safety and protect the lives and health of Americans. We urge the Commission to operate in a way that puts consumer safety first at all times. Thank you again for the opportunity to submit these comments.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Sonia Gill". The signature is written in a cursive, slightly slanted style.

Sonia Gill
Counsel for Civil Justice and Consumer Protection
Congress Watch Division

Jonathan Stewart

National Electrical Manufacturers Association



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

June 1, 2016

Re: Agenda and Priorities FY 2017 and/or 2018

Via email: cpsc-os@cpsc.gov

Dear Commissioners,

The National Electrical Manufacturers Association (NEMA) respectfully submits these **comments regarding recommendations for the Commission's agenda and priorities for fiscal years 2017 and 2018.**

NEMA is the association of electrical equipment and medical imaging manufacturers, founded in 1926 and headquartered in Arlington, Virginia. Its member companies manufacture a diverse set of products including smoke and carbon monoxide detection devices, arc fault and ground fault interrupters and household batteries. Worldwide annual sales of NEMA-scope products exceed \$120 billion. NEMA Dry Battery Section members manufacture and market primary dry cell batteries of various sizes and chemistries, which are available for consumer use in the United States.

On May 9, 2016 the CPSC posted a Notice of Public Hearing in the Federal Register inviting responses to four questions regarding the 2017 and 2018 agenda and priorities. One question posited was:

Should the Commission consider making any changes or adjustments to the agency's proposed or ongoing education, safety standards activities, regulation, and enforcement efforts in fiscal years 2017 and/or 2018, keeping in mind the CPSC's existing policy on establishing priorities for Commission action (16 CFR 1009.8)?

In response to this inquiry, NEMA recommends that the Commission include as part of its fiscal year 2017 Operating Plan or fiscal year 2018 Congressional Budget Request resources allocated toward promulgation of a rule under Section 15(j) of the Consumer Product Safety Act (CPSA). Such a rule would specify/require consumer lithium coin cells with a diameter greater than 16 mm sold in the U.S. to comply with the "**American National Standard for Portable Lithium Primary Cells and Batteries – Safety Standard**" ('ANSI Standard' or '**standard**') section entitled: Lithium Coin Packaging and Marking (details below).

Background

For nearly four decades, U.S. battery manufacturers have worked through NEMA to fund a telephone hotline with the National Capital Poison Center (NCPC) to provide information

and education addressing the ingestion of small batteries. With the increase in use of 3 volt lithium coin batteries of larger diameter (i.e. 20 mm), a hazard surfaced where the ingested cell could lodge itself in the consumer's esophagus. Prolonged contact between the battery and saliva can result in a chemical reaction known as hydrolysis where the pH of the saliva solution increases. This reaction can lead to serious tissue injury in only a few hours and, unless mitigated through surgery or other means, even death.

Since 2007, the U.S. has seen a steady decrease in the number of reported battery ingestions (including button and coin cells). During this same time, the number of major to fatal cases has fluctuated without depicting a trend in either direction with 20 mm lithium cells involved in the majority of these situations as reported by the NPCC. When considering current trends in reported ingestion cases, it is important to note that over the same period of time (since 2007) the number of lithium coin cells in the U.S. marketplace has increased dramatically.

NEMA member company efforts to minimize this hazard form a five-part approach: proactive education and outreach to the medical and other communities, promoting child resistant battery compartment designs in devices that use these batteries, clear and logical warning copy, improved and compartmentalized packaging, and a more robust battery design. Over the last 18 months, NEMA has made substantial efforts towards warning copy and packaging. The goal – and likely outcome – of these efforts is a series of revisions to the ANSI Standard that establishes a baseline for warning text on lithium coin cell packages that clarifies the ingestion hazard and compliance with the Poison Prevention Packaging Act at 16 C.F.R §§ 1700.15(b) and 1700.20. The revisions to the standard are scheduled for approval by December 2016, at which point NEMA members including Energizer, Duracell, Panasonic and Rayovac are prepared to initiate compliance. We also expect other major worldwide manufacturers and marketers who sell into the U.S. to begin to comply, including Japanese companies such as Maxell, Toshiba and Sony.

Because an ANSI Standard is voluntary, there is no guarantee that all battery manufacturers, including importers of foreign-made batteries, will comply without a regulation by the CPSC as recommended by NEMA in these comments.

About the ANSI Standard

Though not finalized, the current draft of the ANSI Standard contains the following elements regarding packaging and marking:

- **Icon:** NEMA members have developed an icon (similar to what is used in other consumer industries) that connotes the importance of keeping the batteries out of reach of children, specifically toddlers. (The icon was tested for comprehension according to American National Standards Institute Z535.3 procedures for the evaluation of safety symbols and received a very high score for symbol comprehension.)
- **Text:** the phrase “**Serious Harm if Swallowed**” will be placed on the front of the blister card with additional, more explanatory text on the back which indicates the potential for death.

- **Packaging:** the standards under the Poison Prevention Packaging Act at 16 C.F.R §§ 1700.15(b) and 1700.20 will be applicable.
- **Scope:** with the exception of the requirement that the icon be engraved on the cell (which applies to consumer and non-consumer lithium coin cells) the above requirements will apply only to products available for retail. The packaging standards will be applicable to consumer lithium coin cells with a diameter of 16 mm or greater; the icon and text requirements will apply only to consumer lithium coin cells with a diameter of 20 mm.

CPSC Policy on Establishing Priorities

16 CFR 1009.8 contains the policy guidance the Commission is to use in establishing priorities. Subsection (c) contains a list of 8 criteria the Commission is to take into account throughout the process. NEMA addresses each of these as follows:

Frequency and severity of injuries

In 2014, the most recent year for which data is available, there were 3,272 reported battery ingestions of all types, chemistries and sizes with 23 major cases and 2 deaths. For statistics from prior years, NEMA refers the Commission to the National Capitol Poison Center (www.poison.org). Most ingestion cases fortunately do not result in any injury and past and current medical protocol for ingested batteries is to allow batteries to pass if they pass the esophagus.

Causality of injuries

While the direct causation of the injury is the chemical reaction between the battery and the saliva after prolonged contact, there are indirect causes that, if addressed, would prevent or greatly reduce incidents of battery ingestion. One of these is a lack of public awareness of the risk. NEMA believes that the warning label requirements in the ANSI Standard will lead to greater public awareness.

Another indirect cause of the ingestion hazard is the packaging (i.e. blister card) in which the batteries are sold to consumers. For example, many blister cards contain two or four coin cells but, when opened, not all coin cells are removed by the consumer and placed into service. This leaves the remaining batteries easily accessible. Compliance with the Poison Prevention Packaging Act would largely resolve this as counter-measures such as compartmentalization (where each cell is self-contained in its own “compartment”) would be present.

Chronic illness and future injuries

In 2016, products that rely on lithium coin cells for power are ubiquitous across almost every subsector of the U.S. consumer market. Wearable devices, key fobs, remote

controls, calculators, wrist watches and a range of electronic toys are just some examples. The lithium coin batteries will continue to present an ingestion risk to consumers due to their size, voltage and growing prevalence in the market.

Cost and benefit of CPSC action

While NEMA cannot offer a specific estimate of cost to the CPSC to promulgate this rule, it is clear that staff time and resources would need to be allocated. But NEMA also believes that the benefit of requiring all industry participants to comply with the labeling and packaging standards is apparent. Broader compliance will lead to broader public awareness and more consumer-driven precautions to prevent ingestion.

Unforeseen nature of the risk

As mentioned earlier, a primary indirect cause of the injury is lack of consumer awareness. Many consumers do not realize the ingestion hazard, let alone that lithium coin cell ingestion can be fatal. The ANSI Standard aims to remedy this circumstance.

Vulnerability of the population at risk

Unfortunately, the most common victims of the coin cell ingestion hazard are children under six years of age. Senior citizens are also impacted.

Probability of exposure to hazard

With so many products that contain coin cell batteries and an anticipated growth in demand for these products, exposure will only increase. It is imperative that public awareness increase and that product packaging act as safeguard in the face of increased exposure to the hazard.

Additional criteria

While NEMA cannot offer an estimate of its members' market share of the lithium coin cell market, we do know that our products do not comprise 100% of the U.S. market. Increasingly, these batteries are imported under different brands. If a certain segment of the market does not conform to the same warning and packaging standards that are broadly used, it could create the false impression among consumers that certain products somehow do not pose the same ingestion risk. Requiring all products on the U.S. market to comply with the ANSI Standard would avoid this potential consequence.

CPSC 2016-2020 Strategic Plan

Promulgation of a rule under CPSA 15(j) is commensurate with CPSC's 2016-2020 Strategic Plan (the Plan). Strategic Goal 2, "Prevent Hazardous Products from Reaching Consumers" includes Strategic Objective 2.1, "Improve identification and assessment of hazards to consumers." While NEMA does not believe that lithium coin cells are hazardous products in and of themselves, we certainly recognize the associated risk and believe that it is critical to identify it to consumers through warning copy. Appropriate

packaging will also prevent unsupervised children from accessing the coin cells, thereby preventing the hazard.

Substantial Product Hazard

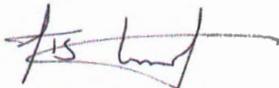
The CPSC has the authority under the Consumer Product Safety Act (CPSA) to require that all manufacturers and importers of lithium coin cells in the U.S. market comply with the ANSI Standard. NEMA believes that the statutory requirements for the CPSC to do so will be met once the ANSI Standard is published. Specifically, section 15(j) authorizes the Commission to:

- “...specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence shall be deemed a substantial product hazard... if the Commission determines that
- (A) such characteristics are readily observable and have been addressed by voluntary standards; and
 - (B) such standards have been effective in reducing the risk of injury from consumer products and that there is substantial compliance with such standards.”

NEMA recommends that the Commission specify that the absence of the warning and packaging requirements in the ANSI Standard constitute a substantial product hazard. The characteristics are readily observable and (will) have been addressed by a voluntary standard. Further, as mentioned above, NEMA members are fully prepared to comply with the packaging and marking revisions to the standard once it is finalized, which NEMA believes would constitute substantial compliance.

NEMA appreciates the opportunity to submit this recommendation that the CPSC include promulgation of a rule under CPSC 15(j) to require U.S. manufacturers and importers of lithium coin cells to comply with the Lithium Coin Packaging and Marking requirements in the ANSI Standard. NEMA believes that in order to materially increase consumer awareness of the associated ingestion risk and reduce instances of ingestion, all battery products within the scope of the ANSI Standard should comply. NEMA will make its resources available to the CPSC to assist in promulgating the rule. For further inquiries, please contact Jonathan Stewart (Manager, Government Relations) at jonathan.stewart@nema.org.

Sincerely,



Jonathan Stewart
NEMA Manager, Government Relations

Charles Jeffrey Duke, General Counsel and Corporate Secretary
Zippo Manufacturing Company



June 3, 2016

CHARLES JEFFREY DUKE
GENERAL COUNSEL AND
CORPORATE SECRETARY

jduke@Zippo.com
PHONE: 814 368-2797
FAX: 814 363-2597

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

Submitted to the Commission online at: cpsc-os@cpsc.gov

Dear Mr. Stevenson:

Zippo Manufacturing Corporation provides the foregoing comments in response to the notice of public hearing on the Consumer Product Safety Commission's ("CPSC" or "the Commission") agenda and priorities for fiscal years 2017 and 2018. Our company is a manufacture of lighters and other related consumer products that are impacted by the policies and actions of the Commission.

ZMC is committed to providing safe consumer products. We believe that the commission must develop policies ensuring consumer product safety based on the highest quality data available and proactive relationships with those stakeholders, who produce, import and sell consumer products. In this regard, the Commission's priorities should be predicated on protecting consumers effectively and in promoting responsible product stewardship, and that the Commission's resources should not be subverted by ill-advised policies and procedures that do not protect the public from dangerous products.

From this perspective, ZMC believes that the Commission should focus its priorities on the following:

Terminate Rulemakings That Would Undermine Consumer Protection

The Commission should immediately withdraw the following open rulemakings that that would not protect consumers.

- 1. Information Disclosure under Section 6(b) of the Consumer Product Safety Act.*

In February 2014, the Commission proposed a rule that would significantly alter its interpretation of section 6(b) of the Consumer Product Safety Act (CPSA). This proposal altered the Commission's longstanding policy on how the agency disclosed information on companies and products.



In February 2014, the Commission issued a Notice of Proposed Rulemaking (NPR) making changes to section 6(b) of the Consumer Product Safety Act. Section 6(b) of the statute requires the agency to take "reasonable steps" to assure that any information it intends to disclose to the public identifying a manufacturer or private labeler of a product (whether on its own initiative or in response to a Freedom of Information Act request) is accurate, that the disclosure is "fair in the circumstances." The congressionally mandated protection is critically important as it encourages companies to voluntarily report potential product hazards and defects.

This proposal proposes to, among other things:

- Make any information publically available on the internet exempt from 6(b) requirements;
- Remove the ability for companies to be re-notified each time the agency releases information that has already gone through the 6(b) process;
- Remove the ability for companies to designate that their comments or objections in response to a 6(b) notice be withheld from public disclosure
- Remove the ability for companies to protect information from disclosure by designating them "work product" or "attorney client" privileged

Concerns with the proposed changes include:

- The current rule has been in place for 30 years and has fostered in industry and CPSC a level of trust in the recall process. 6(b) protections are important because they offer confidence for companies in sharing information on consumer product incidents with the agency, knowing that the agency will take time to investigate the incidents and make a determination on an appropriate corrective action plan (with the cooperation of the company) prior to disclosing the information to the public.
- Any efforts to diminish the privacy protections afforded under 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.

2. Guidelines for Voluntary Recall Notices.

Almost all recalls conducted with the CPSC are voluntary, with most firms not only reporting an alleged problem but also agreeing to cooperate with the Commission to recall and address potential product hazards. Indeed, the Commission's *Fast Track* recall program, developed in 1995, which won an innovation in government award, provides an abbreviated 20 day process for negotiating a voluntary recall, incentivizing companies to cooperate with the CPSC without fear of an adverse determination regarding the safety of their product.



The CPSC has individually negotiated voluntary recalls for forty years and, in doing so, has built trust with firms and created common practices. The recently proposed notice of proposed rulemaking (NPR) could substantially reverse past successes and create major disincentives for the regulatory community to cooperate with the Commission. Updating this rule is not required by any CPSC statute.

When it was issued in 2013, the proposed rule, received over 50 public comments, including formal comments submitted by ZMC, expressing grave concern over the impact this change would have on the continued safety of consumer products. Some of the concerns are as follows:

- Voluntary Corrective Action Plans (CAPs) Become Legally Binding
 - Under the current process, CAPs are expressly not legally binding and giving binding force marks a fundamental shift in the way that voluntary recalls are handled by the CPSC by:
 - Imposing potentially significant delay in the voluntary recall process so that terms can be negotiated, thereby gutting the Fast Track program;
 - Shifting CPSC resources away from getting unsafe products out of the hands of consumers toward negotiating and enforcing CAPs causing firms to reevaluate their cooperation with the Commission given:
 - The potential for future litigation with the CPSC over enforcement of CAPs;
 - The need for publicly traded companies to approve the terms of a binding agreement and ensure compliance with such an agreement to meet duties owed their Shareholders, financing institutions and even the SEC; and
 - The effect CAPs might have if introduced as evidence in product liability litigation.
- Compliance Programs Imposed in CAPs would be counterproductive
 - This proposal would significantly impede the negotiation of CAPs. Before CPSC staff can even begin the negotiation process and create a proposed structure for an appropriate, and possibly cumbersome “compliance plan,” they will have to first inquire into and fully understand the operations of a company and its current compliance plans and product safety programs. This is a far greater administrative task than is currently required, and CPSC does not have the resources for such an undertaking.



- Proposed Substantive Provisions Are Not Authorized by Statute and Do Not Comply with Required Rulemaking Procedures
 - Many provisions of the proposed rule constitute a “legislative rule” and not an “interpretative rule,” as the staff asserts. The proposed rule would place new obligations on companies, and go well beyond merely providing guidance about the existing voluntary recall process. The Commission is proposing fundamental changes of long-standing practice that establish new rights and responsibilities and legally bind firms in ways not currently provided by statute. By classifying the proposed rule as “interpretative,” the Commission is in violation of the Administrative Procedures Act and should have engaged in a full and proper rulemaking procedure, including requiring cost benefit analysis of the proposed changes.

Chairman Kaye has made clear in Congressional testimony and through other statements that the rule is not a priority of his. However, the Commission continues to include final action on this rule in its operating plan. If the CPSC continues with this rulemaking, it could threaten the cooperative relationship that many companies rely upon and could potentially eliminate the Fast Track recall program, which the Commission itself highlights as a model of good governance.

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

The fiscal year 2015 Financial Services Appropriations legislation provided \$1,000,000 for test burden reduction and directed CPSC to report to the Committee on its efforts to work with the regulated community and identify steps CPSC can take to reduce third-party testing costs while still assuring compliance. The House Appropriations Committee report stated the following:

The Committee is disappointed by the limited scope of the Commission's report and its failure to make real strides towards tangible test burden reduction. The CPSC has identified a significant number of opportunities for test burden reduction, yet there continues to be no meaningful relief.

The Committee provides another \$1,000,000 in fiscal year 2016 for third-party test burden reduction and urges the Commission to take actionable steps to provide demonstrable relief from the burdens of third-party testing. The Committee directs the Commission to provide quarterly reports updating the Committees on Appropriations of the House and Senate on its efforts to reduce the costs of third-party testing, including any that the Commission has chosen not to pursue.



ZMC encourages the Commission to continue making efforts to make reducing third-party testing burdens a priority as Congress intended when it passed H.R. 2715 (Pub. Law 112-28) in 2011. Both the authorization and appropriations committees of Congress have made it clear that the Commission needs to identify ways to reduce “third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.” Congress has made it clear that the Commission must endeavor to ensure safety in consumer products without imposing an undue burden on manufacturers, retailers and consumers. This Administration supports this goal. In July 2011, the President issued Executive Order 13579 directing independent regulatory agencies, to the extent permitted by law, to comply with the provisions of Executive Order 13563. This Executive Order states that our regulatory system “must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends.”

Manufacturers, retailers and imports all agree that testing is a critical component to the safety of consumer products. However, ZMC and similarly situated companies continue to struggle with the costs associated with mandatory testing requirements that do not help determine compliance or are redundant. The agency has only provided limited relief despite spending substantial time and resources attempting to identify opportunities to reduce testing burdens. The agency must be more vigilant in its efforts to find ways to reduce testing costs.

The Commission Should Continue Efforts to Improve Engagement with External Stakeholders

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

The Commission Should Focus Resources on Addressable Safety Concerns

Given the Commission’s limited resources, the agency must focus attention on safety issues where the agency has specialized experts. We support the CPSC’s cooperation with other federal agencies in identifying and responding to areas of risk, but the Commission must not duplicate or even complicate the efforts that other agencies have undertaken. The Commission should also commit to working with manufacturers, retailers and other interested parties in developing strategies for addressing safety concerns.



Through the CPSA and its amendments, the Congress recognized the importance of voluntary standards and cooperative engagement with stakeholders as effective tools for protecting consumers. Industries can identify and respond to emerging risks quickly, so the agency would be wise to foster this working relationship. With a mission focused on safety, The CPSC must rely on the best available and relevant data to support regulatory decisions. Importantly, the CPSC should complete a thorough a robust analysis of its regulatory proposals and employ sound regulatory principles to ensure that they effectively meet policy objectives.

Zippo Manufacturing Corporation appreciates your consideration of our views and look forward to working with the Commission in the future.

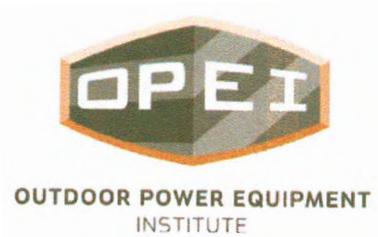
Sincerely,

A handwritten signature in blue ink, appearing to read "Charles Jeffrey Duke".

CHARLES JEFFREY DUKE
General Counsel and Corporate Secretary

C: Walt Sanders

Greg Knott, Vice President, Regulatory Affairs
Outdoor Power Equipment Institute



June 1, 2016

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

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

Dear Mr. Stevenson:

On May 13, 2016 the ANSI Board of Standards Review approved the development process for the ANSI/OPEI B71.9-2016 American National Standard for Multi-Purpose Off-Highway Utility Vehicles. The approved standard is now with ANSI staff being prepared for final publication. OPEI expects the standard will be published in June. With the pending publication of the B71.9-2016 standard, OPEI requests CPSC terminate the Recreational Off-Highway ("ROV") rulemaking activity for CPSC fiscal year 2017.

ANSI/OPEI B71.9-2016 Development Review

The B71.9-2016 standard was developed in close cooperation with CPSC staff. Industry worked side-by-side with CPSC staff throughout the revision process, including several "engineering meetings" to discuss proposals from both sides¹. The resulting B71.9-2016 standard was unanimously approved² for revision this year.

The B71.9-2016 standard includes several key revisions. Most importantly, the standard seeks to improve seat-belt use by limiting the maximum vehicle speed to 15mph when the operator's seat belt is unbuckled³. OPEI and CPSC analysis showed that lack of seat belt use was the most common factor in ROV related injuries and fatalities. Therefore addressing seat belt use was a top priority for the B71.9-2016 revision. The B71.9-2016 standard will also include new vehicle handling requirements, revisions to the "J-turn" and "tilt table" stability requirements, and a new point-of-sale hang tag requirement.

¹ CPSC staff met with OPEI and/or the Recreational Off-Highway Vehicle Association on October 23, 2014; May 5, 2015; May 19, 2015; July 8, 2015; October 5, 2015

² The recirculation ballot resulted in 14 affirmative votes, zero negative votes and one abstention.

³ For gasoline-powered fuel-injected models. This technology is common in most ROVs.

The B71.9 Committee and CPSC staff alike both believe these changes will increase ROV safety with minimum impact on vehicle performance. In fact, in their canvass ballot responses CPSC staff noted "(they) supports the proposed changes to the voluntary standard contained in the recirculation ballot and believes the aggregate effect of improved vehicle stability, handling, and occupant protection will reduce injuries and deaths associated with ROV rollovers"⁴.

Request to Terminate ROV Rulemaking Activity in 2017

Despite a high level of industry and CPSC cooperation, the Commission continued to include ROV rulemaking activities on the 2015 and 2016 agendas, priorities and operating plans while the two sides continued to discuss requirements. Now, with a mutually agreeable standard set to be published, OPEI requests CPSC terminate the ROV rulemaking activity for CPSC fiscal year 2017.

As noted above, the B71.9-2016 standard will include several significant changes versus the 2012 revision. Once published manufacturers will need to focus resources on testing and design changes needed to assure compliance with new industry standards. However, the potential that the CSPC ROV rulemaking may still move forward, despite robust, mutually agreeable industry standards, threatens adoption of these standards. Unfortunately, if the CPSC ROV Rulemaking is not terminated, manufacturers will need to assess the cost and risks of moving forward with testing and design changes to comply with new industry standards versus a "wait and see" approach due to the uncertainty of CPSC ROV rulemaking activity and requirements there-in. For this reason it is critical that CPSC terminate the ROV rulemaking activity in 2017.

Thank you for your consideration of this request. Please feel free to contact me if you have any questions regarding the development, content or status of the B71.9-2016 standard.

Kind regards,



Greg Knott
Vice President, Regulatory Affairs
B71.9 Committee Executive
Outdoor Power Equipment Institute
Phone: (703) 549-7600
gknott@opei.org

⁴ Canvass ballot response letters from CSPC staff (Caroleene Paul) to OPEI (Greg Knott) dated December 1, 2015 and March 11, 2016.

Andrew Pappas, Government Affairs Coordinator
Outdoor Industry Association



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June 1, 2016

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

Re: Agenda and Priorities FY 2017 and/or 2018

Dear Mr. Stevenson:

Outdoor Industry Association (OIA) is the national trade association for suppliers, manufacturers and retailers in the \$646 billion outdoor recreation industry. Our members, including W.L. Gore, Columbia, The North Face and REI, produce a wide range of products including performance apparel, safety gear, camping tents and various other outdoor products.

We appreciate the opportunity to submit comments on the Consumer Product Safety Commission's (CPSC) agenda and priorities for fiscal years 2017 and 2018 and your willingness to work with industry and other interested parties to budget for your goal of protecting consumers. Your work is critical to ensuring the quality, safety and integrity of outdoor industry products being sold across the United States and used by tens of millions of Americans.

Outdoor industry products must be reliable, durable and resistant to the elements, whether being used by a family spending a day on the beach or professional athlete testing their limits in some of the most extreme conditions. Individuals rely on our products for their safety, protection and comfort, which is why, for decades, the industry has worked to develop the highest quality and safest products that meet or exceed these expectations.

In addition, the outdoor industry is a global leader in responsible business practices. We are continually working to examine our supply chains to ensure the products we make are manufactured in a socially and environmentally responsible manner. We also look for opportunities to continue to improve and innovate our products.

When examining your FY2017 priorities, there are multiple opportunities where the outdoor industry can support the work of the commission to make sure our products are safe and reliable for consumers. Our unique position at the crossroads of



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commerce and corporate responsibility allows us to provide a unique voice as the CPSC discusses the most pressing issues and develops workable regulations while approaching subjects through the lenses of sustainability and responsible innovation.

We look forward to partnering with you on your various priorities in order to support sustainable business practices and promote creation of products that withstand the rigor of the outdoors while protecting American consumers and environment.

Please reach out to me with any questions or comments. OIA is pleased to be considered a resource and partner to the CPSC over the coming year and beyond.

Sincerely,

Andrew Pappas
Government Affairs Coordinator
Outdoor Industry Association

ENSURING THE GROWTH AND SUCCESS OF THE OUTDOOR INDUSTRY

David French, Senior Vice President
National Retail Federation



June 1, 2016

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

RE: NRF Comments on “Public Hearing on Fiscal Years 2017 and 2018 Commission Agenda and Priorities”

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).

NRF is the world’s largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation’s largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing \$2.6 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, and the critical role that retail plays in driving innovation.

Last year, NRF made several concrete suggestions to the Commission with regard to ways the agency might better engage its stakeholders and allocate its very limited resources to carry-out its mission. Although NRF appreciates some actions the CPSC has taken with regard to these recommendations, unfortunately the agency has taken no or very limited action on other key recommendations. Therefore, we would like to reiterate and expand upon several of those in these comments regarding the Commission’s priorities for Fiscal Years 2017 and 2018.

1. What are the priorities the Commission should consider emphasizing and dedicating resources toward in the fiscal year 2017 Operating Plan and/or the fiscal year 2018 Congressional Budget Request?

- Establish a Formal Trade Advisory Group. For several years now, NRF and other groups have advocated for the creation of a permanent, trade advisory group, to meet regularly, including with senior CPSC officials, and make recommendations on key issues affecting CPSC stakeholders, especially regarding the complex and technical issues surrounding the importation of consumer products into the U.S. NRF again requests that the Commission emphasize and dedicate resources toward this effort and, generally, toward

more systematized stakeholder engagement. The CPSC is specifically empowered to create such a permanent advisory group under the Federal Advisory Committee Act (FACA) and, in fact, has created and maintained such advisory groups in the past.

NRF also recommends that the Commission revisit its Open Meetings Policy to ensure that, where appropriate, non-public meetings of such an advisory group could be held to facilitate more useful discussion, especially regarding sensitive business confidential information and practices that are likely to be discussed, *e.g.*, regarding import business practices. The recent experience of the CPSC/Product Safety Working Group of COAC was a prime example of how the existing CPSC meetings policy fails to facilitate the kind of direct discussion that is often necessary and appropriate for such groups.

- Establish a Trusted Trader Program. NRF recognizes the initial steps the CPSC has taken to establish a Trusted Trader Program, whereby U.S. importers of consumer products would be given “green lane status” in exchange for undertaking a number of efforts to ensure the CPSC compliance of their imports. However, despite the allocation of some resources to this effort by the CPSC, there has not been any demonstrable progress on this front, including the type of stakeholder engagement referred to in the previous point. Establishment of a robust Trusted Trader program would, in NRF’s view, serve as an agency/trade/consumer win-win, by enabling both the free flow of trade and freeing limited agency resources to focus on higher risk imports.
- Revive CPSC Retailer Reporting Program (RRP). Despite repeated indications by senior CPSC officials over the last several years, NRF understands that the agency’s apparently ongoing “review” of the important RRP continues, with no end in sight. This is unacceptable. The program should be formalized, codified if necessary, and reopened to new entrants, under the same parameters and understanding as the program began with, *i.e.*, that information provided to the CPSC under the program can and generally will be considered to satisfy the reporting company’s 15(b) CPSC reporting obligation. The Retailer Reporting Program has provided significant benefits to the CPSC and to the cause of product safety by providing participating companies with the structured opportunity to report to the agency consumer complaints and other information that may indicate a product safety issue but that do not necessarily rise to the level of required reporting. And by all accounts, the program has resulted in the removal from the market of many products that might have otherwise posed a safety concern to consumers. The time for internal review of the RRP is over, and the time for formal endorsement and re-opening by the Commission is now.
- Continue Third Party Testing Burden Reduction Activities. It has been approximately five years since Congress mandated, via H.R. 2715 (PL 112-28), that the CPSC undertake significant efforts to reduce the third party testing and certification burdens and costs mandated under the Consumer Product Safety Improvement Act of 2008 (CPSIA). While there has been some progress in this regard, notably the recent Commission enforcement policy clarifying that general certificates of conformity (GCCs) are not

required for testing-exempt adult apparel items subject only to the CPSC general wearing apparel flammability standard, much more can and should be done, consistent with assuring the compliance of products with mandatory safety standards. For example, a number of materials have been found by the CPSC, via direct testing and literature review, to not contain phthalates, but yet have not yet been exempted by the agency from mandatory phthalates testing for toys and child care articles. The agency should finalize this and other efforts to reduce unnecessary testing and certification burdens on the trade.

2. *What activities should the Commission consider deemphasizing in the fiscal year 2017 Operating Plan and/or the fiscal year 2018 Congressional Budget Request?*

- Do Not Continue Seeking Congressional “User Fee” Authorization Until Fully Establishing and Justifying the Basis and Need for Such. For the last several years, the CPSC has included in its annual budget requests to Congress new statutory authority to impose “user fees” of an unknown amount and scope on importers of consumer products, ostensibly in order to expand its Risk Assessment Methodology (RAM) import surveillance system. These requests have come with very little explanation or justification, and NRF has and will continue to oppose their implementation until such time as the need for such fees can be adequately explained and justified, preferably as part of the development, with full consultation of the trade via a permanent advisory group of the kind NRF continues to advocate for, of a comprehensive import surveillance plan.
- Formally Terminate the pending 1110, Voluntary Recall, and 6(b) Regulation Re-writes. Given the very limited resources of the CPSC, and public statements by the CPSC Chairman that they no longer are “priorities” of the agency, NRF continues to fail to understand why these proposed and heavily criticized regulations aren’t formally terminated. As NRF has publicly expressed many times, including through formal rulemaking comments, each of these rules seeks to “fix what isn’t broken” and in fact could threaten the functionality of the CPSC by discouraging companies from working cooperatively with the agency in a variety of contexts—cooperation that is and always has been the hallmark of the agency’s ability to magnify its limited resources to effectively oversee the 15,000 or so different types of consumer products under CPSC jurisdiction. And should it in fact be the will of the Commission that any of these regulations does need to be revised, then NRF would urge and expect that there be early-stage stakeholder engagement to prevent the type of deeply flawed proposed rules each at present constitutes.
- Focus on Addressable, Acute Hazards Rather than Theoretical Chronic Hazards Better Suited to Other Federal Agencies. The recent hearing by the CPSC on a petition to ban all organohalogen flame retardants in various categories of consumer products, as well as the proposed new regulation governing phthalates in toys and child care articles continues to raise concerns about the appropriate use of very limited agency resources to try and

address highly complex and often speculative chronic health or safety concerns of this type. With the potential enactment of the revised Toxic Substances Control Act (TSCA), and considering the existing size, resources and authorities of the EPA, FDA, CDC and other federal agencies, NRF believes that engaging in often years-long analysis of such hazards by the relatively much smaller CPSC represents a much lower and more tenuous return for consumers in terms of product safety. NRF would rather see the agency focus on its traditional areas of strength and authority, *i.e.*, known, addressable and acute physical/mechanical or thermal hazards posed by consumer products. As the now nearly 8-year-long-and-counting CPSC/CHAP review of phthalates has clearly demonstrated, pursuit of other hazards generally presents a regulatory quagmire and enormous resource drain for the agency.

3. *Should the Commission consider making any changes or adjustments to the agency's proposed or ongoing education, safety standards activities, regulations, and enforcement efforts in fiscal years 2017 and/or 2018, keeping in mind the CPSC existing policy on establishing priorities for Commission action (16 CFR 1009.8)?*

- Unnecessary and Unfair Compliance Pursuit of Retailers. NRF is increasingly aware of a growing trend of the CPSC to single-out retailers for a variety of agency enforcement activities, notably including pursuing product recalls and civil penalties for failure to report under Section 15(b) of the CPSA. NRF supports CPSC action on appropriate enforcement activity. However, we are concerned if the agency is either consciously or by default unfairly pursuing retailers due to their size or purported ability to pay for either recalls and/or civil penalties. NRF therefore strongly urges the Commission to inquire as to agency staff policies and practices in this regard and to ensure full compliance of staff with those established statutory enforcement criteria.

Relatedly, NRF continues to be concerned about extra-regulatory "requests" by the CPSC (whether commissioners themselves or staff at the apparent behest of commissioners/the Commission) that retailers undertake voluntary recalls of entire categories of products, whether or not there has been the statutorily required, factual basis of specific product hazard established by the agency to do so. The recent examples of most concern to NRF have been those regarding self-balancing scooters ("hoverboards") and corded window coverings. In each case, heavy-handed tactics have been used to get retailers to "voluntarily" remove all such products from sale, despite the absence in many cases of any consumer incidents regarding those specific products for which a stop sale/recall is being sought, and often without regard to contrary evidence that some such products are in fact safe for consumer use. Moreover, the tactic utilized by the agency of going first and in some cases exclusively to the retailers of these products, rather than to more appropriately first approach the manufacturers of these products, all fly directly in the face of the agency's decades-old and established statutory and regulatory procedures, not to mention good government and rule-of-law.

- Continue to Expand Education and Advisory Activities. While NRF acknowledges and appreciates the CPSC's expansion of both U.S. and international education activities aimed at ensuring that all levels of the consumer products supply chain understand and comply with the growing number of complex CPSC safety standards and procedural requirements, much more needs to be done in this regard. In addition, not only is it important for the agency to generally educate companies on its requirements, but it is critical that the agency have a commitment to provide retailers, importers and manufacturers with specific guidance when it is needed. NRF notes in this regard that it is frequently difficult or impossible to get "the answer" from CPSC staff on such essential questions as which products may be covered by a standard, what the actual requirements of standards may be for a particular product or issue, or, indeed, who at the agency is the appropriate person from whom to obtain such guidance and determinations. Such opaqueness does not further the agency's mission and creates an environment of forcing companies to frequently guess at how the CPSC will interpret or enforce its requirements. The Commission should therefore create a clear and repeatable process for companies to understand what is required of them, starting with a top-down expectation that all appropriate CPSC staff should be responsive to stakeholder requests for information or guidance.

Relatedly, NRF notes that the agency's current and unnecessarily expansive interpretation of its Meetings Policy (16 CFR part 1012) frequently makes it difficult for stakeholders to have discussions with CPSC staff without making those open to reporters and other members of the public. While NRF fully supports an open and transparent CPSC, there are of course many times when companies or groups of companies will, for legitimate reasons, want to have frank discussions with agency staff but not have those discussions scrutinized by the media or other third parties. Unfortunately, the Office of General Counsel has apparently taken such an overly expansive view of the Meetings Policy as to ignore regulatory exceptions to the Policy, including that the Policy does not apply to non-substantial interest matters, *i.e.*, those that are not "likely to be the subject of a regulatory or policy decision by the Commission," including "interpretations of existing laws, rules and regulations," as well as "routine speeches given by CPSC personnel before outside parties." (16 CFR 1012.2 (d) and 1012.3(d)(4)).

- End or Publicly Vet the Continued "Mission Creep" of Compliance and other Agency Offices. NRF continues to be very concerned over ongoing, extra-regulatory and typically unannounced new Compliance, Import Surveillance, Office of General Counsel and other agency policies, requirements and "expectations" in the context of corrective action plans, port procedures and civil penalty demands, among others. These continually evolving agency policies, interpretations and demands of general applicability are more properly proposed via the traditional, fairer and more transparent mode of regulatory proposals, especially where such new policies relate directly to existing agency regulations, *e.g.*, the agency's informal and ever-expanding list of information required to be submitted as part of a "full report" under 15(b), despite the existence of a current agency regulation setting-forth in fact what constitutes a "full report." Such

actions by the agency, while perhaps expedient, create an atmosphere among agency stakeholders of a lack of understanding and mistrust that what is acceptable today may or may not be acceptable tomorrow, which clearly undermines the agency's long term effectiveness in identifying and removing unsafe products from the market. And with respect to civil penalties, while the agency has made clear that it is seeking ever-higher civil fines for failure to report under 15(b) and other violations of law, it has provided precious little guidance about whether and how the factors may have evolved that guide agency demands for such penalties. It is NRF's strongly held view that, with due respect to compliance discretion, new policies of general applicability should be publicly vetted, preferably via regulation, prior to their surprise implementation on retailers and other companies, the vast majority of which strive daily to do the right and legally required thing with regard to product safety and CPSC law.

4. *Which candidates should the Commission consider for retrospective review of existing rules for fiscal year 2017 and/or 2018 agendas?*

- NRF has no immediate recommendations in this regard, but generally applauds the agency's efforts in this area and looks forward to continuing to engage with the CPSC to identify and address those standards and regulations in need of updating or repeal.

Thank you for the opportunity to provide these comments and suggestions with regard to the priorities and activities of the CPSC going forward. 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,



David French
Senior Vice President
Government Relations

Stephen Pasierb, President & CEO

Toy Industry Association, Inc.



June 1, 2016

Office of the Secretary
Attn: Todd Stevenson
US Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: Comments from U.S. toy industry and Toy Industry Association, Inc. on CPSC Budget Priorities for FY 2017 and 2018

The Toy Industry Association™, Inc. (TIA) represents more than 900 businesses – toy manufacturers, importers and retailers, as well as toy inventors, designers and testing labs – who are all involved in bringing safe and fun toys and games for children to market. Approximately 3 billion toys are sold in the U.S. each year, totaling \$25 billion at retail; TIA members account for approximately 90% of this market.

Toy safety is the top priority for the industry and TIA and its members have long been leaders in toy safety, dating back to 1930s. Our efforts include leading the development of the first comprehensive toy safety standard (later adopted as ASTM F963, which in 2008 became a mandatory consumer product safety rule under CPSIA); and the industry continues to provide technical input and actively participate in the ongoing review of this "living" standard today, in order to keep pace with innovation and potential emerging issues. TIA and its members work with government officials, consumer groups, and industry leaders on ongoing programs to ensure safe play.

We appreciate the Consumer Product Safety Commission's (CPSC) continued engagement and outreach to the regulated community and thank the Commission for soliciting input from interested stakeholders on the CPSC's priorities for Fiscal Years 2017 and 2018.

Below is an outline of the toy industry priorities we request the Commission take into consideration:

Increase Stakeholder Engagement

TIA has always appreciated the open door policy that the agency has had with industry and other product safety stakeholders. We believe this continued dialogue is imperative to developing good public policy. Unfortunately, regulations have often been developed behind closed doors and without much (or any) input from the impacted and regulated community

before the drafting process begins. The best way to develop good public policy often involves preliminary, exploratory conversations. As was seen with the proposed 16 CFR 1110 rule, beginning the regulatory process in an information vacuum is inefficient and results in significant time and resources spent backtracking to develop regulations that work. Through engagement with the U.S. Customs and Border Protection (CBP) COAC Advisory Committee, importers were able to discuss supply chain complexities and business processing issues on a granular level and develop a solution that would more appropriately reflect current certification and importation filing procedures. We appreciate the Commission's willingness to incorporate this feedback into the e-filing pilot program. We urge the Commission to consider using these types of organized dialogs as an integral part of the rulemaking process. This process will result in a more effective rulemaking process and better regulations that achieve the regulatory objectives without undue burdens on businesses.

Import Surveillance Efforts

We wholeheartedly support the CPSC's efforts to detain violative products at U.S. ports of entry. It is clearly the most effective way to screen and prevent potentially dangerous products from entering the market. The agency has done a laudable job of increasing its presence at the ports and making a huge impact with very few resources. We urge continued improvement in the implementation of the Risk Assessment Methodology (RAM) to better target violative products at ports of entry while still ensuring that compliant goods are not held up unnecessarily or for extended periods of time.

Because toys are highly regulated, and most are imported under Chapter 95 in the Harmonized Tariff Schedule and therefore easily identified, our industry is often the target of product surveillance, by both CPSC and CBP. For compliant importers, these stoppages can cause delays, impact retailer relationships and result in significant costs like demurrage and warehousing fees. Not only is our industry highly seasonal in nature, magnifying the financial effects of delays, but it may be jeopardizing sales and relations with retailers, given increasing just-in-time supply chain pressures. In some cases, inspections result in delays that last days or weeks prompting retailers to levy financial penalties or cancel the order due to a missed delivery window – even though the products are ultimately determined compliant. You can imagine that a toy intended to be sold along with a movie release or a Valentine's Day teddy-bear have limited shelf lives and need to be at retail during a specific time frame otherwise the product is considered unsalable. We would urge that the agency continue to improve RAM targeting to better focus only on the riskiest cargo and ensure that any held targeted shipments are examined in a timely manner, ideally less than 10 calendar days.

Aside from delays, we often hear from industry members that they do not receive information on why shipments are stopped or updates on the inspection timing. Our members spend a significant amount of time and resources to ensure that products imported into the country are safe, yet are often left uninformed of questions raised regarding their imports or of potential risks in their supply chain that CPSC or CBP may be aware of so that they can address these risks. We therefore request that CPSC expend resources on ensuring that field investigators

consistently communicate all relevant information to the importing community and with CBP officials who may be enforcing CPSC regulations in a timely manner. This added transparency will allow the importing community to take steps to reduce supply chain risks, which is in everyone's interest.

We appreciate the agency's willingness to engage industry on import surveillance. Because most toys, and thousands of other products regulated by CPSC are imported, engagement at every step of the way is key to developing systems that not only provide effective targeting but also give the regulated community confidence in the agency's ability to enforce the laws on the books while minimizing hurdles for compliant products to find their way into the stream of commerce. To that end, we support the idea of having a "trusted trader" program, where companies willing to go through some extra safety checks will be allowed an easier entry process. While CPSC has piloted an Importer Self Assessment Product Safety Program, we are unclear whether the program has resulted in meaningful benefits for participants despite the extensive auditing required to participate. Lower risk category aside, the trusted trader program should also benefit participants by being subject to fewer data requests.

Develop Final Rules Exempting Materials from Third Party Testing Requirements

Toy testing is a critical component of product safety assurance. However, toy companies, and more specifically small toy companies, are still struggling with crippling costs associated with unnecessary and redundant third party tests, an unintended consequence of the requirements under CPSIA. We have been encouraged by recent developments at the agency to reduce unnecessary testing costs, specifically for adult wearing apparel. But we are hopeful similar steps will also be taken to help the toy industry reduce its costs for unnecessary and redundant testing.

Thanks to additional funding from Congress, the agency commissioned two studies in the past year on the presence of phthalates and heavy metals in manufactured wood and in four plastic materials that are widely used in toys. Those studies showed very positive results that none of the banned substances were likely to be present in those materials. Based on this evidence, along with the data TIA has previously submitted to the agency, we strongly urge CPSC to move quickly to develop a rule exempting them from costly testing. These exemptions, especially for testing of the four plastic materials for phthalates, would dramatically decrease costs of testing.

Combat Counterfeit Goods

Counterfeiting has become an increasingly significant issue for the toy industry, due, in part, to the increased ecommerce prevalence. Counterfeit toys are extremely concerning on a number of levels, including their potential ramifications for children's safety. Not only is a brand compromised and intellectual property stolen, but it is also possible that the toy has not undergone the rigorous safety testing and certification required to be sold in the U.S. The skirting of safety requirements is especially troubling as it could potentially put children at risk.

We urge the agency to continue its diligence, working even more closely with other government agencies to help combat these counterfeit goods.

Projects that Should Not be Funded

We think there are a few places where CPSC should not be spending extra time and resources that could be dedicated to other safety efforts. Both the proposed voluntary recall and Section 6(b) information sharing rules are fraught with problems – with minimal benefit to the agency and consumers. If these rules are made final, they could have a chilling effect on the way industry interacts with CPSC. This would be an untenable result that will potentially hurt the consumer by discouraging companies from sharing information with CPSC in “borderline” cases where it is not clear whether a noncompliance exists. We urge CPSC to publicly abandon rulemaking on the voluntary recall and section 6(b) information sharing rules.

We also feel that the agency should not be spending scarce resources working to develop rules around very complex chemical issues. Congress is set to pass an updated Toxic Substances Control Act (TSCA) that gives the Environmental Protection Agency (EPA) new authorities to regulate chemicals in commerce, including chemicals in products. This updated statute gives EPA new enforcement authorities so that consumers can have renewed confidence in the U.S. system to regulate chemicals. Because of this it is our opinion that CPSC should work in concert with EPA to support their efforts as needed to regulate groups of chemicals, like organohalogen flame retardants, rather than duplicate efforts. The EPA has more resources to take on such long-term research endeavors.

Conclusion

Toy safety is the top priority for the toy industry and TIA is supportive of CPSC efforts to keep consumers safe from the unreasonable risk of injury or death associated with consumer products. We appreciate this opportunity to provide feedback to the agency and we wish to continue to be a resource for the staff and commissioners.

If you have any questions, comments or concerns, please contact Autumn Moore at amoore@toyassociation.org in our Washington, DC office.

Sincerely,



Stephen Pasierb
President & CEO

Daniel Rosenberg, Senior Attorney

Jennifer Sass, Ph.D, Senior Scientist

Veena Singla, Ph.D, Staff Scientist

(Natural Resources Defense Council)



June 8, 2016

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

Sent via e-mail: cpsc-os@cpsc.gov

RE: *Written comments on CPSC agenda and priorities for fiscal years 2017 & 2018*

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

Thank you for the opportunity to share our views on the Consumer Product Safety Commission's (CPSC's) agenda and priorities. The top priority for action, which has been pending for a year and half and is past the statutory deadline is:

- 1. To finalize the proposed rule on phthalates in children's toys and childcare articles, making the interim ban on DINP permanent and prohibiting DIBP, DPENP, DHEXP, and DCHP.**

For fiscal years 2017 and 2018, we urge the CPSC to prioritize its efforts to protect consumers, especially children, from toxic chemicals in a wide range of household products by moving forward with two actions:

- 2. To propose and finalize regulations under the Federal Hazardous Substances Act (FHSA), in accord with Petition No. HP 15-1, to ban household products in four categories that contain any additive, non-polymeric organohalogen flame retardant.**
- 3. To adopt the State of California Department of Consumer Affairs' Technical Bulletin 117-2013 (TB 117-2013) as a mandatory national flammability standard under the Flammable Fabrics Act (FFA).**

These priorities are fully consistent with the CPSC's "Policy on establishing priorities for Commission action."¹ Under that policy, the Commission must prioritize action on:

- products where the probability of exposure to the hazard is high due to "the number of units of the product that are being used by consumers, the frequency with which such use

¹16 C.F.R. § 1009.8.

occurs, and the likelihood that in the course of typical use the consumer would be exposed to the identified risk of injury”;²

- preventing product-related injury to children, the handicapped, and senior citizens;³ and
- “products, although not presently associated with large numbers of frequent or severe injuries, [where] ... there is reason to believe that the products will in the future be associated with many such injuries.”⁴

1. Finalizing the proposed rule banning certain phthalates in children’s products should be a priority for Commission action

In 2014, the Chronic Hazard Advisory Panel (CHAP) completed a comprehensive risk assessment of phthalates and made recommendations for which phthalates should be prohibited in order to protect children’s health. CPSC proposed the rule making the interim ban on DINP permanent and banning four additional phthalates (DIBP, DPENP, DHEXP, and DCHP) from children’s products on December 30, 2014⁵. It has now been over a year since the public comment period closed on April 15, 2015. Since that time, studies continue to be published finding troubling associations between phthalate exposure and toxicity to the developing reproductive, respiratory, immune and nervous systems, heightening the concern for children’s health.⁶

This rule is needed because phthalates are present in children’s products, according to data reported by manufacturers to the states of Washington and Maine.⁷ The Commission is now far past the deadline established by Congress to finalize a rule based upon the recommendations of the CHAP. We urge the Commission to move immediately to finalize the proposed rule.

2. Banning products containing additive, non-polymeric organohalogen flame retardants should be a priority for Commission action

Household products containing additive, non-polymeric organohalogen flame retardants fall squarely within the Commission’s prioritization criteria:

1. The affected products are ones that most people use daily, such as chairs, sofas, mattress pads, computers and other electronics;
2. Children are at particular risk for several reasons: they tend to spend more time on or near the floor (crawling, playing, and so on) where they contact flame retardant contaminated dust; they have hand-to-mouth behaviors that result in their ingestion of this material; and

² 16 C.F.R. § 1009.8 (c)(7).

³ 16 C.F.R. § 1009.8 (c)(6).

⁴ 16 C.F.R. § 1009.8 (c)(3).

⁵ Prohibition of Children’s Toys and Child Care Articles Containing Specified Phthalates; available <https://www.regulations.gov/#!docketDetail;D=CPSC-2014-0033>

⁶ Gore A, Chappel V, et al. EDC-2: The Endocrine Society's Second Scientific Statement on Endocrine-Disrupting Chemicals. *Endocrine Reviews* 36(6):E1-E150. doi: 10.1210/er.2015-1010.

Robinson L and Miller R. The Impact of Bisphenol A and Phthalates on Allergy, Asthma, and Immune Function: a Review of Latest Findings. *Current Environmental Health Reports*. 2015 Dec;2(4):379-87. doi: 10.1007/s40572-015-0066-8

⁷ See <https://fortress.wa.gov/ecy/cspareporting/> and Environmental Health Strategy Center (2016). What Stinks? Toxic Phthalates in Your Home. Available http://www.ourhealthyfuture.org/sites/default/files/pdfs/ehsc_tech_report_2016_rev_single_page_web_2.pdf

they may be exposed during critical developmental windows of rapid growth and development during which they are particularly vulnerable to these toxic chemicals. A recent study documented that exposure to flame retardants was ubiquitous amongst the infants age 2 months- 1.5 years old tested. Further, infants on average had higher flame retardant exposures compared to adults, with some children having levels 20 times greater than their mothers. Higher flame retardant exposure in babies was connected to having more baby products in the home.⁸

3. There is strong reason to believe that continued use of additive organohalogen flame retardants will result in future illness and injury, just like the now-banned or discontinued polybrominated diphenyl ether (PBDE) flame retardants. The International Agency for Research on Cancer recently classified the high-volume use flame retardant tetrabromobisphenol-A (TBBPA) as a “probably carcinogenic to humans.”⁹

The lack of regulation of household products containing hazardous substances in the form of organohalogen flame retardants, despite the abundant evidence that these chemicals are pervasive in the homes and bodies of people across the country is a serious public health concern.

The following items establish that the criteria for regulation under the FHSA have been met: Petition No. HP 15-1; the record developed during the comment period; the December 9, 2015 hearing on the petition; and the responses to the Commission’s Questions for the Record. We urge CPSC to take action to protect the public as soon as possible.

3. Adopting a smoldering source flammability standard should be a priority for Commission action

We also urge the CPSC to take action in fiscal years 2017 and 2018 under the FFA to adopt a mandatory smoldering source flammability standard for residential upholstered furniture, such as TB 117-2013. Under the FFA, the CPSC is “authorized and directed” to prescribe rules and regulations “as may be necessary and proper for administration and enforcement” of the Act.¹⁰

The blueprint for a smoldering standard has already been drafted and the feasibility of this approach is established. California TB 117-2013 was developed through an open and transparent rule making process involving a broad and diverse group of stakeholders including consumers, public health groups, consumer groups, firefighters, environmental NGOs, labor advocates, social justice NGOs, upholstered furniture manufacturers, and component suppliers. California developed the TB 117-2013 standard because the original TB 117 was not effective and led to the use of harmful and potentially harmful flame retardant chemicals in various components of upholstered furniture, *i.e.*, foam, fabric, and decking materials.¹¹

⁸Hoffman K, Butt C, Chen A, Limkakeng A and Stapleton H. High Exposure to Organophosphate Flame Retardants in Infants: Associations with Baby Products. *Environmental Science & Technology* 2015 vol: 49 (24) pp: 14554-14559.

⁹IARC (2016). List of Classifications. Available http://monographs.iarc.fr/ENG/Classification/latest_classif.php

¹⁰15 U.S.C. § 1194(c)

¹¹The U.S. Department of Commerce, National Bureau of Standards (now NIST), the CPSC, and independent fire engineers and scientists have found that TB 117 foam treated with flame retardant chemicals was not effective in reducing fire hazard, and CPSC reported that foam treated with flame retardant chemicals rendered upholstered furniture more prone to cigarette smolder ignition, which, as discussed, is the leading cause of upholstered furniture fires. See, *e.g.*, Vytenis Babrauskas, *Upholstered Furniture Heat Release Rates: Measurements and Estimation*, 1 *J. Fire Sciences* 9 (1983); Memorandum from Weiyang Tao, Textile Technologist, CPSC, to Dale Ray,

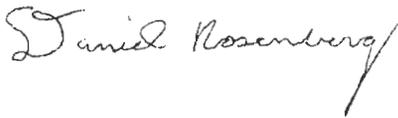
The new TB 117-2013 standard significantly improves on its predecessor. It protects the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage by:

1. Focusing on, and providing protection from, the major cause of upholstered furniture fires: smolder ignition.
2. Providing compliance options that do not require the use of flame retardant chemicals.
3. Providing a cost effective solution that will benefit households at all income levels.
4. Using composite test methods to recognize the pivotal role of fabrics and the interactions of all covered components.

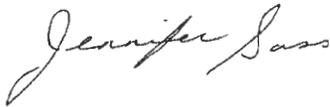
The CPSC has an opportunity to bring closure to the longstanding issue of an upholstered furniture flammability standard by adopting the revised TB-117-2013 as a mandatory national standard. By taking this step, the CPSC will adequately protect consumers from the dangers associated with upholstered furniture flammability and eliminate the need for flame retardant chemicals. We urge CPSC to make this a priority in fiscal years 2017 and 2018.

We would be happy to discuss any of these recommendations at your convenience. Please do not hesitate to contact us with any questions.

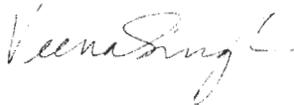
Sincerely,



Daniel Rosenberg
Senior Attorney



Jennifer Sass, Ph.D.
Senior Scientist



Veena Singla, Ph.D
Staff Scientist

Project Mgr., CPSC (May 12, 2005) ("Evaluation of Test Method and Performance Criteria for Cigarette Ignition (Smoldering) Resistance of Upholstered Furniture Materials") CPSC, Upholstered Furniture Flammability: Regulatory Options for Small Open Flame & Smoking Material Ignited Fires (1997), *available at* <https://www.cpsc.gov/PageFiles/80986/3458ca2d.pdf>; T.H. Talley, Phases 1&2, UFAC Small Open Flame Tests and Cigarette Ignition Tests, Annual AFMA Flammability Conf. (1995).