



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
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Memorandum

July 17, 2014

TO : The Commission

FROM : Todd A. Stevenson, The Secretariat
(Office of the Secretary)
Office of the General Counsel

SUBJECT : Public Hearing on Commission Agenda and Priorities for FY 2015 and FY 2016 – Thursday, July 24, 2014 – Oral Presentations and Written Comments

Listed below are the three (3) individuals who have asked to give oral presentations at the Public Hearing on Commission Agenda and Priorities for FY 2015 and FY 2016 on Thursday, July 24, 2014. Also listed below are three (3) individuals that submitted written comments. Presentations and comments are attached.

Presenters

Nancy Cowles
Executive Director
Kids In Danger

Rachel Weintraub
Legislative Director and Senior Counsel
Consumer Federation of America

Shihan Qu
Founder
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Submitted Written Comments

Ed Desmond
Executive Vice President, External Affairs
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David French
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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 2015 and FY 2016"**

July 10, 2014

Thank you for the opportunity to submit comments on CPSC's agenda and priorities. We hope that the CPSC shares our concern about these issues and that much of this work can begin prior to FY 2016.

Kids In Danger (KID) is a nonprofit organization dedicated to protecting children by improving children's product safety. We urge CPSC to consider prioritizing activity in the following areas.

Safe Sleeping Environments

Through the implementation of the Consumer Product Safety Improvement Act (CPSIA) and Danny's Law, the CPSC has put much time and energy into making sure that sleep products for infants and toddlers are as safe as possible. Robust standards already published include cribs, play yards, bassinets and bedside sleepers. Work on inclined sleep products continues and the attention to the safety of these new types of sleep products is vital. KID appreciates the measured approach CPSC is taking to assure that each of these products is as safe as possible.

Nonetheless, all of this attention to safety does nothing to stop the sale and use of sleep products that don't fall under the scope of current standard and that present hazards to infants and toddlers. The Nap Nanny is a troubling recent example. Six children have died – more than almost any individual infant product other than the rotating rail portable cribs such as the PlaySkool Travel Lite or Baby Trend Home & Roam that our founders' son Danny Keysar died in. The product was put on the market without safety testing – originally intended for use in a crib, just as it was used by those families whose children died. Parents who buy these products assume that if they are for sale, someone must have made sure they are safe. While that is true for regulated products, it is completely false for the Nap Nanny and many other sleep products. KID believes CPSC should make it a priority to ensure that products intended for sleeping infants and toddlers must meet a standard relevant to the product.

Another troubling issue is the continued sale of crib bumper pads, despite suffocation incidents involving this completely unnecessary

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product. CPSC has agreed to consider JPMA's petition to accept the ASTM standard for infant bedding that covers crib bumper pads. Recent changes to the ASTM standard addressing thickness simply mean that the very type of bumpers we know children have suffocated on – Aiden and Preston being two families we work with – would now be labeled as 'safe' having met that standard. In addition to the direct risk of suffocation from crib bumper pads, there is also the issue of contributing to SIDS by reducing air flow in the crib AND confusing parents on the safe sleep message which 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 pad to wrap around the crib at the same time. We urge CPSC to follow the lead of major retailers, Maryland, the City of Chicago and hopefully shortly the State of Illinois to ban the sale of padded bumpers.

Recall Effectiveness

Recall effectiveness is an extremely important area of focus for the CPSC. The Commission has done solid work in promoting the product registration card program for infant and toddler durable products. Most manufacturers are complying with this requirement, and many consumers are registering their products online. However, better messaging is still needed to ensure that consumers understand the importance of registering products and consistently register their infant and toddler durable products. In addition, CPSC should prioritize compliance with the product registration program to get manufacturers to fully comply. A recent review of sites found manufacturers whose sites were no longer active.

CPSC has made good use of social media and other new methods of communication. It is now much more likely that parents will learn of a recall quickly and be able to comply. But participation rates are still abysmal. Our recent look at 2012 recall effectiveness rates for children's products hovered below 10%, even when counting product still in manufacturer or retailer's hands. In fact, 50% of product with retailers does not return to the manufacturer – something that should be easy to address.

The proposed changes to voluntary recalls and corrective action plans are a good first step in improving recall quality and compliance. KID suggests again that a publically available annual report of recall effectiveness rates of each recall would go far to encourage manufacturers, retailers and other stakeholders to work together to boost those numbers. As we are all aware, sometimes shining a little light on a problem helps to illuminate solutions that were previously overlooked.

Building Transparency

For many years, consumer groups have advocated for the elimination of section 6(b) of the CPSA. This secrecy provision is unique to the CPSC and prevents the timely release of information about serious hazards relating to children's products. Before disclosure of such information is completed, the Commission must provide the

manufacturer or private labeler with an opportunity to comment on the accuracy of the information. Through Section 6(b) the CPSC may not disclose such information for at least 15 days after sending it to the company for comment. Section 6(b) also requires the Commission to notify the firm of its decision and to wait another five days before disclosing the information.

The proposed NPR modifications to the secrecy provisions would make minor modifications that streamline and modernize the regulation. This proposed rule seeks to update an antiquated system, saving government resources and time. However, the modifications do not change the inherent problem and inequality created by section 6(B), which is that a federal agency, CPSC, and industry know of dangers for weeks, months or longer while the public is kept in the dark and unwittingly continue to expose children to known hazards.

KID supports the changes included in this NPR but still believes more should be done to untangle the stranglehold section 6(b) has on public right to know.

Furniture and TV Tipovers

The nation has been saddened in the past few weeks with the news that two young girls died in Pennsylvania when a dresser overturned on them. In fact a child dies every two weeks when furniture tips over on them. This dresser, like the one that killed Shane Siefert in Illinois a few years ago, appears to be one made for children's rooms. And yet the weight of these two little girls was enough to tip it. The issue of furniture tip-over is a complex one but requires leadership from CPSC. We need stronger standards for furniture – perhaps extra requirements for that intended for use in a child's room; we need more awareness in the public because of the vast majority of furniture which is already in homes not subject to any new standard; and we need increased availability of restraint straps and other devices to impede tipping. While progress has been made on a voluntary standard, it will not be enough to address the problem. CPSC should consider a CPSIA Section 104 approach to this issue – building on the ASTM standard to a strong mandatory standard.

Conclusion

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

Rachel Weintraub, Consumer Federation of America



Consumer Federation of America

July 24, 2014

Statement of Rachel Weintraub,

Legislative Director and Senior Counsel, Consumer Federation

Before the

U.S. Consumer Product Safety Commission

Addressing

Agenda and Priorities FY 2015 and 2016

I appreciate the opportunity to provide comments to you on CPSC's FY 2015 and 2016 priorities. I am Rachel Weintraub, Legislative Director and Senior 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.

I. CPSIA Implementation

The implementation of the Consumer Product Safety Improvement Act (CPSIA) should continue to be of the highest priority for the Consumer Product Safety Commission (CPSC). The CPSC has been effectively prioritizing CPSIA implementation and we congratulate the Agency for its work thus far. CPSC has promulgated more rules than it ever has in its history and has done so in a relatively short period of time. The rules are substantively strong and will have an important and positive impact on consumers.

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

CPSC has additional infant durable product rules to promulgate under section 104; the Danny Keysar Child Product Safety Notification Act, which includes highchairs, infant bouncer seats, infant bath tubs, folding chairs and stationary activity centers. We urge CPSC to continue to commit the staff time and resources necessary to prioritize the promulgation of these rules. This is a critical component of the CPSIA that consumers recognize as necessary to ensure the safety

of their infants when they are using products designed for infants. In addition, we urge CPSC to consider increasing its role in voluntary standards proceedings to ensure that voluntary standards for products under CPSC's jurisdiction adequately address hazards.

Another high priority for CPSC should continue to be the consumer incident database- saferproducts.gov- required by the CPSIA. We recognize CPSC's current commitment to this important consumer tool and urge the CPSC to maintain that commitment and to research reports that appear to indicate trends. We know that 20,425 reports 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 CPSC continue to explore how to make saferproducts.gov more useful and accessible to consumers including increasing consumer access to saferproducts.gov through the use of "apps" as a means for reporting risks of harm. We also urge the CPSC to work to increase awareness of the database so that reports to saferproducts.gov will increase.

II. Product Safety Hazards

There are numerous product safety hazards that CPSC should prioritize. While CPSC is working on these issues in various ways, we urge CPSC to further prioritize these issues.

1. Window Coverings

In May of 2013, Consumer Federation of America, along with Kids In Danger, Consumers Union, Parents for Window Blind Safety and others filed a petition with the CPSC requesting that the CPSC promulgate mandatory standards to make operating cords for window coverings inaccessible.

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

A strong mandatory standard to address the hazards posed by corded window coverings is necessary because, according to data from the CPSC, 293 children have been killed or seriously injured by accessible window covering cords between 1996 and 2012, and the rate of injuries and deaths has not been significantly reduced since 1983¹, despite six industry attempts at developing adequate voluntary standards. The voluntary standards 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. In addition, window covering manufacturers' have failed to comply with the existing voluntary standard.

¹ CFA 2011 Press Release. <http://www.consumerfed.org/pdfs/WindowCoveringsStandardPressRelease.pdf>

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

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

In a tragic twenty-two day period this year, four children strangled to death from 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. These most recent tragic incidents contribute to the already long list of 293 deaths and serious injuries caused by these products between 1996 and 2012.

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. In light of the history of the voluntary standard, the documented and persistent hazard that cords on window coverings pose to children, and these recent deaths, it is time for CPSC to grant the petition for mandatory standards and move forward with a mandatory rulemaking process that effectively addresses the hazards posed by window covering cords

2. ATV and ROHV Safety

According to the most recent data released by CPSC,² at least 107,900 people were injured while riding all-terrain vehicles (ATVs) seriously enough to require emergency room treatment in 2012. The estimated number of ATV related fatalities was 684 in 2011, though the 2011 data is not considered complete and the number of fatalities will almost certainly grow as more data is received.

In 2012, ATVs killed at least 54 children younger than 16, accounting for 15 percent of ATV fatalities. Fifty-seven percent of children killed were younger than 12 years old. Children under 16 suffered an estimated 26,500 serious injuries in 2012. This represents 25 percent of all injuries.

CPSC must prioritize the issue of ATV safety. While CPSC's ATV rulemaking was required to be finalized in August of 2012, we applaud CPSC for holding an ATV Safety Summit in October of 2012 and urge CPSC to complete the rulemaking which should include a serious analysis of the safety hazards posed to children by ATVs, the adequacy of existing ATV safety training and training materials, and efforts to ensure that children are not riding ATVs that are too large and powerful for them.

²2011 Annual Report of ATV-Related Deaths and Injuries <http://www.cpsc.gov//Global/Research-and-Statistics/Injury-Statistics/atv2011.pdf>

Recreational off highway vehicles (ROHVs) pose hazards to consumers and have been associated with more than 231 deaths and 388 injuries from 2003–2011. The current voluntary standard fails to address hazards in five significant areas: 1) the stability standard is inadequate; 2) the occupant protection measures are insufficient; 3) the draft standard does not sufficiently address handling of recreational off- highway vehicles; 4) there is no maximum speed established for these vehicles; and 5) the measures to ensure seat belt use by occupants of the vehicles are inadequate. Unfortunately, the ROHV industry has not been responsive to concerns raised by CFA, CPSC and others to improve the effectiveness of the voluntary standard. Due to the inadequacy of the standard, we urge the CPSC to move forward, as quickly as possible, with the promulgation of a mandatory standard to address these critical safety issues.

Another serious issue has emerged regarding ATVs in this country. In March, 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.

The design of ATVs makes them incompatible with operation on roads. ATVs have high centers 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.

- According to the CPSC’s most recent complete data from 2007, as analyzed by the Insurance Institute for Highway Safety, 492 of 758 deaths, or 65% of ATV fatalities occurred on roads.
- According to CPSC’s data, ATV on-road deaths have increased more than ATV off road deaths.
- According to NHTSA’s FARS database, 74% of ATV deaths occur 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:

- 35 states, or 69% of states, allow ATVs on certain roads under certain conditions.
- Of these 35 states, 22 states, or 63%, have passed laws allowing or expanding ATV access on roads since 2004. Four states have passed such laws in 2013 alone.
- 31 of the 35 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 17 jurisdictions currently considering increasing ATV access to roads.

We urge the CPSC to prioritize this issue, to be a strong voice in opposing the operation of ATVs on roads, and to be a leader in educating consumers about the dangers of on road ATV

use. Additionally, the CPSC could improve ATV death data by including how many deaths occur on private versus public roads.

3. 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 43,200 children are injured as a result of a piece of furniture, appliance or television tipping over. Fifty-nine percent of those injuries occurred to children 18 years old and younger. Between 2000 and 2011, there were 349 tip-over related deaths. Eighty-four percent of those deaths involved children eight years old and younger. While the ASTM standard for furniture has recently been strengthened, it has not yet been published, and 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 that CPSC has demonstrated an increased financial commitment to this issue and urge the CPSC to continue to work to decrease these tragic deaths and injuries.

4. 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 or an effective mandatory standard for adult portable bed rails. The petition also requested CPSC to recall dangerous bed rails and refund consumers.

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

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

5. Baby Bumpers

We urge CPSC to take strong action to ban baby bumpers. Last year, the state of Maryland took strong action to ban baby bumpers as has the city of Chicago. Last year, 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 and review the science, and evaluate testing procedures and performance standards that might lead to safe bumpers and then make a decision about what a mandatory standard or ban should include. We are encouraged that CPSC will evaluate the role that bumper pads have played in at least 48 bumper related infant deaths.

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

6. Laundry Pods

Highly concentrated single-load liquid laundry detergent packets pose a serious risk of injury to children when the product is placed in their mouths. “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.”³ According to the National Poison Data System (NPDS), 4,468 kids aged 5 and younger were exposed to single-load laundry packets from Jan. 1, 2014, to May 31, 2014. Further, also according to NDPS, in 2013, poison centers received reports of 10,354 exposures to highly concentrated packets of laundry detergent by children 5 and younger.

While voluntary standards efforts are underway, we urge CPSC to prioritize this issue to ensure that the voluntary standard effectively addresses the hazards posed by laundry pods.

7. Button Cell Batteries

Button cell batteries pose serious and potentially fatal ingestion hazards to children. According to the National Capital Poison Center, every year, more than more than 3,500 people ingest button batteries.⁴ According to a study released two years ago in the American Academy of Pediatrics Journal,⁵ *Pediatrics*, an estimated 65,788 children less than 18 years of age were injured by button cell batteries – serious enough to require emergency room treatment – from 1990 to 2009, averaging 3,289 battery-related emergency room visits each year.

The number and rate of visits increased significantly during the study period, with substantial increases during the last 8 study years. Of the emergency room visits caused by button cell batteries, battery ingestion accounted for 76.6% of emergency room visits, followed by nasal cavity insertion (10.2%), mouth exposure (7.5%), and ear canal insertion (5.7%). Button batteries were implicated in 83.8% of patient visits caused by a known battery type. Most children (91.8%) were treated and released from the emergency room.

³ Laundry Detergent Packets, American Association of Poison Control Centers <http://www.aapcc.org/alerts/laundry-detergent-packets/>

⁴ National Poison Center, Swallowed a Button Battery? Battery in the Nose or Ear? <http://www.poison.org/battery/>

⁵ Samantha J. Sharpe, BS,a,b Lynne M. Rochette, PhD,a and Gary A. Smith, MD, DrPHa,b,c, 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>

We urge CPSC to continue its work to strengthen the relevant voluntary standards to include a provision to securely enclose all button cell batteries⁶ and also to work in support of design changes that would eliminate the serious health hazard, if ingested. While the CPSC has indicated that they are encouraged by recent efforts that have resulted in new safety warnings and packaging changes in the United States, we hope that those changes do successfully reduce button cell battery ingestions.

We applaud the CPSC and its counterparts from 12 other countries and jurisdictions for recently joining together to make button battery safety a global priority through an international information and awareness effort.

8. 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.⁷ Suffocations were the second highest cause of death (motor vehicles ranked first). As part of CPSC’s work on safe sleep environments, CPSC must continue to prioritize this issue, educate consumers about the importance of safe sleep environments and understand why data indicates that suffocations have been increasing for infants.

9. Upholstered Furniture

We applaud that CPSC continues 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 CPSC to require labels indicating such use. We reaffirm the statements made in our 2008 letter and urge CPSC to promulgate the final rule which will improve fire safety standards and will not lead to the use of potentially toxic fire retardant chemicals.

⁶ Id.

⁷ 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

10. Low Income Child Safety

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

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

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

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

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 which they own and to ensure that consumers effectively remove the potentially hazardous product from their home. We urge CPSC to continue to prioritize this issue. Specifically we urge the CPSC to work with manufacturers of infant and toddler durable products to maximize awareness about product registration. Further, we urge CPSC to engage in a dialogue with all stakeholders about the factors that are essential to the most well publicized recalls to replicate that success with all recalls. We support CPSC's proposed Voluntary Recall Rule and urge CPSC to finalize this rule which will increase recall effectiveness.

2. 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 2014, thus far, CPSC has collected 4 civil penalties, ranging from \$725,000 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 for \$10,000. In FY 2012, CPSC collected 9 civil penalties, ranging from a consent decree, \$214,000 to \$1.5 million dollars; and zero criminal penalties. In FY 2011, CPSC collected 15 civil penalties, ranging from a consent decree for permanent injunctions, ranging from \$40,000 to \$960,000; and one criminal penalty for \$16,000. In FY 2010, CPSC collected 7 civil penalties, ranging from \$25,000 to \$2.05 million; and no criminal penalties. In FY 2009, CPSC collected 37 civil penalties, ranging from \$25,000 to \$2.3 million; and no criminal penalties. Civil and criminal penalties serve an important deterrent effect to non compliance with CPSC laws and we urge CPSC to prioritize this important element of its enforcement responsibilities.

3. Import Surveillance

We applaud CPSC's current commitment to enforcing its safety mission at the ports of entry to the United States. Specifically, we support CPSC's expansion of the Import Surveillance pilot program to a full-scale national program over the next five years, beginning in Fiscal Year 2015. With the profound increase of imported products into the United States, CPSC's efforts at the ports in cooperation with U.S. Customs and Border Protection is critical to preventing unsafe products from entering the United States marketplace. We further support 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 CPSC mandatory standards and regulations.

IV. Conclusion

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

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)

Shihan Qu, Zen Magnets LLC

Zen Magnets LLC

PO Box 1744. Boulder CO 80306. Phone: 303-316-1936
ZenMagnets.com



Todd A. Stevenson
Office of the Secretary, CPSC
4330 East West Highway
Bethesda, MD 20814

Comment on the Agency's budget priorities for fiscal years 2015 and 2016

I'm a rare breed here. I'm not an advocacy organization representative, and I don't represent a trade association. I'm a small business owner. And not any small business owner, I'm the founder of Zen Magnets, the last of the US magnet sphere companies, still alive thanks to the financial and moral support of the American public.

However, I'm not here to speak of the merits or lack of merits of the CPSC's magnet prohibition, since the arena for that debate is going to be in a courtroom in front of an administrative law judge this December. Although I likely wouldn't be present at this hearing, if I wasn't already in DC for depositions relating to magnet litigation.

Update NEISS capabilities

In regards to the National Electronic Injury Surveillance System (NEISS) database, I feel some usability upgrades to the public interface are needed. The current web app only allows for queries up to one year, which makes analysis of multi-year data tedious. Additionally it would be nice, and more transparent, if the NEISS also app explained in detail, with the use of understandable language, what methods are used to extrapolate nation wide projections from the data provided by the 100 hospitals that report to the NEISS database.

Another request regarding the NEISS database is to renew the outdated product categorization coding system. Although the coding manual is routinely updated to fit new products into old category codes, the categories don't always properly represent the actual product and can lead to confusion and inaccuracy of analysis. For example, magnets, which are a big enough hazard to the CPSC to earn its own spot on the front page of the CPSC website, don't have their own NEISS category. Instead, magnets of industrial use or unknown origin are coded 0428, thereby being lumped together with kitchen gadgets. Magnet spheres being the exception, which are to be coded 1345 with other building sets.

If the web development team, or person, in charge of NEISS is feeling inspired or especially productive, other useful features would be: the option to show incidence rate ratios, the option to select multiple product categories for comparison, and a built in text search filter for the narratives of incidences----.

Punitive Approaches by CPSC are Inherently Unsafe

People outside and within your organization have noted that the focus of CPSC seems to be shifting more towards finding violations and seeking penalties, rather than trying to work with manufacturers and sellers to solve safety problems. CPSC's number of voluntary Section 15(b) reports that lead to either a Corrective Action Plan or Preliminary Determination dropped by two thirds, from about three hundred in FY09-FY12 to one hundred in FY13⁽¹⁾. Since these reports are what usually trigger a recall, it's unsurprising that the overall number of recalls has also gone down in response to the CPSC cost of recalls going up. When previously the CPSC advice to businesses was "when in doubt, report," the change has resulted in more companies now willing to take the risk of a penalty for late or non-reporting of marginal safety issues, rather than deal with heavy unpredictable penalties.

Comments about agency priorities are usually specific actionable suggestions. But in this matter, much of the behavior that has negatively affected the perception of CPSC amicability cannot be undone. For example: the already retracted proposal of releasing notices of CPSC investigations against companies who voluntarily submit Section 15 reports, and proposed provisions for voluntary recall notices containing new legal obligations, as well as eliminating the ability of a company to disclaim any substantial hazard unless the Staff agrees.

It's certain that ignoring a safety issue and hoping it will go away is not a responsible compliance strategy, but greater penalties and punishments for voluntary actions alienate industry, and in the long run product safety is best achieved when regulators and businesses work together to address problems.

On Behalf of Small Business

Speaking more generally on behalf of other small business owners who are concerned about safety for their customers, it is still too burdensome to have to deal with regulations that are designed for large multinational corporations. For example the testing rule, 16 CFR 1107, and the certification rule, 16 CFR 1110. The relief from testing that Congress asked the Commission to consider has not been forthcoming, in spite of repeated statements from the commission that they are working on it. Nor does the agency appear to pay much attention to the regulatory flexibility analysis that is required in order to inspect the impact of it's regulations on small business. While the small business ombudsman is well intentioned in trying to explain the rules to small businesses, there has not been an effort to write rules that are cognizant of the issues that small businesses need to deal with. These are all things I believe would be in the broad interest of small businesses to be addressed at higher priorities by the CPSC.

Thanks for the opportunity to comment.

-Shihan Qu

Ref: 1. <http://www.productsafetyletter.com/librepository/cpsccompliancelong.pdf>

Written Comment

Ed Desmond, Toy Industry Association, Inc.



July 10, 2014

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

Dear Mr. Stevenson:

On behalf of the Toy Industry Association (TIA), thank you for the opportunity to comment on the agency's budget priorities for fiscal years 2015 and 2016.

TIA and its more than 750 members – from toy manufacturers, importers and retailers to toy inventors, designers and testing labs – are all involved in creating and bringing fun and safe toys to children. Our members account for roughly 85% of the three billion toys sold in the United States each year, toys which generate nearly \$22 billion in annual retail sales. Additionally, the toy industry supports more than 618,350 U.S. jobs that generate nearly \$27 billion in wages for American workers each year. Overall, the toy industry has an annual economic impact of over \$75 billion in the U.S.

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

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

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

Import Surveillance

TIA continues to support the CPSC's enforcement efforts, in cooperation with Customs and Border Protection (CBP), to stop unsafe and counterfeit toys from entering the U.S. We reiterate our offer to assist in the development and refinement of procedures that will effectively identify and stop violative products before they enter U.S. ports while facilitating trade for compliant products from responsible companies. Any refinements to requirements or practices that impact supply chain logistics should be

coordinated with CBP and take into account importers' various standard operating procedures (SOPs), timing and volume cycles. As the CPSC expands its Risk Assessment Methodology and increases its presence at the ports, we also recommend that the agency implement a Customs Advisory Committee (similar to CBP's Advisory Committee on Commercial Operations) and that it maintain its focus on products that pose the most significant risk to consumers.

Reducing Testing Burdens

An area of key emphasis and priority for TIA is the need for CPSC to dedicate resources to the analysis and implementation of the approved recommendations to reduce the costs of third-party testing. TIA supports testing that will help to assure the safety of toys, but under current requirements many companies are conducting unnecessary third-party testing on materials that, by their very nature, cannot exceed the defined chemical content limits. Streamlining testing requirements will provide a *significant* benefit to toy and other children's product manufacturers – particularly smaller companies – by facilitating compliance and reducing redundant costs, which means safer products at better prices for consumers.

We appreciate all opportunities to comment on proposed regulations and opportunities to participate in workshops like the April 3rd materials determination workshop and the upcoming workshop on the proposed amendment to the certifications of compliance regulations. With competing priorities and limited resources, TIA encourages CPSC to continue to reach out and use its industry partners to help the agency achieve its strategic objectives.

Thank you again for the opportunity to submit these comments on the CPSC's budget and priorities for fiscal year 2015 and 2016.

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

Sincerely,



Ed Desmond
Executive Vice President, External Affairs

Stevenson, Todd

From: Mond, Rebecca <RMond@toyassociation.org>
Sent: Thursday, July 10, 2014 12:46 PM
To: CPSC-OS
Cc: Kaufman, Alan; Lawrence, Joan; Moore, Autumn; Desmond, Edward
Subject: Agenda and Priorities FY 2015 and/or 2016
Attachments: 07-10-14 - TIA - Comments on CPSC budget.pdf

Dear Mr. Stevenson,

Please see attached TIA comments regarding the CPSC Agenda and Priorities for FY 2015 and 2016. Note that these are just comments for the record and are not a request to testify at the July 24th hearing.

Please feel free to contact us if you have any questions.

Sincerely,

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

Visit our website for more information:
www.toyassociation.org

Written Comment

George P. Slover, Consumers Union

Comments of Consumers Union to the U.S. Consumer Product Safety Commission on “Agenda and Priorities FY 2015 and FY2016”

July 17, 2014

Introduction

Consumers Union, the public policy and advocacy division of Consumer Reports, appreciates the opportunity to comment regarding CPSC’s agenda and priorities for the coming two fiscal years. We appreciate the Commission’s commitment to protecting consumers from product hazards.

CPSIA Implementation

Durable Infant and Toddler Products (Section 104)

The implementation of the Consumer Product Safety Improvement Act (CPSIA) remains a top priority for our organization, and we appreciate the Commission’s ongoing efforts to complete this process. Over the past year, we have seen new final rules on soft infant carriers and strollers. (As we reported in a *Consumer Reports* article last month,¹ our testers discovered a stroller on which the safety brake disengaged under our routine testing. The manufacturer says the stroller meets the applicable voluntary industry standard – another demonstration, in our view, of the importance of the new final rule.) We appreciate the time, energy, and leadership CPSC has devoted to CPSIA implementation. It has already significantly increased protections for a number of durable infant and toddler products.

We look forward to seeing other rules finalized under section 104, including for high chairs, infant bouncer seats, infant bath tubs, folding chairs and stationary activity centers. In our testing of high chairs, for example, we have found high chairs without crotch posts, or with crotch posts, but leg openings still large enough to permit passage of a torso probe, which we have found could allow a child to slip under the tray and be injured (and which therefore still fails the voluntary standard).² We urge CPSC to continue working closely with the ASTM

¹ “Graco Ready2Grow Classic Connect LX stroller poses safety risk in Consumer Reports test: Wheel brakes disengage on Graco convertible double stroller,” *ConsumerReports.org*, June 30, 2014, available at <http://www.consumerreports.org/cro/news/2014/06/graco-ready2grow-classic-connect-lx-stroller-poses-safety-risk-in-consumer-reports-test/index.htm>.

² “Consumer Reports calls Dream on Me Bistro high chair a “Don’t Buy: Safety Risk,” *ConsumerReports.org*, Feb. 7, 2012, available at: <http://news.consumerreports.org/baby/2012/02/consumer-reports-calls-dream-on-me-bistro-high-chair-a-dont-buy-safety-risk.html>; Consumer Reports cites two BeBeLove high chairs for safety problems:

Juvenile Product Subcommittees to develop strong standards for durable infant and toddler products.

Public Database

The three-year-old product safety database, www.saferproducts.gov, has been a successful result of the CPSIA. With the help of this important public information tool, consumers are better informed about the safety hazards associated with products available in the marketplace. Industry can also receive valuable feedback regarding hazards associated with their products. In addition, consumer representatives and government officials can better track and address developing hazard trends. We encourage the agency to continue its efforts to make this tool as up-to-date and consumer-friendly as possible, to increase public awareness of its availability, and to use consumer postings to help track trends and identify emerging hazards. We also encourage the agency to conduct follow-up investigations of recurring consumer complaints.

Surveillance and Enforcement

As CPSC's CPSIA activities progress from rulemaking to standards enforcement, we commend the agency for its commitment to closely monitor imports of children's products. Many countries currently producing toys and other children's products sold in the United States do not follow the same rigorous standards mandated by the CPSIA. We support the CPSC's continued efforts to ensure the safety of imported children's products and by preventing, to the fullest extent possible, entry of dangerous children's products into the U.S. marketplace.

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

Other Product Hazards

Laundry Detergent Pods

Consumers Union and Consumer Reports have been warning the public of the dangers of detergent pod ingestion for over two years.³ During that time, poison control centers around the country have reported an increasing number of calls, totaling in the thousands each of those years, about children ingesting or otherwise being exposed to highly concentrated laundry detergent packaged in small, single-load packets. Some toddlers and young children who have swallowed these detergent pods have become extremely ill and have required hospitalization. These laundry detergent pods are very colorful, and can often look like toys or candy to small

BeBeLove 604-1 and 604-B high chairs judged 'Don't Buy: Safety Risk', *ConsumerReports.org*, August 29, 2013, available at <http://www.consumerreports.org/cro/news/2013/08/consumer-reports-cites-two-bebelove-high-chairs-for-safety-problems/index.htm>.

³ See "Laundry detergent pods remain a health hazard," *Consumer Reports*, March 2013, available at: <http://www.consumerreports.org/cro/2013/03/laundry-detergent-pods-remain-a-health-hazard/index.htm>

children.⁴ In light of the injuries associated with this hazard, we continue to urge the CPSC to investigate this product and adopt stricter standards that will ensure this product does not harm children. We appreciate the agency's education and outreach work on this issue, and we urge the CPSC to spur manufacturers to take effective measures to better ensure that young children are not exposed to these detergent pods.

Appliance Fires

Appliance fires continue to be a concern. CPSC data estimated that between 2006 and 2008, there were over 150,000 residential fires per year involving major appliances, resulting in 3,670 injuries and 150 deaths. More recently, a 2012 analysis of reports by consumers submitted to SaferProducts.gov showed that appliances account for 36% of all such reports, with electric ranges and ovens representing 9.7% of them.⁵

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

In a March 2013 follow-up story to our initial investigation,⁷ we examined reports of self-starting microwaves from KitchenAid and GE. Whirlpool, which owns KitchenAid, initially told us that they didn't have a single verified report of a microwave turning on by itself. However, after the investigation came out, Whirlpool told us that they have identified a design flaw that could cause microwaves to turn on by themselves. In addition, electromagnetic interference from mobile devices may also cause certain appliances to turn on. We continue to urge the CPSC to address appliance fire hazards, and to pay particular attention to the risk of self-starting appliances.

Crib Bumpers

Consumers Union continues to urge the Commission to ban all crib bumpers. These products are unnecessary, and pose a significant risk of suffocation and death to infants. In fact,

⁴ "Tide Pod laundry detergent packaging gets makeover due to safety concerns," *ConsumerReports.org*, May 25, 2011, available at: <http://news.consumerreports.org/home/2012/05/tide-pod-laundry-detergent-packaging-gets-makeover-due-to-safety-concerns.html>.

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

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

⁷ "After denial, Whirlpool admits microwave self-starts can occur," *ConsumerReports.org*, February 15, 2013, available at <http://news.consumerreports.org/appliances/2013/02/whirlpool-acknowledges-malfunctions-are-possible-with-kitchenaid-khms1551ss-microwave.html>

crib bumpers were featured in Consumer Reports' June 2012 ShopSmart list of "13 Dangerous Baby Products to Avoid."⁸ Maryland recently became the first state in the country to ban crib bumpers, an effort that CU strongly supported. Having granted the Juvenile Products Manufacturers of America (JPMA) petition to consider a more limited rulemaking in this area, the Commission should take this opportunity to consider moving to a full and permanent ban.

Glass Cookware

A few years ago, we reported receiving complaints from consumers regarding exploding glass cookware. In a story published in the October 2011 issue of *Consumer Reports*, we found that between January and October 2011, we had received 121 new reports of exploding glass bakeware from consumers, which had resulted in 18 consumers being injured. As of that time, we had analyzed over 300 reports of such incidents.⁹ We have urged the Commission to investigate this hazard and address any safety concerns, and we continue to do so.

Bike Helmets

According to the National Highway Traffic Safety Administration, 677 cyclists were killed and 48,000 were injured in motor vehicle crashes in 2011.¹⁰ Although fewer people have been dying from bicycle accidents in recent years, plenty of crashes are still fatal, and helmets can save lives. Two years ago, Consumer Reports tested a number of bike helmets and found that some transferred slightly more force to the head than the limit set by the CPSC bike-helmet standard.¹¹ However, there were many helmets that exceeded the current CPSC standard. This illustrates that many of the bicycle helmets currently on the market perform far better than CPSC's standards require.

CPSC's bicycle helmets standard has not been revised since it was adopted in 1998 – at which time it was modeled on the existing ASTM standard. Since then, the ASTM standard has evolved in important ways. It now specifies variable mass head forms, and has become more explicit on a number of items in order to increase testing consistency and reduce lab-to-lab variability. As we reiterated in comments to CPSC earlier this month,¹² we urge you to make a similar upgrade of your bicycle helmet standard, including more stringent thresholds for impact testing, so as to ensure increased safety of these critically important products.

Window Coverings and Other Cord-Related Hazards

The injuries from corded window coverings can often be severe and are sometimes fatal. Some children suffer permanent and debilitating brain damage after getting entangled in window

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

⁹ "Shattered Glass," *ConsumerReports.org*, October 2011. Available at:

<http://www.consumerreports.org/cro/magazine-archive/2011/october/home-garden/bakeware/overview/index.htm>.

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

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

¹² Comments of Consumers Union to the U.S. Consumer Product Safety Commission, "Agency Information Collection Activities; Proposed Extension of Approval of Information Collection; Safety Standard for Bicycle Helmets," Docket No. CPSC-2010-0056 (July 3, 2014).

blind cords. Recent CPSC data on window covering incidents indicated that since 1999, there had been 135 fatalities and 140 non-fatal incidents as a result of a child's getting tangled in a cord of the window covering. The voluntary industry standards in place for almost 20 years have proven inadequate to address this hazard.

In May of 2013, Consumers Union joined a petition calling on CPSC to promulgate mandatory standards to make operating cords for window coverings inaccessible. We continue to urge the CPSC to promulgate such mandatory standards, to eliminate the risk of strangulation associated with window coverings.

Furniture Stability Safety

We continue to be concerned about deaths and injuries suffered by young children as a result of furniture tip-overs. Recent CPSC statistics showed that over 22,000 children 8 years and younger are injured every year as a result of furniture, appliances, or televisions tipping over. The ASTM furniture stability standard has recently been updated, but we urge strengthened, but we urge the agency to continue actively monitoring to ensure that this safety risk is being satisfactorily addressed.

Flame Retardants

We urge the commission to take action to address the hazard of flame retardant chemicals in baby products, upholstered furniture, and mattresses. As *Consumer Reports* published in our February 2013 article, "How safe are flame retardants?", recent peer-reviewed scientific studies provide new evidence that Americans are widely exposed to flame retardants that may pose worrisome health risks, and may not actually provide significant fire protection.¹³

In comments we submitted last year with Consumer Federation of America,¹⁴ we urged the CPSC to support the new furniture flammability standard proposed by California, since approved,¹⁵ that will steer fire protection measures away from a focus on open flame resistance that encourages use of flame retardant chemicals, and toward a focus on smolder resistance that not only is more effective, but that reduces or eliminates the need for such chemicals. As this shift follows the lead of the CPSC in its March 2008 NPRM, we urged the CPSC last year, and continue to urge, that it take further action itself to stop the unnecessary use of these chemicals. As the CPSC noted in its March 2008 NPRM on upholstered furniture flammability, the right kind of effective standard could already be met by an estimated 85 percent of upholstered furniture currently on the market, without the use of chemical flame retardants, and the rest could readily adapt.¹⁶ Eliminating these chemicals would not be an undue burden on manufacturers.

¹³ "How Safe Are Flame Retardants," *Consumer Reports*, February 2013. Available at: <https://www.consumerreports.org/cro/magazine/2013/02/how-safe-are-flame-retardants/index.htm>

¹⁴ Comments of Consumers Union and Consumer Federation of America to the U.S. Consumer Product Safety Commission on "Upholstered Furniture Fire Safety Technology," Docket No. CPSC-2008-0005 (July 1, 2013).

¹⁵ See http://www.bhfti.ca.gov/about/laws/tb_noticeapproval.pdf.

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

The CPSC should act to accomplish this important step for consumer safety and health as quickly as possible.

Lead and Other Heavy Metals

We urge the agency to continue to address the safety hazards associated with lead and heavy metals that may be in consumer products, including in products not covered by the current standards for toys and paint. For example, two years ago the European Consumer's Organization (BEUC) revealed that soccer jerseys of teams competing at Euro 2012 contained toxins and harmful substances.¹⁷ We urge the Commission to work diligently with ASTM International in the development of effective heavy metals standards for all consumer products.

Generator Safety

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

ATVs and ROVs

We are concerned about the hazards associated with use of all-terrain vehicles (ATVs) and recreational off-highway vehicles (ROVs). Recent CPSC data on ATV injuries showed that at least 57 children under 16 years of age had lost their lives, and that 29,000 were injured seriously enough to require treatment in a hospital emergency department, in 2011 as a result of using an ATV.¹⁸ We urge the CPSC to prioritize ATV and ROV safety, and to issue mandatory standards that protect consumers, and especially children, from these risks.

Button-Cell Batteries

We commend CPSC's efforts to push industry towards creating a safer product design for button-cell batteries. As the Commission is aware, this is a significant health hazard. Button-cell battery ingestion causes rapid and severe gastrointestinal tissue damage and perforation, due to formation of caustic substances by a battery's low voltage, and can result in devastating injuries to consumers and can even cause death. These batteries are particularly hazardous for small children. They are ubiquitous in consumer products, and manufacturers must ensure they are safely secured within the battery compartment so that they are not accidentally ingested.

We are encouraged by the agency's announcement last month that it has joined with 12 other nations to increase public awareness of this hazard and make battery safety a priority. We urge the agency to also continue pushing for redesign of button cell batteries so that they are nonhazardous if swallowed.

¹⁷ "Toxic Poland shirt should be banned-consumer group," Reuters, June 8, 2012. Available at: <http://in.reuters.com/article/2012/06/08/soccer-euro-shirts-idINL5E8H88Z420120608>.

¹⁸ 2011 Annual Report of ATV-Related Deaths and Injuries, <http://www.cpsc.gov/Global/Research-and-Statistics/Injury-Statistics/atv2011.pdf>

Food Blenders

As reported in a July 10, 2014 *Consumer Reports* article,¹⁹ our tests found that the blade in the NutriBullet Pro 900 had cracked or broken twice during performance testing that involved crushing ice cubes. Although the manufacturer says the machine is not a blender, but a “superfood nutrition extractor,” and is not intended for crushing ice, it is sold by major retailers as a blender, and is compared by the manufacturer with other blenders, and earlier versions of the product have been in our blender ratings for several years. Because we believe crushing ice is a foreseeable use, and because a broken blade fragment could be small enough to end up in a blended beverage without detection, thus posing a potential hazard to users, we advised consumers not to buy the product, and to stop using it if they already own it.

Unfortunately, our testers have had similar experiences with faulty blades in other blenders. In July 2013, we judged the Calphalon XL 9-speed blender a Don’t Buy: Safety Risk after its blade assembly broke during testing. Calphalon later recalled the product, in conjunction with the CPSC. And the manufacturer fixed the problem, sending owners of the affected model a replacement blade assembly, which passed our follow-up durability tests. There have also been recalls of blenders from Vitamix (August 2013, models 7500, Professional Series 300, and Professional Series 750) and Frigidaire (September 2013, model FPJB56B7MS) for blade-related problems.

In light of this troubling pattern, we urge the CPSC to press for a stronger safety standard for blades in blenders.

CPSC Participation in Voluntary Standards Development

As noted in our comments last October, we support the CPSC’s proposal to amend its rules to permit greater CPSC staff involvement in voluntary standards development. We believe such increased participation will be very useful in helping ensure voluntary standards are developed expeditiously and effectively address known and reasonably foreseeable product hazards, based on the best information available.

Enforcement

We encourage the agency’s continued prioritization of effective enforcement.

Effective enforcement of civil and criminal penalties is critical to reinforcing appropriate incentives for compliance with CPSC laws. We urge the agency to prioritize the imposition and collection of these penalties as warranted.

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. We

¹⁹ “Latest NutriBullet poses safety hazard: A blade on the NutriBullet Pro 900 can break, causing risk of ingestion,” <http://www.consumerreports.org/cro/news/2014/07/nutribullet-pro-900-don-t-buy-safety-risk/index.htm>

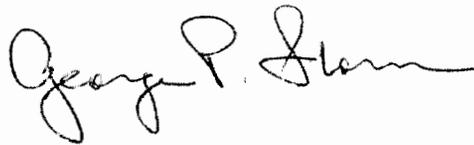
support the CPSC's proposed Voluntary Recall rule and urge the CPSC to finalize it as soon as practicable.

Stopping unsafe products from entering the country is no less critical than stopping them from being manufactured here. We fully support CPSC's commitment to enforcing product safety at ports of entry.

Conclusion

We deeply appreciate the Commission's sustained efforts to address hazards associated with consumer products, and we look forward to our continued work with you to help you fulfill that important mission.

Respectfully submitted,

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

George P. Slover
Senior Policy Counsel

Written Comment

David French, National Retail Federation



THE VOICE OF **RETAIL**

July 18, 2014

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

RE: NRF Comments on “Agenda and Priorities FY 2015 and/ 2016”

Dear Mr. Stevenson:

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

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

This time last year, the 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 (*e.g.*, delaying finalization of the proposed 1110 rule and beginning the process of expanding the determinations lists), 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, in response to the specific solicitation for public comments:

1. What are the priorities the Commission should consider emphasizing and dedicating resources toward in the fiscal year 2015 Operating Plan and/or the fiscal year 2016 Congressional Budget Request?

- Establish a Formal Trade Advisory Group. NRF again requests that the Commission emphasize and dedicate resources toward more and better stakeholder engagement. Specifically, the agency should establish a formal trade advisory group similar in nature to those that routinely advise U.S. Customs and Border Protection. NRF and other groups have repeatedly asked the agency to undertake this activity, which NRF believes is

essential in enabling the CPSC to effectively and appropriately further its ambitious plans to expand its import surveillance and inspection activities. While NRF appreciates the agency's recent "mid-year review" announcement that it will place on indefinite hold finalization of the proposed (and in NRF's view, unworkable) 1110 (certification) rule and that it will hold one public "workshop" this fall to solicit further comments and suggestions in this regard (with, NRF notes, very prescribed and limited areas of discussion), the agency truly needs a more regularized and formal means of engaging U.S. importers and others before proposing or undertaking plans to affect the importation of hundreds of billions of dollars of annual consumer products imports. As Acting Chairman Adler relayed to NRF representatives in a recent meeting, the CPSC has had such advisory groups in the past and NRF sees no reason why the agency cannot and should not reestablish one now.

- Make the Trusted Trader Program Work. NRF notes with appreciation the recent public announcement of the long-anticipated initiation (on a limited "test" basis) of a joint CPSC/CBP Trusted Trader Program intended to incentivize importers to undertake certain internal and supply chain activities to ensure compliance with CPSC and other US legal requirements, in exchange for certain benefits, notably including streamlined port inspection and release of imports. However, NRF also notes the limited success of the precursor Importer Self-Assessment—Product Safety Program, and strongly encourages the CPSC, in conjunction with CBP, to not only dedicate sufficient resources to making the Trusted Trader Program a success, but to ensure that the incentives for participation in fact materialize and are sufficient to encourage broad participation in the program. One such step toward this that NRF would encourage CPSC/CBP to undertake would be to make the actual application for participation in the "test" (pilot) program public, to enable companies to better determine the parameters of the program. NRF believes this program has the potential to be an enormous win-win for the trade and the CPSC to ensure safe consumer products and the efficient importation of those products.
- Expand Third Party Testing Burden Reduction Activities. It has been approximately three years since Congress mandated, via HR 2715/PL 112-28, that the CPSC undertake within a year a review of ways in which to mitigate the burdens of the CPSIA third party testing mandate. While the agency has initiated that process, notably including an ongoing staff review of the agency's "determinations" lists of substances that do not contain regulated phthalates or heavy metals, it has thus far resulted in no concrete results in terms of actual testing burden mitigation. NRF strongly encourages the CPSC to devote sufficient additional resources to not only finalizing the determinations lists review process, but also toward exploring international and intra-U.S. standards alignment and other areas of burden reduction that the CPSC staff recommended almost two years ago that the Commission pursue. Third party testing is of course critical to ensure the compliance with CPSC standards of consumer products, especially those intended for children, but unnecessary testing benefits no one and ultimately increases the cost and limits the availability to consumers of safe and compliant products.
- Revive CPSC Retailer Reporting Program. NRF understands that the CPSC is still not admitting new companies to this important program, apparently due to a long-underway "internal review" of the Program. The review should include input from those participating retailers about the benefits of the program and ways to improve the program. 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 to the agency under Section 15(b) of the CPSA. In exchange, the CPSC has indicated that civil penalties will generally not be pursued connection with any failure to report investigations regarding the information that is provided. This program has therefore resulted in the provision of a great deal of information (from both retailers and others in the supply chain) that the CPSC might otherwise not become aware of, which in turn has resulted in the removal from sale of many products that could pose a safety hazard to consumers. As such, this program represents a tremendous win-win for consumers, the CPSC, and participating members alike. NRF therefore urges immediate completion of this apparent review of the Retailer Reporting Program and its reopening to new participants.

2. *What activities should the Commission consider deemphasizing in the fiscal year 2015 Operating Plan and/or the fiscal year 2016 Congressional Budget Request?*

- Unnecessary Promulgation of Regulations. Given the very limited resources of the CPSC, NRF fails to understand the agency's prioritization to date of the recent promulgation of new regulations regarding product certification, voluntary recall requirements and interpretation of Section 6(b) public information disclosure. As NRF noted in its public comments submitted on each of these regulations, there is scant or no evidence that any of these preexisting regulations were or are in need of being rewritten. These unnecessary regulatory projects, then, have placed and continue to place an unnecessary and significant drain on staff time and other resources—resources that could and should be dedicated to other necessary activities of the agency, including the priorities NRF notes in these comments. Particularly at a time when the CPSC is experiencing very modest increases in its Presidential budget requests and congressional funding, NRF is hard pressed to see how such reinvention of long-standing and functioning regulations is in the best interests of consumers when there are other, far more pressing regulatory, compliance and education needs.

3. *Should the Commission consider making any changes or adjustments to the agency's education, safety standards activities, regulations, and enforcement efforts in fiscal years 2015 and/or 2016, keeping in mind the CPSC existing policy on establishing priorities for Commission action (16 CFR 1009.8)?*

- 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)).

- Unfair Enforcement 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.

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