



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

**Memorandum**

Date: July 1, 2009

TO : The Commission

FROM : Todd A. Stevenson, Director  
Office of the Secretary

SUBJECT : Comments Regarding **Commission Agenda, Priorities and Strategic Plan for FY 2011** – Request for Comments Published in the *Federal Register* June 9, 2009 - Comments due by June 26, 2009

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
1	6/18/09	Nancy A. Cowles Executive Director	Kids In Danger 116 W. Illinois, Suite 5E Chicago, IL 60654
2	6/26/09	Donald L. Mays Senior Director Product Safety & Technical Policy	Consumers Union
3	6/26/09	Ryan Trainer Executive Vice President & General Counsel	International Sleep Products 501 Wythe Street Alexandria, VA 22314
4	6/26/09	Stephanie Lester Vice President International Trade	Retail Industry Leaders 1700 N. Moore Street Suite 2250 Arlington, VA 22209
5	6/26/09	Christopher A. McLean Executive Director	Consumer Electronics Retailers Coalition 317 Massachusetts Avenue Suite 200 Washington, DC 20002

# KIDS IN DANGER<sup>SM</sup>

10 Years of Dedication 1998-2008

Protecting Children by Improving Children's Product Safety

Linda E. Ginzel, Ph.D.  
Boaz Keysar, Ph.D.  
Co Founders

Leslie M. Batterson  
Karen Bertoli  
Shawn S. Kasserman  
Judy Sage

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Board of Directors

Kristine Anderson  
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Howard Haas  
Advisory Board

Sarah Chusid  
Program Director

Nancy A. Cowles  
Executive Director

June 18, 2009

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
Via email: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov)  
Subject: Comments on Agenda, Priorities and Strategic Plan

Kids In Danger submits the following comments in response to the U.S. Consumer Product Safety Commission ("CPSC" or "Commission") in the above-referenced matter, "Agenda, Priorities and Strategic Plan" ("priorities").<sup>1</sup>

Kids In Danger is a nonprofit organization dedicated to protecting children by improving children's product safety. We were founded in 1998 by Linda Ginzel and Boaz Keysar, after the death of their son Danny Keysar in a poorly designed, inadequately tested and belatedly recalled portable crib. Our mission is to promote the development of safer children's products, advocate for children and educate the general public, especially parents and caregivers, about children's product safety.

CPSC has suffered from a lack of funding and staffing for years. With a budget smaller than the FDA's for regulating animal medicines, CPSC must attempt to keep consumers safe from the flood of unsafe products. We look forward to new priorities and funding at CPSC. The two things CPSC can do that will improve all aspects of their mandate are to operate with a greater sense of transparency and openness and to focus on making sure products are safe before they reach store shelves, rather than ineffective recalls after the fact.

Kids In Danger would urge *CPSC to prioritize the setting of mandatory standards for durable infant and toddler products*. Recent recalls of cribs and other sleep environments (more than 5 million since September 2007) shows the importance

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<sup>1</sup> See "Commission Agenda, Priorities and Strategic Plan; Request for Comments," 74 Fed. Reg. 27290 (6/9/2009), <http://www.cpsc.gov/businfo/frnotices/fr09/priorities.pdf>

of strong mandatory standards. Almost all these products met the current voluntary standards and yet led to deaths and injuries. In addition, within the list of durable infant and toddler programs, we would urge CPSC ***to consider sleep environment standards sooner rather than later*** as the lack of a strong standard is leading to product failures, injuries and deaths.

Secondly, while the CPSIA did not directly take on the Section 6(b) provision that limits access to vital safety information; it does ***mandate a database*** of product complaints and injuries. This database will provide valuable information to consumers, researchers and advocates on injuries and product failures even prior to a recall. Now, many parents turn to Amazon.com, or other online sites to review customer comments on products. This sometimes gives safety information, but is not as reliable as a government database would be.

First, as mentioned above, the Infant and Toddler Durable Product Safety Act is a top priority for Kids In Danger. This requires strong mandatory standards and third party testing for juvenile products such as cribs, strollers, high chairs and more. These new standards are to build on the current voluntary standards (ASTM) and be developed with input from all stakeholders. The ASTM standards were developed primarily by industry with a few consumer watchdogs on the committees. But consumers have never had enough of a presence to add stronger requirements to the standards. This is why almost 5 million cribs that met the voluntary standards had to be recalled after product failures, injuries and deaths. CPSC must avoid going the way of ASTM and making sure consumer and safety experts' voices are heard as loudly as industry's. In the original thinking on this provision (it had been a stand-alone bill of Rep. Schakowsky since 2001) there would be a committee with no one group having a majority that would develop these standards. While that might not be the model now, the intent, ***to have a wide variety of input should still be a priority***.

CPSC has much to repair in terms of their relationship with consumer groups. The current administration seemed to regard manufacturers as their constituents and consumer advocates as their adversaries. Instead, CPSC should draw on their experience and knowledge, and allow for the new perspective they bring to the agency. CPSC leadership should communicate forcefully to staff that consumer groups are allies; that information should be shared as fully as possible, not meted out only when forced. Some things they are doing should be continued – participation in the International Consumer Product Health and Safety Organization, participation in ASTM committees on consumer products. In addition, CPSC should consider establishing a consumer liaison, even if it is

an added duty to current staff, to assure that there is an open door at CPSC to work with consumer groups and victims.

While the website is a good source of information for recalls, it is very hard to use for other information. For instance to get access to consumer statistics or documents, you have to know to go through the Library/FOIA link and much important information is behind the Business link – not exactly an invitation for consumers to access it.

CPSC does a horrible job at recall effectiveness – in everything from keeping track of recall responses (while monthly reports are supposed to be filed, we have never seen a file that includes reports for every month, and most stop after a month or two, even though fewer than 10% of the products are accounted for) to requiring aggressive action on the manufacturer's part to reach consumers. When asking for recall effectiveness numbers through FOIA over the past several years, we have been told there are no monthly reports, the entire file has been lost, the investigation is still open and they can't give us that information or in a few cases gotten the data – which shows a dismal return rate of less than 10% for products already with consumers.

The 'What we do' part of the CPSC website seems unfocused. A stronger statement of mission would improve the actual strength of the agency as well as how it is perceived by others.

Consumers need to feel the agency is on their side. ***CPSC should initiate better follow-up on consumer complaints.*** This should include regular updates to the complainant on the progress made or the decision to close a case.

***Parents, grandparents and caretakers can be enlisted as the eyes and ears of the agency*** – reporting unsafe or recalled products when they find them on store shelves, in childcare centers or on second-hand websites.

Use new powers under CPSIA to ***enlist state Attorneys General help nationwide. Create a clearinghouse for state activities on product safety.***

***Section 6(b) should be repealed.*** It unfairly favors business interests and puts secrecy above consumer safety.

***FOIA process needs to be addressed.*** Currently CPSC shows blatant disregard for FOIA requirements responding slowly if at all to requests. Most are denied or severely

curtailed and without a legal team, consumers are left with no recourse to get the information. Between the flaws in both of these systems (6B and FOIA), most reporters are discouraged from reporting in depth because of the time delay and need to repeatedly enter FOIA's for basic information.

***Recall effectiveness rates should be a matter of public information.*** Either in an annual report to Congress or on some other basis, CPSC should publicize the effectiveness of each recall. Transparency of information should be a goal. Perhaps if the woeful numbers shown by most manufacturers were subject to public scrutiny, they might make more of an effort to retrieve the products.

In addition to product registration cards and online registration, CPSC should require notification of each state department that regulates child care and foster care and every licensed child care provider of every recall. ***When a death or injury is involved, CPSC should require reverse marketing*** – using marketing dollars to reach consumers after purchasing a recalled product. Blanket mass media has been proven ineffective in retrieving unsafe products.

CPSC must ***improve the effectiveness of their field staff.*** In depth investigations are often missing pertinent information (for instance brand or model information) and investigators are too quick to blame the parents and stop the investigations.

The key to safe children's products is strong mandatory standards, independent third party pre-market testing and rigorous enforcement by CPSC. The CPSIA has given CPSC many of the tools it needs to keep products safe, now CPSC needs the resources and the will.

## Stevenson, Todd

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**From:** Nancy A. Cowles [nancy@kidsindanger.org]  
**Sent:** Tuesday, June 23, 2009 11:56 AM  
**To:** CPSC-OS  
**Subject:** Agenda, Priorities and Strategic Plan: Comments  
**Attachments:** KID CPSC Priorities Comments.pdf

Attached please find our comments on the CPSC's agenda, priorities and strategic plan.

Nancy A. Cowles  
Executive Director  
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312.595-0649  
[nancy@kidsindanger.org](mailto:nancy@kidsindanger.org)

Kids In Danger is a nonprofit organization dedicated to protecting children by improving children's product safety. Learn more at [www.KidsInDanger.org](http://www.KidsInDanger.org). Read what's new at our [KID Blog](#).

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



please don't print this e-mail unless you really need to

June 26, 2009

Office of the Secretary  
Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, Maryland 20814  
Via e-mail: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov)

**Comments of Consumers Union of United States, Inc.  
to the U.S. Consumer Product Safety Commission on  
“Agenda, Priorities and Strategic Plan”**

**Introduction**

In this Notice, the U.S. Consumer Product Safety Commission (“CPSC” or “Commission”) seeks comment on its agenda and priorities for Commission attention during fiscal year 2011, and its planned revisions to its current strategic plan, pursuant to the Government Performance and Results Act (“GPRA”). Consumers Union of United States, Inc. (CU) submits the following comments in response to the CPSC in the above-referenced matter (“Commission Agenda”).<sup>1</sup> CU’s comments and recommendations relating to the Commission’s Agenda are as follows:

**2010 Performance Budget Request**

**Laboratory Modernization.** We are pleased that the modernized laboratory space will be completed in 2009. However, we remain concerned that the laboratory will be housed separately and physically isolated from other CPSC staff. (p. vii, 6)

**Import Safety.** We strongly support the decision to increase staff at the ports. (p. viii, ix, 21, 25). In addition, we support the expansion of the Import Surveillance Division. However, given recent safety problems with imported goods we would like to see a significant increase in the goal to screen 1,800 samples of suspect imported goods. (p. 25)

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<sup>1</sup> “Commission Agenda, Priorities and Strategic Plan; Request for Comments,” 74 Fed. Reg. 27290 (June 9, 2009).

**ATVs.** CU has cautioned against the use of ATVs by children under the age of 16. However, we support the testing of ATVs, both youth and adult models, to better understand relative safety risks (e.g. stability, handling, braking, and compliance with voluntary standards). (p. 16-17, 48)

**Public Outreach and Education.** In order to better understand the CPSC's thinking during the continued implementation of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), we support the CPSC's outreach and education efforts, and planned six public and Web-cast meetings. (p. 18)

**Risk Management System.** We strongly support the CPSC's goals relating to the creation of the Consumer Product Safety Risk Management System (RMS), to implement the publicly available database mandated under the CPSIA. (p. 20)

**Reduction in Fire Hazards.** We support the CPSC's efforts to reduce the rate of death from fire hazards. We recommend that the Commission focus additional attention on cooking fires. (p. 28)

**Carbon Monoxide.** We support the CPSC's strategic goal of reducing the rate of deaths from carbon monoxide poisoning and work with industry to assess automatic shut-off safety systems that could potentially save lives. (p. 34)

**Children's Hazards.** We support the CPSC's efforts to reduce injuries to children from hazards, especially those associated with toys, nursery products, and swimming pools. In addition we support the CPSC's efforts to reduce choking, suffocation, strangulation, poisoning and other hazards. (p. 39) We strongly urge the CPSC's increased focus on reducing the increased risk and incidence of harm faced by minority children relating to products under the CPSC's jurisdiction. We believe that information provided from the General Accountability Office report mandated by Section 107 of the CPSIA and due out in August of 2009, may provide assistance in focusing this effort.

**Chemical Toxicity.** We are very pleased to see focus on Chemical Toxicity Assessment. (p. 42) In addition to the planned studies, we strongly urge the CPSC to quickly determine the harms caused by Chinese drywall.

**Nanomaterials.** We are very concerned with the rapid proliferation of products containing nanomaterials without a sufficient understanding of possible health effects. We strongly support the CPSC's study of nanomaterials in aerosols and nanosilver in consumer products generally, and particularly in children's products as well as products that contain nanomaterials that come in contact with the skin. (p. 42-43) We appreciate that the CPSC will be creating a database with detailed information on products containing nanomaterials, and

hope the analysis and tracking of this information will lead to a better understanding of any risks involved with products containing nanoparticles. (p. 55)

**Pool and Spa Safety, Portable Pool Protection, In-home drowning prevention.** We appreciated the CPSC's activities relating to drowning prevention. We strongly urge the CPSC to increase focus on reducing the increased risk and incidence of drowning faced by minority children. We believe that information provided from the General Accountability Office report mandated by Section 107 of the CPSIA and due out in August of 2009, may provide assistance in focusing this effort. (p. 43, 48)

**Sleep Environment Hazards.** We agree that this is an important area in which to focus. We recommend that the Commission work with advertisers of children's cribs and bedding to recommend against displaying cribs with pillows, soft bumpers and quilts for use with infants. (p. 44-45)

**Tip-Over Prevention.** CU is very concerned about deaths and injuries – especially to young children -- caused by furniture tip-overs. We urge the Commission also to focus on injuries resulting from breaking glass in furniture. At least 20,000 injuries are suffered per year related to glass furniture, and most injuries can be prevented through the use of safety glass. (p. 45, 49)

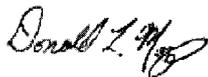
**Consumer Outreach.** CU supports the CPSC's increased public presence and outreach to disseminate safety alerts and messages. (p. 47) We support any effort to enhance recall effectiveness.

**Emerging Hazards.** We support the CPSC's work to identify emerging hazards, particularly the review of data relating to cooking equipment. (p. 52)

\* \* \*

We look forward to working with the Commission in the implementation of its current and future goals.

Respectfully submitted,



Donald L. Mays  
Senior Director, Product Safety & Technical Policy  
Consumers Union

## Stevenson, Todd

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**From:** Giddings-Jonas, Lynette [GiddLy@consumer.org]  
**Sent:** Friday, June 26, 2009 10:32 AM  
**To:** CPSC-OS  
**Subject:** Comments to CPSC  
**Attachments:** CPSC 2010 Priorities - comments \_2\_.pdf

Attached below is a Comments to CPSC document for filing with your office:

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INTERNATIONAL  
SLEEP  
PRODUCTS  
ASSOCIATION

June 26, 2009

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

Re: Agenda, Priorities and Strategic Plan

Dear Mr. Stevenson:

The International Sleep Products Association (ISPA) represents mattress manufacturers and suppliers of components and services to the industry. ISPA and the industry have a long history of working with the Consumer Product Safety Commission (CPSC) to establish effective and reasonable product safety standards and to educate consumers about the fire risks associated with using mattresses unsafely.

In response to the CPSC's request for input on its current strategic plan and priorities and agenda for FY2011 published at 74 Fed. Reg. 27290, and in order to further promote fire safety, ISPA proposes that the CPSC establish the following educational program in partnership with the mattress industry.

**Background**

ISPA proposes a joint safety campaign in partnership with the CPSC designed to raise awareness of the potential fire dangers of used and non-compliant renovated mattresses among consumers and resellers. The federal open-flame flammability standard for mattresses, codified at 16 CFR Part 1633, is intended to improve the fire performance of mattresses and applies to all new and renovated mattresses manufactured after July 1, 2007. Few mattresses manufactured before that date meet the requirements of Part 1633. Thus, used mattresses manufactured before July 1, 2007 and renovated mattresses often do not meet the CPSC's mandatory flammability requirement of Part 1633.

Used and renovated mattresses are frequently sold to families and individuals in lower socio-economic groups who, according to statistics, are at the highest risk of fire. Furthermore, when a used or renovated mattress is sold, the purchaser, and too often the retailer, is unaware that the mattress must meet the requirements of Part 1633. This results in a large population of consumers – the very segment of consumers that are the most at risk of mattress fires – being needlessly exposed potential fire risks.

ISPA is committed to mandatory flammability standards that are effective in improving product safety, and supports the CPSC's efforts to enforce Part 1633. ISPA believes that increased public awareness of the dangers of purchasing used or renovated mattresses that do not meet Part 1633 will improve compliance with that standard and enhance the ability of the new standard to improve public safety. Helping consumers understand the risks involved with purchasing a non-compliant mattress, and educating them about what to look for when purchasing a compliant mattress, will allow them to better protect themselves and their families. Likewise, informing state and local officials with responsibility for health, public safety, housing and consumer protection will enhance enforcement of Part 1633.

In tandem with this request, ISPA will also be working with other federal and state agencies with jurisdiction over other consumer health and deception issues related to the sale of used and renovated beds to develop public education messages that address those risks. For example, to prevent consumers from being deceived into thinking that the renovated or used mattresses they are buying are in fact new products, the Federal Trade Commission and a number of states regulate how those mattresses must be labeled.

Likewise, a number of states and the Environmental Protection Agency are focused on hygienic risks associated with used and renovated mattresses, especially in light of recent bed bug problems in many urban and other areas of the country. Given that the CPSC and these other agencies are regulating different consumer issues related to the same products, perhaps a coordinated message that incorporates all of these concerns might be an efficient option to consider.

### **Proposal**

For the reasons discussed above, ISPA proposes a joint ISPA/CPSC public safety campaign that targets the following audiences:

- Consumers from lower socio-economic levels and consumers in general
- Multi-family housing authorities
- Thrift stores and used product resellers
- Fire safety officials and local fire departments
- State officials with health, public safety, public housing and consumer protection responsibilities
- Members of the International Association of Bedding and Furniture Labeling Officials (IABFLO)

The campaign would be designed to improve consumer awareness about buying a 1633-compliant mattress and to improve overall compliance with Part 1633. As the government agency charged with protecting U.S. consumers, the CPSC's active involvement in the campaign would increase public awareness of this issue. We propose that ISPA and the CPSC jointly use their respective public information channels, publications and relationships to disseminate this information to the target audiences described above.

ISPA suggests that the mattress industry and the CPSC work together through the campaign to develop educational materials and flyers and targeted media outreach to educate consumers on the inherent safety risks of non-compliant mattresses. The campaign should also target thrift and second hand retailers informing them of their responsibilities to sell only compliant mattresses under federal law.

\* \* \* \* \*

For these reasons, ISPA requests that the CPSC identify this public education campaign as an agency priority and include funding to develop and implement the campaign in its FY2011 fiscal plan.

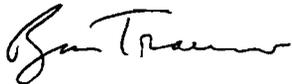
Alternatively, we urge the CSPC to make this public education campaign a priority as the agency reconsiders its current strategic plan.

ISPA Comments on FY011 Agenda  
Page 3  
6/26/09

ISPA would welcome the opportunity to work with the CPSC to further these objectives in a manner that will help consumers make reasonable fire safety choices when purchasing mattress and encourage greater compliance with CPSC standards among retailers.

If you have questions, please contact me at 703-683-8371.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Trainer". The signature is fluid and cursive, with the first name "Ryan" being more prominent than the last name "Trainer".

Ryan Trainer  
Executive Vice President & General Counsel

## Stevenson, Todd

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**From:** Chris Hudgins [CHudgins@sleepproducts.org]  
**Sent:** Friday, June 26, 2009 12:16 PM  
**To:** CPSC-OS  
**Subject:** Agenda, Priorities and Strategic Plan  
**Attachments:** ISPA Campaign for CPSC FY11.pdf

Please see attached comments from ISPA regarding CPSC's request for comments on its Agenda, Priorities and Strategic Plan.

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"Start Every Day With a Good Night's Sleep <sup>TM</sup>"

**2009 ISPA Industry Conference and Exhibition**  
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Bonita Springs, FL  
[www.sleepproducts.org/IndustryConference](http://www.sleepproducts.org/IndustryConference)



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June 26, 2009

Todd A. Stevenson  
Office of the Secretary  
U.S. Consumer Product Safety Commission  
Room 502  
4330 East West Highway  
Bethesda, MD  
Submitted electronically to [cpsec-os@cpsec.gov](mailto:cpsec-os@cpsec.gov)

Re: Agenda, Priorities and Strategic Plan

Dear Mr. Stevenson:

Please accept the following comments from the Retail Industry Leaders Association (RILA) on behalf of its members regarding the Consumer Product Safety Commission's ("Commission's") agenda and priorities for fiscal year 2011 and revisions to the strategic plan.

By way of background, RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry--retailers, product manufacturers, and service suppliers--which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Product safety and customer satisfaction are paramount for retailers. RILA strongly supports the Commission's core mission of saving lives and keeping families safe, as well as its specific charges

- to protect the public against unreasonable risks of injury associated with consumer products;
- to assist consumers in evaluating the comparative safety of consumer products;
- to develop uniform safety standards for consumer products and to minimize conflicting state and local regulations; and
- to promote research and investigation into causes and prevention of product-related deaths, illness and injuries.

These strategic goals should always be considered when prioritizing Commission actions. Given limited resources, RILA agrees with the Commission's plan to reduce hazards and prioritize issues based on results-oriented goals.

*Develop Constructive Solutions and Issue Guidance on CPSIA*

The Commission's mission to save lives and keep families safe has not changed, but its means to do so has changed dramatically with the enactment of the Consumer Product Safety Improvement Act in 2008.

The CPSIA prompted widespread changes on product safety by requiring testing, certification and labeling for certain children's products. The law also established new federal standards for lead and phthalates. RILA supported the CPSIA when it was enacted. However, as the Commission and industry have sought to implement the new law, various problems have come to light due to extremely tight deadlines and the inflexible nature of the statute, particularly with regard to a risk-based approach to product safety. RILA respectfully asks the Commission to constructively engage with the U.S. Congress and interested stakeholders to find constructive solutions to the limitations in the CPSIA.

RILA also requests the Commission to promptly issue detailed guidance on pending issues in the CPSIA, such as whether products that are inherently lead-free (such as textiles and unadorned apparel) must be tested, whether component testing is acceptable to ensure final product compliance, and implementation of the tracking label requirement in section 103 of the CPSIA.

### *Ensure Product Safety is Implemented Throughout Supply Chains*

To be effective, product safety must be designed and incorporated throughout global supply chains. From appropriate design hazard analysis by product category to recall effectiveness programs, the Commission should adopt a comprehensive approach that outlines minimum due diligence obligations at each stage. End-product testing, such as that required by the CPSIA, should be viewed as a stop-gap measure that ensures other more holistic efforts are working; end-product testing should not be the primary means to ensure product safety.

The Commission's product safety efforts should include:

- Design and Development
- Sourcing and Material Management
- Distribution and Supply Chain Traceability
- Life Cycle Issues
- Corrective and Preventative Actions

In a globalized economy, product safety efforts necessarily involve foreign suppliers. RILA encourages the Commission to continue to partner with industry to best reach global suppliers.

RILA also suggest that the Commission work with industry and U.S. Customs and Border Protection to adopt guidelines for Good Importer Best Practices to improve controls and avoid careless errors.

Commission resources should also be allocated to support other public-private cooperative initiatives including industry education campaigns.

### *Hazard Identification*

The Commission's work to identify and reduce product hazards is critical. To help raise awareness of potential *future* risks, RILA suggests the Commission should categorize the causes of product recalls. For example, the Commission should determine the percentage of the critical defects that prompt consumer product recalls attributed to:

- (1) design flaws,
- (2) poor manufacturing practices,
- (3) lack of controls between raw material suppliers and finish product producers, or

(4) misuse by end users.

These categories of risks will help to educate stakeholders on the most common types of risks and raise awareness to avoid those risks in the future. The Commission could also partner with industries to most effectively address any systemic failures that caused the recalls.

### *Improving Recall Effectiveness*

The Commission can also work to improve recall effectiveness by finding new ways to raise public awareness of recalls. The Commission's "Drive for 1 Million" campaign is a laudable effort to directly contact consumers regarding product recalls. Nevertheless, more public outreach could be done. A perennial challenge for retailers, manufacturers and the Commission is awareness of recalls by the specific consumers who have purchased the affected products. Retailers and manufacturers can contact consumers directly, when we have contact information, and many retailers already notify their customers when they are able to track a specific purchase to a customer (such as through internet sales). However, there are often instances when consumer contact information for specific purchasers is unavailable. RILA suggests the Commission could explore an information clearinghouse whereby more consumer information could be gathered in the event of a recall, but that information would be protected to allay any privacy and data-security concerns. For example, the National Association of Attorneys General could be engaged to create a clearinghouse and leverage resources while safeguarding consumer privacy.

### *More Cooperation with State Governments*

The Commission's mission to develop uniform safety standards for consumer products and to minimize conflicting state and local regulations is an important one, particularly for national retailers that operate in all 50 states. As the Commission rightly recognizes, inconsistent state or local regulation can create a significant burden on interstate commerce. It is not feasible to have states implement differing or conflicting product safety standards for the same risk or product. The Commission should proactively identify areas for further improvement and coordination of consumer protection efforts with state governments.

### *Conclusion*

RILA members place the highest priority on ensuring product safety and RILA appreciates this opportunity to comment on the Commission's strategic plan. Should you have any additional questions about the comments as submitted, please don't hesitate to contact me by phone at (703) 600-2046 or by email at [stephanie.lester@rila.org](mailto:stephanie.lester@rila.org).

Sincerely,



Stephanie Lester  
Vice President, International Trade

**Stevenson, Todd**

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**From:** Jim Neill [Jim.Neill@retail-leaders.org]  
**Sent:** Friday, June 26, 2009 12:23 PM  
**To:** CPSC-OS  
**Subject:** RILA CPSC strategic plan comments  
**Attachments:** CPSC strategic plan comments 06 2009 \_2\_.pdf

Dear Mr. Stevenson,

Attached you'll find comments for consideration as you update and revise the CPSC strategic plan.

RILA appreciates the opportunity to offer our thoughts.

Thank you,

Jim Neill

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**Jim Neill**

Vice President, Product Safety  
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**Consumer Electronics Retailers Coalition**



June 26, 2009

Inez Moore Tenenbaum  
Chairman  
Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Re: Comments concerning the Commission's agenda and priorities for fiscal year 2011 and revisions to the strategic plan.**

Dear Chairman Tenenbaum

Congratulations on your recent Senate confirmation and assuming the duties of Chairman. Please accept the following comments submitted on behalf of the Consumer Electronics Retailers Coalition on the Consumer Products Safety Commission's 2011 strategic plan.

The Consumer Electronics Retailers Coalition (CERC) is a public policy organization consisting of the major retailers of consumer electronics products and two of the nation's major retail industry trade associations. Our members are among America's favorite places to shop for electronic devices which make our lives more productive and enjoyable.

CERC members have combined to focus our unique and expert market perspective on the critical policy issues facing the consumer electronic retail industry and our customers. Individually our members operate in all 50 states and territories, collectively employing over three million people nationwide.

All of our retail members are committed to the health, safety and satisfaction of their customers. Our members take great pride and care selecting the products and services offered to our customers, especially products marketed to children. Our members have been working individually and through CERC to help the Consumer Products Safety Commission (CPSC) and its staff understand the nature of components used in consumer electronics and the complexity of the retail supply chain.

We share a desire to successfully implement the Consumer Products Safety Improvement Act (CPSIA) in a way that maximizes safety without unnecessarily disrupting commerce.

CERC would like to offer itself as a resource for guidance and expertise as CPSC considers appropriate as the Commission works on addressing current and as yet unforeseen issues in the electronics marketplace. As such, CERC would like to respectfully offer comments and recommendations related to:

- 1) Electronic device waiver;
- 2) Regulatory clarity, guidance and exceptions;
- 3) A constructive approach to enforcement;
- 4) Recognition of the product, publication and selling cycles; and
- 5) Global harmonization of standards.

CERC has appreciated the courtesies and helpfulness of CPSC Counsel and staff as the agency works to implement a new law and prepare for the arrival of new Commissioners and staff. CERC and its members seek to be a constructive partner with the CPSC in successfully implementing the Consumer Product Safety Improvement Act (CPSIA) and protecting the health and safety of all Americans.

### **1) Maintain Electronics Device Waiver**

Maintenance of the lead exemption for electronic products promotes safety of general use products while balancing commercial realities and technical feasibility as intended by the Congress.

#### **a) Inaccessible Parts**

Congress appropriately provided an exemption from lead level standards for electronic devices in the CPSIA. By providing for a waiver, the CPSC fulfilled an important Congressional mandate. CERC was pleased to provide constructive comments as the CPSC reviewed this issue. Maintaining the exemption is appropriate and safe for consumers.

Although metal alloys containing lead are fairly common components in electronic devices, most of the lead contained in these types of products is inaccessible and pose very minimal if any risk of exposure. Many component parts that contain lead are rendered inaccessible by a cover or enclosure. Typical examples include components on a circuit board. Lead solder, one of the main components on a circuit board, is used to secure components to printed circuit boards and/or to solder wires to other components and connectors.

Because of the product's outer casing, in most cases, significant effort (i.e. removal of screws, sonic welds, or glue) is required to access these components. The lead present in a circuit board is inaccessible. Metal alloys containing lead in contact in battery compartments are also inaccessible especially when the compartments are enclosed with screw covers or other technique which makes the contacts difficult to access.

There also may be cases where lead is in a product component such as a glass or crystal element which poses either no risk where contact can transfer lead to skin or mouth or

where the component by its very nature does not leach lead. These types of product components should also be determined to be “inaccessible” and exempt. In fact, lead in glass used in picture tubes actually protects viewers from exposure to x-ray radiation.

#### **b) Technical Infeasibility**

Given its experience in the marketplace, CERC and its individual members would respectfully like to offer its expertise and guidance as CPSC deems appropriate to come to a common and workable understanding of what is and is not technically feasible with respect to lead content.

Industry experience and practical necessity has demonstrated that there is in fact a technical infeasibility in removing all lead from general use electronic internal parts and/or products. Substitutes for many of the alloys which contain lead are either not available or have characteristics that are not optimal for use in electronic devices because of conductivity or brittleness. For example, alloys are the primary example of accessible component parts containing lead.

Various alloys use lead to achieve certain properties necessary to form or make the part, including steel, aluminum, and copper-based alloys are used in numerous children products. Common examples of such products include: battery contacts; audio and video connectors; battery chargers; and AC adapters. On another front, for example brass alloy which is particularly malleable, can be cast and machined and is a commonly used metal.

It can be molded into usable products more accurately and at a faster rate, making it particularly useful in small metal parts, and in antenna parts for electronic devices ranging from radios to remote-controlled cars. Component parts of this nature should also be exempt from meeting the CPSIA lead standard because it would not be technologically feasible for them to do so.

#### **c) General Use Products**

Most electronic products are for ‘general use’ and are in fact never marketed toward, or intended for use by, children. Indeed, under CPSIA, the term “electronic devices” encompasses more than children’s products and seeks to move regulation into what can be considered ‘general use’ products.

### **2) Regulatory Clarity, Guidance and Exceptions**

Clear understanding of rules and regulations is fundamental to compliance with those rules and avoidance of the risks that the rules were designed to prevent. CERC is interested in working with the CPSC to ensure that rules and regulations are clear and practical to allow for consistent compliance.. As you know, clearly establishing with precision what is and what is not covered by a regulation will always best benefit consumers, industry, and government. Clarity results in improved and efficient

compliance with regulations needed to avoid wasteful legal and operational costs that would, ultimately, be passed onto consumers.

We applaud the Commission's continued efforts to offer clear guidance as is practical which can be relied upon by requestors. In alignment with the CPSC's mission to promote safety in consumer products, CERC believes it is better to avoid the safety risks associated with product safety problems with proper regulatory compliance. Clear, well-defined rules with which CERC's membership can practically comply, furthers the mission of safety in the consumer marketplace.

CERC members play by the rules and as such we do not want to compete with those bad actors in the marketplace that do not. Cooperative efforts, clear rules and clear communications will always enhance compliance as well as general consumer and children's safety.

At the end of the rulemaking the CPSC should also consider providing affected parties an opportunity for an exception or exemption which could be requested and expeditiously granted or denied upon due consideration. Again, CERC would be delighted and honored to act as an industry resource, offering its marketplace expertise as deemed appropriate by CPSC.

CERC would also respectfully like the opportunity to offer its input as new regulations are proposed and implemented with respect to the practical implications of the timing of the effective dates of regulations. It is important to give retailers and manufacturers a reasonable amount of time to comply given complex supply systems.

As industry leaders, our genuine goal is to best serve consumers. In the end, that convergence of common interest will benefit all stakeholders, including the Commission.

### **3) A Constructive Approach to Compliance and Enforcement**

Retailers genuinely want to offer the best, safest products possible. It is critical to retailers' reputations with consumers that they do so. All members of CERC, expend considerable and necessary amounts of resources to screen products and suppliers, ensure that sales staffs are fully trained on product requirements and labeling. Every CERC member maintains a high level of vigilance on product safety. Each and every day our consumer electronic retailers remove known dangers from the stream of commerce and respond quickly to both voluntary and mandatory product recalls.

CERC members want to be a constructive partner in the effort to keep all Americans safe. It is worth noting that the CPSIA represents one of the most comprehensive reforms of consumer product safety legislation in decades. The Obama Administration also brings new commitment to consumer protection and safety. We welcome and encourage a full and open dialog between the CPSC and retailers to get an even better sense of our common interests and to demonstrate the depth of commitment we have to our customer's health and safety.

Given that modern retail supply chains are complex and retail organizations are rather large, when considering approaches to enforcement, it is critically important to distinguish between a simple human error and an effort to blatantly disobey the rules of the CPSC. In enforcing and interpreting the new and existing consumer protection laws, CERC urges the CPSC to adopt an approach to enforcement which is aimed at achieving compliance rather than focused on punishment.

As to the issues of enforcement and penalties CERC would like to respectfully offer the following based on its industry experience. As the CPSIA is being implemented and complex rules are being promulgated, tested and refined, CERC believes that enforcement efforts should focus first on achieving compliance through education and information.

CERC offers an excellent conduit for industry education and outreach. Necessary penalties should be reserved for more extreme cases of conscious violations of the rules. CERC recommends that additional considerations to be taken into account before civil penalties are assessed and with respect to the level of penalty, including:

- The objective clarity of the regulation involved;
- The timing of the regulation in relationship to the alleged violation;
- Whether a prior warning had been issued;
- The actual risk to consumers related to the violation;
- The opportunity to resolve the alleged violation through cooperative measures; and
- Whether the alleged violation represents an isolated error, conscious violation or systemic risk.

CERC believes that the object of the enforcement process should be first and foremost to encourage timely compliance with the clear rules as established by the CPSC and Congress.

#### **4) CPSC Should Recognize Product, Publication and Selling Cycles**

One of the largest challenges that the retail sector faces with government regulations, mandates or requirements at all levels is that the timing of new requirements often fails to take into account the natural product, selling and publication cycles of retailing. We believe that the effectiveness and efficiency of regulation could be dramatically improved as we better work with regulators to more fully communicate these cycles. One obvious example would be the implementation of major systematic regulatory change during the end of year holiday selling season.

It is the work of CERC and our members to more fully communicate with the CPSC that proposed and/or necessary warnings or statements which must be included in printed materials or on websites, for example need adequate lead times. This also holds true for manufactures and retailers to implement product changes or labeling changes.

Where regulatory changes do not involve actual risk of harm, CERC would recommend that the CPSC should set product, packaging or labeling changes on a “manufactured after date” basis and allow for the sell through of safe products and take into account the product cycle when obligations become effective. CERC strongly believes in protecting the safety of our customers and children.

### **5) Global Harmonization of Standards**

As you know, the consumer electronics market is global in nature. It would be useful to seek a global harmonization of consumer product safety issues. Common or at least compatible standards between the United States and the European Union (EU) would be an excellent way to start. Safety should know no borders. The US and EU can learn from each other and should work closely together to ensure that safety standards are not used as an artificial trade barrier. Such an approach is not only good trade policy, it is good safety policy. Consumers need to have confidence that safety policies; product warnings and product recalls are based on sound science, not political expediency.

### **Conclusion**

CERC appreciates the opportunity to comment on the CPSC’s strategic plan for 2011. All of our members have a deep commitment to consumer and child safety. We welcome the opportunity to work cooperatively with the CPSC to preserve and advance product safety and act as an industry resource providing education and resources to our shared goal to protect the safety of consumers.

Sincerely,

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**Stevenson, Todd**

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**From:** Glen Cooney [glen.cooney@e-copernicus.com]  
**Sent:** Friday, June 26, 2009 8:17 PM  
**To:** cpscos@cpsc.gov; CPSC-OS; Falvey, Cheryl; Stevenson, Todd  
**Subject:** "Agenda, Priorities and Strategic Plan"  
**Attachments:** CERC.CPSC.strategic.plan.2011.comments.06.26.09.final.doc

Chairman Tenenbaum and CPSC Staff:

Pease accept the attached document on behalf of the Consumer Electronics Retailers Coalition (CERC). The document offers CERC comments concerning the Commission's agenda and priorities for fiscal year 2011 and revisions to the strategic plan.

Thank you,  
Glen

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