



**U.S. CONSUMER PRODUCT SAFETY COMMISSION**  
Bethesda, Maryland

**Public Hearing**  
**Commission Agenda and Priorities**  
**for FY 2019 and FY 2020**

**Wednesday, April 11, 2018**  
**10:00 a.m.**

<b>EDT</b>		<b>Presenter</b>	<b>Affiliation</b>
<b>10:00 AM</b>	<b>Opening</b>	Acting Chairman Buerkle	
<b>10:05 AM</b>	<b>Panel 1</b>	1 Nancy Cowles	Kids in Danger
		2 Diana Zuckerman	National Center for Health Research
		3 Janet McGee	Bereaved Mother
		4 Greg Wischstadt	Portable Generator Manufacturers Association
		5 Pamela Zidarich	Midway Defective Window Recipients
<b>10:55 AM</b>	<b>Panel 1 Questions</b>	Commission	
<b>11:35 AM</b>	<b>Panel 2</b>	6 Rachel Weintraub	Consumer Federation of America
		7 Kristen Kern	American Apparel & Footwear Association
		8 Sarah Denny	American Academy of Pediatrics
		9 Jennifer Cleary	Association of Home Appliance Manufacturers
		10 Eve Gartner	Earthjustice
<b>12:25 PM</b>	<b>Panel 2 Questions</b>	Commission	
<b>1:05 PM</b>	<b>----- L u n c h B r e a k -----</b>		
<b>2:00 PM</b>	<b>Panel 3</b>	11 Lisa Siefert	Shane's Foundation
		12 Sheila Bearden	Consumer
		13 William Wallace	Consumers Union
		14 Danielle Iverson	International Federation of Inspection Agencies
		15 Gary Cowles	Consumer
<b>2:50 PM</b>	<b>Panel 3 Questions</b>	Commission	
<b>3:30 PM</b>	<b>Panel 4</b>	16 Don Huber	Consumer Reports
		17 Remington A. Gregg	Public Citizen
		18 Russell Kendzior	National Floor Safety Institute
		19 Timothy Frink	Consumer
<b>4:10 PM</b>	<b>Panel 4 Questions</b>	Commission	
<b>4:50 PM</b>	<b>Adjourn</b>	Acting Chairman Buerkle	

# Panel 1

**Nancy Cowles**

Executive Director

Kids In Danger

March 28, 2018

Office of the Secretary  
Consumer Product Safety Commission  
Room 502  
4330 East-West Highway  
Bethesda, Maryland 20814

Comments of Nancy Cowles, Executive Director  
Kids In Danger  
To the U.S Consumer Product Safety Commission on  
"Agenda and Priorities FY 2019 and FY 2020"

Thank you for the opportunity to submit comments on the CPSC's agenda and priorities for FY 2019 and FY 2020. Kids In Danger (KID) is dedicated to protecting children by fighting for product safety. Our mission is to save lives by enhancing transparency and accountability through safer product development, better education and stronger advocacy for children.

KID has been presenting testimony at these hearings for many years. You can expect us to reiterate some of the same issues we have in past years – recall effectiveness, Danny's Law, SaferProducts.gov and more. But if you leave today with a key message from KID it is this: Innovation, Regulation, and Transparency. You'll hear these themes throughout my testimony

### **First, Mandatory Standards**

Through the implementation of the Consumer Product Safety Improvement Act (CPSIA) and Danny's Law, the CPSC has successfully developed strong mandatory standards for 19 types of durable infant and toddler products –leaving just six from the list.

But this year is CPSIA's 10 year anniversary – a decade after passage of this landmark legislation, consumers still have no assurance that booster seats, high chairs, gates, changing tables, inclined infant sleepers and stationary activity centers are tested for safety to a strong standard before they reach store shelves. And that is without even talking about products such as baby nests, crib hammocks and other potentially hazardous products that have entered the market and are not covered by any standard. Last year, I specifically mentioned the delay in the high chair standard -- there were then 11,000 emergency room visits for injuries associated with high chairs in that year's annual Nursery report. This year, it is up to 13,000 injuries. While a strong standard won't

eliminate all injuries, we have seen with other products that it makes a difference. It is coming up on three years since the NPR, time to take action and get a standard on the books.

We appreciate the amount of time, energy, research and knowledge that CPSC staff dedicate to this task. We urge the CPSC to continue to prioritize this work, giving staff the time, resources and support they need to develop strong standards that will reduce injuries and deaths from nursery products.

ASTM International, the voluntary standards organization, is responding to the CPSC's Notice of Proposed Rulemaking on crib bumper pads by looking at firmness, breathability and other measures, we still support a ban of padded crib bumper pads. The American Academy of Pediatrics has a strong recommendation against using crib bumper pads. One of the most common question posed to KID at our parent and caregiver trainings is why bumpers continue to be in stores and for sale online when they are unsafe. The amount of time and money going into designing a possible test method for these unnecessary products would be better spent joining Maryland, Ohio, the city of Chicago, and most state child care regulators in the country in banning the sale of padded bumper pads. A standard that doesn't fully address the risk and gives a false sense of safety to parents is more dangerous than no standard. As the state prohibitions on bumpers exclude mesh liners, the CPSC should review data to assure the public that these products are indeed not involved in suffocation deaths or near misses.

Further, we believe that the CPSC should seek to include in Section 104 rulemaking all durable infant and toddler products. Parents should have confidence that all the durable infant and toddler products – not just those that were commonplace when the bill was adopted -- are safe.

### **Product Registration**

As part of CPSIA, the Danny Keysar Child Product Safety Notification Act requires companies to provide prepaid product registration cards in a conspicuous location and a way to register online. The information gathered must only be used to notify the consumer in the event of a recall or safety notice. Direct notification is key to effective recalls and more should be done to encourage completion of registration by consumers, both for new products and ones they purchase on the secondhand market. While CPSIA requires the card and online site at a minimum, companies should be encouraged to innovate and add other methods such as scanning an icon or bar code on the actual product, or partnering with technology companies that have new methods to gather registrations. The CPSC should research and make public registration numbers, return ratios and recall impact.

### **SaferProducts.gov**

The CPSIA also charged the CPSC to create a product database for consumers incident reporting. **SaferProducts.gov** is the result of this mandate. According to recent data from the CPSC, there have been over 35,000 reports made to SaferProducts. Information from last year showed that an average of 800,000 visits to the site occur each year. It is an invaluable resource for safety, and should be marketed widely to increase its usefulness. It is discouraging but not surprising that the number of reports has dropped every year since 2012. We see little effort to publicize the database. Most of the company comments on the site appear to discourage use of the database and suggest reports to the company instead – where it will not be made public. The CPSC should prioritize using low-cost efforts to increase the database’s visibility and use as presented in the 2016 report by Consumer Federation of America and released with KID and other groups including efforts to add more reports to the public database.

### **Transparency**

The development of SaferProducts.gov was in part, a compromise on transparency in the Consumer Product Safety Improvement Act. Consumer advocates and others were calling then for a repeal of section 6(b) of the Consumer Product Safety Act. Section 6(b) restricts the CPSC’s ability to warn the public about product hazards and keeping consumers in the dark about dangerous products they have in their homes and use daily with their families. Parents should not have to wait until a full recall effort is complete before learning their child is sleeping in a deadly crib, playing with a lead-tainted toy, or riding in a stroller prone to losing a wheel.

KID’s most recent recall report, which evaluates recall effectiveness in 2016 by looking at ‘required’ Monthly Corrective Action Plan Reports received through FOIA requests, shows - nothing... Because of the over-use of Section 6(b) protection, many of the reports we received are basically blank – every drop of information is redacted. That includes already public information such as social media postings and the number of products in the recall. This is on top of many other reports that have many missing months or data fields, mathematical errors that prevent any real review or are simply never filed.

We urge the CPSC to require companies to comply with the CPSA, including Section 6(b) by not allowing it to become a blanket protection for any public accountability.

### **Recall Effectiveness**

A lot of work appears to go into announcing a recall. However, we must stop thinking that is the goal. Removing unsafe products from consumer use is the goal.

Innovation is needed in the area of recall effectiveness. What we – you – are doing now with recalls is not working. From what we can gather from sparse data, the effectiveness rate has not changed significantly since KID first started working on the issue in 1998 – despite mindboggling changes in communication channels and tracking possibilities.

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

Benchmark requirements for notification measures such as using registration card data and social media, and outcome measures such as capture rate should be developed and enforced. Consumers deserve to know how effective companies are at retrieving dangerous products. KID recommends (again) an annual report to Congress on all open recalls with the current capture rate and action taken outlined. That simple step will encourage manufacturers to improve their own numbers in those reports. While efforts are underway to make the Monthly Corrective Action Plan Reports public – it carries a prohibitive caveat – if the company wants it to be public. Our research shows those companies that allow public posting will be few and far between – and not the ones that really need public scrutiny to do a better job.

We applaud the CPSC action to begin the mandatory recall process on Britax B.O.B. branded strollers involved in dozens of injuries. This is one of the tools in the CPSC’s arsenal to protect consumers that is used too rarely. While it may not lead to a recall for a period of time, it does give consumers information previously hidden through Section 6(b) that they can use to protect their families.

### **Safe Sleep Environments**

Among children’s product safety issues, a safe sleep environment is an overriding concern to KID. Suffocation – most of it in a sleeping environment – is the leading cause of unintentional death in infants. Danny Keysar died in a recalled portable crib. Whether they are bassinets, portable cribs, play yards, cribs, or some newly designed product or accessory, sleep products must meet the highest standards for safety. These products are intended to be safe for a child even without an adult in direct supervision. The number of sleep related deaths in infants is too high and is not showing signs of decreasing – it is a public health emergency.

The CPSC should continue their work to develop standards for all sleep products and make it a priority within the Small Business Ombudsman’s office to provide outreach and vital product safety information to companies producing these products.

## **Furniture Tip Overs**

In 2016, KID worked with Shane's Foundation to review data and testing results for furniture stability. This year, Consumer Reports has also released new report on this issue and the CPSC has done its own testing. Here is what we would hope the CPSC would focus on in 2019 and 2020.

- Continued CPSC participation and leadership in ASTM committee to push for a stronger standard, including an increase of the testing weight to 60 pounds.
- Recalls of products that do not meet the ASTM standard
- Strong education messages for furniture already in homes to be anchored
- Evaluation of the #AnchorIt campaign to see measurement of changes in behavior. It is troubling that incidents have increased during the time #AnchorIt was running.
- Working with IKEA and other recalling companies to do effective recalls.

## **Pacifiers**

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

## **Ingestion Hazards**

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

## **Window Coverings**

The CPSC has been working to reduce the strangulation risk inherent in window coverings for decades. With the new voluntary standard eliminating cords in stock items, it is showing progress. Now the CPSC must continue to work to cover all window treatments and enforce the voluntary standard or adopt a mandatory one.

## **Small Parts Hazards**

Choking on small parts of toys and other consumer products is one of the leading causes of death and injury for infants and toddlers. The current method for testing small parts, the small parts test fixture, is not optimally designed to prevent dangerous toys from being sold to consumers. In a

peer-reviewed report published in the International Journal of Pediatrics, KID found that a review of the size of the small parts test fixture is warranted to better protect children.

**Conclusion**

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



**Diana Zuckerman, Ph.D.**

President

National Center for Health Research



# NATIONAL CENTER FOR HEALTH RESEARCH

The Voice For Prevention, Treatment And Policy

**Diana Zuckerman, Ph.D., President of the National Center for Health Research**  
**Comments on the U.S. Consumer Product Safety Commission**  
**Agenda and Priorities for FY2019/2020**

The National Center for Health Research is a nonprofit research center staffed by scientists, medical professionals, and health experts who analyze and review research on a range of health issues. Thank you for the opportunity to share our views concerning the Consumer Product Safety Commission's (CPSC) priorities for fiscal year 2019 and 2020. We respect the essential role of the CPSC, as well as the challenges you face in selecting the most important priorities.

We want to emphasize three issues involving chemicals in products that affect our health and our children's health. These issues are clearly consistent with the CPSC priorities. We are very concerned about flame retardants and phthalates, both of which migrate out of products and into the dust we breathe and touch. We're also very concerned about artificial turf fields and playgrounds, which contain a range of endocrine-disrupting chemicals and other toxic materials that can harm children's development and possibly increase risk for cancer as these children grow up.

### **Organohalogen Flame Retardants**

Thank you for voting to initiate rulemaking on non-polymeric organohalogen flame retardants (OFRs) and to provide guidance for manufacturers, distributors, and retailers to avoid OFRs.<sup>1</sup> We urge you to convene a Chronic Hazard Advisory Panel (CHAP) as soon as possible and develop regulations to address OFRs in children's products, upholstered residential furniture, mattresses/mattress pads, and the plastic casing of electronic devices. In addition, it is essential to consider current flammability standards to determine if there are changes that would improve their safety from both chemical exposures and potential fire.

Since OFRs are not bound to products, they migrate out of products and into dust, and thus get onto our skin and food as well as into the air we breathe. Because so many products are made with these chemicals and because they are so long-lasting, consumers are repeatedly exposed day after day.<sup>2,3</sup> In addition, many OFRs bioaccumulate in our food supply.<sup>4,5,6,7</sup> As a result, nearly all people in the U.S. have OFRs in their bodies.<sup>8</sup>

OFRs have been associated with various health problems, including disrupting hormones, altering brain development, and harming reproductive health, such as reduced ability to get and stay pregnant and the timing of puberty.<sup>5,9,10,11</sup> While not all OFRs have been sufficiently studied

to determine whether all are unsafe, those that have been sufficiently studied have proved to be harmful to health.

While we recognize that the Commission must be concerned about fire hazards as well, it seems that these flame retardants may not be effective at preventing deaths in real world situations.<sup>12,13</sup> When the chemicals burn during a fire, the inhaled smoke is more toxic to humans, and exposures could result in serious harms, including death.

### **Artificial Turf and Playground Surfaces**

We appreciate the CPSC's ongoing efforts to investigate the safety of crumb rubber on playgrounds and playing fields. This requires your immediate attention, because artificial turf fields are becoming increasingly popular surfaces for fields and playgrounds where children are exposed day after day, year after year. And yet, the materials used are often treated as "trade secrets" making it impossible to know exactly what they are, which ones are safer, and which ones are more dangerous. We encourage you to closely evaluate the research that has been done, focusing on independently funded research rather than industry claims. We also urge you to carefully examine the EPA/CDCs studies when they are completed, and to develop rules that will protect our children from harm. We urge you to convene a Chronic Hazard Advisory Panel (CHAP) to examine the short-term and long-term risks of different types of artificial turf used in playing fields and children's playgrounds.

Crumb rubber contains chemicals with known health concerns, which are released into the air and onto skin and clothing and even into children's ears and noses. This is inevitable for a product that is outdoors and in constant use. The chemicals include endocrine disruptors such as phthalates, heavy metals such as lead and zinc, as well as other carcinogens and skin irritants such as some polycyclic aromatic hydrocarbons (PAHs) and volatile organic compounds (VOCs).<sup>14,15,16,17,18,19</sup> While one time or sporadic exposures are unlikely to cause long-term harm, children's repeated exposures over the years, especially during critical developmental periods, raise the likelihood of serious harm.

These fields can also cause short-term harms. Artificial turf generates dust which may exacerbate children's asthma.<sup>20,21</sup> Fields heat up to temperatures far higher than ambient temperature, reaching temperatures that are more than 70 degrees warmer than nearby grass; for example, 180 degrees when the temperature is in the high 90's and 150-170 degrees on a sunny day when the air temperature is only in the 70's.<sup>22,23,24</sup> This can cause heat stress and burns.

Fields made of crumb rubber have been marketed as reducing injuries compared to grass. However, research has shown that this is not the case. We have spoken to students harmed by turf burn, and some studies have indicated increased risk for joint injuries and brain injury.<sup>25,26</sup>

We need to know more about the risks of “virgin rubber” compared to “recycled tires.” However, we already know that “virgin” rubber is made from many of the same chemicals that have these health concerns.<sup>27,28</sup>

### **Phthalates in Children’s and Household Products**

CPSC has helped millions of American children by finalizing the phthalate rule to ban five additional phthalates (DINP, DPENP, DHEXP, DCHP, DIBP) in children’s toys and care products.

The next priority should be for CPSC to expand its work on phthalates to include other household products. Children are exposed to many products with the same phthalates as those that are banned in toys and products specifically for children. Restricting the use of phthalates in common household products would reduce exposure for young children and also older children, pregnant women and other adults. Phthalates in household dust can be harmful regardless of what products it comes from and prenatal exposure is of particular concern.

Phthalate exposure has been associated with an increased risk for early puberty and reproductive problems.<sup>29,30,31</sup> In utero exposure or exposure through breast milk puts the developing fetus, neonate, or infant at serious risk of abnormal neurological and reproductive development.<sup>32</sup>

In conclusion, endocrine disruptors and chemicals in common consumer products that do not stay bound to those products get into the air and dust and thus into our bodies. These chemicals tend to pose greater risks to fetuses and children. There are large gaps in our knowledge about the chemicals in the products on the market. Ideally, all of these chemicals would be evaluated in the final product for health concerns before it was sold. Since that is not happening, we must constantly play catch-up as health concerns are identified. Too often this leads to cases of false claims regarding the safety of new products that we later learn are as harmful or even more harmful than the ones they are replacing. While research is lacking regarding the exact extent of the dangers of many of these products, there is already sufficient evidence to cause concern. We need CPSC to address those as soon as possible.

#### References:

1. Consumer Product Safety Commission. (2017) Guidance document on hazardous additive, non-polymeric organohalogen flame retardants in certain consumer products. <https://www.federalregister.gov/documents/2017/09/28/2017-20733/guidance-document-on-hazardous-additive-non-polymeric-organohalogen-flame-retardants-in-certain>
2. Gramatica P, Cassani S, Sangion A. (2016) Are some “safer alternatives” hazardous as PBTs? The case study of new flame retardants. *J Hazard Mater.* 306:237-246.
3. Allgood JM, Vahid KS, Jeeva K, Tang IW, Ogunseitan OA. (2017) Spatiotemporal analysis of human exposure to halogenated flame retardant chemicals. *Sci Total Environ.* 609:272-276.
4. Lupton SJ, Hakk H. (2017) Polybrominated diphenyl ethers (PBDEs) in US meat and poultry: 2012-13 levels, trends and estimated consumer exposures. *Food Addit Contam Part A Chem Anal Control Expo Risk Assess.* 34(9):1584-1595.

5. Lyche JL, Rosseland C, Berge G, Polder A. (2014) Human health risk associated with brominated flame-retardants (BFRs). *Environ Int.* 74:170-180.
6. Schecter A, Colacino J, Patel K, Kannan K, Yun SH, Haffner D, Harris TR, Birnbaum L. (2010) Polybrominated diphenyl ether levels in foodstuffs collected from three locations from the United States. *Toxicol Appl Pharmacol.* 243(2):217-24.
7. Widelka M, Lydy MJ, Wu Y, Chen D. (2016) Statewide surveillance of halogenated flame retardants in fish in Illinois, USA. *Environ Pollut.* 214:627-634.
8. Centers for Disease Control and Prevention (2015) Fourth national report on human exposure to environmental chemicals, updated tables. <http://www.cdc.gov/exposurereport/>.
9. Dishaw L, Macaulay L, Roberts SC, Stapleton HM. (2014) Exposures, mechanisms, and impacts of endocrine-active flame retardants. *Curr Opin Pharmacol.* 0:125-133.
10. Hendriks HS, Westerink RHS. (2015) Neurotoxicity and risk assessment of brominated and alternative flame retardants. *Neurotoxicol Teratol.* 52:248-269.
11. Kim YR, Harden FA, Toms LM, Norman RE. (2014) Health consequences of exposure to brominated flame retardants: A systematic review. *Chemosphere* 106:1-19.
12. McKenna S, Birtles R, Dickens K, Walker R, Spearpoint M, Stec AA, Hull TR. (2018) Flame retardants in UK furniture increase smoke toxicity more than they reduce fire growth rate. *Chemosphere.* 196:429-439.
13. Shaw SD, Blum A, Weber R, Kannan K, Rich D, Lucas D, Koshland CP, Dobraca D, Hanson S, Birnbaum LS. (2010) Halogenated flame retardants: Do the fire safety benefits justify the risks? *Rev Environ Health* 25:261-305.
14. Llompert M, Sanchez-Prado L, Lamas JP, Garcia-Jares C, et al. (2013) Hazardous organic chemicals in rubber recycled tire playgrounds and pavers. *Chemosphere.* 90(2):423-431.
15. Marsili L, Coppola D, Bianchi N, Maltese S, Bianchi M, Fossi MC. (2014) Release of polycyclic aromatic hydrocarbons and heavy metals from rubber crumb in synthetic turf fields: Preliminary hazard assessment for athletes. *Journal of Environmental and Analytical Toxicology.* 5:(2).
16. California Office of Environmental Health Hazard Assessment (OEHHA). (2007) Evaluation of health effects of recycled waste wires in playground and track products. Prepared for the California Integrated Waste Management Board. <http://www.calrecycle.ca.gov/publications/Detail.aspx?PublicationID=1206>
17. Kim S, Yang J-Y, Kim H-H, Yeo I-Y, Shin D-C, and Lim Y-W. (2012) Health risk assessment of lead ingestion exposure by particle sizes in crumb rubber on artificial turf considering bioavailability. *Environmental Health and Toxicology.* 27, e2012005. <http://doi.org/10.5620/eht.2012.27.e2012005>
18. U.S. National Library of Medicine, National Institutes of Health. (2017) Tox Town (Environmental health concerns and toxic chemicals where you live, work, and play): Polycyclic aromatic hydrocarbons (PAHs). [https://toxtown.nlm.nih.gov/text\\_version/chemicals.php?id=80](https://toxtown.nlm.nih.gov/text_version/chemicals.php?id=80)
19. Armstrong B, Hutchinson E, Unwin J, and Fletcher T. (2004) Lung cancer risk after exposure to polycyclic aromatic hydrocarbons: a review and meta-analysis. *Environmental Health Perspectives,* 112(9), 970.
20. Shalat SL. (2011) An evaluation of potential exposures to lead and other metals as the result of aerosolized particulate matter from artificial turf playing fields. Submitted to the New Jersey Department of Environmental Protection. <http://www.nj.gov/dep/dsr/publications/artificial-turf-report.pdf>
21. Mount Sinai Children's Environmental Health Center. (2017) Artificial turf: A health-based consumer guide. <http://icahn.mssm.edu/files/ISMMS/Assets/Departments/Environmental%20Medicine%20and%20Public%20Health/CEHC%20Consumer%20Guide%20to%20Artificial%20Turf%20May%202017.pdf>
22. Thoms AW, Brosnana JT, Zidekb JM, Sorochna JC. (2014) Models for predicting surface temperatures on synthetic turf playing surfaces. *Procedia Engineering.* 72:895-900. <http://www.sciencedirect.com/science/article/pii/S1877705814006699>
23. Penn State's Center for Sports Surface Research. (2012) Synthetic turf heat evaluation- progress report. <http://plantscience.psu.edu/research/centers/ssrc/documents/heat-progress-report.pdf>
24. Serensits TJ, McNitt AS, Petrunak DM. (2011) Human health issues on synthetic turf in the USA. Proceedings of the Institution of Mechanical Engineers, Part P: Journal of Sports Engineering and Technology. 225(3), 139-146.
25. Balazs GC, Pavey GJ, Brelin AM, Pickett A, Keblish DJ, Rue JP. (2015) Risk of anterior cruciate ligament injury in athletes on synthetic playing surfaces: A systematic review. *American Journal of Sports Medicine.* 43(7):1798-804.

26. Theobald P, Whitelegg L, Nokes LD, Jones MD. (2010) The predicted risk of head injury from fall-related impacts on to third-generation artificial turf and grass soccer surfaces: a comparative biomechanical analysis. *Sports Biomechanics*. 9(1):29-37.
27. Canepari S, Castellano P, Astolfi ML, Materazzi S, Ferrante R, Fiorini D, Curini R. (2018) Release of particles, organic compounds, and metals from crumb rubber used in synthetic turf under chemical and physical stress. *Environ Sci Pollut Res Int*. 25(2):1448-1459.
28. Kim S, Yang JY, Kim HH, Yeo IY, Shin DC, Lim YW. (2012) Health risk assessment of lead ingestion exposure by particle sizes in crumb rubber on artificial turf considering bioavailability. *Environ Health Toxicol*. 27:e2012005. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3278598/>
29. Chen Q, Yang H, Zhou N, Sun L, et al. (2017) Phthalate exposure, even below US EPA reference doses, was associated with semen quality and reproductive hormones: Prospective MARHCS study in general population. *Environ Int*. 104:58-68.
30. Mariana M, Feiteiro J, Verde I, Cairrao E. (2016) The effects of phthalates in the cardiovascular and reproductive systems: A review. *Environ Int*. 94:758-776.
31. Yi Wen, Shu-Dan Liu, Xun Lei, Yu-Shuang Ling, Yan Luo, and Qin Liu.(2015) Association of PAEs with precocious puberty in children: A systematic review and meta-analysis. *Int J Environ Res Public Health*. 12(12): 15254–15268. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4690910/>
32. Consumer Product Safety Commission. (2014) Chronic Hazard Advisory Panel on Phthalates and Phthalate Alternatives. <https://www.cpsc.gov/PageFiles/169876/CHAP-REPORT-FINAL.pdf>



**Janet McGee**

U.S. Consumer Product Safety Commission

Attn: Alberta E. Mills, Secretary

4330 East-West Highway

Bethesda, MD 20814

**TOPIC: Agenda and Priorities FY 2019 and/or 2020**

March 25, 2018

Dear CPSC:

The first child to die from an Ikea dresser was recorded in 1989. By 2014, there were five documented children's deaths from Ikea dressers. Some of these were quietly settled with families, with little to no publicity. The last two of these five children to die were killed by the Ikea MALM dresser in 2014. By 2015, these two families were pursuing litigation against Ikea. In July 2015, in response to these deaths, Ikea decided to issue a "repair kit program" where, if a consumer requested it, they would send out anchor kits for free to consumers. Advocate groups warned Ikea that it wasn't enough. The attorney of these two families appeared on national news in early 2016 saying it wasn't good enough and another child was going to die if they didn't recall these dressers off the market. My husband, Jeremy, and I had no idea of any of this.

On February 14, 2016, our precious son, Ted, who was just 22-months-old, died when the Ikea MALM dresser in his bedroom fell on him. We had never heard of this "repair kit program" that had been launched seven months prior. In fact, we initially thought Ted's death was a freak accident because we had never even heard of a "tip-over" accident. Four days after he died, while sitting on the floor in my dead son's bedroom, I googled "Ikea dresser deaths" on my phone. A friend of mine had heard something about Ikea dressers being unstable, and it prompted my search.

My heart sank when the first thing that appeared was Ted's MALM dresser, as well as a flood of news stories about the other two precious boys (Curren Collas and Camden Ellis) who had died from the same MALM dresser in 2014. I was completely devastated to learn this. At that time in my life, I watched the news almost every morning. I was busy raising my family, had attained a Master's degree and was working a corporate job at a Fortune 500 company. Looking back, I would rate myself as "moderate" at keeping up with current events. I represented many mothers. And I had no idea children were dying from unanchored furniture, or the risk this unanchored dresser posed to my child.

Two days after Ted's funeral, I called the attorney representing these two families, the same man who had appeared on national news just weeks before, predicting another death would happen. I learned that day that Ted's MALM dresser did not meet safety standards. And it didn't have to, because the standards for making furniture were voluntary. And that companies do not legally have to comply with these standards in order to sell furniture in the United States. I was appalled.

At this point, Ted was the sixth child to die from an Ikea dresser and it didn't appear that the company was doing much about it, other than saying something along the lines of, "Sorry for your loss, you should have anchored your furniture." We were learning so much information about this in a very short period of time, we were overwhelmed with Ted's death (just a couple weeks prior at this point) and sickened at the thought that this could happen to another child. My husband and I felt it was necessary to press this company to finally do something about this. We didn't know much about this process. We were told it might take years. We were told we might face judgment from others surrounding a tip-over death, as many families had experienced before us. None of this mattered to us, because all we could think is that Ted's death might not be the last one from a tip-over.

In June of 2016, four months after Ted's death, Ikea, facing pressure, voluntarily recalled 29 million dressers because they did not meet the safety standards. We were elated to know that Ted's dresser was off the market, finally.

In the fall of 2016, we learned that yet another child had died from the MALM dresser in 2011, but the family hadn't reported it publicly. This was completely understandable, given the immense pain the death of a child brings to a family. Learning this meant that Ted was actually the seventh child to die in 27 years from an Ikea dresser.

In December of 2016, Ikea settled with our three families. Among several stipulations of the settlement, our families were awarded \$50 million and the company agreed to never sell dressers that didn't meet the standards again. Why did it take this to get a company to comply with standards? Because they are voluntary.

As 2017 rolled around, advocates warned Ikea that they weren't doing enough to promote their recall. By the one-year mark there were an estimated 28 million of the 29 million recalled dressers still unaccounted for. And it was confusing that Ikea was selling the new furniture that met safety standards under the same name as the dressers that didn't meet the standards. Advocates were scared another child would die. And in October 2017, we learned it happened in May of 2017. An innocent boy in California died from the Ikea MALM dresser, almost a year after the recall. His family hadn't heard of the recall. We now know of eight children who have died from Ikea dressers. Are there more? Possibly. I want to be very clear, however, that this is an industry-wide problem. My story involves just one company, but represents what is happening in the market today because standards are not mandatory,

and we aren't moving fast enough to address this problem. ***My son's death is a live example of what happens when we wait to address an apparent issue.***

So I sit here in 2018, wondering when enough is enough. Wondering when the next family is going to live through the hell and heartbreak my family has experienced. Who is the next innocent child to lose their life? Who is the next family to be ripped apart? And why can't we require ALL furniture makers to design and sell safe, tip-resistant dressers so that consumers are safe? We know it's possible because some furniture makers are doing it today!

Today, I ask the CPSC to acknowledge that the time is ***now*** to address this issue. I urge you to not wait any longer. We do not need to wait for another child to die. Please get this on your priority list for fiscal year 2019. I encourage the CPSC to use the new data released in March, 2018, from Consumer Reports, along with the Furniture Stability Report released in August, 2016, from Kids in Danger and Shane's Foundation, to:

- 1) Strengthen the current furniture making standards to 60 pounds. This takes into consideration heavier children, the real-world scenario of clothing in all drawers, and dressers being used in carpeted bedrooms.
- 2) Make the voluntary standards for furniture making ***mandatory***.
- 3) Recall all dressers on the market today that do not meet today's voluntary standards, and call on the companies and the industry as a whole to widely publicize their recalls with the same vigor and tenacity they used in selling the dressers to consumers in the first place.

Signed,

Janet D. McGee

Bereaved Mother

[www.janetmcgee.com](http://www.janetmcgee.com)

651-600-8229

[jmcgee652@outlook.com](mailto:jmcgee652@outlook.com)



**Greg Wischstadt**

President

Portable Generator Manufacturers' Association



**Secretary/Treasurer:**  
THOMAS ASSOCIATES, INC.

**Portable Generator Manufacturers' Association Submitted Testimony**  
**Susan Orenga, Executive Director**  
**Presented by Greg Wischstadt, President**

**Hearing: CPSC Annual Agenda and Priorities Fiscal 2019-2020**  
**April 11, 2018**

Acting Chair Buerkle, Commissioners, thank you for the opportunity to submit testimony to the Consumer Product Safety Commission. My name is Greg Wischstadt and I serve as the President of the Portable Generator Manufacturers' Association. PGMA is a voluntary trade organization which began in 2009 and includes major manufacturers of portable generators representing a majority of market share.

PGMA and its members are dedicated to the safe use of power portable generators. As such, PGMA has developed and maintains the ANSI standard for portable generators, ANSI/PGMA G300. Since this standard first achieved ANSI recognition in 2015, PGMA and its members have been working towards an update to the standard to address the carbon monoxide (CO) hazard posed by misuse of portable generators. This is a voluntary standard that our members are committed to following. Many of our member products are compliant with this voluntary standard today.

Since last March's hearing on potential rulemaking activities at CPSC, our members have made significant progress towards the update of G300 including:

- Investing tens of thousands of hours in the development testing and verification of the requirements contained within the standard;
- Forming a steering committee comprised of independent stakeholders to provide input and feedback throughout the standard development process;
- Holding four technical summits where the current draft of the new standard requirements, member data, and analysis was shared in order to get valuable feedback on the revision;
- Facilitating the visit of CPSC Commissioners and staff at several of the PGMA members' facilities in Wisconsin last year where they were able to get a firsthand look at the work that was being done to develop the solution. The feedback indicated that the Commission "was very impressed with the work that had been accomplished." In fact, it was further indicated that the staff felt that detection and shutoff was the appropriate approach to the hazard. It just wasn't ready for review at the time CPSC staff initially studied this approach."
- Working together to replicate the efforts that CPSC staff and NIST undertook in the NPRM to estimate the impact to fatalities avoided through extensive analysis using the CONTAM tool. This work has now been formalized in a technical report provided to you

today. This report has also been validated by an independent engineering firm, Exponent;

- And lastly, providing a comprehensive set of requirements to address all aspects of the hazard. At CPSC staff's request the standard includes a robust set of requirements for tamper-resistance, reliability, and operation over a broad range of environmental extremes that will insure the safety systems on compliant generators will continue to operate for the life of the generator. Additionally, it includes requirements for post shutdown notification and instructions to the user.

I am pleased to share with you today that the latest revision of the PGMA G300 Standard, which now includes requirements for an automatic carbon monoxide detection and shutoff, has achieved overwhelming consensus of more than 90% acceptance amongst the diverse canvass group. This includes CPSC staff who also voted in favor of the revision. It is now in the final stages of ANSI recognition. Many of the PGMA members are already working towards compliance with the standard today.

The standard includes an effective date of March 31, 2020, meaning that all G300 compliant generators produced after March 31, 2020 must meet the requirements for the CO safety shutoff system. Additionally, the new standard would address 99% of the carbon monoxide related fatalities resulting from misuse of portable generators where CO can accumulate. For comparison, the emissions reductions required in the present NPRM were estimated to be only 42% effective at the avoidance of fatalities.

The PGMA G300 safety standard for portable generators provides the assurance of safety while at the same time avoiding undesirable effects such as; significant price increases making generators less accessible to those who need them in times of emergency, fire hazards resulting from increased exhaust temperatures, or not being easily applicable to all portable generators.

As a whole, CPSC has amassed an enormous amount of work to progress the portable generator safety efforts to its present state. PGMA and its members are very appreciative of this effort as it was invaluable to help us in the revisions to the voluntary standard. Our progress in such a short time would not have been possible without the efforts of CPSC. This process should be viewed by all as a success where industry and government worked together towards the best solutions.

Given that the voluntary standard has been proven to be effective, adopted by the canvass group, and compliance has been demonstrated, we feel that it is no longer necessary for CPSC to continue with mandatory rulemaking. We request that CPSC terminate the proposed rule and allow the voluntary standard to achieve its goals.

Further we request that CPSC redirect the resources and efforts that would have been expended to complete the portable generator rule towards the improvement of the incident tracking surveillance systems which allow for the tracking of hazards such as carbon monoxide poisoning from the misuse of portable generators. Today, these systems do not allow for simple determinations such as does a generator that is implicated in a CO poisoning incident contain the carbon monoxide safety label that was mandated by the CPSC rule in 2007. Improving the data that is used by CPSC to track incidents associated with all consumer products will make it much easier to identify the hazard patterns and create solutions for them. In particular, for portable generators this data will be invaluable to evaluate the effectiveness of G300. It would

also provide valuable data for PGMA and it's members to use when making future revisions to ANSI/PGMA G300 to further improve the safety of portable generators. Resources could also be expended on our public outreach campaign, entitled "Take it Outside™."

We would like to thank CPSC staff for their efforts throughout the rulemaking process. The work completed by CPSC and NIST has been extremely beneficial for our members to complete the work on the voluntary standard.

Thank you for your time and consideration.

# **Pamela Zidarich**

Vice President and Co-Founder  
Midway Defective Window Recipients, NFP

## Hammond, Rocky

---

**From:** Anne Prevenas <anne@midwaydefectivewindowrecipients.com>  
**Sent:** Tuesday, March 27, 2018 2:43 PM  
**To:** CPSC-OS  
**Cc:** Prevenas Anne; Zidarich Pamela; Victoria Whitney  
**Subject:** Agenda and Priorities Fiscal Year 2019 and/or 2020- MDWR, NFP- U.S. Consumer Product Safety Commission Submission  
**Attachments:** MDWR.NFP CPSCPetition 3.27.18.cleaned.pdf

---

This email's attachments were cleaned of potential threats by Check Point Gateway.

---

Dear Office of the Secretary:

Please find attached submission for the Midway Defective Window Recipients, NFP (presentation outline will be sent under a separate cover). The purpose of this submission relates to the Agenda and Priorities Fiscal Year 2019 and/or 2020.

We request your help, guidance, direction, regulatory guidelines, testing procedures and rule making for toxic odorous window and door products in Chicago, Illinois.

Our formal submission petition is attached in PDF format. The attachments, video and exhibits are available through this link: <https://1drv.ms/f/s!AqNNuOSIJNckwVDVWhwRag1sZxlj>

We thank you for your time and consideration regarding this matter.

Very Truly Yours,

**MIDWAY DEFECTIVE WINDOW RECIPIENTS, NFP**

**Ms. Anne Prevenas, President and Co-Founder**

[anne@midwaydefectivewindowrecipients.com](mailto:anne@midwaydefectivewindowrecipients.com)

**Mrs. Pamela Zidarich, Vice-President and Co-Founder**

[pam@midwaydefectivewindowrecipients.com](mailto:pam@midwaydefectivewindowrecipients.com)

Telephone: 773-573-3282

**Mrs. Victoria Whitney, Secretary/Treasurer and Co-Founder**

[vicki@midwaydefectivewindowrecipients.com](mailto:vicki@midwaydefectivewindowrecipients.com)

Email secured by Check Point



## CPSC VERBAL PRESENTATION 4/11/18 for Midway Defective Window Recipients.

Good Morning, I want to take this opportunity to thank Chairman Buerkle and this board of Commissioners for the opportunity to come before this Commission to bring awareness to our battle for the truth and trustworthy scientific findings! My name is Pamela Zidarich and I am the co-founder and VP of a non-profit organization, Midway Defective Window Recipients. I am a lifelong resident of Chicago IL and for the record, I love my city! As the name of our organization suggests, my home is literally 1-1/2 city blocks south of Midway International Airport.

The Midway Defective Window Recipients, NFP was codified in August of 2017 to assist with advocating on behalf of the community for the grave concern that has fallen on the tens of thousands of residents surrounding both the Chicago Midway International Airport and O'Hare International Airport in Chicago, Illinois. We are in need of your help, guidance, direction, regulatory guidelines, testing procedures and rulemaking. The problem at hand is in regard to the defective and harmful PVC window and door products that were installed in the homes near both airports in an effort to reduce the impact of aircraft noise. The program that sponsors this sound-insulating environmental program is the Residential Sound Insulation Program (hereinafter referred to as the RSIP) by and through the Chicago Department of Aviation (hereinafter referred to as the CDA). The PVC window and door products were ultimately found to be defective by and through homeowners that discovered the smell of a harmful off-gassing stench of burning plastic from the PVC and PVC byproducts when exposed to direct sunlight. This concerning issue was raised to the attention to the CDA, RSIP and the CDA's personnel dating back to as early as Spring of 2015, but not acknowledged as an alarming and dangerous issue until April of 2017. Thereafter, on a personal and professional level, our organization continues to struggle with the RSIP and the CDA for resolution of our defective PVC window and door product issues that are off-gassing in our homes.

I got my windows in 2011 but did not begin to smell "The Smell" until late summer 2016. It took me until March 2017 to discover the source of this smell was my RSIP windows. I was shocked! I also knew that it probably had something to do with the PVC and also there was no way I was alone. Manufacturing does not work that way. Also, I want to be clear the mechanism that starts these windows smelling is the SUN. It is not the heat. It can be 105 and high humidity and the windows will not off gas. It can be -10F and with a clear blue sky, my windows will off gas. It is like a faucet being turned off and on. Also, think of it this way. You can be in a hot room and be hot but you must be in the sun to get sunburn.

Since my first call to the RSIP office to present day the CDA and its agents have undertaken a campaign of lies, misinformation, fraud, dissuasion and attrition tactics, just to name a few. Why? What are they trying to hide???

Clearly this behavior has raised several questions about the CDA's handling of this program and the \$550,000,000.00 they managed. Everything from their procurement practices, engaging with a corrupt, embezzling business owner long after the CDA was aware of same, and so on and so on, outlined in detail in our submission. The ultimate result of which, was the bankruptcy of Sound Solutions Windows & Doors leaving thousands of residences without a warranty on the products that were installed in their home and leaving the CDA holding the bag. Something that I am sure was not lost on them when this problem first came to their attention in 2015 when they replaced 2 whole houses of windows for this issue. 1 home not 1 full block from my home from the same install year as mine as well and that homeowners paperwork was visited and inspected by the same gentleman that stood in my kitchen and lied right to my face no less telling me if my windows were replaced for this problem, I'd be the first.

The CDA treated this "Smell" as an anomaly, so they say. 2 homes did not indicate a program wide issue. A statement made by Aaron Frame of the CDA under oath at a City Council meeting. Frankly, a statement that makes absolutely no sense. Failing hardware, other mechanical issues? Sure. That fits that bill for

sure. But windows that smell so bad it warrants a complete rip out and re-installation??? I do not buy it. How did that get justified internally? No non-conformance? No engineering evaluation? No corrective action? That is utter nonsense.

So I started small and on social media, I approached my neighbors and as much of the community I could any way I could. Word spread. Local press got involved. My wonderful Alderman; Marty Quinn got involved and then came Alderman Burke and Alderman Zalewski and Speaker Mike Madigan and Congressman Dan Lipinski in our corner and soon the CDA had to acknowledge what was going on. We have had some great progress on this issue. Local TV got involved and reported on our problem. Our community took the opportunity at the Noise Compatibility Commission Meetings to raise our concerns about these windows and gain media coverage. 3 separate specific hearings have been held by our City Council to grill the CDA about these windows and what their plan is for testing, etc.. The City Council also took the opportunity to again press the CDA about these windows during their 2018 budget hearing. The City Council has passed an ordinance which extends the warranty on all products provided by this program another 10 years. To date, agents of the CDA have performed "screenings" in 836 homes and have confirmed that 447 have these windows. That is a 53% confirmation rate. 5,000 of the 20,000+ homes have been formally notified by the CDA of this issue. Chamber testing was performed on a set of defective windows and subsequent in-home indoor air quality testing was performed in 9 homes. Even the FAA who has been silent has formally recognized this problem stating in a 3/2/18 letter to our organization that Washington Headquarters confirmed this is an unprecedented situation.

Despite these wins we still have very difficult issues to overcome. There are still over 16,000 addresses that have not yet been given the courtesy or benefit of notification by the CDA. The agents of the CDA responsible for complaint intake and warranty work as well as these home screenings claim they have not been properly instructed by the CDA to no longer refuse service to a homeowner based on a warranty issue that no longer exists. We have many questions and issues

with the chamber testing that was performed. Seeing this was the bench test for isolating what VOC's they would look for when performing their in-home testing, without the impact of UV on these windows and basically shutting off the windows by placing them in a dark chamber, they did not mimic the conditions that they have been told time and time again cause these windows to off gas, which would be the foundation of any scientifically sound test. Chain of custody of the windows used in chamber is extremely sketchy. Timing of in-home tests were end of October, beginning of November but if they never had a chance of reproducing the chemical reaction in chamber, they were not looking for the right thing once they got in a home setting. Amec Foster Wheeler, the firm hired by the City of Chicago testified under oath they have never done this type of testing. Based on this incomplete and inconclusive test results the CDA issued a press release and subsequent homeowner mailing stating that "Chicago Department of Aviation announces initial window testing finds no evidence of health impact! They admit they have no idea what the root cause is but they can still draw a scientific conclusion?! They also state there is no impact on indoor air quality which I can tell you as a homeowner with these windows, is utter nonsense and an insult. Sunny beautiful days fill anyone with these windows with dread. The CDA were in no position to make these statements. It was negligent, misleading and purposeful. Now we have the addition of Harvey Windows to the list of manufacturers. Harvey is a current supplier to this program which totally throws a wrench in the whole works. It was easy to vilify a corrupt bankrupt business owner. It was convenient when this problem ceased with the demise of Sound Solutions. But now that is not the case anymore. I personally put my nose on the windows of 3 separate homes with Harvey Windows and there is no difference between what is coming off my Sound solutions windows than what is coming off the Harvey Windows. The list goes on and on and one year later we are no closer to getting to the bottom of what is going on.

Homeowners are suffering with a long list of health issues such as coughing, headaches, dizziness, nausea, vomiting, nasal, eye and throat irritation, upper respiratory infections, chronic sinus infections, difficulty breathing, asthma which in some pediatric cases is extreme, bronchitis, fatigue, and so on. Unless proper

testing is undertaken and the root cause is identified, no one will ever know for sure if any of these maladies or God forbid, long term health issues are related. So far has this in no way been answered by the minimal testing that has been performed to date. We are scared and rightfully so. We owe it to our loved ones, our community, future and past residents of these buildings, and especially to our children the true and exact scientifically sound information as to exactly what we are being exposed to.

Think about is the impact to our home values. Not one of us who have been confirmed with these windows can sell our homes without disclosing this fact. Can you imagine having your biggest investment, your home, being unsellable or losing significant value under these circumstances? A fact the CDA has not even been willing to discuss or acknowledge.

And just to add a cherry on top, there have been several reports and I have personally witnessed catastrophic mechanical failures which could result in significant injury or death. These windows are extremely heavy and under the right circumstances could kill. Are these mechanical failures of the hidden metal components tied to the off gassing? Quite possibly considering that when PVC burns it produces Hydrogen Chloride aka Hydrochloric acid.

We urgently need help from the Consumer Product Safety Commission in whatever capacity it can be given. There is no precedent to refer to here unless you take a look at the Chinese Drywall mess or the Lumber Liquidators vinyl flooring issue. There is always a first and a beginning. I think our issue qualifies for this distinction. Longer days are coming and instead of filling us with anticipation it fills me and the hundreds of other homeowners with these windows with dread. We cannot easily throw these windows out like a lead laden piece of cheap jewelry. We can't drag them to the curb like some problem defective TV. The deed is done. These windows are in place. The CDA has told Alderman Quinn that if a recall is implemented the most homes per yr that could be replaced is 200. That means it could take 10 years to right this mess and at what cost? It is just staggering to even consider. The number of impacted homes

will continue to climb of this I am completely confident. It is only a matter of time.

My front, east facing windows were not noticeably off gassing last year. Thankfully we have a large 74 yr old silver maple in our front yard which has protected this side of our home up till now. Just the other morning while having breakfast around 8am I began to smell "The Smell" coming off these particular windows. Once the tree has its leaves perhaps they will be protected again but due to recent sewer work several branched have been cut off my tree and I have no idea what the actual outcome will be. There seems to be an exposure tipping point. Exactly what that is, I cannot say but I am confident if a proper scientific study was done, that could be determined along with the root cause and our toxic exposure.

I cannot stress enough how complicated and far reaching this issue is. I believe that our written submission clearly and indisputably supports our contention that the CDA is not to be trusted with this investigation. At every turn in this process they have not cooperated or been truthful and unfortunately this exact scenario is not uncommon. For instance, take the water poisoning cases in Flint MI or Crestwood IL. There was so much misinformation fed to the homeowners, rigged testing practices, attempts to appease at first and then demand that waivers be signed absolving anyone of wrong doing, etc.. What has taken place so far in Chicago almost mirrors the Flint case. It was not until the EPA did their due diligence and then Professor Marc Edwards stepped in to help this community that the truth was finally uncovered. Criminal charges were filed against 3 state officials at the Michigan Department of Environmental Quality. The three "face felony charges including misconduct, neglect of duty and conspiracy to tamper with evidence. They've also been charged with violating Michigan's Safe Drinking Water Act." And this is just the goings on in Flint. It supports our need for independent oversight for the investigation and testing of these windows and the air quality in homes. Please help!!

Pamela Zidarich, VP, Midway Defective window Recipients, NFP



# MIDWAY DEFECTIVE WINDOW RECIPIENTS, NFP

A 501(3)(C) not for profit corporation

CHICAGO, ILLINOIS

March 27, 2018

Office of the Secretary  
U.S. Consumer Product Safety Commission  
4220 East West Highway  
Bethesda, MD 20814  
*Sent by electronic mail to [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov)*

## **Re: Agenda and Priorities Fiscal Year 2019 and/or 2020**

Dear Office of the Secretary:

The Midway Defective Window Recipients, NFP is a not for profit corporation that was codified in August of 2017 to assist with advocating on behalf of the community for the grave concern that has fallen on the tens of thousands of residents surrounding both the Chicago Midway International Airport and O'Hare International Airport in Chicago, Illinois. We are in need of your help, guidance, direction, regulatory guidelines, testing procedures and rulemaking. The problem at hand is in regard to the defective and harmful PVC window and door products that were installed in the homes near both airports in an effort to reduce the impact of aircraft noise. The program that sponsors this sound-insulating environmental program is the Residential Sound Insulation Program (hereinafter referred to as the RSIP) by and through the Chicago Department of Aviation (hereinafter referred to as the CDA). The PVC window and door products were ultimately found to be defective by and through homeowners that discovered the smell of a harmful off-gassing stench of burning plastic from the PVC and PVC byproducts when the products are exposed to direct sunlight and ultra-violet rays. This concerning issue was raised to the attention to the CDA, RSIP and the CDA's personnel dating back to as early as Spring of 2015, but not acknowledged as an alarming and dangerous issue until April of 2017. Thereafter, on a personal and professional level, our organization continues to struggle with the RSIP and the CDA for resolution of our defective PVC window and door product issues that are off-gassing toxic chemicals that have tested positive for human carcinogens.

Moreover, at this time we have reached an impasse regarding the establishment, or lack thereof, of Indoor Air Quality Standards in Illinois. The window off-gassing in residential homes should be regulated by the Illinois Public Health Indoor Air Quality Act (410 ILCS 87/) but it remains silent and states *"The State of Illinois lacks guidelines that define and protect indoor air quality. The development of these guidelines is required to ensure the health and safety of the people of Illinois."* Due to the nature of the off-gassing we find that the health and safety of the people of Illinois, specifically in the City of Chicago airport residential neighborhoods, are expressively compromised on multiple levels with the State's lack of guidelines. Furthermore, the window and door products installed in our homes need a consumer product safety standard; testing standards for VOC's and chemicals; design and engineering regulatory guidelines; proposed rulemaking; adopt national regulations and a mitigation action plan put in effect to eliminate the proposed risk of injury and illness due to toxic exposure.

Furthermore, through our extensive and in-depth detailed research and ongoing activities, we would like to also bring your agency up to speed regarding an additional precarious aspect of this toxic and hazardous exposure; the CDA's extraneous efforts to defraud the residents of the City of Chicago through their questionable and vexatious behavior toward the issue at hand. We will walk you through a time line of events that will not only raise an additional set of concerns but prove that the actions from the agents/employees on behalf of the CDA are outright fraudulent, unethical and a pure breach of their fiduciary duty. We plead for your assistance in order to tackle concerns about toxic substances and our immediate risks due to faulty parts and shoddy workmanship. All of our concerns incorporated herein to this petition coincide with our mission, which is to advocate on behalf of the community to safeguard this environmental health issue of toxic exposure is ended so that when we enter our homes, we can rest assured that we are safe.

Accordingly, we respectfully request that the U.S. Consumer Product Safety Commission review our petition in full and contact the undersigned immediately as we desperately seek your expertise and necessitate your assistance at this juncture.

Very Truly Yours,  
**MIDWAY DEFECTIVE WINDOW RECIPIENTS, NFP**

*Anne Prevenas*

**Ms. Anne Prevenas, President and Co-Founder**  
anne@midwaydefectivewindowrecipients.com  
Telephone: 773-317-4435

*Pamela Zidarich*

**Mrs. Pamela Zidarich, Vice-President and Co-Founder**  
pam@midwaydefectivewindowrecipients.com  
Telephone: 773-573-3282

*Victoria Whitney*

**Mrs. Victoria Whitney, Secretary/Treasurer and Co-Founder**  
vicki@midwaydefectivewindowrecipients.com

*See attached:*

*Table of Contents*

*Midway Defective Window Recipients, NFP Expert and Qualified Opinion*

*City of Chicago Joint Committee Hearing Transcript(s)*

*City of Chicago Department of Law Preliminary Expert Report*

*Correspondence*

*Research and Publications*

*Media Articles and News Stories*

*Source Citations/ Related Links*

# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>TABLE OF CONTENTS .....</b>	<b>3</b>
<b>SYNOPSIS.....</b>	<b>5</b>
<b>BACKGROUND .....</b>	<b>5</b>
<i>Midway International Airport Residential Sound Insulation Program .....</i>	<i>5</i>
<i>O'Hare International Airport Residential Sound Insulation Program.....</i>	<i>5</i>
<i>Midway Noise Compatibility Commission.....</i>	<i>5</i>
<i>O'Hare Noise Compatibility Commission.....</i>	<i>5</i>
<i>Residential Sound Insulation Program Funding .....</i>	<i>5</i>
<b>CONTRACTORS AND MANUFACTURES.....</b>	<b>6</b>
<b>REPUBLIC WINDOWS &amp; DOORS, LLC .....</b>	<b>6</b>
<i>Corporate History, Ownership and Overview .....</i>	<i>6</i>
<i>Closure of Company .....</i>	<i>6</i>
<b>SOUND SOLUTION WINDOW &amp; DOORS, LLC .....</b>	<b>7</b>
<i>Corporate History, Ownership and Overview .....</i>	<i>7</i>
<i>City of Chicago Minority Contracts .....</i>	<i>7</i>
<i>Install Years of Acoustical Windows for City of Chicago/ RSIP .....</i>	<i>8</i>
<i>Closure of Company.....</i>	<i>8</i>
<b>HARVEY BUILDING PRODUCTS.....</b>	<b>8</b>
<i>Corporate History, Ownership and Overview .....</i>	<i>8</i>
<b>HOMEOWNER ODOR CONCERNS.....</b>	<b>9</b>
<b>FIRST REPORTS OF ODOROUS WINDOWS .....</b>	<b>9</b>
<b>HOMEOWNERS SCREENINGS .....</b>	<b>10</b>
<i>In Home Screening Methods.....</i>	<i>10</i>
<i>Current Confirmed Cases.....</i>	<i>11</i>
<b>PRODUCT WARRANTY STATUS.....</b>	<b>11</b>
<b>HOMEOWNER HEATH STATUS' AND CONCERNS.....</b>	<b>13</b>
<b>JOINT COMMITTEE MEETINGS &amp; COMMISSION MEETINGS .....</b>	<b>14</b>
<b>POLITICAL INVOLVEMENT .....</b>	<b>14</b>
<b>MIDWAY NOISE COMPATIBILITY COMMISSION MEETING .....</b>	<b>15</b>
<i>July 27, 2017 Meeting Overview .....</i>	<i>15</i>
<b>CITY OF CHICAGO JOINT COMMITTEE MEETING .....</b>	<b>15</b>
<i>August 23, 2017 Meeting Overview .....</i>	<i>15</i>
<b>CITY OF CHICAGO JOINT COMMITTEE MEETING .....</b>	<b>17</b>
<i>October 3, 2017 Meeting Overview .....</i>	<i>17</i>
<b>MIDWAY NOISE COMPATIBILITY COMMISSION MEETING .....</b>	<b>19</b>
<i>October 26, 2017 Meeting Overview .....</i>	<i>19</i>
<b>O'HARE NOISE COMPATIBILITY COMMISSION MEETING .....</b>	<b>19</b>
<i>November 3, 2017 Meeting Overview.....</i>	<i>19</i>
<b>CITY OF CHICAGO JOINT COMMITTEE MEETING .....</b>	<b>20</b>
<i>December 11, 2017 Meeting Overview.....</i>	<i>20</i>
<b>MIDWAY NOISE COMPATIBILITY COMMISSION MEETING .....</b>	<b>22</b>
<i>January 25, 2018 Meeting Overview .....</i>	<i>22</i>
<b>CHICAGO DEPARTMENT OF AVAIATION .....</b>	<b>23</b>
<b>HISTORY AND INTERACTION.....</b>	<b>23</b>
<b>AMEC FOSTER WHEELER ENVIRONMENT &amp; INFRASTRUCTURE, INC. ....</b>	<b>25</b>
<i>December 29, 2017 Preliminary Report.....</i>	<i>25</i>
<i>Current Ongoing Testing Schedule.....</i>	<i>25</i>
<b>FREEDOM OF INFORMATION ACT (FOIA) REQUESTS .....</b>	<b>26</b>

HOMEOWNER NOTICE LETTERS.....	27
QUESTIONABLE ODOROUS WINDOW REPORT PUBLICATION .....	30
<b>MIDWAY DEFECTIVE WINDOW RECIPIENTS, NFP.....</b>	<b>33</b>
BACKGROUND .....	33
COMMUNITY ACTIVISM .....	33
HOMEOWNER VIDEO SUBMISSION CITATIONS.....	34
MOVING FORWARD AND PRAYER FOR RELIEF .....	35
<b>MEDIA ARTICLES AND NEWS COVERAGE .....</b>	<b>37</b>
<b>RESEARCH AND PUBLICATIONS .....</b>	<b>41</b>
HEALTHY BUILDING NETWORK REPORT .....	41
<i>Environmental Impacts of Polyvinyl Chloride Building Material</i> .....	41
U.S. ENVIRONMENTAL PROTECTION AGENCY- OFFICE OF RESEARCH AND DEVELOPMENT .....	41
<i>Compendium of Methods for Determination of Toxic Organic Compounds in Ambient Air</i> .....	41
CENTER FOR HEALTH, ENVIRONMENT AND JUSTICE .....	41
<i>Volatile Vinyl</i> .....	41
U.S. NATIONAL LIBRARY OF MEDICINE .....	41
<i>Environmental Health Concerns and Toxic Chemicals</i> .....	41
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH .....	41
<i>Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions</i> .....	41
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY AIR RESOURCES BOARD.....	41
<i>Risk Management Guidance for Stationary Sources of Toxic Air</i> .....	41
ILLINOIS GENERAL ASSEMBLY .....	41
<i>Indoor Air Quality Act</i> .....	41
NATIONAL TOXICOLOGY PROGRAM .....	41
<i>Report on Carcinogens</i> .....	41
U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF AIR AND RADIATION .....	41
<i>Report to Congress on Indoor Air Quality, Assessment and Control of Indoor Air Pollution</i> .....	41
INTERNATIONAL AGENCY FOR RESEARCH ON CANCER.....	41
<i>IARC Monographs on the Evaluation of Carcinogenic Risks</i> .....	41
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT- OEHHA.....	41
<i>Air Toxics Hot Spot Programs &amp; Chemical Database Metadata</i> .....	41
<b>SOURCE CITATIONS .....</b>	<b>42</b>
<b>EXHIBIT ATTACHMENTS.....</b>	<b>44</b>

# SYNOPSIS

## BACKGROUND

The City of Chicago (hereinafter referred to as the City) is home to two (2) international airports; Chicago Midway International Airport (hereinafter referred to as Midway) and O'Hare International Airport (hereinafter referred to as O'Hare). The Midway complex resides on approximately eight hundred forty (840) acres with forty-three (43) gates and five (5) runways as of January 2018. The O'Hare complex resides on approximately seven thousand two hundred (7,200) acres with one hundred eighty-four (184) gates and eight (8) runways as of January 2018. These airports generate massive revenues for the City resulting from items such as tourism, landing fees and rental payments. Due to the capacity and constant air traffic at the airports, the residents that reside in close proximity of the airports are subject to aircraft noise inside their residential homes.

The City has two (2) comprehensive programs dedicated to lessening the noise in homes through their respective location(s) at the airports named the Residential Sound Insulation Program (hereinafter referred to as the RSIP). The RSIP must follow in compliance with the Federal Aviation Administration (FAA) regulations and guidelines noting (*150/5000-9A – Announcement of Availability Report No. DOT/FAA/PP/92-5, Guidelines for the Sound Insulation of Residences exposed to Aircraft Operations*). By and through this program, residents are eligible for different home insulating packages that include, but are not limited to, replacement of windows, doors, wall modifications, ceiling modifications, insulation, vents, and HVAC modifications which are subject to approval based on location and recommendations by the CDA and their respective Commissions. The RSIP has been in effect since 1995 at O'Hare and since 1996 at Midway, approximately twenty-three (23) years to date.

In addition to the RSIP, the City has an ample system to provide measurements of the aircraft noise levels through the CDA's Airport Noise Management System established in 1996. Each airport has a Commission in which they welcome public participation, feedback and complaints regarding aircraft noise and other related items incorporated into quarterly published reports after holding community quarterly meetings. Midway has the Midway Noise Compatibility Commission (MNCC) and O'Hare has the O'Hare Noise Compatibility Commission (ONCC). These Commissions consist of community leaders, Alderman, Mayors in surrounding towns, CDA personnel, County representatives, private consultants and City Law Department personnel.

Moreover, the CDA, RSIP, MNCC, and ONCC, approved and implemented sound insulation to the residences in each airport community. Midway sound insulated ten thousand one hundred seventy-three (10,173) residences and O'Hare sound insulated ten thousand nine hundred twenty-four (10,924) residences for a total of twenty-one thousand ninety-seven (21,097) homes with an overall cost of \$550,000,000.00 during this twenty-three (23) year period, ongoing. These sound insulation programs, prior to 2018, were funded entirely by approved airport revenue sources. The FAA provides 80% of the funding using Airport Improvement Program (AIP) grants, while the City provides the remaining 20% using passenger facility charges/ ticket sales. It was noted by the FFA that all sources of funds must go through an application process which are considered in accordance with the procedures required by the FFA. As of 2018 the source of funds

is subject to approval through the FAA's OMP Build-Out Noise Contour and Midway 2018 Noise Contour programs.

## **CONTRACTORS AND MANUFACTURERS**

### **REPUBLIC WINDOW & DOORS, LLC**

Mr. William Spielman founded Republic Aluminum as a manufacturer of aluminum doors and windows in 1964. It was located on the north side of Chicago for 33 years. In 1997 Republic Aluminum changed its name to Republic Windows & Doors, Inc. Mr. Ronald Spielman assumed control of the company. Mr. Robert Gillman joined the company in 1974 as a salesman. Mr. Ronald Spielman later became Republic's Executive Vice President. By 1996 the company outgrew its manufacturing facility at 1725 W. Diversey in Chicago, IL. As an incentive to keep the company in Chicago, the City of Chicago provided Tax Incremental Financing (TIF) to partially fund the construction of a new manufacturing facility on Goose Island at 930 W. Evergreen Avenue, Chicago, IL (hereinafter referred to as the Goose Island Property). The Goose Island Property cost more than \$30,000,000.00 to develop. The company received \$10,400,000.00 in TIF Funding in exchange for an agreement to create jobs and develop a manufacturing plant at the Goose Island Property. The TIF Funding was contingent upon the company remaining a viable business entity and employing a certain number of employees. The company was obligated to repay the City of Chicago \$10,000,000.00 in the event certain benchmarks of development were not met.

As Republic Windows & Doors, LLC went in financial trouble, they considered bankruptcy, however rather than bankrupt the company and trigger the penalties of the TIF Funding guaranties, Mr. Ronald Spielman and Mr. Robert Gillman formulated an exit strategy to mine a profit from the company's only asset, the Goose Island Property. They were caught partaking in fraudulent real estate transactions and transfers in order to avoid repayment and penalty of TIF funds. Mr. Ronald Spielman then began to transfer assets in excess of \$23,000,000.00 on or around December 2005 to his wife Mrs. Sherry Spielman in preparation of liquidating the companies and its D/B/A and wash through companies in order to again, avoid repayment of TIF funds.

Moreover, Mr. Robert Gillman obtained several Acoustical and Lead Abatement Business Agreements, including work for the City's RSIP program, and in order not to lose important large manufacturing and installation contracts he assigned certain sound insulation projects and contracts to RS Windows & Doors, LLC, an entity owned by Mr. Ronald Spielman, for no consideration. After Mr. Ronald Spielman left, Mr. Robert Gillman kept the company's doors open until 2006 to ultimately avoid the TIF Funding penalties and guaranties, and to avoid Illinois' four-year statute of limitations on the prosecution of fraudulent transfers with respect to the Goose Island Property Transfer.

Furthermore, on March 20, 2006, RWD Properties, LLC (the wash-through company of Spielman and Gillman) sold the Goose Island Property to William Wrigley, Jr. Company for \$31,500,000.00. After paying the senior lender and other expenses, RWD Properties, LLC netted approximately \$8,000,000.00. They then transferred \$6,269,181.37 to Mr. Ronald Spielman and

\$1,767,295.34 to Mr. Robert Gillman from the sale proceeds. Both agreed to place \$3,000,000.00 million of those funds in bank accounts. Through the payment of the sale, fraudulent salary transfers, improper bonuses, breach of duties to its members and shareholders and multiple lawsuits it was found that Mr. Ronald Spielman and Mr. Robert Gillman did not provide reasonably equivalent value for the amounts they received and that as a result of the liquidating transfers to Mr. Ronald Spielman and Mr. Robert Gillman, Republic Window & Doors, LLC was rendered insolvent. After the insolvency, Mr. Robert Gillman plead guilty in a criminal case with theft of the assets in September of 2009 and sentenced to four (4) years in prison.

## **SOUND SOLUTIONS WINDOWS & DOORS, LLC**

As Republic Window and Doors, LLC went into insolvency, Mr. Ronald Spielman opens a mirror and subsidiary corporation named Sound Solutions Window and Doors, LLC (hereinafter referred to as Sound Solutions). Sound Solutions, a private contractor, participated in the City of Chicago's RSIP program and placed bids for contracts for the sound insulating work with the requirement that they (as well as any other bid contractors) commit to a "good faith effort" to expend "contract specific goals" on Disadvantaged Business Enterprise (DBE) or Minority-owned Business Enterprise (MBE) if awarded a contract.

Between 2006 and 2008, the City solicited bids for RSIP Contract Nos. 17362, 11996, 12009, 14984 and 14985 (collectively, RSIP Contracts). Contract No. 17362 required a DBE and Nos. 11996, 12009, 14984 and 14985 required MBEs to serve as subcontractors and to be paid at least a set percentage of the contract award. Sound Solutions was awarded the contracts having identified FCJ Real Estate Development Company Inc. (hereinafter referred to as FJC) as the subcontractor that would fulfill its DBE and MBE requirements. However, FCJ was a minority pass-through company, not a valid DBE or MBE. Sound Solutions and Mr. Ronald Spielman, who was Sound Solutions' president, knowingly and falsely claimed that Sound Solutions would utilize FCJ as a DBE or a MBE subcontractor for a percentage of the total contract price when in actuality Sound Solutions and Mr. Ronald Spielman knew that FCJ would operate merely as a "pass through" company. Mr. Ronald Spielman knew that there was no valid DBE or MBE participation in the actual performance of the contracts, so each claim for payment by Sound Solutions was a false and fraudulent claim.

Furthermore, pursuant to the Illinois Whistleblower and Protection Act, a "Whistleblower" exposed Mr. Ronald Spielman and Sound Solutions for their fraudulent actions regarding purposefully misleading representations to the City in exchange for the contracts and funds to complete RSIP and sound insulating work. This led to the lawsuit that was filed in November of 2009 by the United States District Court, the City and several other entities that Mr. Ronald Spielman and Sound Solutions deceived and defrauded.

*NOTE:* Despite the City suing Sound Solutions in 2009, the City knowingly continued to allow Sound Solutions to follow through on all of their contracts and permitted them to carry out the contracts that they fraudulently obtained all the way through 2015 (last install year of Sound Solutions products in the RSIP) **It is odd and highly suspicious that Sound Solutions continued to work for the City for six (6) years after they were found to be fraudulent (emphasis added).**

Moreover, between 2006 and 2009, based on Mr. Ronald Spielman's false representations, the City approved at least six (6) RSIP contracts to Sound Solutions. It was undisputed in the court record that there were thirty-eight (38) individual false claims during the course of all of the total contracts. It was further noted in the court record that because of the false claims the City was claiming damages under the so called "taint" theory, the City is entitled to three times what it actually paid for the goods or services at issue. Mr. Ronald Spielman contends that because Sound Solutions completed the insulation work, the City received the full value of the contracts and suffered no damages. Even though if Sound Solutions performed the installation, its false statements mean that the City was denied its goal of developing and sustaining DBEs and MBEs. Thus, installing the sound insulation did not provide the consideration for which the City bargained—supporting MBEs and DBEs.

Meanwhile, in September 2014, the Court found both Sound Solutions and Mr. Ronald Spielman in default. In May 2015, a default judgment was entered against Sound Solutions in favor of the City in the amount of \$13,554,508.01 but because Mr. Ronald Spielman had filed for bankruptcy, no judgment could be sought from him at that time. In October 2015, the bankruptcy court lifted the automatic stay, permitting the City to seek judgment against Mr. Ronald Spielman. The City moved for entry of a default judgment in the amount of \$13,554,508.01 jointly and severally with Sound Solutions, against Mr. Ronald Spielman which was granted on December 18, 2107 after a lengthy appeal. The City clearly prevailed in the lawsuit and Mr. Ronald Spielman continued to practice business on false and fraudulent pretenses, just like Republic Window and Doors, LLC, in order to launder monies for himself as he ran another company into insolvency.

Similarly, even though the "suspicion" of fraud was clearly out in the open and in plain sight in 2009, several years of additional RSIP contracts were still performed for another six (6) years through 2015. This begs several questions- Why did the City not do its due diligence in checking corporate records after the "Whistleblower" suit was filed in 2009? Why did the City continue to use FFA regulated funds to payout on said contracts during the six (6) year period? Why would the City allow this misappropriation to happen with such large sums of money? Who was *really* overseeing the RSIP project and contracts? Will the City not be reprimanded and continue to be allowed to run a governmental entity in such a haphazard and unethical manner? I believe that we still await the answers to these questions.

**Now... what happens to the residences that experience issues with their products after Mr. Ronald Spielman ran another company into the ground and cannot honor the expressed, implied and written ten (10) year product warranty?**

## **HARVEY BUILDING PRODUCTS**

Assumingly, the City has vested another sound insulating company to install and supply building products from a new, non-Spielman related, manufacturer and installer. Harvey Industries, Inc. makes and distributes replacement windows and other building products, is centrally located in Waltham, Massachusetts, and was established in 1961. The City turned to Harvey Building Products in order to obtain sound insulating products from them for the RSIP projects. The City has been engaged with Harvey Building Products since 2011 to the present time.

# HOMEOWNER ODOR CONCERNS

## FIRST REPORTS OF ODOROUS WINDOWS

Imagine walking into your biggest investment every day to a noxious odor that you couldn't identify. Imagine sitting in the living room with your family smelling an electrical fire, but there are no flames. Imagine the fear that you would have on a daily basis because your windows are off-gassing toxic and hazardous fumes and are harming your loved ones. What measures would you take to provide safety and security for your family? What if your windows were the culprit of this unidentifiable stench? What would you do? Would you make a complaint to the window company? What if the window company wasn't in business? Would you call the entity that oversaw their work? Would you call their boss? We have been calling. We have been asking for answers. We have been asking for answers for YEARS. We are facing this problem of toxic and hazardous windows that we all know is not going to go away anytime soon. This is a real problem that the homeowners face in Chicago, Illinois, and it hasn't been resolved yet. We must get to the bottom of this.

According to the CDA, prior to Spring 2017 there were three (3) complaints of odorous windows in the history of the RSIP. The CDA further states that all three (3) of these odorous window complaints were Sound Solutions windows with two (2) complaints at Midway and one (1) complaint at O'Hare.

The CDA is wrong. There were more than three (3) complaints. Actually, there were dozens of complaints, but the CDA just flat out ignored them.

NOTE: Through our research and thorough investigation, there were several other complaints made to the CDA prior to the Spring of 2107, in fact, there were complaints dating all the way back to the early months of 2015. Our community has advised us that these three (3) stated complaints were not the only complaints of odorous windows made to the RSIP office. Mounds of complaints flowed into the RSIP office asking for help and answers. From a procedural standpoint, residents would call their local RSIP office about having odorous windows and were told things like:

*"That's not an issue that is going on with RSIP windows"*

*"You should consider using other cleaners in your home"*

*"Remove your storm windows and it will go away"*

*"We are unsure to what you are referring to sir/madam"*

*"Are you sure you have the correct number?"*

*"That's an issue I've never heard of, you should get that checked out"*

*"The company that made your windows is out of business, you are on you own"*

Many residents were forced to leave messages in a voicemail box of abyss at the RSIP office as the CDA and RSIP personnel would (*and still continue to*) refuse to take our calls, refuse to return our calls, give us false answers, brush off our

concerns, talk to us in circles, and still leave messages unreturned. The complaints of the homeowners to the CDA and RSIP have fallen on deaf ears.

The purposeful disregard for the homeowners that have the odorous windows is so egregious, that when a homeowner whom speaks a foreign language would call, they would be hung up on. **DOZENS of complaints** from homeowners, and not just the three (3) complaints that the CDA acknowledged, **have been made as early as the Spring of 2015**. It took almost two (2) years for the CDA and the RSIP to acknowledge the issue, and as the complaints became so voluminous that they just could not hide from the residents any longer. The CDA was put on formal notice in writing in 2015 by several homeowners in the Midway area that they just can't escape from.

In conjunction with the unethical business practices of the CDA's hired contractor, Sound Solutions, the CDA personnel, wholly and exclusively ignored the homeowners complaints in such a manner that the community demanded answers in person at the MNCC meeting in July 2017. Imagine the energy it takes for the CDA to train their office personnel, their third-party consultant firm personnel and their field inspectors to ignore, lie and cheat the homeowners out of the answers to their only question throughout this entire process... **What is the root cause of these off-gassing odorous windows?**

## **HOMEOWNER SCREENINGS**

While hundreds of complaints poured into the RSIP office, especially in the most recent months, the CDA felt the need to implement and hire an entire team of third party consultants to form what they have named an "odor inspection protocol" team. This team of inspectors and staff are employed by outside consulting firm(s), Civcon Services, Inc., CMC Partners Inc., Cotter Consulting and Millhouse Engineering & Construction, Inc., and have been subcontracted by the CDA to operate the phone lines, sort logistics for screenings and perform in-home inspection screenings. They are specifically hired for the task of visiting homeowners to perform odor inspection screenings in the off-gassing homes for those who have called the RSIP office to request to be placed on the screening schedule. Screening inspections are scheduled and take place during normal business hours, Monday through Friday, on a regular forty (40) hour per week type of basis, starting in the latter end of 2017. This would only occur when, and if, the RSIP would take or return calls.

Furthermore, as scheduled screenings were carried out, residents welcomed the inspectors into their homes to complete said screenings however, a few prominent issues began to develop. First, the manner in which the inspections are performed are less than scientific, and in reality, comedic in nature. The inspectors (usually one (1) or two (2) inspectors), arrive to a home with nothing but their nose. **They sniff the windows.** They say they do smell toxic odor or they say that they don't smell the toxic odor. **That is it. This is the test "scientific test" that the CDA developed, approved and authorized.** The CDA sends some unqualified, layman person who becomes the sole determining factor if a person's home is confirmed with having the toxic odorous off-gassing windows.

Secondly, when the inspectors would complete their "scientific test" of the sniff, they would provide no type of paperwork to the homeowners. Even after a direct verbal request for

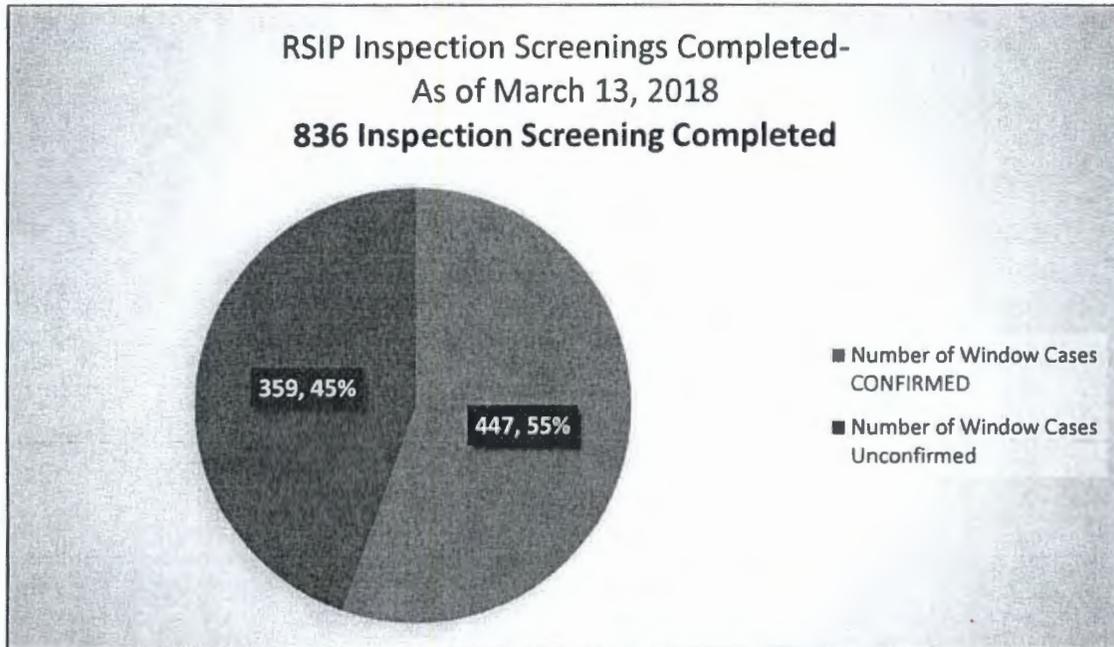
paperwork, the inspectors, as instructed by the CDA, still refuse to provide written type of documentation, receipt of sort or confirmation/ reference number for their respective inspection. Third, when inspectors would arrive at a home to perform a screening inspection and figured out the resident do not fluently speak English (many residents in the area speak Spanish or Polish), the inspectors would not even enter the home. In one instance, a Spanish-speaking couple called for a screening inspection and underwent an inspection at their home. When the inspectors arrived as scheduled, the couple started speaking Spanish to them and as they noticed that the couple did not speak English through brief conversation, they decided *sua sponte*, to tell the couple “We don’t understand you, so we are marking you down that you don’t have the smell” without even entering the home as the conversation was exchanged on the front stoop of the home.

Unknowingly to the inspectors, the couple’s pre-teen, bilingual grand-daughter was standing a few feet from her grand-parents, heard the comment and translated to her grandparents about what the inspector said after they left. The couple’s daughter then communicated with Midway Defective Window Recipient, NFP’s personnel at one of the community meetings about what happened. After further investigation, the CDA refused to acknowledge the situation. However, later at an MNCC meeting, Mr. Aaron Frame, deputy director of the CDA, after being asked about the occurrence stated that language would no longer be an issue for homeowners, and they now have a Spanish speaking staff member (Enrique) and a Polish speaking staff member (Edyta) at the RSIP office available to translate.

As a result of the items above regarding homeowner screening inspections, the CDA by and through this type of authorized testing methodology, lack of paperwork and racial profiling, continue to prove that they are not taking this problem seriously; that they are not taking all means necessary to resolve the issue of odorous window products despite their previous public statements; that they are breaching their fiduciary duty as members of City government; that they are condoning and committing unethical racial profiling; and that are they refusing to provide any type of basic human respect for the residents of the City of Chicago. As per the age-old proverb “Actions speak louder than words”.

Further, as of March 13, 2018, the RSIP reported the following inspection screening findings:

- Number of inspections completed: 708 MDW + 128 ORD = 836
- Number of confirmed window cases: 357 MDW + 88 ORD = 447  
*MDW: 290 Sound Solutions, 46 Republic, 21 Harvey*  
*ORD: 81 Sound Solutions, 2 Republic, 5 Harvey*
- Number of confirmed window cases outside “Warranty”: 120 MDW + 2 ORD = 122  
*MDW: 67 Sound Solutions, 47 Republic, 7 Harvey*  
*ORD: 2 Republic*
- Number of confirmed door cases: 0 MDW + 0 ORD = 0
- Number of inspections that need to be re-scheduled: 71 MDW + 8 ORD = 82



*Based on 836 Inspection Screenings, 447 Homes have been Confirmed with Odorous Windows resulting in a 55% Confirmation Rate*

*PLEASE NOTE: RSIP Inspection Screening Report Totals are now provided to the Alderman on a weekly basis pursuant to verbal and written requests for screening inspection totals and status'.*

**PRODUCT WARRANTY STATUS**

Pursuant to the RSIP contract requirements for sound insulation (explicitly indicating all windows and door products) with contractors it was mandatory that the manufactures provide all residences a ten (10) year written warranty for labor and material for any issues that may arise with the window and door products after installation. As the problem with the odorous windows was coming to light, homeowners were calling the RSIP office about issues with the window and door products installed by Sound Solutions or Republic Windows. By the time many homeowners became aware that the concerning toxic smell in their homes derived from their windows, by means of social media, newspaper publications, and television news coverage, homeowners began contacting the RSIP office to schedule screenings (with many homeowners falling outside the parameters of the expressed and implied warranty).

Time had been swiftly passing on since the first set of installed window products from Sound Solutions, with many homeowners being out of warranty by the time they phoned the RSIP office in order to receive an inspection screening for their odorous windows. The RSIP felt the need to completely disregard the homeowners that were out of warranty, so they refused to provide screening inspections to those residences (noting that the residents were calling in the calendar year of 2017). Residents were attempting all avenues to plea with the CDA and RSIP office to resolve the ongoing warranty issues with the windows, and therefore, homeowners sought relief of said warranty issue with their local governmental representatives.

Request for assistance with the warranty piled into the applicable local Alderman's office, specifically Alderman Marty Quinn's office in the 13<sup>th</sup> Ward located in the Midway area. As

Alderman Marty Quinn worked closely with the CDA and RSIP to resolve all the fluid issues in this situation, he proposed that the CDA take immediate action. In doing so, Alderman Marty Quinn proposed and sponsored an amendment of the Municipal Code concerning screening and testing of windows and doors installed under the Midway and O'Hare RSIP program(s). Alderman Marty Quinn was accompanied by Alderman Edward Burke, Alderman Michael Zalewski, Alderman Raymond Lopez, and Alderman Patrick Thompson in sponsoring this amendment. Thereafter, the City Council of Chicago passed said proposed amendment on December 11, 2107 to the Municipal Code of Chicago 2-20, adding Section 45 which sates as follows:

***“2-20-045 Warranties under Midway and O'Hare Residential Sound Insulation Program. The Commissioner of the Department of Aviation or his or her designees are hereby authorized to extend the warranty period of windows, storm doors, vinyl patio doors, wood prime doors and any other product installed pursuant to the Midway and O'Hare Residential Sound Insulation Program for a period of ten (10) years for each product. If the companies that installed the original windows and doors pursuant to the Residential Sound Insulation Program cease to exist due to bankruptcy or closing, the City shall honor the warranties and shall remedy any and all product and installation defects. (Added Coun. J. 12-13-17, p. 63904, § 2)”***

In addition to the above amendment, Alderman Marty Quinn also sponsored a second proposed amendment directly relating to the RSIP in-home screening inspections as described above in order to resolve the outstanding issues concerning screening inspections. This amendment passed also on December 11, 2107 to the Municipal Code of Chicago 2-20, adding Section 50 which sates as follows:

***“2-20-050 Screening and testing of windows and doors installed under the Midway and O'Hare Residential Sound Insulation Program. The Commissioner of the Department of Aviation or his or her designees are hereby authorized to conduct the screening of all windows, storm doors, vinyl patio doors, wood prime doors and any other product installed pursuant to the Midway and O'Hare Residential Sound Insulation Program that have been reported to the Department as emitting odors. The Commissioner of the Department of Aviation or his or her designees are hereby mandated to immediately perform in-house testing on a minimum of 10 percent of the confirmed cases of houses with odors issues after the initial screening. The homeowners shall be provided with copies of the final testing report by the City once the report has been completed. (Added Coun. J. 12-13-17, p. 63907, § 2)”***

Be it that it may, the CDA initially refused to schedule and proceed with screening inspections for the homes that fell outside the “warranty” period based on their respective year of install. The importance of this amendment in the Municipal Code of Chicago is due to the fact that one of the most prominent years for confirmed odorous windows is the 2006 install year with the original manufacturing warranty expiring in 2016 which is one (1) full calendar year after the CDA admitted that they first became aware of said issue(s). We as a community applied pressure at every possible opportunity. Thereafter, through the determination from the community and our elected officials, screening for ALL homes commenced irrespective of the install year and warranty circumstances.

## HOMEOWNER HEALTH STATUS' AND CONCERNS

It should be noted that homeowners have severe and momentous concerns for their health, health of their family members and their pets. Residents have been experiencing symptoms that are similar in nature with the intensity of their respective symptoms varying by age, quantified amount of exposure based on their dwellings' square footage and length of time the exposure of toxic odorous window products that have been installed in their homes. Community meetings, personal discussions and online forum discussions result in descriptions of physical symptoms and types of illnesses' that homeowners and their families experience.

Symptoms currently being experienced include, but are not limited to:

- Respiratory Symptoms
- Coughing
- Respiratory Tract Irritation
- Dizziness
- Asthmatic Related Diagnoses
- Ataxia
- Extreme Fatigue
- Chronic Sinusitis
- Bronchitis
- Headaches
- Migraine Headaches
- Visual Disturbances
- Irritation of the Eyes
- Tingling of the Extremities
- Respiratory Depression
- Wheezing
- Hydrocarbon Pneumonitis
- Corneal and Conjunctivitis Irritation
- Nausea or Loss of Appetite
- Vomiting
- Diarrhea
- Epigastric Pain
- Medical Counseling for the Acutely Exposed Pregnant Woman
- Bronchospasm
- Disorientation

Additional health concerns based upon the research of the toxic exposure to phthalates, formaldehyde, polyvinyl chloride, and hydrochloric acid include the following:

- Long-term Liver and Kidney Damage in Children
- Angiosarcoma of the Liver
- Higher Risk of Nose, Throat and Oral Cancers
- Increased Incidence of Birth Defects
- Miscarriages

- Decrease in Male Sexual Performance
- Testicular Damage and Decreased Male Fertility
- Myeloid Leukemia
- Hematopoietic and Lymphatic Cancers
- Lung Cancer
- Neuroendocrine and Endocrine Cancers

Major long-term health issues are of major worry due to residents' being asymptomatic at this time. It cannot be ruled out at this time that residences' health may deteriorate with time and the onset of symptoms may manifest themselves in a progressively worsening manner that are causally related to said exposure. Children may be more vulnerable because of relatively increased minute ventilation per kg and failure to evacuate an area promptly when exposed. It was noted that the residents that have "lifetime" exposure limits have an increased risk of long-term irreversible symptoms (*as defined by the California Environmental Protection Agency Office of Environmental Health Hazard Assessment, citing CaOEHHA REL's Air Toxics Hot Spot Program publications*).

*"The chronic REL is intended to be protective for individuals exposed continuously over their lifetime. Scientific data available to assess these effects generally consist of discontinuous exposures over a shorter interval. In such cases default or chemical-specific assumptions are required to estimate concentrations causing comparable effects if exposures were to be continued over the entire lifetime. From a practical standpoint, chronic exposure for humans is considered to be greater than 12% of a lifetime of 70 years. Thus, human exposures of greater than 8 years are considered chronic exposures and are not adjusted either in their calculation or application"*

Therefore, residents that have been exposed to the off-gassing windows for a time period of eight (8) years or greater will experience the long-term effects of toxic exposure. Toxic off-gassing windows that have been installed in homes with install dates that range from 1998 through 2004 by Republic Windows and 2005-2010 have already experienced a lifetime chronic exposure level, *ongoing*.

## **JOINT COMMITTEE MEETINGS & COMMISSION MEETINGS**

### **POLITICAL INVOLVEMENT**

Once the CDA and RSIP personnel continued a path of silence in the early months of 2017, outreach to political leaders was an essential route to take in order to protect the residents of the City of Chicago. Alderman Marty Quinn has been relentless on getting to the bottom of said issue as well as Alderman Ed Burke, Alderman Mike Zalewski and Alderman Raymond Lopez. Ongoing support continues from Michael J. Madigan, Illinois speaker of the House and the state representative for Illinois' 22nd District, as well as, Daniel W. Lipinski, U.S. Representative for

Illinois's 3rd congressional district. Repeated requests for comment, status and direction on this issue to the City of Chicago's Mayor, Mr. Rahm Emanuel has gone unreturned to date.

Alderman for the City have been thoroughly invested in getting to the bottom of the cause of the off-gassing windows as they call joint committee meetings between the City of Chicago Department of Finance and the City of Chicago Department of Aviation. Alderman Marty Quinn leads the pact by holding a multitude of phone conferences, in-person meetings, group discussions, written correspondence, demands for formal testing and joint committee meetings. His day-to-day involvement has proven that his constituents deserve an answer of the toxic and hazardous exposure and ensures that the CDA provide answers for homeowners' concerns and be held accountable for their actions.

Actions to promote and make positive change have occurred by adopting amendments the City of Chicago Municipal code (as described above) have been done because of the political leadership. Ongoing discussions about proposing legislation for corrected statutes for the State of Illinois' Indoor Air Quality Act is underway. Future scheduled joint committee meetings will be upcoming in the weeks ahead as many questions remain unanswered by the CDA.

#### **MIDWAY NOISE COMPATIBILITY COMMISSION MEETING** **July 27, 2017**

This is the first attended public meeting by the homeowners in regards to the odorous off-gassing toxic windows. As the MNCC chair and board members were unaware of the issue at hand, the upwards of one hundred (100+) homeowners clearly brought the board up to speed regarding their outstanding issues as well as the unethical and fraudulent behavior by the CDA and RSIP personnel. The "Audience Question and Answer Session" was well attended and homeowners brought their concerns to a much public light with heart in hand and display of disquieting fear about the off-gassing window toxins and exposure. Several news outlets published the events in print and on television (*See media articles and news coverage section below*).

#### **CITY OF CHICAGO JOINT COMMITTEE MEETING** **August 23, 2017**

The purpose of this meeting was for the Alderman to provide answers to the community about the off-gassing windows as the CDA was not taking the matter as seriously as it should. Alderman Edward Burke stated *"The Committee on Finance took up this matter at the meeting that we held prior to the last Council meeting on the 26th of July, and it was done so because this Council was not to meet again until September, 14 and we thought that the matter was urgent enough to take action and require the head of the Chicago Department of Aviation, the Commissioner, to appear before a Joint Committee of the Committee on Aviation and the Committee on Finance regarding the very clear concern of the residents of this community about the concerns that they have on the windows which are installed under the Midway Airport Residential Sound Insulation Program."*

A summons was issued to the Commissioner of Aviation, Ms. Ginger Evans, for her appearance at this meeting to address the community. She failed to comply with the summons order. Despite Ms. Ginger Evan's lack of concern for the community, Alderman Edward Burke advised the community that *"You are going to get justice"* regarding the CDA's lack of

commitment to the homeowners. The CDA representatives at this hearing were Mr. Mort Aimes, Esq. from the Department of Law and Mr. Aaron Frame, Deputy Commission of Aviation. Alderman Edward Burke further questioned Mr. Aaron Frame regarding the Commissioner lack of compliance with Mr. Aaron Frame noting a scheduling conflict for a "*prior commitment*".

Alderman Edward Burke addressed the community noting "*Apparently it's not important enough for the Department of Aviation to have the Commissioner comply with and order of the City Council to be present*" Alderman Raymond Lopez further adds "*It is an insult to our communities, and it is a direct insult to the legislative process that makes up this City Council. And it is outrageous that she is not here today*" subsequent to this discussion, several additional questions were answered about testing from the CDA.

Alderman Marty Quinn requests that the CDA guide the community through testing parameters. In response to testing questions, Mr. Mort Aimes stated "*the Department of Law has retained a consulting firm that is a specialist in air quality issues as well as industrial hygiene*" "*the testing will be done to figure out exactly what gases these windows are emitting. And then, armed with that knowledge, we plan to do in home air sampling*". Through a long and vigorous process to get the CDA engaged with the homeowners, this is the first occasion in several months that the CDA, and their representative, expressly acknowledges that this off-gassing is a serious problem.

Alderman Marty Quinn raises a multitude of concerns, taking note that "*when it comes to matter regarding the health of our constituents, we will leave nothing to chance*". The ongoing issues with the CDA's lack of diligence and failure to take this issue seriously is discussed by several Alderman with Alderman Raymond Lopez adding "*I would hope that Aviation would quit treating this process like the farce that it seems like to be today and actually start getting serious about helping all these residents out here who have gone to their elected leaders who then have gone to you and expect action. I think that nothing short of that is owed to these communities and to these aldermen here*".

Upwards of twenty-five (25) homeowners testified and provided statements at this hearing. The consensus of the homeowners is that this issue needs a diligent resolution to ensure the safety of the homeowners. At the forefront of this issue, Mrs. Pamela Zidarich, Vice-President and Co-Founder of Midway Defective Window Recipients, NPF testified to the background particulars of this issue. It should be noted, *with emphasis added*, the unethical and fraudulent actions by the CDA's hired agent Mr. Andy Rivers of Civcon Services Inc. arrived at her home, "smelled" the windows, and after being asked by Mrs. Pamela Zidarch "Are you [the CDA] going to replace my windows" blatantly remarked back "Well if they did, you would be the first". Mr. Andy Rivers proclaimed this sarcastic lie to Mrs. Pamela Zidarch knowing that a few homes were already experiencing off-gassing windows, years prior to this instance, that subsequently received replacement of the off-gassing windows. Therefore, this is another significant example of the CDA and their hired agents/employees partaking in purposeful fraudulent and deceitful behavior.

*(See attached Exhibit 1, incorporated herein)*

**CITY OF CHICAGO JOINT COMMITTEE MEETING**  
**October 3, 2017**

This is the second of a series of joint committee hearings between the City of Chicago Department of Finance and the City of Chicago Department of Aviation. Alderman Edward Burke noted the two (2) items on the agenda being *“Number one is a substitute order requiring the Commissioner of Aviation to appear before the Joint Committee. Number two is a proposed order calling for the Commissioner of the Department of Aviation to appear before the Joint Committee and show cause why she should not be held in violation of an order requiring her to appear before the Joint Committee regarding the Midway and O'Hare Sound Insulation Program”*. It should be noted that Ms. Ginger Evans, the Aviation Commissioner was present pursuant to order by the City Council.

Moreover, Alderman Edward Burke displayed a great deal of advocacy and empathy on behalf of the community, advising Ms. Ginger Evens that she [as well as her representatives] *“pledge to the people of the southwest side that you and the Department are going to do a better job going forward. But before you do that I want to be clear on what I mean by a better job. Let the facts lead where they may, but let's find the truth and find it quickly. A better job requires weekly communications to elected officials and residents affected in the areas, most especially the people who have these windows installed in their homes. A better job necessitates transparency. When I evaluate any decision, I make as a City official, I ask how would I feel if this directly affected my family. That's the standard you need to employ, Commissioner.”*

Furthermore, several members of the CDA were present, including a representative from Amec Foster Wheeler Environment and Infrastructure, Inc. (hereinafter referred to as Amec), in order to answer the outstanding questions by the Alderman and the community in conjunction with the progression that has been made. Prior to discussing specifics at the hearing, it should be noted that Ms. Ginger Evans failed to appear at the October 23, 2017 meeting as she was enjoying a luxurious holiday at the Grand Tetons in Bozeman, Montana; busy “Tweeting” on social media about the great time that she was having. Alderman Edward Burke expressed concerns about her lack of commitment and responsibility she has to the residents with toxic and hazardous windows noting that *“as a public servant(s), we have responsibility to adapt.”*

An on the record discussion was had between Alderman Mary Quinn and Ms. Ginger Evans, Mr. Aaron Frame and Mr. Mort Aimes regarding the testing methodology, or lack thereof, for the initial screening at the residences. Several questions were asked about screening that remained unanswered. Alderman Marty Quinn then posed questions to Mr. Kirk Sweetland, an employee/ representative from Amec, whom was sworn in under oath, to provided testimony regarding in-home and chamber testing. Alderman Marty Quinn and he discussed numerous items about what testing consists of, length of in home testing, etc. When Alderman Marty Quinn asked about the amount of homes that need to be tested in order to have a proper assessment of the exposure, Mr. Kirk Sweetland testified that *“We've indicated say a minimum ten percent, so that's what we're working with. Whatever the final number is, is ten percent of those”*.

Likewise, Mr. Kirk Sweetland, when asked about the minimum testing percentage/ number of homes to be tested, he stated *“a rule of thumb in that type of sampling that ten percent is very common. If you look at the data as it comes out and you do an evaluation, is it really representative, so it's an initial survey”*. When asked by Alderman Quinn what Amec was looking for when they

were administering in-home testing, Mr. Kirk Sweetland testified in part that *"we use very sophisticated sampling techniques that sample the air. Those samples then go to a very highly qualified lab that does the analysis. The analysis that we use is very broad-based. We look for what we call volatile organic compounds. VOCs is the common term. And by doing that, it goes to the lab. We have target compounds we're looking for, but we also have the ability to identify compounds, and that list can be 100,000 different chemicals that we can actually see if they are there."*

Mr. Kirk Sweetland continued to testify inasmuch that:

*"There are compounds that have been identified as far as odor. There is potential health impacts associated with odor. Those don't necessarily coincide. So what -- you know, what we need to do is to look at all of those and from a health, potential health impact what we do is compare those to published values. The real published values are out there actually from California, a set of environmental health standards that -- California has been very progressive in indoor air quality. They prepare a list. They have identification of, you know, potential health impacts, long term, lifetime and those -- that list is based upon an average annual exposure."*

*"We've identified criteria that we want to maintain. That is sunny days because that's part of the driver for elevating temperature"*

*"we're going to do what we call in chamber, we've actually already started that, where we take windows, we take representative windows -- once the people say okay they have odor, problems with those, we put them in an enclosed chamber and we control the temperature of that chamber. We can run it high. We can run it low and it's recirculated, so it actually -- when I say conservative, I mean most protective of, you know, finding values that give us conservative assessments of what would occur. They'd be much conservative compared to something that would be in a house where you've got recirculation of air inside and outside."*

Further dialog exchanged between Alderman Marty Quinn and Mr. Kirk Sweetland, specifically noting the following verbatim from the record:

ALDERMAN QUINN: Has your company ever performed testing on windows?

MR. SWEETLAND: We've done a lot of indoor air quality monitoring. When you do that, you're normally looking at the room. You don't normally focus on a specific item in the room.

ALDERMAN QUINN: So you haven't? You haven't?

MR. SWEETLAND: Specifically for a window?

ALDERMAN QUINN: Yeah.

MR. SWEETLAND: Not specifically for it but as part of an overall room condition.

ALDERMAN QUINN: So you haven't. Okay. Okay.

*(See attached Exhibit 2, incorporated herein)*

### **MIDWAY NOISE COMPATIBILITY COMMISSION MEETING October 26, 2017**

Dozens of homeowners yet again appear at this MNCC meeting to express concerns relating to the off-gassing windows. The Chairman and the Board allow homeowners to provide comments and statements regarding their experiences, frustrations, fears, hindrances and concerns regarding said windows. The Board attempts to answer questions although you can interpret by their answers that they are not provided up to date information from the CDA. Mr. Aaron Frame is present to attempt to provide clarification to the members of the MNCC, however, by reaction to his statement from the crowd, homeowners continue to stay frustrated at the logistical aspect of the lack of return calls, unreturned messages, inadequate times for inspections and several other poignant issues. Mr. Aaron Frame provides no solution to the ongoing problems at this time.

### **O'HARE NOISE COMPATIBILITY COMMISSION MEETING November 3, 2017**

Notwithstanding the active homeowner participation at the MNCC meeting(s), this ONCC meeting is explicitly unwelcoming to homeowners participating in the RSIP. Three (3) members of the Midway Defective Window Recipients, NFP attended this public meeting to ensure that all members of the ONCC Board are contemporaneously made aware of the off-gassing window issues that directly relate to the O'Hare community. Abiding by the rules of the ONCC, each of the members filled out a written card with the pertinent information filled out that was handed in to the personnel of the ONCC in order to speak and make public comments before the Board. It shall be noted that ONCC Chairman Ms. Arlene Juracek **refused** to let the Midway Defective Window Recipients, NFP members speak after Mr. Aaron Frame advised her that our comments would not be needed as "our issues do not pertain to the residences at O'Hare". After much commotion and sudden uproar by our members, Ms. Arlene Juracek allowed only one (1) of the three (3) members of this non-profit organization speak, subject to the applicable time restraints of three (3) minutes time.

Pursuant to the First Amendment of the Constitution of the United States of America 1789 (rev. 1992) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances; As well as the Illinois Compiled Statutes, General Provisions: Open Meetings Act (5 ILCS 120/) and The State of Illinois Public Act 096-1473: Open Meeting Act (5 ILCS 120/2.06(g)) Any person shall be permitted an opportunity to address public official under the rules established and recorded by the public body, The ONCC is clearly in direct violation of the above protected laws for freedom of speech for their refusal in allowing members of the Midway Defective Window Recipients, NFP to speak at this public meeting.

With attention to specific matters relating to the ONCC, the Chairman allowed several other members of the O'Hare community to speak without any hesitation or defiance. It shall further be noted in this instance that Mr. Aaron Frame sat to the left of the Chairman Ms. Arlene Juracek, whispered several private statements into her ear, and immediately following Mr. Aaron Frame's statements, she then declared that she was not going to allow our three (3) members to speak, but would only allow one (1) of the three (3). As our non-profit continues to advocate on behalf of not only the Midway community, but also the O'Hare community, we find that the "secret statements", pushback and restraint from the Chairman of the ONCC and the Deputy Commissioner of the CDA on the refusal to allow us to address the Board, is a clear violation under the law, unethical, a breach of their fiduciary duty and tantamount to fraud.

Further demonstrating wrongdoing, Mr. Aaron Frame then provided a statement to the ONCC to refrain from any additional commotion, stating "We have had a few complaints about smelly windows, but don't worry Board, we have addressed and resolved those issues and do not anticipate any more issues moving forward". This statement to the ONCC is in direct opposition to Mr. Aaron Frame's sworn testimony under oath on both August 23, 2017 and October 3, 2017 and his representations to the Board of the MNCC.

**The question then becomes- What else are they [the CDA] trying to hide?**

#### **CITY OF CHICAGO JOINT COMMITTEE MEETING December 11, 2017**

A third joint committee meeting was held between the City of Chicago Department of Finance and the City of Chicago Department of Aviation. Alderman Michael Zalewski noted the two (2) items on the agenda regarding the amendment and addition to the City ordinances regarding extension of the warranty of windows and testing percentage of windows. (*cited above in Product Warranty Status section*) Several items regarding warranty of windows, funding, surety bonds and testing were discussed amongst the Council on the record. Specifically noting items regarding in home air quality testing by Alderman Marty Quinn as he addresses the CDA "*I would be very, very cautious about putting a ton of stock into your initial testing. As we've concluded together, most of these complaints are coming in summer days, on sunny days where it's really hot. To the Commissioner's point about when this testing took place, it was in the late fall, early winter, so I would be cautious about putting all your eggs in that basket with those tests and parading around saying that we have results because I would say that they're incomplete results at this point.*"

Previous statements from the CDA, included the time frame in which the Alderman and the public would be receiving the report of the testing from Amec, were again confirmed on this date that the results would be published at the end of December (approximately 3 weeks from the date of this hearing). Alderman Anthony Napolitano made a statement to the CDA regarding the constituents of the 41<sup>st</sup> ward around O'Hare. He expressed concerns that the residences of his respective ward were not provided any type of notification regarding off-gassing windows. He advised "*I was told that there wasn't very many houses in the 41st Ward that had Sound Solution until I asked for those actual numbers, and that number actually came to 686 homes that had the windows from Sound Solution. I asked later if those 686 people had been contacted to be informed, if they're not watching the news, don't read the newspaper or not on line about what is going on, and I was told that they have been, and I asked for that list of those addresses which you had given*

*me but without any phone numbers to contact anybody. Luckily our neighborhood is a two-degree separation, and I probably knew about 30 to 40 percent of the people on that list and called them personally and asked them if they had any information about what is going on based on the windows and the smell, and they said no, nothing.”* Also commenting on the CDA’s testing Alderman Anthony Napolitano stated *“I just think that something needs to be done. I think this time line needs to move a little bit faster. I think we need to get on whoever's conducting this research and ask for some results sooner.”*

Several Alderman testified regarding the CDA’s inaction about the warranty ordinance, off-gassing windows situation as a whole and testing procedures. Alderman Raymond Lopez added *“Twenty-one thousand people have windows that may make them sick, that may make them – their families sick, and it is not acceptable that we continue to be unwilling to give them the most basic of yeses, that the City that told them to do this will take care of them. So I hope that you and your team consider that as this Body moves forward with this legislation which I hope all of my colleagues will support because this goes far beyond the simple warranties. This goes to our obligation to our residents and to the program that we say that we support.”*

The joint discussion amongst Alderman continued noting that Alderman Leslie Hairston relayed her frustrations with the CDA on several other issues. She stated as she addressed the CDA *“So when I hear these issues from my colleagues, I know that it's true, and the responsibility is on your Department who is dishonest and quite frankly can't be trusted, cannot be trusted.”*

Alderman Raymond Lopez’s additional comments about testing procedures state in part that: *“ten percent [of 21,000 homes with these windows] is from a qualitative standpoint sufficient for statistical sampling but not when you're limiting the pool to only the people who have come forward. It should be 10 percent of all the windows across the board so that 2,000 windows get randomly checked to see what's going on so that you can get a true idea and sense of what's going on. At this rate the information you're going to receive will lie within the statistical margins of error and in my view give you the grounds and the opportunity to avoid doing anything in the future because you will write it off as an anomaly as opposed to something that is representative of the greater situation people on all sides of the City are facing.”*

Furthermore, several statements by the Midway Defective Window Recipients, NFP were made at this hearing. As issues of the members of the City Council are discussed, a reiteration of the CDA’s lack of importance of this situation is broadened to include all issues with a statement from Ms. Anne Prevenas, President and Co-Founder of the Midway Defective Window Recipients, NFP on behalf of the community: *“Apparently we have either outright failed to express that the homeowners are concerned or the CDA continues to undermine our intelligence and purposely try and mislead the City Council and the community by ceasing to take a stand or resolve the problem that they have created. They are not taking us seriously, and they are making a mockery of our lives. They refuse to provide us basic human respect. Our homes are still plagued with toxic exposure that is causing harm to the community. Does it have to get to the point where a causally related death needs to occur for them to take us seriously?”*

Mrs. Pamela Zidarich, Vice-President and Co-Founder of Midway Defective Window Recipients, NFP provides an additional statement and plea to the City Council and CDA proclaiming: *“We formally request that the RSIP cease and desist any more installation of windows until they know the root cause of this problem and figure out how to eliminate it because*

*otherwise they are just throwing good money after bad and causing more problems for more homeowners. That is just craziness”*

*(See attached Exhibit 3, incorporated herein)*

## **MIDWAY NOISE COMPATIBILITY COMMISSION MEETING January 25, 2018**

As test results from Amec were released a few weeks prior to this meeting, this was the first opportunity the community and homeowners had to address the MNCC and Mr. Aaron Frame of the CDA. Homeowners saw through the incomplete testing and the lies that were published in the homeowner letter released, signed and authored by Mr. Aaron Frame on behalf of the CDA. The methodology of testing was discussed amongst all who were present. It was noted that although questions were asked of the Board and Mr. Aaron Frame, very few answers were given, if at all.

## **CHICAGO DEPARTMENT OF AVIATION**

### **HISTORY & INTERACTION**

Chicago has a large well-known history with aviation since 1927 with Chicago's Municipal Airport (now Midway airport) being established just six (6) months after the first historic transatlantic flight by Mr. Charles Lindbergh. In 1929 it was the busiest airport in the world, in 1936 it held the record for the first non-stop flight to New York and by 1949 it was renamed to Midway after a battle that was fought in the Pacific during World War II. In 1981 Midway received a \$200,000,000.00 face lift and by 2002 it became an international airport after a forty (40) year gap in international flights. Again in 2015, Midway was underway with its third major overhaul with a \$248,000,000.00 in upgrades to the airport back into the glorious airport that it once was more than ninety-one (91) years ago.

In 1945, O'Hare was built from an orchard field into an airport utilizing four (4) concrete runways. Through the construction of major highways and Chicago infrastructure, O'Hare evolved into the mecca of travel in the Midwest. By 1960, O'Hare became the world's busiest airport and today has poured in billions of dollars into major construction overhauls, addition of runways, parking lots, car rental facilities, cargo facility, concessions and so much more. In 1996 O'Hare hit the 60 million passenger mark and continued on to be at the forefront of aviation in the Midwest. From 1945 to the present time, multiple billion-dollar overhauls have taken place with another \$8,300,000,000.00 expansion coming to fruition and in the process of being scheduled in the next twenty-four (24) months.

Further, with the affluent and growing history of the Chicago airports, Chicago continued to be the forefront of aviation. The CDA was established to continue this rich history moving forward and staying at the forefront of transportation for Chicago just as locomotive, maritime travel, trucking and vehicle transportation have been. Chicago will always stay the hub of the

Midwest and is very proud of its transportation, especially its airports. Given that the CDA oversees both airports, it developed a core mission that reflects the following:

- Ensure safe and efficient travel through O'Hare and Midway International Airports.
- Enhance economic activity and job creation within the City of Chicago and the region.
- Continue to grow Chicago's airports' competitive positions in the global aviation marketplace.
- Provide world class services and amenities in an environment that reflects Chicago's rich, diverse and unique character.
- Continue to be the international leader in airport sustainability by integrating environmental best practices into all aspects of the airports.

Their mission contains five (5) items, most specifically noting that they "Continue to be the international leader in airport sustainability by integrating environmental best practices into all aspects of the airports". The neighborhoods that surround the airport(s) are included with "all aspects" as described by the CDA's mission. The CDA should exercise best practices by and through all projects it undertakes. When interacting with the homeowners that have the odorous and toxic windows, however, this is not the case. The odorous and toxic windows have proven that the CDA has lost sight of any type of "best practices", in fact, the CDA continues to partake in "unethical practices" instead of "best practices".

As fully noted and described above, the CDA has stone-walled their own sound insulation programs by not using any type of "best practices" when interacting with homeowners. Several correspondences, publications, press releases and written reports by the CDA have proven to be in direct opposition to the department's testimony given at several City Council hearing and meetings. The only thing that has been consistent with the CDA is that they continue to falsely report the facts and purposely try to mislead the public.

Moreover, the CDA was forced by the City of Chicago Department of Law's attorneys to attempt to resolve the toxic odorous window issues in a manner that would freshen homeowners' trust in the CDA by using their method of "best practices" to resolve and conquer problems... but that is just not happening. Several months have passed after discussions of the very first plan of action of testing had been underway. Product chamber testing, indoor air quality testing, homeowner mass mailings, FOIA reports and internet publications have been completed to date, however, the CDA is not accurately reporting the facts of the toxic odorous windows.

Furthermore, it shall be noted that the CDA's participation with the public at the Joint Committee hearings have not been on a voluntary basis. Due to the nature of the Joint Committee hearings, it shall be noted that the CDA personnel has been present due to MANDATORY appearances per the City Council. Please pay special attention to the fact that the Joint Committee meetings have not been called by the CDA, they have been called by The Committee on Finance's Chairman, Alderman Edward Burke who calls said meetings due to the CDA's lack of information, participation, engagement and resolution of the issues with the homeowners **AND** the Alderman.

The Alderman have stressed on several occasions that the lack of response and respect from the CDA and RSIP have proven that the CDA is not performing their due diligence and ethical obligations in resolving these outstanding matters.

Accordingly, as detailed below and upon review of the documentation attached and incorporated herein, one can plainly see that massive amounts of information are missing without logical explanation for the falsehoods or one scintilla of evidentiary support.

### **AMEC FOSTER WHEELER ENVIRONMENT & INFRASTRUCTURE, INC.**

More than a several months after the CDA acknowledged that Indoor Air Quality testing needed to take place in home, the CDA commenced in home testing at nine (9) homes starting on October 17, 2017 all the way through December 16, 2107. The CDA opportunely pushed off all in home air quality testing to colder weather and undesirable outdoor conditions that would lessen the toxic odors because the catalyst of the off-gassing, the sun, wouldn't be present. They purposely eliminated the sun which is the mechanism that activates the chemical process that causes the windows to off-gas. It shall be known and perfectly clear to everyone that the CDA's sole purpose of pushing off this poorly timed testing to cold and/or cool temperatures was to ensure that the CDA's testing results returned as "unfounded". Specifically noting that this is due to the timing choice of the testing guaranteeing that the results would reflect the lowest possible exposures. Therefore, again, we have on good faith that the CDA, a governmental agency, is trying to purposely mislead the residents of the City of Chicago involved with the RSIP which is tantamount to fraud.

Keeping in mind the conditions as described above, the report from Amec states several items in which the CDA has overlooked, unheeded, and outright ignored to acknowledge. Methodology for testing was not within the expressed State of California Indoor Air Quality Guidelines; outside the realm in which Amec testified; and completed in manner in which would not recreate/reproduce off-gassing conditions; and therefore, said report is insufficient, incorrect, invalid, and would further deem that this report be inadmissible.

Noting a few wide-ranging items:

- Chamber testing of window products were tested at 105 degrees in a small "average bathroom sized" room in dark conditions.

***NOTE: The chain of custody for windows that underwent the chamber testing is MISSING; the storm portion of the windows is MISSING making the product that was tested incomplete; and most importantly, the catalyst of the SUN/UV exposure is MISSING and therefore would deem this test INVALID!***

- Testing of nine (9) homes of Sound Solutions windows were tested in October 2017 through December 2017 on days that had little to no sun/ultraviolet exposure, temperatures under 50 degrees Fahrenheit and shortened winter days due to Day Light Savings Time.

***NOTE: Testing was completed on days with cool or cold temperatures and limited SUN/UV exposure which would make the results inaccurate and the baseline for testing INVALID!***

- Test results find that FORMALDEHYDE was detected in both chamber and in-home testing.
- It needs to be recognized that this report presents a VERY LIMITED SAMPLING set particularly in regard to assessing formaldehyde influences.

**NOTE: More testing MUST to be completed in homes in order to show an accurate representation of the exposure conditions of windows that would ensure TRUE results.**

- There is insufficient data to reasonably identify those (off-gassing) impacts at this time.
- Further assessment of conditions experienced under more extreme temperature conditions appear warranted.

**NOTE: The CDA's press release (discussed further below) representation that the off-gassing test "FINDS NO EVIDENCE OF HEALTH IMPACT" is logically and expressly FALSE as their own expert advises that more testing is warranted in order to complete a proper assessment of the exposure.**

Consequently, based on the chamber testing, testing methodology, and the lack of testing standards followed, this published report is **invalid on its face**.

#### **FREEDOM OF INFORMATION ACT (FOIA) REQUESTS**

Multiple requests were made to the CDA pursuant to FOIA requests for list of homeowners that complained to the RSIP about odorous windows have been answered by the CDA that there is "no information available". Noting that this occurred on seventeen (17) different occasions over a period of five (5) months. The Midway Defective Windows Recipients, NPF has been requesting multiple items from the CDA pursuant to FOIA requests with no responses of substance to date. One particular request to the CDA via FOIA contained many line items for request of information. The CDA returned the request advising that the information that was being asked for contained a reply that was so voluminous that the CDA would experience a burden on the department. No documents have been returned to date as requested, even after narrowing request parameters.

The continued lack of response also was experienced by an O'Hare resident that sent multiple FOIA requests for related documents including contracts and surety bonds related to their particular property address. The CDA's refusal to respond landed them in the Circuit Court of Cook County Illinois in front of a judge to order the CDA to answer the request. It was noted that the homeowner, Ms. Ada Filippini, decide to retain counsel to force the CDA to produce FOIA documents as described. The CDA by and through its representatives at the City of Chicago Department of Law attempted delay tactics in order not to produce documents such as multiple continuances and filing motions to substitute the judge. After the presiding judge ordered the CDA and its counsel to comply with the FOIA request with upwards of seven hundred (700) pages of contracts relating to Ms. Filippin's property address. The time frame from initial request to documents in hand, in this instance, took five (5) months' time. (*Citing: Ada Filippini v. City of Chicago Department of Aviation, 17 L 011429*)

Moreover, Ms. Sandra Fried, Freedom of Information Officer for the CDA, was asked by the Midway Defective Window Recipients, NFP to produce "*any and all documentation and*

correspondence regarding Amec Foster Wheeler and their agents/ employees that were hired by the City of Chicago and the City of Chicago Department of Aviation". The entire response stated as follows:

*"Regarding your request for call logs and all documentation and correspondence with Amec Foster Wheeler, information of this nature is not subject to release under FOIA pursuant to Section 7(1)(m) of FOIA. Specifically, Section 7(1)(m) exempts from disclosure "...materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body" and further, contain discussions of matters that were prepared at the request of, pursuant to the direction of, and/or in consultation with City attorneys, on behalf of and for the purpose of advising the CDA. Additionally, Illinois Supreme Court Rule 201 deems privileged "the identity, opinions, and work product of a consultant." The City's Law Department has engaged the consultant for which you have sought documentation in anticipation of litigation and therefore, the materials you have requested are exempt from disclosure under Section 7(1)(m) of FOIA and Rule 201 and have been properly excluded."*

Noting that the reader should pay close attention to the last sentence in the response above regarding the involvement of Amec Foster Wheeler Environment and Infrastructure Inc. The CDA DID NOT hire Amec to help the homeowners get to the bottom of the root cause of the off-gassing windows, they were hired for the sole purpose of **PREPERATION OF LITIGATION** in anticipation of a criminal, civil or administrative proceedings and no other reason heretofore.

## **HOMEOWNER NOTICE LETTERS**

Correspondence dated October 25, 2107 was mailed to O'Hare related RSIP participants totaling 2,034 residents and to Midway related RSIP participants totaling 3,006 residents, equaling 5,040 residents that have been notified in writing by the CDA via USPS Regular Mail. This letter states as follows:

"As part of the sound insulation work performed through your participation in the City of Chicago ("City") Department of Aviation's ("CDA") Residential Sound Insulation Program ("RSIP") at Chicago Midway International Airport ("Midway") [O'Hare International Airport ("O'Hare")], acoustical windows were installed in your home. You are receiving this letter, because the windows installed in your home were manufactured and warrantied by Sound Solutions Windows & Doors, LLC ("Sound Solutions"). Although Sound Solutions provided a 10-year warranty on your windows, it is not honoring warranty obligations, because Sound Solutions ceased its operations in 2014. Recently, some homeowners have raised concerns about odors emitted from a small percentage of the acoustical windows manufactured by Sound Solutions. The CDA is taking action to address the concerns of these homeowners as quickly and thoroughly as possible while determining the root cause of the odors to understand any potential impacts better. We would like to inform you of our thorough approach to this issue, including the following actions to date:

- First, the CDA is committed to performing odor inspections in every RSIP home which reports a concern to us. If you suspect your windows are emitting an odor and would like an odor inspection performed in your home, please call the Midway RSIP Office at 773.838.5632 to schedule an appointment.

- Second, to determine the root cause of the odor issue and whether it is actually affecting air quality, the City has retained a specialized environmental and industrial hygiene consultant, Amec Foster Wheeler Environment & Infrastructure, Inc., to test for the cause of the odors that emit from some windows. This testing – both a lab test of the materials and indoor air quality testing – is underway. The CDA will outreach to you again once we receive the report on the results of this testing program.

Please know that our commitment through the RSIP is to improve the indoor quality of your home, and if you suspect that your windows are emitting an odor, we want to hear from you.”

A second piece of correspondence dated January 18, 2018 was mailed to homeowners regarding the first round of test results published by Amec. It is unknown to date how many letters were mailed to residents at this time. This correspondence is also published on the RSIP website and states as follows:

“As a follow-up to our October 2017 letter, we are writing to inform you of the findings from the first phase of testing of odorous windows. As you know, in September, the City of Chicago (“City”) began a thorough, independent environmental testing program to determine any potential health impacts associated with odors emitted from some vinyl windows installed as part of the Residential Sound Insulation Program (“RSIP”). While we were unable to identify the exact cause of the odor, **we are pleased to inform you that the results of phase one testing indicate that the windows do not have any significant impact on indoor air quality or related health concerns.** As promised, a full report of the findings by the certified industrial hygiene consulting firm, Amec Foster Wheeler Environment & Infrastructure, Inc. (“Amec”), will be made available to you and the community on the Chicago Department of Aviation (“CDA”) website this week. The Amec report contains findings from the in-home indoor air quality and laboratory testing performed, which screened for more than 200,000 compounds in the home environment. The term “indoor air quality” generally means the quality of air inside and around homes and buildings, especially as it relates to the health and comfort of the home and building occupants. The report findings are compared to indoor air quality guidelines, and are summarized below:

- There is no evidence that RSIP windows have any significant impact on air quality inside the nine homes;

- Based on the difference between test results from pre- and post-window replacement, indoor air quality in all nine homes tested below the Illinois Department of Public Health and/or the State of California relevant guidelines, with

the exception of formaldehyde detected in one home, which the report indicates is most likely from sources in the home other than the windows.

The Chicago Department of Public Health (“CDPH”) has reviewed the testing results in detail, as well as the methodology employed throughout the first phase of testing, and determined that the methodology was credible. Based on these findings, CDPH believes that it is highly unlikely that the RSIP windows, nor the levels of formaldehyde detected, have any significant impact on indoor air quality, and has committed to future review of results in the second round of testing this year.

Because further testing is recommended by the testing experts to develop further information regarding window off-gassing and the sources of the odors, the City will again partner with Amec on a second round of testing this spring and summer. This will provide a better understanding of the window off-gassing issue with inclusion of data during the warmer months of the year, and will ultimately inform our recommendations for a solution to mitigate the odors.”

The above letter to homeowners has been released under false pretenses, contains inaccurate interpretation of the testing results by a non-qualified individual and are at best, premature. The bold and underlined statement is reflective of the style in which the CDA chose to flaunt around a misrepresentation of the facts. We find it highly suspicious that the CDA purposely misstated the facts as the report from Amec stated that “*There is insufficient data to reasonably identify those (off-gassing) impacts at this time*” and “*Further assessment of conditions experienced under more extreme temperature conditions appear warranted.*”

Further, said correspondence did not reflect the *results* of the testing and therefore, the false statements by the CDA should be retracted with additional correspondence to the homeowners stating that the test is inconclusive due to the erroneous testing time periods in cool and/or cold temperatures; inadequate methodology of chamber testing, citation of entities that lack guidelines of Indoor Air Quality; testing in direct opposition of the approach that Amec testified to under oath; as well as the fact that the test **REQUIRES** additional testing in order to make an assessment. This is just another example of the duplicitous and deceptive statements along with the fraudulent actions by the CDA.

On January 12, 2017 the CDA released a Media Relations letter to the media discussing the unqualified and inaccurate opinion of the Amec testing results titled “**CHICAGO DEPARTMENT OF AVIATION ANNOUNCES INITIAL WINDOW TESTING FINDS NO EVIDENCE OF HEALTH IMPACT- CDA will do more testing to determine cause of sporadic odor issues**”. In it of itself, the letter states both “*Amec Foster Wheeler Environment & Infrastructure, tested for more than 200,000 compounds in the air and found no evidence that the RSIP windows have any significant impact on indoor air quality or related health concerns*” and “*phase one of testing **did not identify an impact to indoor air quality***”.

Observing the full and complete definition of “identify” the CDA clearly released a false statement as it did not establish or indicate who or what (someone or something) is. THE TEST IS INCOMPLETE yet the CDA felt the need to implement stall tactics to manipulate testing results; proclaim outright lies to the residents and media outlets; publish purposefully misleading

information; participate further acts of deception; operate in a repeated unethical manner which results in willful and wanton behavior that is again, tantamount to fraud.

## QUESTIONABLE ODOROUS WINDOW REPORT PUBLICATION

A twenty (20) page "Residential Sound Insulation Program: Odorous Window Report" (hereinafter referred to as the OW Report) was published by the CDA and released to the public for review via their website in March 2018 although it is dated December 29, 2017. Several items in the report are questionable and become yet another example as to how much the CDA is purposely misleading the public and other agencies by falsely reporting the facts. There are three (3) sections with twenty-one (21) respective subsections. Of the twenty-one (21) subsections, thirteen (13) subsections contain a gratuitous amount of falsehoods and factualness inconsistencies with specifics regarding odorous windows. Therefore, specifically noting a condensed number of factual inconsistencies below-- please pay close attention to all the tall tales and avoidance of factualness published in said report by the CDA.

The CDA's OW Report stated that three (3) reports of odorous windows occurred prior to the Spring of 2017. Specifically noting the testimony of Mr. Aaron Frame, he stated on October 23, 2017 that "*The first complaint we received in the spring of 2015. We had two, one in April, one in May.*" On December 11, 2017 Mr. Aaron Frame testified that "*Alderman, I would say that -- as we've talked about at prior meetings, we had one or two isolated cases before 2017.*" Ms. Ginger Evans further testified on October 3, 2017 that "*I don't know a lot except that two complaints were received, one at O'Hare and one at Midway, and the windows were replaced at that time.*" It is highly suspicious that both the Commissioner and Deputy Commissioner testified that the number of the first reports of odorous windows was one (1) or two (2) homes. The OW Report is in direct opposition to their testimony on the record by now stating through the OW Report that there were three (3) complaints of odorous windows.

On October 3, 2017, Alderman Marty Quinn specifically asked Ms. Ginger Evans "*Commissioner, is there a reason why the Chairman of the Aviation Department wasn't notified, Alderman weren't notified about these windows being replaced in 2015*" [when being asked about the first reports of odorous windows that the CDA replaced in 2015]. Ms. Ginger Evans replied, "*windows that we've replaced it was two, so -- there were no more complaints received*". So, when did the CDA lie? Did the CDA lie in the text of their written OW Report? or Did Commissioner and the Deputy Commissioner lie when they testified to a different number while under oath? To date, Ms. Ginger Evans and/or Mr. Aaron Frame have not moved to strike their prior statements from the record nor include supplemental testimony.

Noting another inconsistency regarding the OW Report, it referenced that the discontinuation of Sound Solutions involvement with the RSIP contracts was solely for "quality assurance problems". Contrarily, Mr. Mort Aimes, Esq. testified on August 23, 2017 that "*The Law Department currently has a 13 and a half million dollar judgment against Sound Solutions for MBE fraud and that has gone to collections.*" As a well-versed attorney from the Law Department regarding the topic of RSIP toxic odorous complaints, Mr. Mort Aimes, Esq., testified on the record that the reason that Sound Solutions wasn't completing any additional RSIP contract work solely because of the DBE/MBE fraud. The Court record also reflects same.

Now, is it new testimony by the CDA that DBE/MBE fraud never occurred and that the sole reason Sound Solutions discontinued RSIP contact work was due to “quality assurance problems”? Should the OW Report be the CDA’s be deemed an accurate and reliable source of the facts? Mr. Mort Aimes, Esq. (who represents the CDA) has an absolute duty as a licensed attorney, to report that the City’s legal team lied when they filed the verified the complaint against to Sound Solutions for fraud versus the new testimony of “quality assurance problems”.

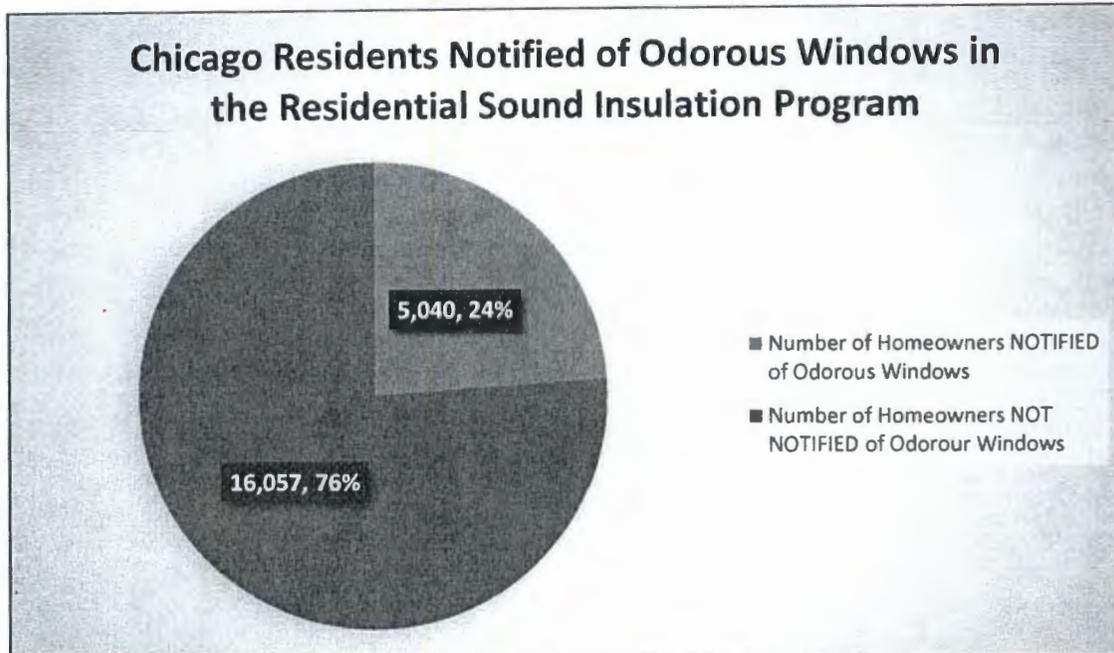
Additionally, if the City’s legal team lied about Sound Solutions DBE/MBE fraud, because the CDA’s OW Report now accounts that there are completely different surrounding circumstances for the discontinuation for the work, changes must occur in the 2009 lawsuit against Sound Solutions; and Mr. Mort Aimes, Esq. must report every attorney involved in the prosecution of the 2009 fraud case for professional misconduct. This report must be made to the Attorney Registration and Disciplinary Commission of The Supreme Court of Illinois for investigation resulting in a possible suspension of their license to practice law or probable disbarment for violating the Illinois Rules for Professional Conduct (*citing: In re Himmel, 125 Ill.2d 531, 533 N.E.2d 790 (Ill. 1988)*) If Mr. Mort Aimes, Esq. fails to report the misconduct, he himself is also involved with violating the Illinois Rules for Professional Conduct noting further that “*In re Himmel*” was a case decided by the Supreme Court of Illinois that upheld the suspension of an attorney's license for failing to report misconduct by another attorney. Therefore, either the CDA must retract their OW Report in writing, or we shall notify the respective governing entities about the new evidence by CDA produced by and through the OW Report.

Struggles with the CDA’s OW Report factual accurateness continue in regards to the “involuntary dissolution” of Sound Solutions. It was noted by the Illinois Secretary of State that the grounds for involuntary dissolution of an Illinois LLC (*citing: 805 ILCS 180/35-1(4)*), provides that a court may dissolve an LLC by a court order as a result of a lawsuit by creditors, or by the Illinois Secretary of State for failure to file an annual report or pay annual fees. Pursuant to the bankruptcy court record and the Illinois Secretary of State Certificate of Good Standing, Sound Solutions was “involuntarily dissolved” due to their failure to file and annual report and for non-payment of annual fees, with the State of Illinois being listed as a debtor in the bankruptcy matter.

It shall be further noted, and in direct opposition of the OW Report, that up to and including March 23, 2017, CDA personnel continue to advise homeowners who are out of “warranty” that they could not have inspection screenings scheduled at their homes. As the “warranty” issue no longer exists as of December 13, 2017 per the Amendment added to the Municipal Code of Chicago, yet the RSIP is still training their personnel to partake in fraudulent activities when it comes to homeowner inspection screenings. The Midway Defective Window Recipients, NFP members found out about this statement to the homeowners, then phoned the RSIP office and spoke to the representative Ms. Norma Fragosa who made this fictitious statement. When asked why she would be making this false statement to a homeowner, she replied “she didn’t know about any warranty change or any change in the law”. The RSIP and the CDA continue to partake in fraudulent activities even after they have been made well aware that changes in the warranty occurred noting that **they were physically present** in the City Council’s chambers when the Amendment was approved.

Coupled with these factors above, the reader shall place close attention to the purposely misleading and factually inaccurate pie chart graphs on page ten (10) of the OW Report. The “Homes with Inquiries and Confirmed Odorous Windows” pie chart graph states that out of 21,097

sound insulated homes that there are eight hundred four (804) inquiries and two hundred eighty-two (282) confirmed homes. This pie graph chart is based solely on false information resulting in the other three (3) pie chart graphs being obsolete as they are a subsidiary statistical pattern calculated based on the main pie chart graph. The reasons resulting in its falsehood is because of the 20,097 homes that are sound insulated by the RSIP, and per the CDA's own testimony, only 5,040 residences were put on written notice about toxic odorous windows. Per the pie graph chart below, you will notice that the CDA only advised 24% of the sound insulated homes of the problem at hand.



*Based on 21,097 RSIP Sound Insulated Homes, 5,040 Homeowners have been Notified to Date Resulting in 24% of Homeowners having been given Written Notice of Odorous Windows.*

With insufficient notice to homeowners, 21,097 homes cannot be considered in the calculation of the confirmed cases. Only 5,040 homes can be calculated in the pie graph chart as the other **16,057 residences ARE NOT AWARE of the toxic and odorous windows** despite the CDA's and RSIP's expressed knowledge of the issue. The CDA has had six (6) months' time (as of the present date) to advise the remaining 16,057 residences of the toxic odorous windows. The CDA **STILL REFUSES** to do so and continues to breach its fiduciary duty as a governmental entity by not making these residences aware of the problem in writing as they did to the 5,040 residences in October 2017. The OW Report, as approved by Ms. Ginger Evans, continues to purposely lie to the residences that are participants in the RSIP.

Finally, as the CDA "prides" themselves as being fully dedicated to providing the solution for the problem at large, they fail to miss the mark... over and over again, on all accounts particularly in regard to providing Indoor Air Quality. Indoor Air Quality by definition is the term which refers to the air quality within and around buildings and structures, especially as it relates to the health and comfort of building occupants. In this matter, there is no possible circumstance that a building occupant (homeowner) feels comfort in their building and/or structure armed with the knowledge that their windows are off-gassing toxic chemicals. The unsurmountable

risks of homeowner's health linger in mystery because of the CDA's continuous and blatant disregard to find a solution for this plague of toxic and hazardous windows.

## **MIDWAY DEFECTIVE WINDOW RECIPIENTS, NFP**

### **BACKGROUND**

The Midway Defective Window Recipients, NFP was codified in August of 2017 to assist with advocating on behalf of the community. We derived from a group of concerned Midway homeowners' that continue to diligently work hard to find an answer about the toxic odorous windows provided by the RSIP. As the difficulty with communication and transparency with the CDA and RSIP continue, we felt that it was essential to form a not for profit corporation with the sole purpose of research; research that will result in finding out the true and exact exposure components that the RSIP participants continue to suffer from. We uphold three (3) important aspects in finding the answer by and through our mission which is as follows:

- **OUR MISSION** is to provide all residents involved with the Residential Sound Insulation Program (RSIP) access to TRUE AND EXACT scientific research and results of the potential chemical exposure and potential health hazards that are a consequence of the PVC window and door products provided to the impacted communities.
- **OUR FOCUS** is to provide RESULTS directly to the Community for the problems that we currently face.
- **OUR PROMISE** is to GUIDE the Community through this troubling time with integrity and respect.

Our not for profit corporation will take all means necessary to get to the bottom of this situation and refuse to take "no" for an answer in the process. Our diligent work by and through this organization will result in finding the real answers and making positive change. We further advise that this matter of toxic and hazardous windows is that of science and engineering, safety and security, health and happiness, but most of all, ethics. We continue to guide the community with integrity and respect even if we cannot receive it in return from the CDA and RSIP. Our dedicated team is comprised of several individuals that have shown that they will take all means necessary in order to find out the real answers of the expressed issues and are also in the process of the providing safe and effective manners in which to resolve said issues.

Ms. Anne Prevenas, President and Co-Founder, is the sister of a homeowner whose family resides in the Midway area and is affected by the toxic odorous windows. Upon learning of this matter, Ms. Prevenas stepped in as one of the community activists whose goal is to obtain answers for her two (2) small nephews (ages ten (10) and thirteen (13)). Her nephews are heartbreakingly ill with severe and permanent respiratory issues from the time they were small children due to the exposure to the off-gassing window(s). Said windows are located in their shared bedroom and home, and were installed by the RSIP in 2006. She has a background in Plaintiff tort law and civil law as the senior trial paralegal in a litigation law firm in Chicago, Il for the past fifteen (15) years. She is certified in leadership management, is finishing her coursework for her Bachelor of Business

Management and is also applying for dual Law School/ Business School programs to obtain her Juris Doctor in Law and Master's in Business Administration. Her solid work ethic, knowledge and passion in fighting for her nephews, the community, and positive change, has made her invaluable to the team.

Mrs. Pamela Zidarich, Vice-President and Co-Founder, is a resident of the Midway area that received the off-gassing sound insulating windows from the RSIP in 2011. She is at the forefront of said off-gassing window issues as she the number one (1) advocate for the community since the first day this problem arose. Mrs. Zidarich and her family have been exposed to the off-gassing windows for several years and continue to be at risk on a daily basis because of the toxic off-gassing. Mrs. Zidarich is the utmost advocate on this issue and has been the furthestmost essential part of this organization due to her perseverance, dedication and commitment. She has a substantially impressive background in manufacturing and sales with detailed and vast comprehension in quality control, quality assurance, and up to date industry manufacturing standards. Mrs. Zidarich has twenty (20+) years in the Teflon and metal hose industry which provides her the experience, the profound knowledge and understanding of chemicals and a multitude of thermoplastics including PVC. Her expressed knowledge of PVC, its chemical components, factors of impact, sensitivity to temperature, sunlight and ultraviolet rays has been fundamental to figuring out the issues at hand while progressing towards a resolution for her family and the entire community. Her experience and credentials result in more than \$1,100,000.00 in sales this past year (2017) making her a top asset to her firm. She is indispensable because of her abilities in the art and science of engaging people-- by way of transitioning those skills into bringing the community together as we sort through multitude of concerns about off-gassing windows. She is the community liaison and the go-to person for problem solving, organization, connections to strategy, her know-how and most importantly her ability to obtain results.

Mrs. Victoria Whitney, Secretary/Treasurer and Co-Founder, relocated to Southside of Chicago after moving from Indiana in 1954. She is a longtime Chicagoan and has lived in the Clearing area with her husband Mr. Richard Whitney since 1973, now forty-five (45) years. Prior to retiring in 2008, Mrs. Whitney worked for Easter Seals National Headquarters for forty-three (43) years where she held positions in her Public Relations/Communications Department for twenty-three (23) years. She also managed their Conference and Travel Department for twenty (20) years. Mrs. Whitney provides an organized, genuine and honorable approach to our organization as we all reach towards meeting our set goals of obtaining results. Mrs. Whitney draws the community together as she shows everyone that friends and family are the utmost importance to her, and that we all must do the same. This authentic approach to community leadership translates to all the members of the neighborhood(s) as she establishes that by being supportive of critical issues, change will occur. In her spare time Mrs. Whitney enjoys traveling, camping, antique and thrift shopping, gardening and spending quality time with family and friends. Mrs. Whitney is essential to the team by showing all that strength is needed during this stressful and worrisome time as we sort through a plethora of concerns regarding toxic and hazardous windows.

## **COMMUNITY ACTIVISM**

The Midway Defective Window Recipients, NFP holds bi-monthly community events that welcome Midway and O'Hare residences to share their concerns, experiences, questions and encounters with the CDA and the RSIP and the toxic off-gassing sound insulating products. Being

at the forefront of these issues helps the community feel as though they are being taken care of and not ignored. We have shown that we will not back down or give in to the CDA's and the RSIP's employees/ agents and personnel as they continue to lead us down a fraudulent and unethical path as a governmental entity. We all stand strong and untied in the hundreds to get to the bottom of these toxic and hazardous off-gassing windows.

YouTube Video Presentation Link:

[https://www.youtube.com/watch?v=Yk6CTy\\_URTY](https://www.youtube.com/watch?v=Yk6CTy_URTY)

“A newly-formed non-profit organization of Midway Airport-area homeowners holds its first public meeting, at West Lawn Park on Monday night, October 23, 2017. The group's purpose is to get to the truth behind defective windows supplied to local residents through the Chicago Department of Aviation's Residential Sound Insulation Program, and to obtain a satisfactory resolution to the problem.” - Southwest News Harold, October 29, 2017

### **HOMEOWNER VIDEO SUBMISSION CITATIONS**

The Midway Defective Window Recipients, NFP performed several in-home interviews with residents that have the defective and toxic off-gassing windows. This is a glimpse of the raw unfiltered facts and situations that the homeowners experience with the defective and toxic off-gassing products. (*See attached video submission attached hereto*)

### **MOVING FORWARD AND PRAYER FOR RELIEF**

The Midway Defective Window Recipients, NFP respectfully request assistance from the U.S. Consumer Product Safety Commission for your guidance, direction, aid, regulatory guidelines, testing procedures and rulemaking. As described in detail above and through the attached documents, it is clear that the problem that Chicago, Illinois' residences face is a severe and urgent issue that needs prompt assistance to be rectified, instant. The immediacy needed is in order to avoid any further exposure of the toxic and hazardous window and door products provided to homeowners.

The Midway Defective Window Recipients, NFP attest, affirm and request the following:

- a) That the U.S. Consumer Product Safety Commission recall the window and door products installed in our homes because of their defectiveness, harmful exposure and being toxic in nature;
- b) That the U.S. Consumer Product Safety Commission require and specify chamber testing standards for building products in Illinois (and nationwide);
- c) That the U.S. Consumer Product Safety Commission require and specify chemical and volatile organic compound (VOC) testing standards in Illinois;
- d) That the U.S. Consumer Product Safety Commission require and specify that the future acoustical windows, doors and building products to be installed in our homes in the future are manufactured based on design and engineering regulatory guidelines;
- e) That the U.S. Consumer Product Safety Commission demand that the Chicago Department of Aviation be forced to cease and desist all installation of acoustical windows in the Midway and O'Hare neighborhoods until said issues are regulated and certified to be safe;

- f) That the U.S. Consumer Product Safety Commission require and specify rulemaking to set the standard of Indoor Air Quality in Illinois as it expressly lacks guidelines;
- g) That the U.S. Consumer Product Safety Commission adopt national regulations based on the State of California's standard for Indoor Air Quality;
- h) That the U.S. Consumer Product Safety Commission require and specify a mitigation action plan to put in effect immediately to eliminate the risk of injury and illness due to toxic exposure that are installed in all 21,097 homes in the City of Chicago; and
- i) That the U.S. Consumer Product Safety Commission open and complete a thorough investigation for the fraudulent and unethical actions by the Chicago Department of Aviation, its agents/employees/ and personnel.

**WHEREFORE**, Midway Defective Window Recipients, NFP prays that the U.S. Consumer Product Safety Commission implement an immediate recall of Sound Solutions Window & Doors, LLC acoustical windows; implement an immediate recall for Republic Windows & Doors, LLC acoustical windows; implement an immediate recall of Harvey Building Products acoustical windows; set a consumer product safety standard for acoustical residential sound insulation products; set testing standards for VOC's and chemicals in Illinois; set design and engineering regulatory guidelines for acoustical window and door products; propose rulemaking on Illinois Indoor Air Quality; implement the adaption of national regulations for Indoor Air Quality; propose a mitigation action plan for defective and toxic off-gassing acoustical windows in order to eliminate the proposed risk of injury and illness due to toxic exposure; and open a thorough investigation of the unethical and fraudulent actions by the Chicago Department of Aviation, its agents/employees/ and personnel.

We graciously thank you for your help and assistance regarding the toxic and hazardous windows that have plagued the residences in Chicago, Illinois.

Respectfully Submitted,  
**MIDWAY DEFECTIVE WINDOW RECIPIENTS, NFP**

*Anne Prevenas*

**Ms. Anne Prevenas, President and Co-Founder**

*Pamela Zidarich*

**Mrs. Pamela Zidarich, Vice-President and Co-Founder**

*Victoria Whitney*

**Mrs. Victoria Whitney, Secretary/Treasurer and Co-Founder**

## MEDIA ARTICLES AND NEWS COVERAGE

“Window to worry: Homeowners want sound-insulation windows out, health testing in” - Southwest News Herald, June 9, 2017

<http://swnewsherald.com/window-to-worry-homeowners-want-soundinsulation-windows-out-health-testi-p6112-1.htm>

“Midway window worries continue: Offensive odor persists; Lipinski vows action” -Southwest News Herald, June 30, 2017

<http://swnewsherald.com/midway-window-worries-continue-offensive-odor-persists-lipinski-vows-acti-p6115-1.htm>

“Midway window worries expand: More homeowners have questions about fumes” -Southwest News Herald, July 7, 2017

<http://swnewsherald.com/midway-window-worries-expand-more-homeowners-have-questions-about-fumes-p6125-1.htm>

“2 Investigators: Soundproofed, With Smell Of ‘Burning Plastic’” -CBS Channel 2 Chicago, July 14, 2017

<http://chicago.cbslocal.com/2017/07/14/soundproofed-with-smell-of-burning-plastic/>

“Homeowners near Midway Airport claim soundproof windows give off chemical odors” -ABC Channel 7 Chicago, July 22, 2017

<http://abc7chicago.com/home/homeowners-near-midway-claim-soundproof-windows-give-off-chemical-odors/2241979/>

“2 Investigators: Toxic-Smelling Windows Draw Attention Of Aldermen” -CBS Channel 2 Chicago, July 25, 2017

<http://chicago.cbslocal.com/2017/07/25/2-investigators-toxic-smelling-windows-draw-attention-of-aldermen/>

“Soundproof windows possibly releasing dangerous chemicals into homes near Midway” -Fox Channel 32 Chicago, July 21, 2017

<http://www.fox32chicago.com/news/local/soundproof-windows-possibly-releasing-dangerous-chemicals-into-homes-near-midway>

“Homeowners Near Midway Airport Claim Soundproof Windows Give Off Chemical Odors” - Door & Window Market Magazine, July 24, 2017

<https://www.dwmmag.com/quick-hits-for-monday-july-24-2017/>

“Residents Give City Panel Earful About Toxic-Smelling Windows” -CBS Channel 2 Chicago, July 27, 2017

<http://chicago.cbslocal.com/2017/07/27/residents-give-city-panel-earful-about-toxic-smelling-windows/>

“Residents near Midway say windows designed to block noise emit fumes” -ABC Channel 7 Chicago, July 27, 2017

<http://abc7chicago.com/news/residents-near-midway-say-windows-designed-to-block-noise-emit-fumes/2256306/>

“Residents Near Midway Concerned About Windows” -NBC Channel 5 Chicago, July 28, 2017  
<https://www.nbcchicago.com/on-air/as-seen-on/WEB-residents-near-midway-have-health-concerns-over-smelly-windows-437260123.html>

“City Council will examine window worries” -Southwest News Herald, July 28, 2017  
<http://swnewsherald.com/city-council-will-examine-window-worries-p6154-1.htm>

“City Council to Hold Hearing at Hale Park on Possibly-Toxic Windows Supplied to Midway-Area Homeowners” -Southwest Chicago Post, August 10, 2017  
<http://www.swchicagopost.com/2017/08/city-council-to-hold-hearing-at-hale.html>

“2 Investigators: Window Maker Baffled By Toxic Smells” -CBS Channel 2 Chicago, August 21, 2017  
<http://chicago.cbslocal.com/2017/08/21/window-maker-baffled-over-toxic-smells/>

“Funky' Smell From Airport Noise-Reducing Windows Draws 86 Complaints: City” -DNAInfo, August 23, 2017  
<https://www.dnainfo.com/chicago/20170823/clearing/86-complaints-received-on-funky-smell-from-airport-noise-reducing-windows>

“Midway residents want city to replace foul-smelling, noise-reducing windows” -Chicago Tribune, August 24, 2017  
<http://www.chicagotribune.com/news/local/breaking/ct-midway-airport-noise-abatement-windows-0825-20170824-story.html>

“Bad odor from airport noise-reducing windows draw 86 complaints” -WGN Channel 9 News Chicago, August 24, 2017  
<http://wgntv.com/2017/08/24/homeowners-complaining-about-stinky-windows/>

“Midway residents want city to replace foul-smelling, noise-reducing windows – Chicago Tribune” -National Aviation Trial Lawyers, August 25, 2017  
<http://www.natla.org/2017/08/midway-residents-want-city-to-replace-foul-smelling-noise-reducing-windows-chicago-tribune/>

“2 Investigators: Warranty May Have Expired On Toxic-Smelling Windows” -CBS Channel 2 Chicago, August 28, 2017  
<http://chicago.cbslocal.com/2017/08/28/toxic-windows-warranty-expired/>

“A growing stink over soundproof windows near airports” -Chicago Tribune, September 3, 2017  
<http://www.chicagotribune.com/news/columnists/wisniewski/ct-midway-windows-getting-around-0904-20170904-column.html>

“Window worries continue as pressure builds on Aviation chief” -Southwest News Herald, September 15, 2017  
<http://swnewsherald.com/window-worries-continue-as-pressure-builds-on-aviation-chief-p6213-1.htm>

“Noise reducing windows emit ‘burnt plastic’ odor” -Nadig Newspapers, September 15, 2017  
<http://nadignewspapers.com/2017/09/15/noise-reducing-windows-emit-burnt-plastic-odor/>

“Toxic-Smelling Window Testing Begins” -CBS Channel 2 Chicago, September 19, 2017  
<http://chicago.cbslocal.com/2017/09/19/toxic-smelling-window-testing-begins/>

“Aviation Boss Slammed After Missing Hearing For Vacation To Grand Teton” -DNAInfo, October 3, 2017  
<https://www.dnainfo.com/chicago/20171004/clearing/window-odor-hearing-commissioner-ginger-evans-vacation-midway-ohare-noise-canceling-department-of-aviation-smell-residential-sound-improvement-program>

“2 Investigators: Aviation Boss In Hot Seat Over Toxic-Smelling Windows” -CBS Channel 2 Chicago, October 3, 2017  
<http://chicago.cbslocal.com/2017/10/03/aviation-boss-in-hot-seat-over-toxic-smelling-windows/>

“Smelly Windows Near Airports Should Be Replaced, Warranty Or Not: Aldermen” -DNAInfo, October 11, 2017  
<https://www.dnainfo.com/chicago/20171011/midway/smelly-windows-warranty-alderman-ordinance>

“Chicago airport-area residents raise stink over foul-smelling windows” -North Cook News, October 19, 2017  
<https://northcooknews.com/stories/511248758-chicago-airport-area-residents-raise-stink-over-foul-smelling-windows>

“Midway Homeowners Call Out Rahm, Fed up with Aviation Department, want mayor to step in” -Southwest News Herald, October 26, 2017  
<http://www.swchicagopost.com/2017/10/midway-homeowners-call-out-rahm.html>

“Complaints About Smelly Noise-Cutting Windows Soar; Aviation Boss Grilled” -DNAInfo, October 30, 2017  
<https://www.dnainfo.com/chicago/20171030/midway/as-smelly-noise-cutting-windows-rise-62-aldermen-grill-aviation-boss>

“O'Hare neighbors complain of stink from soundproofing windows” -Daily Herald, November 6, 2017  
<http://www.dailyherald.com/news/20171103/ohare-neighbors-complain-of-stink-from-soundproofing-windows>

“Window Problems Reported At Soundproofed Homes” – Journal&Topics, November 15, 2017  
<https://www.journal-topics.com/articles/window-problems-reported-at-soundproofed-homes/>

“Elected Officials Put More Pressure on Chicago Department of Aviation, Madigan, Quinn launch online petition” -Southwest Chicago Post, November 15, 2017  
<http://www.swchicagopost.com/2017/11/elected-officials-put-more-pressure-on.html>

“Aldermen move to protect homeowners stuck with smelly windows” -Chicago Sun-Times, December 11, 2017

<https://chicago.suntimes.com/chicago-politics/aldermen-move-to-protect-homeowners-stuck-with-smelly-windows/>

“Testing finds no health concerns from smelly windows near Midway Airport, city says” -Chicago Tribune, January 12, 2018

<http://www.chicagotribune.com/news/local/breaking/ct-met-midway-smelly-windows-20180112-story.html>

“Sound insulation windows may stink, but they’re not dangerous, testing shows” -Chicago Sun-Times, January 12, 2018

<https://chicago.suntimes.com/news/sound-insulation-windows-may-stink-but-theyre-not-dangerous-testing-shows/>

“Soundproof windows in homes near Midway not a health risk, aviation department says” -Chicago Informer, January 13, 2018

<https://chicagoformer.com/471128/soundproof-windows-in-homes-near-midway-not-a-health-risk-aviation-department-says/>

“First Tests May Put Cracks In ‘Toxic Windows’ Theory Around Airports” -CBS Channel 2 Chicago, January 19, 2018

<http://chicago.cbslocal.com/2018/01/12/first-tests-may-put-cracks-in-toxic-window-theory-around-airports/>

“Soundproof windows in homes near Midway not a health risk, aviation department says” -ABC Channel 7 Chicago, January 19, 2018

<http://abc7chicago.com/health/soundproof-windows-in-homes-near-midway-not-a-health-risk-aviation-department-says/2938623/>

“Homeowners skeptical of Aviation Dept. results on defective windows” -Southwest News Herald, January 19, 2018

<http://swnewsherald.com/homeowners-skeptical-of-aviation-dept-results-on-defective-windows-p6323-1.htm>

“Scientist Supports Our Position, Homeowners Say About Defective Windows- Will reveal details at public meeting at West Lawn Park” -Southwest Chicago Post, February 22, 2018

<http://southwest381.rssing.com/browser.php?indx=11268110&last=1&item=15>

## **RESEARCH AND PUBLICATIONS**

### **HEALTHY BUILDING NETWORK REPORT**

Environmental Impacts of Polyvinyl Chloride Building Material

### **U.S. ENVIRONMENTAL PROTECTION AGENCY- OFFICE OF RESEARCH AND DEVELOPMENT**

Compendium of Methods for Determination of Toxic Organic Compounds in Ambient Air

### **CENTER FOR HEALTH, ENVIRONMENT AND JUSTICE**

Volatile Vinyl

### **U.S. NATIONAL LIBRARY OF MEDICINE**

Environmental Health Concerns and Toxic Chemicals

### **CALIFORNIA DEPARTMENT OF PUBLIC HEALTH**

Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers

### **CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY AIR RESOURCE BOARD**

Risk Management Guidance for Stationary Sources of Air Toxics

### **ILLINOIS GENERAL ASSEMBLY**

Indoor Air Quality Act

### **NATIONAL TOXICOLOGY PROGRAM**

Report on Carcinogens

### **U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF AIR AND RADIATION**

Report to Congress on Indoor Air Quality, Volume II: Assessment and Control of Indoor Air Pollution

### **INTERNATIONAL AGENCY FOR RESEARCH ON CANCER**

IARC Monographs on the Evaluation of Carcinogenic Risks

### **OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT- OEHHA**

Air Toxics Hot Spot Programs & Chemical Database Metadata

## SOURCE CITATIONS

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1535&ChapterID=35>

*150/5000-9A – Announcement of Availability Report No. DOT/FAA/PP/92-5, Guidelines for the Sound Insulation of Residences exposed to Aircraft Operations*

<http://www.flychicago.com/SiteCollectionDocuments/Community/Noise/Midway/SIP/MDWSIYHBooklet-04-26-2017.pdf>

<http://www.flychicago.com/SiteCollectionDocuments/Community/Noise/Midway/SIP/MDWFactSheetRSIP2017.01.pdf>

<http://www.flychicago.com/SiteCollectionDocuments/Community/Noise/OHare/SIP/ORDFactSheetRSIPhistorical2017.05.pdf>

[https://www.faa.gov/regulations\\_policies/advisory\\_circulars/index.cfm/go/document.information/documentID/22770](https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/22770)

[https://www.faa.gov/airports/airport\\_development/omp/FAQ/Noise\\_Monitoring/#q20](https://www.faa.gov/airports/airport_development/omp/FAQ/Noise_Monitoring/#q20)

<https://www.ilnb.uscourts.gov/sites/default/files/opinions/Republic.pdf>

[https://www.gpo.gov/fdsys/pkg/USCOURTS-ilnd-1\\_09-cv-06948/pdf/USCOURTS-ilnd-1\\_09-cv-06948-1.pdf](https://www.gpo.gov/fdsys/pkg/USCOURTS-ilnd-1_09-cv-06948/pdf/USCOURTS-ilnd-1_09-cv-06948-1.pdf)

<http://www.flychicago.com/community/MDWnoise/SoundInsulation/Documents/2017.12.29%20report%20by%20Amec.pdf>

<https://healthybuilding.net/uploads/files/environmental-impacts-of-polyvinyl-chloride-building-materials.pdf>

<https://www3.epa.gov/ttnamti1/files/ambient/airtox/tocomp99.pdf>

<http://chej.org/wp-content/uploads/Volatile%20Vinyl%20-%20REP%20008.pdf>

[https://toxtown.nlm.nih.gov/text\\_version/chemicals.php?id=3](https://toxtown.nlm.nih.gov/text_version/chemicals.php?id=3)

[https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/EHLB/IAQ/CDPH%20Document%20Library/CDPH-IAQ\\_StandardMethod\\_V1\\_2\\_2017\\_ADA.pdf](https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/EHLB/IAQ/CDPH%20Document%20Library/CDPH-IAQ_StandardMethod_V1_2_2017_ADA.pdf)

<https://www.arb.ca.gov/toxics/rma/rmgssat.pdf>

<http://ntp.niehs.nih.gov/go/roc12>

<https://nepis.epa.gov/Exe/ZyNET.exe/9100LMBU.TXT?ZyActionD=ZyDocument&Client=EPA&Index>

<http://monographs.iarc.fr/ENG/Monographs/vol88/index.php>

[https://oehha.ca.gov/media/tcdb\\_metadata.pdf](https://oehha.ca.gov/media/tcdb_metadata.pdf)

## **EXHIBIT ATTACHMENTS**

1. Transcript of Joint Committee Meeting, Dated August 23, 2017
2. Transcript of Joint Committee Meeting, Dated October 3, 2017
3. Transcript of Joint Committee Meeting, Dated December 11, 2017
4. General Correspondence(s)



## Panel 2

**Rachel Weintraub**

Legislative Director and General Counsel  
Consumer Federation of America



## Consumer Federation of America

April 11, 2018

Testimony of Rachel Weintraub,

Legislative Director and General Counsel, Consumer Federation

Before the

U.S. Consumer Product Safety Commission

Hearing

Commission Agenda and Priorities FY 2019 and 2020

I appreciate the opportunity to provide comments on the Consumer Product Safety Commission's (CPSC) fiscal year (FY) 2019 and 2020 priorities on behalf of Consumer Federation of America (CFA).<sup>1</sup> I am Rachel Weintraub, CFA's Legislative Director and General Counsel. CFA is a non-profit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education.

The CPSC is an incredibly important independent agency. Its mission impacts every American, every day: to protect the public from unreasonable risks of injury or death associated with the use of consumer products. The CPSC has numerous tools to fulfill this mission and all of these tools must be used to effectively protect consumers. For the agency to fulfill its mission, it relies upon the authority Congress granted to the agency through the passage of the Consumer Product Safety Act. The CPSC's mission relies upon agency action to issue mandatory standards, assess civil and criminal penalties, work on voluntary standards, conduct recalls, and educate consumers. The use of these tools in combination has historically led to the most effective consumer protections.

We urge the agency to take actions to protect consumers and enforce its laws. Our concerns include the failure to recall Polaris recreational off-highway vehicles that pose a known fire hazard to consumers. We are also concerned that in the last quarter of 2017, there were no civil penalties<sup>2</sup> assessed by the CPSC. Civil and criminal penalties serve an important deterrent effect to non-compliance with the laws enforced by the CPSC, and we urge the agency to prioritize this important element of its enforcement responsibilities. We specifically urge the CPSC to continue to assess significant penalties when the violations represent problematic disregard for the CPSC's laws.

---

<sup>1</sup> U.S. Consumer Product Safety Commission, Public Hearing on Fiscal Years 2019 and 2020 Commission Agenda and Priorities, Vol. 83 No. 41 Fed. Reg. 9953 (March 1, 2018), available at

<https://www.gpo.gov/fdsys/pkg/FR-2018-03-01/pdf/2018-04129.pdf>

<sup>2</sup> See <https://www.stericycleexpertsolutions.com/wp-content/uploads/2018/02/ExpertSolutions-RecallIndex-Q42017.pdf>

We hope that the agency increases its focus on mandatory standards. For example, the FY 2018 Budget Request<sup>3</sup> includes 15 mandatory standards in various stages of rulemaking, while the FY 2019 Budget Request<sup>4</sup> includes just 10 such rulemakings. Acknowledging that some of the rulemakings in 2018 will be finalized, the decrease in the number indicates that the CPSC can and should dedicate at least the same resources to the same number of rulemaking proceedings, and not less, in FY 2019.

It is imperative for consumers and for the regulated community that CPSC's laws are enforced rigorously and consistently and that all of the tools Congress gave to the CPSC are used.

My testimony focuses on key product safety issues facing American consumers.

#### I. Recreational Off-Highway Vehicles

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

CFA and its partners documented 499 fatalities between January 1, 2013, and March 18, 2018. We documented 14 deaths in 2018 alone, and 130 fatalities in 2017, the highest recorded annual fatality count we have documented to date. In 2016, we documented 118 deaths and in 2015, we documented 87 deaths. These numbers are likely underestimates as they are based solely on media reports, and may increase as more data become available.<sup>5</sup>

We are concerned not only about the increasing number of recalls for ROVs, but also about the absence of recalls and more effective action for known fire hazards posed by ROVs. First, CFA completed an analysis<sup>6</sup> of off-highway vehicle (OHV) recalls and found that over the past eight years, there have been 72 OHV recalls. The number of recalls increased from two recalls in 2010 to 24 recalls in 2017. We defined OHVs to include all-terrain vehicles (ATVs), recreational off-highway vehicles (ROVs), and utility task vehicles (UTVs).

CFA's analysis of CPSC OHV recall reports since 2010 found that the highest number of recalls occurred during the past three years. 2017 had the most recalls of all years analyzed. In addition, CFA

---

<sup>3</sup> <https://www.cpsc.gov/s3fs-public/FY2018PBR.pdf?BIZZV4R185b6qG7.GPDfnT2ZdDDBsQ.f> at 22.

<sup>4</sup> <https://www.cpsc.gov/s3fs-public/FY2019PBR.pdf> at 23.

<sup>5</sup> CFA Press Release, January 7, 2016, available on the web at [http://consumerfed.org/press\\_release/more-than-500off-highway-vehicle-deaths-in-2015/](http://consumerfed.org/press_release/more-than-500off-highway-vehicle-deaths-in-2015/).

<sup>6</sup> <https://consumerfed.org/analysis-ohv-recalls-increasing-number-ohvs-pulled-market-due-safety-concerns/>

analysis of CPSC OHV recall reports from January 1, 2010 through December 31, 2017 found that 16 brands<sup>7</sup> were involved in the recalls, and the brand with the most recalls was Polaris.<sup>8</sup>

CPSC reports identified at least 61 injuries and two deaths linked to OHVs that were subsequently recalled. Also, more than 880,000<sup>9</sup> OHVs were estimated to be sold and subsequently recalled. We urge the CPSC to immediately and rigorously investigate what is causing the increase in OHV recalls.

OHV companies must do everything necessary to ensure the safety of their products. While we applaud companies for taking responsibility and recalling their products, problems should be identified before the products enter the marketplace and pose risks to consumers, reports of harm associated with products should be immediately reported to the CPSC, and recalls should be conducted quickly and effectively. The CPSC must investigate why the number of OHV recalls are increasing, must carefully review the industry-wide incidents and recalls, evaluate the effectiveness of the ATV and ROV standards to address these safety problems, and along with OHV manufacturers, work to prevent these tragedies and improve the safety of these vehicles.

Second, we are concerned about the failure to remove known fire hazards from the market in a timely and effective manner. On December 19, 2017, the CPSC and Polaris issued a short statement about Polaris RZR 900 and 100 ROVs and fire safety risks.<sup>10</sup>

The statement informed consumers about fires caused by two models of Polaris ROVs. The joint statement included, “[M]ost of the vehicles were voluntarily recalled by Polaris in April 2016 to address fire hazards. However, users of the vehicles that were repaired as part of the April 2016 recall, continue to report fires, including total-loss fires. The 2017 RZR’s were not included in the April 2016 recall, but these models have also experienced fires.”

While it is critically important that the CPSC and Polaris warn consumers of this fire hazard, the statement did not provide consumers with enough information to protect themselves and their families. The statement included that fires have been associated with the recalled ROVs, ROVs that have been previously repaired as part of the recall, and ROVs that have not been subject to the recall.

We are very concerned that consumers do not have the necessary information to protect themselves from the fire hazard identified in the joint statement. In response, we wrote a letter to the CPSC urging action one month after this statement was issued. It has now been over three months since the public was alerted to the fire hazard. Consumers unwittingly are operating and riding ROVs that both Polaris and the CPSC know pose an unreasonable fire risk.

---

<sup>7</sup> Brand, is used to denote the type of OHV being recalled. While the brand is sometimes synonymous with the manufacturer, it is sometimes the name of an OHV produced by a manufacturer of a different name. In some instances, it is not clear from the recall notice who the manufacturer is.

<sup>8</sup> A single CPSC recall notice can include a single model or multiple models, as well as a single model year or multiple model years, or any combination of these factors.

<sup>9</sup> There were five CPSC recall notices that included golf carts alongside OHVs. The CPSC recall notices did not separate the total units of the OHV products from the golf cart products. Therefore this total includes some units of golf carts.

<sup>10</sup> <https://www.cpsc.gov/content/joint-statement-of-cpsc-and-polaris-on-polaris-rzr-900-and-1000-recreational-off-highway>

We urge the CPSC to immediately provide clear information to consumers about ROVs that are catching fire, as identified in the December 19, 2017, statement. We urge the Commission to immediately recall and stop sale of the ROVs mentioned in the statement that have been associated with fires, but not previously subject to recall, to re-issue recalls for the vehicles previously recalled and previously repaired as part of the recall program, and to conduct a thorough evaluation as to why these fires are occurring and implement solutions to prevent these fires.

Furthermore, the voluntary standards for these vehicles must be reevaluated to address these problems. That consumers are continuing to operate products that are known to have caused fires is creating a significant safety risk.

Finally, we urge the CPSC to issue injury and fatality statistics for ROVs annually. The CPSC releases this type of data for ATVs and it is an important addition to the public health research on ATVs. We need that same data for ROVs every year.

## II. Window Coverings

This past January, a new version of the window covering voluntary standard was approved that, for the first time, will require some window coverings to be cordless. The standard requires window coverings sold as stock products (products sold “as is” in terms of color, design features, size) to be free of dangerous accessible cords. While it is significant that a subset of window coverings will, for the first time, be cordless, there is much more work to do to prevent consumers from the strangulation hazards posed by corded window coverings.

This updated version of the ANSI/WCMA standard was preceded by decades of mounting death and injuries caused by window covering cords, and extensive advocacy efforts by CFA, Parents for Window Blinds Safety, the American Academy of Pediatrics and others to protect children from the strangulation hazard posed by these cords. As a recently published *Pediatrics* journal article reported, approximately 11 children die and 80 children are treated for entanglement and near fatal injuries every year as a result of window cord strangulation.

We are concerned that non-compliant products could be sold online and that hazardous corded stock inventory will be liquidated throughout 2018. The CPSC, the WCMA, and others must affirmatively educate consumers, especially those with children, about the strangulation risks corded window coverings pose risks to their families.

Further, the CPSC should rigorously monitor the marketplace to ensure that once the voluntary standard is in effect, that loopholes do not exist that allow for more products to be considered custom, which would minimize the effect of the standard.

While this standard addresses future products sold, it does not address the millions of corded products in homes across the United States. The CPSC should prioritize reducing deaths and injuries from corded window coverings.

Finally, CFA continues to believe that a mandatory standard is necessary to make operating cords for window coverings inaccessible. We reiterate our request from the May 2013 petition that CFA, along with Kids In Danger, Consumers Union, Parents for Window Blind Safety and others filed 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.

In a tragic 22-day period in 2014, four children were strangled to death by cords on a window covering: a 6-year-old girl in Maryland, a 3-year-old girl in Texas, a 4-year-old boy in Georgia, and a 2-year-old boy in Maryland. We are aware of the following fatality statistics for corded window coverings: 13 deaths in 2014; 20 deaths in 2015; 12 deaths in 2016; and one death in 2017, though these numbers are likely to increase as additional data are released.

We urge the CPSC—in light of the history of the voluntary standard and the documented and persistent hazard that cords on window coverings pose to children—to move forward with the mandatory rulemaking process that will effectively address the hazards posed by window covering cords.

While stock products are now cordless due to the voluntary standard, the market must be monitored to ensure more products are not being sold as custom. We urge the CPSC to consider Health Canada’s proposed regulation,<sup>11</sup> which would restrict the length of accessible window blind cords and the size of loops that can be created by those cords.

We also push the CPSC to implement a market surveillance program to ensure compliance with the most current voluntary standard, as well as a consumer education campaign. Time is of the essence. These products pose risks to children every single day.

### III. Flame Retardants in Consumer Products

Flame retardants, found in numerous types of consumer products, are chemicals associated with serious human health problems. These include cancer, reduced sperm count, increased time to pregnancy, decreased IQ in children, impaired memory, learning deficits, hyperactivity, hormone disruption, and lowered immunity.

Flame retardants migrate continuously from everyday household products into the air and onto dust. As a result, 97 percent of U.S. residents have measurable quantities of toxic flame retardants in their blood. Children are especially at risk because they come into greater contact with household dust than adults do. Studies show that children, whose developing brains and reproductive organs are most vulnerable, have three to five times higher levels of flame retardants than their parents.

The CPSC received a petition from the American Academy of Pediatrics, American Medical Women’s Association, CFA, Consumers Union, Green Science Policy Institute, International Association of Fire Fighters, Kids in Danger, Philip J. Landrigan, M.D., M.P.H., League of United

---

<sup>11</sup> <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2009-112/>

Latin American Citizens, Learning Disabilities Association of America, National Hispanic Medical Association, Earth Justice, and Worksafe. The petition urges the CPSC to adopt mandatory standards under the Federal Hazardous Substances Act to protect consumers from the health hazards caused by the use of nonpolymeric, additive form, organohalogen flame retardants in children's products, furniture, mattresses, and the casings surrounding electronics.

We appreciate that the CPSC voted to move forward with our petition and acknowledged that the CPSC has clear authority under the Federal Hazardous Substances Act to regulate potentially toxic chemicals, that there is clear legal precedent for the CPSC to regulate a class of chemicals, and that there is strong scientific evidence documenting the hazards posed to consumers by these chemicals.

We applaud the Commission in moving forward in the process of convening a CHAP to protect consumers from the health hazards posed by flame retardants, while not diminishing fire safety protections. We urge the CPSC to move forward in this process as quickly as possible.

We also applaud the CPSC's issuance of a Guidance Document on additive, non-polymeric organohalogen flame retardants as used in children's product, upholstered furniture, mattresses, and electronics casings. The CPSC published this guidance to protect consumers and children from "the potential toxic effects of exposure to these chemicals."

#### IV. 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 percent mark. While there are now requirements for recall registration cards and online mechanisms for a subset of infant durable products, much more must be done to ensure that consumers find out about recalls of products that they own and to ensure that consumers effectively repair or remove the hazardous product from their home.

We urge the CPSC to prioritize this issue and take actions that will result in recalling companies more effectively recalling their products. We urge the CPSC to work with manufacturers of infant and toddler durable products to maximize awareness about product registration.

We appreciate that notes from last summer's recall meeting were recently made available to the public and that the CPSC provided an opportunity for stakeholders to engage in a dialogue about the factors essential to the most well publicized, effective recalls so that they can be replicated. We agree with how the Recall Effectiveness Workshop Report<sup>12</sup> characterized the key stakeholder suggestions. Specifically we support that the CPSC and others should explore ways to increase direct notice to consumers, expand the use of marketing strategies and technology, consider consumer and business incentives to promote effective recalls, and consider disseminating additional information on best practices.

We urge the Commission to build on these suggestions by requiring recalling firms to advance recall effectiveness by taking action on the initiatives identified at the workshop.

---

<sup>12</sup> See [https://www.cpsc.gov/s3fs-public/Recall\\_Effectiveness\\_Workshop\\_Report-2018.pdf?R1VyLltrI8M\\_id.2vkAkiHoUZjaSCab](https://www.cpsc.gov/s3fs-public/Recall_Effectiveness_Workshop_Report-2018.pdf?R1VyLltrI8M_id.2vkAkiHoUZjaSCab)

In addition, we support the CPSC's proposed Voluntary Recall Rule and urge the CPSC to finalize this rule to increase recall effectiveness.

#### V. SaferProducts.gov

Another high priority for the CPSC should continue to be the consumer incident database, SaferProducts.gov, required by the CPSIA.

In November of 2016, CFA along with other consumer groups released an analysis of SaferProducts.gov. The report concluded that the database is a must-visit site for anyone buying products for children, relatives, or friends. It enables government agencies, public safety entities, health care professionals, child service providers, and consumers to both report dangerous products and search the reports that others have submitted. Our report analyzed eight data points, including which manufacturers and which products have the most reports of harm among the roughly 29,000 reports submitted over five years. Key findings show that reports of harm in SaferProducts.gov are concentrated in a few specific manufacturers and product types. Specifically, we found:

- **Many reports of harm are concentrated among ten manufacturers.** Almost 40 percent of the reports are for products from ten manufacturers, with the rest spread out among 3,802 others.
- **Appliances make up a large percentage of reports among the top ten manufacturers.** Of the roughly 11,000 reports referencing one of the top ten manufacturers, 72 percent involve the "appliances" subcategory. Ranges or ovens of various types make up the vast majority of these reports with "electric ranges or ovens" comprising the largest segment (34 percent) of the top ten product types reported.
- **31 percent of reports document some level of injury.**
- **More than half of the 90 fatalities reported involved children age 12 or younger.**
- **Less than half of the published reports in SaferProducts.gov include manufacturer comments in response.**

We found that SaferProducts.gov is growing, easy to use, and provides helpful information. While a useful resource, we offer a series of recommendations for further improving the database:

- **Increase promotion of the site.** Additional outreach and training is needed to increase submissions by the public and healthcare professionals.
- **Expand the data sources included in SaferProducts.gov.** There are a variety of additional CPSC databases, such as staff in depth investigations, Medical Examiners and Coroners Alert Project, and the National Electronic Injury Surveillance System that would substantially increase the value of SaferProducts.gov if they were interoperable.
- **Release overall reports on data trends.** SaferProducts.gov contains a great deal of useful data, and the CPSC should compile and release an annual report identifying the trends in harm posed by products in the database.

- **Improve data categories and searchability.** Adding more macro-level categories such as “all children’s products,” in addition to the existing, micro-level categories, would make analyzing the data much easier. Additionally, a searchable field for the type of harm documented would enable consumers and researchers to better use this valuable resource.

We know that 35, 640<sup>13</sup> reports have been posted to Saferproducts.gov and that while already a useful tool, more can be done to make it even more effective.

## VI. CPSIA Implementation

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

Because of the rules promulgated by the CPSC, 26 infant durable products including full-size cribs, non-full-size cribs, infant walkers, play yards, and strollers must now meet new robust mandatory standards. The crib standard, which went into effect in June of 2011, is of particular significance as it is the strongest crib standard in the world and offers our nation’s infants a safe sleep environment, which parents and caregivers have a right to expect. For all of these products, third party testing and certification requirements are required.

The CPSC has an additional five infant durable product rules to promulgate under section 104, the Danny Keysar Child Product Safety Notification Act. The CPSC is currently working on mandatory standards changing products, high chairs, inclined sleepers and will need to promulgate standards for stationary activity centers and gates. We urge the CPSC to continue to commit the staff time and resources necessary to prioritize the promulgation of these rules. We were concerned about CPSC’s past delay of the standards for high chairs and stationary activity centers.

In addition, the CPSC has the authority to add additional products under section 104 and we urge them to use this authority to protect infants and toddlers. The promulgation of mandatory safety standards for rules under section 104 is a critical component of the CPSIA that consumers recognize as necessary to ensure safety when using children’s products.

## VII. High-Powered Magnet Sets

We were alarmed by the United States Court of Appeals for the Tenth Circuit decision that struck down the CPSC’s high-powered magnet set rule that we supported strongly. We are concerned by the consequences of that decision. Already, more rare earth magnets are entering the market, creating hidden hazards that could severely injure or even kill children who swallow more than one magnet. We urge that the CPSC take strong action to ensure that doctors and consumers are educated about these hazards, as well as work to reissue the rule.

## VIII. All-Terrain Vehicles

---

<sup>13</sup> Data received from the U.S. Consumer Product Safety Commission as of March 27, 2018.

According to the most recent data released by the CPSC,<sup>14</sup> at least 101,200 people were injured while riding all-terrain vehicles (ATVs) seriously enough to require emergency room treatment in 2016. The estimated number of ATV related fatalities was 647 in 2015, though the 2015 data are not considered complete and the number of fatalities will almost certainly grow as more data are received.

In 2015, ATVs killed at least 53 children younger than 16, accounting for 16 percent of ATV fatalities. Forty-three percent of children killed were younger than 12 years old. Children under 16 suffered an estimated 26,800 serious injuries in 2016, representing 26 percent of all injuries.

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

In March 2014, CFA released a report, "ATVs on Roadways: A Safety Crisis." CFA evaluated laws from all 50 states and the District of Columbia and found that, in spite of warnings from manufacturers, federal agencies, and consumer and safety advocates, ATVs are unsafe on roadways. Yet for several years, an increasing number of states have passed laws allowing ATVs on public roads. In April of 2015, we updated the report to include ROVs and found that all states that allow ATVs on roads also allow ROVs on roads.

ATVs' design makes them incompatible with operation on roads. ATVs have a high center of gravity, and narrow wheel bases, which increases 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 the National Highway Transportation Safety Administration's (NHTSA) Fatality Analysis Reporting System (FARS) document that a majority of ATV deaths take place on roads.

According to the CPSC's data from 2007, as analyzed by the Insurance Institute for Highway Safety, 492 of the 758 deaths for which location was identified (65 percent of ATV fatalities) occurred on roads.

According to the CPSC's data, ATV on-road deaths have increased more than ATV off road deaths. According to NHTSA's FARS database, as analyzed by the Insurance Institute for Highway Safety, 74 percent of ATV deaths occurring on roads occurred on paved roads.

In spite of the fact that a majority of ATV deaths occur on roads and that ATVs are incompatible with road use, CFA found that 36 states (71 percent) allow ATVs on certain roads under certain conditions.

---

<sup>14</sup> 2016 Annual Report of ATV-Related Deaths and Injuries Statistics [https://www.cpsc.gov/s3fs-public/atv\\_annual\\_Report\\_2016\\_0.pdf?ntwycn8wu3ITrXLnLC49kn\\_lxxDASq5e](https://www.cpsc.gov/s3fs-public/atv_annual_Report_2016_0.pdf?ntwycn8wu3ITrXLnLC49kn_lxxDASq5e)

Of these states, 23 states (64 percent) passed laws allowing or expanding ATV access on roads since 2004. Four states passed such laws in 2013 alone, and New Mexico became the 36th state in 2016.

32 of the 36 states, or 89 percent that allow ATVs on roads delegate some or all of the decisions about ATV access to local jurisdictions with authority over those roads.

Data compiled by CFA and our coalition partners document that between January 1, 2013, and March 26, 2018, there were 3,079 OHV fatalities in the United States. Of those deaths, 502 (16 percent) are of children who are less than 16 years old.<sup>15</sup>

We urge the CPSC and Congress to prioritize this issue, be a strong voice in opposing the operation of OHVs on roads, and be a leader in educating consumers about the dangers of on-road OHV use. Additionally, the CPSC could improve ATV death data by including how many deaths occur on private versus public roads.

#### IX. Furniture Tip-Overs

According to the CPSC's most recent data, every two weeks a child dies as a result of a piece of furniture, appliance or television falling on him or her. Further, each year, more than 38,000 children are injured as a result of a piece of furniture, appliance or television tipping over. Between 2000 and 2011, there were 363 tip-over related deaths. Eighty-two percent of those deaths involved children younger than 8 years old.<sup>16</sup> While the ASTM standard for furniture has been modestly strengthened, much more needs to be done to improve the standard.

Further, increased efforts are necessary to bring all stakeholders together to collectively address this increasingly problematic, multifaceted, and dangerous injury pattern. We support the #anchorit campaign that seeks to educate consumers about the need to secure furniture to the wall. Further, while we applaud the recall last year of 29 million IKEA dressers associated with seven deaths, we are deeply concerned about the inadequacy and ineffectiveness of the recall and urge the CPSC and IKEA to encourage consumers to return the dressers and obtain a refund. We support that the CPSC is moving forward with a rulemaking to address these serious issues.

#### X. Laundry Packets

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

“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

---

<sup>15</sup> For 2017 and 2018, FARS data has NOT been included, thus these numbers will likely increase once that additional data source is included.

<sup>16</sup> CPSC Report, Preliminary Evaluation of Anchoring Furniture and Televisions Without Tools, May 2015. Available on the web at: <http://www.cpsc.gov/PageFiles/182505/Tipover-Prevention-Project-Anchors-withoutTools.pdf>

them breathe. There have also been reports of corneal abrasions (scratches to the eyes) when the detergent gets into a child's eyes."<sup>17</sup>

In 2018 to date, according to the AAPC, 1,194<sup>18</sup> children 5 and younger were exposed to laundry packets. In 2017, 10,585<sup>19</sup> children 5 and younger were exposed<sup>20</sup> to laundry packets. In 2016, 11,528 children 5 and younger were exposed to laundry packets.<sup>21</sup> In 2015, there were 12,594 exposures and in 2014 there were 11,714.<sup>22</sup> In 2013, poison centers received reports of 10,395 exposures to highly concentrated packets of laundry detergent by children 5 and younger.<sup>23</sup>

According to a *Consumer Reports* article from 2017,<sup>24</sup> laundry pods pose risks of death to adults with dementia. *Consumer Reports* includes CPSC data indicating "8 deaths related to ingesting liquid laundry packets in the U.S. between 2012 and early 2017 that have been reported to the Consumer Product Safety Commission. Two of the cases were young children and six were adults with dementia."<sup>25</sup>

According to a 2016 *Pediatrics* study,<sup>26</sup> child exposures to laundry detergent packets rose 17 percent from 2013 to 2014. Children exposed to laundry detergent packets were five to 23 times more likely to be hospitalized, and eight to 23 times more likely to have a serious medical outcome than children exposed to other detergent types or forms. In addition, the deaths of two children were associated with laundry detergent packets.

Based on two years of data, the National Poison Data System (NPDS) reported that 769 children required hospitalization for injuries that included seizures, vomiting blood, fluid in the lungs, dangerously slow heartbeats, respiratory arrest, gastric burn, and comas as a result of ingesting the contents of these packets. An analysis of these data published in the November 14, 2014, edition of *Pediatrics*<sup>27</sup> found that in 900 NPDS cases, 42 percent involved packets that were stored within sight or left out, 11 percent of cases

---

<sup>17</sup> Laundry Detergent Packets, American Association of Poison Control Centers, <http://www.aapcc.org/alerts/laundry-detergent-packets/>

<sup>18</sup> See <http://www.aapcc.org/alerts/laundry-detergent-packets/>

<sup>19</sup> See <http://www.aapcc.org/alerts/laundry-detergent-packets/>

<sup>20</sup> The American Association of Poison Control Centers defines "exposure" to mean when someone has had contact with the substance in some way; for example, ingested, inhaled, absorbed by the skin or eyes, etc. Not all exposures are poisonings or overdoses., <http://www.aapcc.org/alerts/laundry-detergent-packets/>

<sup>21</sup> Laundry Detergent Packets, American Association of Poison Control Centers, <http://www.aapcc.org/alerts/laundry-detergent-packets/>

<sup>22</sup> Laundry Detergent Packets, American Association of Poison Control Centers, <http://www.aapcc.org/alerts/laundry-detergent-packets/>

<sup>23</sup> American Association of Poison Control Centers <http://www.aapcc.org/alerts/laundry-detergent-packets/>

<sup>24</sup> <http://www.consumerreports.org/laundry-cleaning/liquid-laundry-detergent-pods-pose-lethal-risk/>

<sup>25</sup> *Ibid.*

<sup>26</sup> Pediatric Exposures to Laundry and Dishwasher Detergents in the United States: 2013-2014; Gary A. Smith Mallory G. Davis, Marcel J. Casavant, Henry A. Spiller, Thiphalak Chounthirath ; OI: 10.1542/peds.2015-4529 *Pediatrics* 2016;137; originally published online April 25, 2016; Available on the web at: <http://pediatrics.aappublications.org/content/pediatrics/137/5/e20154529.full.pdf>

<sup>27</sup> Pediatric Exposure to Laundry Detergent Pods, Amanda L. Valdez, Marcel J. Casavant, Henry A. Spiller, Thiphalak Chounthirath, Huiyun Xiang and Gary A. Smith, *Pediatrics*; originally published online November 10, 2014; <http://pediatrics.aappublications.org/content/early/2014/11/05/peds.2014-0057>

involved temporarily open outer packages, and another 9 percent of cases involved improperly stored packets.

A policy statement issued by the AAPC on laundry packets stated, “The American Association of Poison Control Centers (AAPCC) supports rigorous safety efforts pertaining to single-load liquid laundry packets (Laundry Packets), e.g., through packaging, labeling, product design, information dissemination, storing, handling and usage education, or otherwise.”<sup>28</sup>

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

Critically, all relevant data should be reviewed to determine whether the voluntary standard is effectively reducing incidents.

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

While the voluntary standard was finalized in September 2015, we appreciate the active role that the CPSC has played in the voluntary standard process and urge the CPSC to continue to prioritize this issue to ensure that the voluntary standard effectively addresses the hazards posed by laundry packets. We further urge the CPSC to carefully monitor the incident data to ensure that incidents are decreasing. If the data indicate that the voluntary standard is not successfully addressing the hazard posed by laundry packets, we urge the CPSC to move forward with an effective mandatory standard.

## XI. Conclusion

In conclusion, the CPSC plays a critical role ensuring that consumers are safe from product hazards. We support the CPSC’s existing priorities to strengthen its regulatory and enforcement efforts to fulfill its mission to protect consumers from hazards posed by consumer products. We urge the CPSC to consider including the additional priority issues that we outlined in our statement today. We urge the Commission to address these issues as soon as possible as many pose urgent hazards to consumers.

CFA looks forward to working with the Commission to address these issues.

---

<sup>28</sup> AAPCC Position Statement on Single-Load Liquid Laundry Packets  
[https://aapcc.s3.amazonaws.com/files/library/AAPCC\\_Laundry\\_Packet\\_Position\\_Statement.pdf](https://aapcc.s3.amazonaws.com/files/library/AAPCC_Laundry_Packet_Position_Statement.pdf)

**Kristen Kern**

Government Relations Representative  
American Apparel & Footwear Association



740 6th Street, NW • Washington, DC 20001 | P: 202-853-9080 | [www.aafaglobal.org](http://www.aafaglobal.org)

*Advocacy that fits.*

March 28, 2017

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

RE: Agenda and Priorities FY 2019 and 2020

Dear Secretary Mills:

On behalf of the American Apparel & Footwear Association (AAFA), I am providing these comments regarding the Consumer Product Safety Commission's request for comments on the Commission's agenda and priorities for Fiscal Years 2019 and 2020. Please also consider this a request for Kristen Kern to testify at the April 11<sup>th</sup> hearing.

AAFA is the national trade association representing apparel, footwear, travel goods, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands, our membership includes about 350 companies, drawn from throughout the supply chain. AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its nearly four million U.S. workers, and its contribution of \$384 billion in annual U.S. retail sales.

We are proud of the open and collaborative relationship that we share with the Commission. With many of our members engaged in the production and sale of children's clothing and footwear, we are on the frontlines of product safety. It is our members who design and execute the quality and compliance programs that stitch product safety into every garment and shoe we make. To support our members in this effort, AAFA has taken the lead in educating our industry on the development, interpretation, and implementation of product safety standards and regulations.

The priorities that we hope that the Commission will adopt are as follows:

**Reducing Testing and Regulatory Burdens Associated with Spandex**

Last year, we began working with the Commission to review the testing burdens associated with testing of Spandex to meet the requirements of the Flammable Fabrics Act (FFA) – 16 CFR 1610. Section (d)(2) of 16 CFR 1610 exempted fabrics, regardless of weight, made entirely from, or a

combination of six types of fibers. The exemption, however, did not include Spandex, even though Spandex-blend garments consistently pass flammability tests. AAFA compiled results from Spandex flammability tests and provided findings to the Commission to discuss exempting Spandex from current testing standards. We appreciate the Commission's willingness thus far to work together on reviewing the addition of Spandex to the exempt fibers list. We hope that the Commission will prioritize continuing this effort to reduce testing burden for companies without compromising product safety.

#### **Working to Harmonize Regulations**

We need to make sure that individual states and other countries have a common and consistent approach to product safety. That is currently not the case. The proliferation of conflicting and contradictory product safety standards among the states and abroad is quite likely the biggest product safety challenge of our time. We believe that the Commission has tools through which it can foster a more unified national and international approach to product safety. We would hope that the Commission can focus some of its resources to this priority issue.

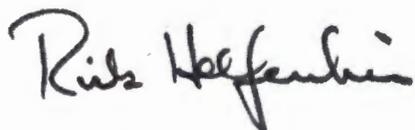
#### **Building Industry-Commission Collaboration**

We want to stress the importance of the Commission using AAFA, as well as other associations, as a resource when developing not only standards, but guidance documents and educational events. We believe that it is integral to our mission to help educate the industry on its domestic and international product safety compliance obligations. AAFA and its members truly appreciate the opportunity to work with the Commission and we look forward to continuing that relationship through Fiscal Years 2019 and 2020 and beyond.

In conclusion, we are delighted to have a positive relationship with the Commission and we believe there are many opportunities for further collaboration. We look forward to working with the Commission to reduce testing and regulatory burdens, harmonize the product safety approach between states and abroad, and to build collaboration between the industry and the Commission for the benefit of consumer product safety and public health.

Thank you for your time and consideration in this matter. Please contact Kristen Kern of my staff at 202-853-9358 if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink that reads "Rick Helfenbein". The signature is written in a cursive, slightly slanted style.

Rick Helfenbein  
President and CEO



**Sarah Denny, MD, FAAP**  
American Academy of Pediatrics

April 11, 2018

Comments of

**Sarah Denny, MD, FAAP**

**Member, AAP Council on Injury, Violence and Poison Prevention  
Executive Committee**

On behalf of the

**American Academy of Pediatrics**

Comments before the

**U.S. Consumer Product Safety Commission**

**“Commission Agenda and Priorities, FY2019 and FY2020”**

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

My name is Dr. Sarah Denny, and I am a pediatrician from Columbus, Ohio. I am here today on behalf of the American Academy of Pediatrics (AAP), a non-profit professional organization of 66,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents, and young adults. I serve on the AAP's Council on Injury, Violence, and Poison Prevention Executive Committee. We appreciate the opportunity to make recommendations, and the following are key areas we suggest CPSC prioritize in the next two fiscal years.

### **Safe Sleep Messaging**

The AAP appreciates CPSC's ongoing work to promote safe sleep, but much work remains to reduce the high incidence of sudden unexplained infant death (SUID). The U.S. Centers for Disease Control and Prevention (CDC) found that in 2015 there were approximately 3,700 SUID cases in the U.S.<sup>i</sup>

A study published in *Pediatrics* in February of this year found that there have been sharp declines in the rates of sudden infant death syndrome (SIDS) since the 1990s associated with national efforts to promote infant safe sleep, mainly through the Back-to-Sleep campaign.<sup>ii</sup> But while sudden infant death syndrome (SIDS) deaths have decreased, the bad news is that there is a remarkable lack of progress in decreasing SUID deaths<sup>iii</sup> in the last two decades.<sup>iv</sup> SUID deaths – the majority of which happen in the first 6 months of life – remain stubbornly high. We can and must do more to prevent the thousands of safe sleep deaths that still occur every year.

The CPSC is in a unique position to help address the public health problem of SUID through its jurisdiction over infant products and opportunities to communicate with families, caregivers, and health care providers. However, current efforts to promote safe sleep are not reducing deaths, especially in high-risk populations. This is an issue desperately in need of new approaches. We call on CPSC to use its position to promote improved understanding of how best to promote safe sleep among high-risk families, and to reduce the hazard posed by certain infant sleep products.

In addition, CPSC can and should strengthen its safe sleep messaging by banning crib bumpers. We appreciate that the CPSC staff has been directed in the past to develop a performance standard for crib bumpers to reduce suffocation hazards. We are eager to learn the status of this work, and urge you not to slow this work down; crib bumpers have no place in a safe sleep environment. There is no evidence that bumper pads prevent injuries, and there is a significant potential risk of suffocation, strangulation or entrapment.

Originally used in Finland, the "baby box" has also captured policymaker and public attention in the past couple of years. Currently, there is insufficient data on the role cardboard boxes play in reducing infant mortality. Finland does experience a low infant mortality rate, but they have never collected data on the possible role of cardboard boxes. There are many factors that may contribute to the country's low infant mortality rate: women receive excellent prenatal care; there is very little smoking in the country; and almost all babies sleep on their backs. Currently, there are randomized controlled trials being conducted in New Zealand and Australia regarding the use of boxes (not necessarily cardboard boxes but flax or woven boxes). However, none of these

studies have yet been published. We would urge CPSC to pay attention to the open safety questions regarding baby boxes.

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

### **Liquid Laundry Detergent Packets**

Reducing child exposures to liquid laundry detergent packets remains a priority for the Academy. These products are uniquely hazardous to children, and child exposures to them continue at an alarming rate. Children are uniquely vulnerable to these product exposures as a result of their colorful and appealing design, and their highly toxic formulation. The AAP has participated in the ASTM process to improve the safety of these products, and we were glad to see the ASTM F3159-15 voluntary standard published in 2015, but our concerns remain as it does not include a number of elements urged by pediatricians. For example, the ASTM voluntary standard does not require the laundry packets to be individually wrapped to keep children from easily accessing them if a caregiver drops one or if a container is left open momentarily.

In addition, we remained concerned that the ASTM subcommittee's work to track the efficacy of the voluntary standard will use inappropriate metrics. Specifically, we are concerned that some stakeholders are pursuing the use of an inappropriate denominator to determine the effectiveness of the ASTM voluntary standard in reducing harm to children from these packets. The appropriate way to use a public health approach in assessing the standard's efficacy is to calculate an incidence rate of packet exposures by dividing the number of exposures to the packets by the number of individuals at risk of exposure. However, despite our suggestions to the contrary the group is still considering dividing the number of exposures by the number of products sold – a number which is growing every year, and which is not a public health-based measure. We are concerned that such a metric could falsely make it appear that the ASTM standard is more effective than it really is by masking an unacceptably high child exposure rate. It is equivalent to trying to demonstrate the effectiveness of an intervention to reduce Zika virus-related disease by measuring the number of Zika cases divided by the mosquito population. We urge CPSC to stay engaged in the ASTM process, and to ensure that follow-up of the implementation of the standard occurs, appropriate metrics are used to evaluate effectiveness, and that meaningful decreases in exposures and exposure rates occur.

### **Liquid Nicotine**

The AAP strongly supported the enactment of the *Child Nicotine Poisoning Prevention Act of 2015*, which requires CPSC to enforce a mandatory child resistant packaging standard. However, the AAP continues to find examples of non-compliant products available for sale in either vape shops or online. We have shared the details of the products we found with the CPSC. The

Commission needs to do more to ensure manufacturers are aware of and complying with the *Child Nicotine Poisoning Prevention Act*. We remain deeply concerned that without stepped-up enforcement efforts, we will see another child poisoning fatality from dangerous liquid nicotine.

### **Furniture/Television Tip Over**

The AAP is glad to see CPSC proceeding with an advanced notice of proposed rulemaking (ANPR) regarding furniture tipovers. Like you, we were deeply saddened that eight children died from unsafe IKEA dressers. These deaths should have, and could have, been prevented. While we appreciate the educational efforts that both the CPSC and IKEA have made using their “Anchor It” and “Secure It” campaigns, respectively, the best solution is simply to design a safer dresser that will not tip over and harm or kill children. Families living in rental homes or apartments may be prohibited by their landlord or lease from installing anchoring kits into the walls; for such children and families, the “Anchor It” campaign is meaningless. We look forward to additional progress from the CPSC towards a robust mandatory safety standard to prevent this hazard.

Like furniture tip-overs, TV tip-overs can result in horrific injuries or even death. We appreciate the CPSC staff’s March 2017 in-depth analysis of non-fatal injuries from TVs falling off furniture.<sup>v</sup> A July 2013 *Pediatrics* article found that between 1990 and 2011, an estimated 380,885 patients under eighteen were treated in emergency departments for a TV-related injury; this equals an average of 17,313 children a year, or 2 children every hour. The median age of patients was 3 years, children under five represented 64.3% of patients, and boys comprised 60.8%.<sup>vi</sup> Despite previous studies identifying the risks of TV tip-over injuries, newspaper articles highlighting local tragedies,<sup>vii</sup> and the CPSC itself listing TV and furniture tip-overs in their top five hidden hazards,<sup>viii</sup> safety standards for TV stability do not include the requirement that TVs be sold with anti-tip or anchoring devices. Both furniture and TV tip-overs are entirely preventable events. Restraints securing these items to the wall can make all the difference, but strengthening the stability performance requirements in the relevant safety standards would be the most effective solution. This may require a mandatory standard from CPSC to ensure that all manufacturers comply and that all consumers have an opportunity to keep their children safe from this hazard.

### **Window Coverings**

Window covering cords present an avoidable home hazard. Infants placed in cribs near a window may reach out, grab the dangling pull cord, pull it into the crib and become entangled. Toddlers playing near a window cord are also at risk of becoming entangled. A study published in *Pediatrics* in December 2017<sup>ix</sup> found that from 1990 to 2015, there were an estimated 16,827 window blind–related injuries among children younger than 6 years of age treated in emergency departments in the United States, corresponding to an injury rate of 2.7 per 100 000 children. The most common mechanism of injury was “struck by” (48.8%). Entanglement injuries accounted for 11.9% of all cases, and among this subgroup, 98.9% involved blind cords, and 80.7% were to the neck. Overall, most injuries (93.4%) were treated and released. Data from the CPSC’s National Electronic Injury Surveillance System and In-Depth Investigation (IDI) databases were retrospectively analyzed for this study.

In IDI reports for 1996 through 2012, researchers identified 231 window blind cord entanglement incidents among children <6 years of age, and 98.7% involved the child's neck; entanglements with the window blind's operating cords (76.4%) or inner cords (22.1%) were the most common. Two-thirds of entanglement incidents included in the IDI database resulted in death (67.1%).

Although many of the injuries in this study were nonfatal and resulted in minor injuries, cases involving window blind cord entanglements frequently resulted in hospitalization or death. A mandatory safety standard that eliminates accessible window blind cords should be adopted.

The AAP was glad to see movement last year on a voluntary standard recommending cordless window coverings for all "stock" products. This represents a very long-overdue step forward by the industry. However, the AAP urges the CPSC to apply this safety standard to custom blinds as well, and to make this voluntary standard a mandatory one. A mandatory standard prohibiting accessible window covering cords is the only way to ensure that all children are protected from this avoidable hazard in all homes going forward. For example, the voluntary standard will not have an effect on rental units in which tenants are unable to change the window coverings to cordless ones, leaving some families vulnerable. Contrary to misleading statements in the press<sup>x</sup>, voluntary standards are not the same as mandatory standards, and we expect the CPSC to acknowledge this fact when its representatives speak to the press.

### **Button Batteries**

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

More than 3,200 incidents of button battery ingestion<sup>xi</sup> are reported to U.S. poison control centers each year, and these incidents may be vastly under-reported. The number of children with serious injury or death more than quadrupled in the five years between 2006 and 2010, compared to the five years prior. A study published in the May 2012 issue of *Pediatrics* found that between 1990 and 2009, an estimated 65,788 patients under eighteen years of age presented to U.S. emergency departments (EDs) due to a battery-related exposure.<sup>xii</sup> The most serious injuries are usually associated with 20 mm diameter 3-volt lithium batteries, about the size of a nickel, because they are more powerful than button batteries used in years past. If a lithium battery becomes lodged in the esophagus, it can cause tissue injury and necrosis within hours, leading to perforation or death if not removed urgently. Unfortunately, these batteries are easily accessible to children via common household products, such as small remote controls, garage door openers, bathroom scales, cell phones, flameless candles, watches, cameras, greeting cards, hearing aids, and digital thermometers.

Much has been written and discussed on this issue, but the hazards continue to proliferate. Most recently, two children were severely injured when the lithium ion batteries in fidget spinners came loose and the children ingested them.<sup>xiii,xiv</sup> CPSC continues to classify most fidget spinners

as general use products<sup>xv</sup> instead of the attractive toys that they are – and we can now add to the list of fidget spinner-related hazards the ingestion of button batteries. We therefore urge CPSC to work without further delay to strengthen the relevant voluntary standards to include a provision to securely enclose all button cell batteries, and also to work in support of design changes that would eliminate this serious health hazard, even if ingested.

### **High-powered magnets**

As you may remember, the AAP was among the groups strongly supportive of a ban on high-powered magnet sets due to the grave injuries caused when ingested in multiples. The AAP applauded the 2013 recalls of the dangerous products by CPSC<sup>xvi</sup> and Health Canada<sup>xvii</sup> and the CPSC's 2014 safety standard to make the magnets safer and prevent the sale of unsafe magnets after children suffered critical injuries and even died after ingesting these magnets. High-powered magnet sets, marketed under names such as Zen Magnets, are composed of tiny high-powered magnet balls or cubes, often with 200 or more magnets to a set. When two or more magnets are swallowed, their attractive force (flux) allows them to find each other across or between different segments of the digestive system. For example, connections can occur between the stomach and the small intestine, between the small intestine and the colon, or across loops of bowel. These connections can lead to necrosis of the intestinal tissue, which can lead to serious infections, and even death.

Research shows that the CPSC and Health Canada efforts to ban high-powered magnet sets were working to protect children. Researchers studied the impact of Canada's recall by comparing data on magnet ingestion at the Hospital for Sick Children during the two years before the recall (2011 and 2012) and two years after the recall (2014 and 2015).<sup>xviii</sup> In the initial two years, there were 22 multiple magnet ingestions, six operations and nine endoscopic procedures. In the two years after the recall, there were five ingestions, one operation and four endoscopic procedures. "Government regulations are one of the strongest instruments in the policy toolbox to effect change," researchers wrote. "... Our study shows that in this particular case, the policy intervention appears to have quickly mitigated the threat of multiple magnet ingestions."<sup>xix</sup>

The AAP applauds the CPSC's October 2017 order to stop the sale of high-powered magnet sets on the basis that they represent a "substantial product hazard." These magnet sets are dangerous, and the CPSC's action to take them off the market was appropriate, given the harm they pose to children. In addition, to prevent the known harms associated with high-powered magnetic sets, we urge the CPSC to establish a safety standard for small rare-earth magnet sets without delay. A mandatory standard would prevent the widely recognized child harms from small magnets – up to and including death – before they occur, as opposed to a stop sale, which takes magnet sets out of commerce after they have already had an opportunity to enter the consumer marketplace.

### **Flame Retardants**

The AAP is a party to the 2015 petition led by EarthJustice and Consumer Federation of America urging CPSC to use its Federal Hazardous Substances Act authority to ban organohalogen flame retardants in four product categories: durable infant or toddler products, children's toys, child care articles, and other articles intended for use by children; furniture sold for use in residences;

mattresses and mattress pads; and the plastic casing of electronic articles. Organohalogen flame retardants are widely present in the environment and human exposure is extensive. These chemicals pose serious public health concerns, particularly for children. They are associated with adverse effects including: reproductive impairment; neurological effects, including decreased IQ in children, learning deficits, and hyperactivity; endocrine disruption and interference with thyroid hormone action; genotoxicity; cancer; and immune disorders. The AAP was pleased to see that the CPSC voted to move forward on a rulemaking on this topic, and to convene a Chronic Hazard Advisory Panel (CHAP) and to issue guidance to consumers and manufacturers. The AAP's comments in support of the 2015 petition is re-attached to this testimony for the Commission's re-familiarity with the data supporting CPSC action on this dangerous class of chemicals.

### **Recreational Off-Highway Vehicles and All-Terrain Vehicles**

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

Children are not developmentally capable of operating these heavy, complex machines. No child under the age of 16 should operate an ROV, and we must do all we can to ensure children do not operate these vehicles. Children should not even be passengers in ROVs, as safe methods of securing children in these vehicles have not been established. However, despite our best efforts to prevent child use of these machines, children continue to suffer injuries and deaths while driving or riding on them. We urge CPSC to continue prioritizing this issue through ongoing monitoring of morbidity and mortality associated with ROVs to assess the effectiveness of the current voluntary safety standard. If that standard is not sufficient to prevent these injuries and deaths, CPSC should move expeditiously to advance a strong mandatory standard that reduces the known injury and fatality hazards associated with these vehicles.

With regards to All-Terrain Vehicles (ATVs), the CPSC's own data demonstrates yet again that ATVs are not safe for children and should not be used by any child under the age of 16. Estimates of serious injuries requiring emergency room treatment among people of all ages increased from 97,200 in 2015 to 101,200 in 2016. While the estimated number of 4-wheel ATV-related fatalities for all ages decreased from 661 in 2014 to 647 in 2015, as CPSC itself notes the 2014, 2015, and 2016 data are not considered complete and will likely increase as CPSC obtains additional crash data. In 2016, ATVs killed at least 53 children younger than 16, accounting for 16 percent of ATV fatalities. However, children continue to drive and ride in these vehicles, and the injuries and deaths continue as a result. Children are not developmentally capable of operating these heavy, complex machines. The CPSC can and must do more to prevent these incidents in the first place and protect children from further harm. The AAP continues to call upon the agency to reject the manufacture of a transitional, "youth model" ATV

for 14- to 16-year-olds that is capable of traveling at speeds up to 38 miles per hour. Preventing children from riding ATVs is still the most effective method to reduce injuries and deaths.<sup>xx</sup>

## Conclusion

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

---

<sup>i</sup> U.S. Centers for Disease Control and Prevention (2016). About SUID and SIDS. Retrieved from <http://www.cdc.gov/sids/aboutsuidandsids.htm>. See also <https://www.cdc.gov/sids/pdf/sudden-unexpected-infantdeath.pdf>.

<sup>ii</sup> Erck Lambert AB, Parks SE, Shapiro-Mendoza CK. National and State Trends in Sudden Unexpected Infant Death: 1990–2015. *Pediatrics*. 2018;141(3):e20173519. Available at: <http://pediatrics.aappublications.org/content/early/2018/02/09/peds.2017-3519>.

<sup>iii</sup> SUID relates to Sudden Infant Death Syndrome (SIDS) and other similar terminology.

<sup>iv</sup> The decline in SIDS rates since the late 1990s has been, in part, attributed to a *diagnostic shift* that was identified from 1999 through 2001; some death certifiers are classifying fewer deaths due to SIDS and more deaths due to other ill-defined and unspecified causes of mortality (unknown cause), or accidental suffocation and strangulation in bed (ASSB). Given this diagnostic shift, grouping SIDS deaths with deaths classified as due to unknown cause or ASSB on death certificates as sudden unexpected infant deaths (SUIDs) is a strategy for consistently monitoring SUID trends.

<sup>v</sup> [https://cpsc.gov/s3fs-public/NonFatalTVInjuriesreportOctober2016March17\\_0.pdf](https://cpsc.gov/s3fs-public/NonFatalTVInjuriesreportOctober2016March17_0.pdf).

<sup>vi</sup> <http://pediatrics.aappublications.org/content/132/2/267.full>.

<sup>vii</sup> Breckenridge MB. Anchoring furniture can prevent tragedy. *Beacon Journal*. January 14, 2012. Available at: [www.ohio.com/news/local/mary-beth-breckenridge-anchoring-furniture-can-prevent-tragedy-1.255040](http://www.ohio.com/news/local/mary-beth-breckenridge-anchoring-furniture-can-prevent-tragedy-1.255040). See also: Toddler dies after TV falls on her. *Times of Trenton*. May 10, 2007. Available at: [http://blog.nj.com/timesupdates/2007/05/post\\_71.html](http://blog.nj.com/timesupdates/2007/05/post_71.html). See also Eldeib D, Stoffel M. TV tips over, kills 6-year-old boy. *Chicago Tribune*. November 1, 2011. Available at: [http://articles.chicagotribune.com/2011-11-01/news/ct-metchild-tv-safety-20111101\\_1\\_flat-screen-televisions-tvs-head-injuries](http://articles.chicagotribune.com/2011-11-01/news/ct-metchild-tv-safety-20111101_1_flat-screen-televisions-tvs-head-injuries). See also Williams-Harris D. “We just need to learn from this.” Girl, 4, dies after TV set falls on her. *Chicago Tribune*. January 16, 2012. Available at: [http://articles.chicagotribune.com/2012-01-16/news/chi-officials-girl-4-killed-after-tv-falls-on-her-in-universitypark-20120115\\_1\\_gianna-share-custody-boyfriend](http://articles.chicagotribune.com/2012-01-16/news/chi-officials-girl-4-killed-after-tv-falls-on-her-in-universitypark-20120115_1_gianna-share-custody-boyfriend).

<sup>viii</sup> US Consumer Product Safety Commission. Top 5 hidden hazards in the home. 2007. Available at: [www.cpsc.gov/PageFiles/116304/hidden.pdf](http://www.cpsc.gov/PageFiles/116304/hidden.pdf).

<sup>ix</sup> Onders B, Kim EH, Chounthirath T, et al. Pediatric Injuries Related to Window Blinds, Shades, and Cords. *Pediatrics*. 2018;141(1):e20172359. Available at: <http://pediatrics.aappublications.org/content/early/2017/12/07/peds.2017-2359>.

<sup>x</sup> <https://www.npr.org/sections/health-shots/2017/12/11/569463027/window-blind-cords-still-pose-a-deadly-risk-to-children>.

<sup>xi</sup> <https://www.poison.org/battery/stats#2017table1>.

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

<sup>xiii</sup> <http://boston.cbslocal.com/2018/01/29/children-injured-after-swallowing-fidget-spinner-batteries/>.

<sup>xiv</sup> <https://www.wthr.com/article/boy-recovering-after-swallowing-fidget-spinner-battery>.

<sup>xv</sup> <https://www.cpsc.gov/Business--Manufacturing/Business-Education/Business-Guidance/Fidget-Spinners>.

<sup>xvi</sup> <https://www.cpsc.gov/Recalls/2013/high-powered-magnet-balls>.

---

<sup>xvii</sup> <https://www.canada.ca/en/health-canada/services/consumer-product-safety/advisories-warnings-recalls/letters-notices-information-industry/information-manufacturers-importers-distributors-retailers-products-containing-small-powerful-magnets.html>.

<sup>xviii</sup> [http://www.jpeds.com/article/S0022-3476\(17\)30187-7/fulltext](http://www.jpeds.com/article/S0022-3476(17)30187-7/fulltext).

<sup>xix</sup> <http://www.aappublications.org/news/2017/04/21/Magnets04211>.

<sup>xx</sup> Flaherty MR, Raybould T, Kelleher CM, et al. Age Legislation and Off-Road Vehicle Injuries in Children. *Pediatrics*. 2017;140(4):e20171164.



**Jennifer Cleary**

Senior Director, Regulatory Affairs  
Association of Home Appliance Manufacturers



1111 19th Street NW > Suite 402 > Washington, DC 20036  
f 202.872.5955 f 202.872.9354 www.aham.org

March 29, 2018

Via Email

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

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

Re: Agenda and Priorities FY 2019 and/or 2020

Dear Ms. Mills:

I am writing to respectfully request to make an oral presentation on behalf of the Association of Home Appliance Manufacturers (AHAM) during the Consumer Product Safety Commission's (CPSC or Commission) April 11, 2018 public hearing on the Commission's agenda and priorities for fiscal year 2019 and 2020. Per the requirements of the March 1, 2018 Federal Register Notice, AHAM submits the following written text summarizing the oral presentation I would like to make on April 11.

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

AHAM is also a standards development organization, accredited by the American National Standards Institute (ANSI). The Association authors numerous appliance performance testing standards used by manufacturers, consumer organizations and governmental bodies to rate and compare appliances. Our safety standards activities, however, are aimed at developing, evaluating, and commenting on proposals before standards development organizations such as UL and CSA. In that regard, AHAM has made and supported a significant number of safety proposals (58 for major and portable appliances combined) in the past six years. AHAM's

consumer safety education program has educated millions of consumers on ways to properly and safely use appliances such as portable heaters, clothes dryers, and cooking products.

During the April 11 hearing, AHAM will discuss:

1. **Flammable Refrigerant**—AHAM thanks the Commission for dedicating staff resources to the refrigerator safety standard (UL 60335-2-24) effort to evaluate, and eventually change, the charge size of flammable refrigerant for refrigerators. We encourage the Commission to continue to ensure the participation of CPSC staff in standards efforts on other products such as room air conditioners, portable air conditioners, and dehumidifiers (UL 60335-2-40). We also strongly encourage the Commission to work with regulators with overlapping interests, such as in this case, EPA (and in other cases for our products DOE and FTC) to increase integration, comprehensive analyses, and to minimize cumulative regulatory burden.
2. **Counterfeit Water Filters for Refrigerators**—Counterfeit and deceptively labeled water filters are flooding the U.S. markets and are sold online every day. These filters often fail to meet the safety and structural standards that consumers, manufacturers, and regulators expect. Consumers purchase these filters thinking they are purchasing genuine filters. Installing a counterfeit or deceptively labeled water filter into a refrigerator can result in health and safety issues. For example, testing shows a failure of many of these filters to remove contaminants and some tests even show counterfeit water filters adding arsenic to the water. Poor fit can lead to damage of the appliance and the kitchen when leaks occur.

AHAM has been working to educate consumers on the dangers of counterfeit water filters for refrigerators and to direct them to a trusted source to purchase genuine filters. We would also like to work with the Commission, as we are with CBP, to stop the importation of counterfeit water filters and we respectfully request that the Commission include this important effort in its budget and priorities for FY 2019/2020. Efforts could include work internationally as well as at the ports with CBP.

3. **Refrigerator Safety Act**—Because of the existence of the old Refrigerator Safety Act—which, in order to prevent refrigerators with latches or similar closures, requires refrigerators to be able to be opened from the inside—manufacturers must file General Certificates of Conformity certifying that refrigerators comply with the Act's requirements. Modern refrigerators do not have doors with latches and the current UL safety standard, in a more modern manner, requires refrigerators to be able to be opened from the inside. Thus, the GCC is a wasteful paperwork exercise that does not protect the public and only serves to add cost and burden to manufacturers.

Manufacturers often list all models of refrigerators on a single label in order to comply with the GCC requirement. This means that when new models are added, the label must be updated, old labels discarded, and the new labels adhered to products. This constant monitoring and changing of labels adds considerable cost and burden to manufacturers. And there is no corresponding safety benefit.

AHAM respectfully requests that CPSC make it a priority to work together with AHAM to mitigate the burden associated with this outdated law. We believe this could be done through changes to existing Commission rules to rely more on the certification mark. In addition, we ask for the Commission's support on legislative changes to eliminate the Act.

4. **Joint Research**—As the Commission knows, AHAM has, for the past several years, been working proactively to improve voluntary safety standards. We have been working cooperatively with CPSC staff in order to ensure the robustness of our proposals and in recognition of the fact that both CPSC and AHAM are often advancing similar or identical goals. Joint or coordinated research would effectively and efficiently advance a number of product safety goals.

AHAM appreciates the opportunity to make an oral presentation during the April 11, 2018 hearing on the Commission's agenda and priorities for fiscal year 2019 and 2020 and would be glad to further discuss these matters with you should you so request.

Respectfully submitted,



Jennifer Cleary  
Senior Director, Regulatory Affairs



**Eve Gartner**  
EARTHJUSTICE



# EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES  
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

March 28, 2018

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

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

Re: *Agenda and Priorities FY 2019 and/or 2020 -- Request to make oral presentation*

To whom it may concern –

I hereby request to make an oral presentation to the Commission on April 11, 2018, in order to comment on the Commission's agenda and priorities for FY 2019 and/or 2020. I will thank the Commission for granting the Petition to ban four categories of products containing additive, non-polymeric organohalogen flame retardants as a class, for issuing guidance addressing these hazardous products, and for directing the convening of a CHAP. I will urge the Commission to move forward expeditiously to protect consumers from products containing these chemicals. I will further urge the Commission to adopt CA TB 117-2013 as a national furniture flammability standard.

Thank you very much.

Sincerely,

Eve Gartner

NORTHEAST 48 WALL STREET, 19<sup>TH</sup> FLOOR NEW YORK, NY 10005

T: 212.845.7376 F: 212.918.1556 [NEOFFICE@EARTHJUSTICE.ORG](mailto:NEOFFICE@EARTHJUSTICE.ORG) [WWW.EARTHJUSTICE.ORG](http://WWW.EARTHJUSTICE.ORG)

# Panel 3

1

2

3

4

5

6

7

8

**Lisa Siefert**

Executive Director of Shane's Foundation

April 2018

Office of the Secretary  
Consumer Product Safety Commission  
Room 502  
4330 East-West Highway  
Bethesda, Maryland 20814



"Agenda and Priorities FY 2019 and FY 2020"

Thank you for allowing me to submit comments on the CPSC's agenda and priorities. I am Lisa Siefert, Executive Director of Shane's Foundation.

"Love you," I said to my baby boy. "Love you," he said back from his bed as I closed the door to his bedroom for his afternoon nap. Later, I went to wake my baby from his nap as my husband came in from yard work. My husband heard a sound that was unrecognizable - my screams. I found Shane under his dresser.

I am a wife and mother of a daughter who is 11 years old and to my son Shane who is two... forever.

I founded Shane's Foundation in 2012, a mere year after Shane passed away. I felt the urgent need to warn parents of this hidden danger in their homes. No family should go through the death of their child, especially one that is so easily preventable and no child should pass away in such a horrific way as Shane did. Shane's Foundation is a child safety not-for-profit organization focusing on furniture, TV and appliance tip-over awareness and prevention - and I need your help.

#### ANCHORIT!

I am proud to be an AnchorIt! Mom. I believe AnchorIt! is crucial to the public's awareness of this hidden hazard. Much effort and funding has gone into this program and I urge you to continue this campaign and distribution of the materials. You already have a good foundation of partnerships dedicated to building the momentum of this program. I firmly believe AnchorIt! should be a priority to continue to use these resources. This message is especially important to families that need to anchor furniture already in their homes as well as the need to use the strap that comes with their new furniture.

While we await complete data on fatalities, the recent 2017 CPSC Tip-Over report reflects 2011, 2012 and 2013 fatalities rising from on average one death every 14 days to one every 10 days. This data is BEFORE the AnchorIt! campaign started early 2015. I strongly urge you to continue to fund the AnchorIt! campaign as data since 2014 is still incomplete.

#### ASTM PRESENCE

While anchoring furniture is important, I also think the CPSC should encourage manufacturers to look to design solutions to tipping furniture. Manufacturers need to hear your voice and support with your leadership in ASTM committees looking at a stronger ASTM standard. The standard should mimic real life use such as additional weight of 60 lbs. that matches a current 5 year olds weight according to recent data, carpet surface, loaded drawers and include all furniture, even those shorter than 30" such as KID and Shane's Foundation tested in our recent report. We urge CPSC to continue to prioritize this work, giving staff the time and resources they need to develop strong standards that will reduce injuries and deaths from dressers and clothing storage units.

#### EFFECTIVE RECALL

I further urge you to recall furniture that does not meet the current standard. Your leadership will show a commitment to safer furniture with these recalls. Recalls need to accelerate to take dangerous products off the market. Further, companies with a recalls, such as IKEA, need to be helped with recall effectiveness. The public needs to be made aware of and steps to be taken on how to get that product fixed or out of their homes.

Thank you for allowing me the opportunity to speak today and I look forward to continue to work with the CPSC.

**Sheila Bearden**

## Agenda and Priorities FY 2019 and/or 2020

Sheila Bearden

[beardenjs@comcast.net](mailto:beardenjs@comcast.net)

615-943-0193

In his book, The Language of God, Dr. Francis Collins, leader of the Human Genome Project and now Director of the National Institute of Health, says that "One of the most cherished hopes of a scientist is to make an observation that shakes up a field of research. Scientists have a streak of closeted anarchism, hoping that someday they will turn up some unexpected fact that will force a disruption of the framework of the day. That's what Nobel Prizes are given for."

Today I come to request that you fund additional research taking a closer look at the dangers of electronic air cleaners (EACs). I use the term "air cleaners" only because they are so named, but certainly not because this is a function of their operation. Even the EPA calls them "Ozone Generators that are Sold as Air Cleaners." This is confusing to the general public. Should air cleaners really produce ozone intentionally or as a by-product? My response: a resounding NO!

If only I had known of the dangers, my suffering could have been avoided. Developing Reactive Airway Disease (RADs) at age 52 is highly unlikely for a non-smoker. Developing a trigeminal facial pain syndrome at the same time, what's happening to me?

I come before you with a decade of research, but I also come with a story to tell. A story of injury, suffering and a desire to educate.

Dr. David Julius, Professor and Chair of the Department of Physiology, UC, San Francisco, was a nominee and major contender for the 2015 Nobel Prize in Medicine. He cloned the gene, TRPV1, that was responsive to capsaicin, the hot in chili peppers. This was the first of 28 TRP ion channels to be discovered.

Maybe you've never heard of a TRP channel. Certainly my physicians had not. TRP is short for Transient Receptor Potential. These ion channels are called gated because in the presence of an activator, the pore will open allowing calcium or potassium ions to flow into the cell, generating an action potential. This action potential is what can lead to pain and inflammation.

TRP channels are nociceptors. Nociception is the sensory nervous system's response to certain harmful or potentially harmful stimuli. Julius and his lab unlocked mysteries of nociception the likes of which scientists had never seen before.

His lab discovered that this same channel, TRPV1, that feels the burning of hot chili peppers, also senses temperatures over 109 degrees. Two different kinds of hot activated by the same ion channel. Furthermore, it was discovered that this channel is also activated by acids, pepper, ammonia, mustard oil, and more.

Your last technical report, "Assessing Potential Health Effects and Establishing Ozone Exposure Limits for Ozone-Generating Air Cleaners," by Richard Shaughnessy, PhD, was issued in 2006. It was also in 2006, when Sven-Eric Jordt, working in the Julius Lab, discovered that TRPA1 senses irritating chemicals in the air. He and other scientists went on to discover that TRPA1 is activated by, among other things, cinnamon, garlic, onions, formaldehyde and acrolein. It would be 2010 before Thomas Taylor-Clark issued his paper, "Ozone activates airway nerves via the selective stimulation of TRPA1 ion channels."

One sensory channel activated by more than one irritant. Interesting!

What are the implications in our homes? More importantly, what are the implications for our health? Ozone reacting with VOCs to generate acids, aldehydes and ultra-fine particle matter. Now that we know that both ozone and aldehydes activate the same TRPA1 ion channel, establishing a limit for ozone is irrelevant. New homes inherently have more VOCs than older homes. One supplier of filters told me that for this very reason, one should never use EACs in a newly constructed home.

Dr. Lee and others published, "Interaction between TRPA1 and TRPV1: Synergy on pulmonary sensory nerves." Their research showed that a TRPA1 activator applied alone at near or below-threshold concentrations evoked only minimal or undetectable responses in isolated pulmonary sensory neurons; however, it markedly amplified the current evoked by the low-level activation of TRPV1 in the same neurons. They noted as much as a 406% greater response than the mathematical sum of the response when a TRPA1 or a TRPV1 irritant was administered individually.

Ozone/VOC reactions result in both TRPA1 and TRPV1 irritants. Lee writes that TRPA1 is known as the “gatekeeper of inflammation” and that TRPV1 has been described as the “molecular gateway to the pain pathway.”

Words by John Rennie, Science Editor & Journalist: “The picture emerging from the work in Julius’s lab and elsewhere thus confirmed that nociceptors do exist as a distinct class of sensory neurons. Equally important was that it clarified how those pain receptors worked. It even explained why the same receptors respond to stimuli as different as heat and chili extract.”

Dr. David Julius has received numerous prestigious awards for his work, and though he is not yet a Nobel Prize winner, his discoveries have already shaken up a field of research.

I am here to encourage you to let the discoveries of Dr. Julius shake up the way the CPSC looks at environmental exposures. I speak concerning EACs, but I ask that you not limit yourselves. This same – disruption of the framework – applies to other exposures as well.

In 2008, Jordt and Bessac published “Breathtaking TRP Channels: TRPA1 and TRPV1 in Airway Chemosensation and Reflex Control.” They write: “Together with TRPV1, the capsaicin receptor, TRPA1 may contribute to chemical hypersensitivity, chronic cough and airway inflammation in asthma, COPD and reactive airway dysfunction syndrome.”

They use the terms “sensitize” and “sensitization” throughout their paper, writing that Reactive Airway Disease is characterized by asthma-like symptoms such as cough, wheezing, chest tightness and shortness of breath and heightened sensitivity to chemical and physical stimuli, including the initial sensitizing stimulus. The multiple chemical sensitivity of TRPA1 can readily explain the broad chemical sensitivity observed in RADS patients.

This is important -- an initial chemical sensory challenge and tissue injury may sensitize TRPA1 channels through inflammatory signaling pathways, thereby establishing prolonged hypersensitivity to multiple reactive chemicals.

Do you understand what it means to live TRPA1/TRPV1 sensitized? Not only am I sensitive to ozone, formaldehyde and weak acids, I am also sensitive to all foods

and spices that activate TRPA1 and/or TRPV. No chili powder, no oregano, no pepper, basically, no spices. They all trigger burning mouth. I am sensitive to most fragrances, many lotions, soaps and shampoos.

It is not easy to accept an invitation to dinner or to be in other's homes. What foods will they serve, do they burn scented candles, do they have fragranced plug-ins, is it new construction?

Jannis Meents, PhD, published "Agonist-Induced Sensitization of Irritant Receptor Ion Channel TRPA1." He writes: "Considering the physiological relevance of agonist-induced sensitization of TRPA1, it is likely that it would initially be masked by calcium-mediated inhibition of the channel. However, the sensitizing effect of agonists increases over time and sensitization may eventually overcome the inhibition of the channel by calcium, leading in total to a sensitized channel state. Agonist-induced sensitization could provide a mechanism for the detection of repeated or long-term exposure to harmful irritants." This explains why one can have a short-term exposure to TRP activating foods, or even to ozone, but air cleaners should not put us in a position to have "repeated or long-term exposures to harmful irritants."

Taylor-Clark says that "Inhalation of ozone is a major health risk" and that "ozone is not an indiscriminate neuronal activator, but rather it potently and selectively activates a subset of airway C-fibers by directly stimulating TRPA1."

In 2006, under contract to the CPSC, Dr. Shaughnessy submitted his report to your commission. He concluded with "Best Available Information," and recommended staying with a maximum accumulation limit of 50 ppb as established by the FDA, but the report contained many qualifiers. He said that the consideration of implications of indoor chemistry related to ozone and byproducts was beyond the scope of this project; however, he noted that the impact of indoor chemistry resulting in adverse byproducts may warrant more stringent ozone limits in the near-future. This would be based not only on the harmful effects from breathing ozone, but also the combined synergy related to the byproducts of indoor reactions resulting in irritants such as aldehydes, ketones, organic acids, and ultrafine particles.

He also noted that studies show that sensitive populations do have the potential to exhibit adverse health effects at low levels of ozone exposure (at or below

background levels). He said it would be prudent to consider a margin of safety to protect these groups from the unquantified risk associated with exposure to ozone intentionally generated indoors. He left the question open – should sensitive populations be advised to avoid exposure to intentionally generated ozone until a margin of safety can be determined (or suggested) using quantitative risk assessment, or whether empirical prevention guidance is warranted at this time.

I say that NOW IS THE TIME – Now that we know that ozone and formaldehyde activate the same receptor, TRPA1, and that TRPA1 is capable of being sensitized, the CPSC has a responsibility to evaluate the dangers and warn the public. Better yet, understanding that we have other, less harmful, options for indoor air cleaners, why allow EACs in our homes at all. HEPA filters are reported to be very effective.

Our EACs were offered and installed by our heating and air contractor. I clearly remember the discussion where he told me of the benefits of these “air cleaners” and I told him that it might be a good idea for us to make the purchase. Our home was built with an in-law suite, and I fully expected that my mother would move in with us one day. She had COPD, wouldn’t this be good for her? Aren’t these air cleaners targeted to people with sensitivities? Yes, they are! But should they be? Absolutely not!

That same summer, our daughter, son-in-law, and two-month-old granddaughter moved in with us for six weeks as they transitioned from one city to another. The little bedroom that we had designed for our grandchildren had a built-in baby bed. That bedroom and, in fact, all our bedrooms, had their own thermostatic controls. The baby room was no more than 120 square feet. If that room were the only room in the house calling for heat or air, then all the ozone generated by our EAC was delivered to this one small room. If the fan were in the “On” position, then ozone was continually generated. How much ozone was generated? Were little Aubrey’s two-month-old lungs affected by breathing lung irritants?

I became sick the day we moved into our home and in just over a week I was at the ED with severe respiratory issues – wheezing, coughing, fatigue and cold sweats. How is it that I was so profoundly affected? I was in good health and

walked two miles most every day. Was I unknowingly a part of the “sensitive population?” Probably so. As a seamstress for my young daughters I would occasionally come across a fabric that triggered burning in my throat, probably formaldehyde related. I once bought a rug that I returned because it triggered burning in my throat.

I now understand that I was sensitive, but not sensitized. Being sensitized, I have an exaggerated response to both TRPA1 and TRPV1 irritants. Why both? Because science says that TRPA1 and TRPV1 are co-expressed. An upregulation of one will cause an upregulation of the other.

With my on-again, off-again symptoms, I reasoned that if I were having a response to something in our new home, I would be sick all the time, but I was not. After my initial, horrific respiratory response, my symptoms were frequent, but not constant.

We moved into our home in May of 2008, and after a summer of multiple cases of bronchitis, in September 2008, I went to my physician and said something is wrong with me. I explained my respiratory symptoms, and he felt that I should see an allergist. Before seeing the allergist, I remembered that our heat and air contractor had told us that for the first week or so in our new home we should turn our thermostats to the fan “On” position so that our air filters would run continuously and clean the air better.

In remembering that, I thought, “Great, that’s what I need to do again. Turn all our thermostat fans to the “On” position.” I did that, thinking that perhaps in cleaning my air, my symptoms would improve. It never once crossed my mind that our filters being in the continual “On” position could generate more ozone and contribute to my illness.

Honestly, I didn’t even know that my air cleaners generated ozone. Had I known, I certainly would not have understood the dangers. I trusted my contractor and we both trusted Honeywell.

This simple change to our thermostats is a decision I will forever regret, but how could I have known that my health would be so profoundly affected?

In a matter of a few days, our bedside tables were covered with dust – what science calls particle matter. I called our heating and air contractor to our home

to see if he understood what was happening. He had no idea that a chemical reaction was taking place. After that, over the next two months, our house became increasingly pungent-smelling.

It was during this time that I again developed severe bronchitis with wheezing. By this time, my mother had lung cancer. Wanting desperately to get well so that I could be with her and help with her care, I felt it best for me to get rest. For two solid weeks, I hardly left the house. I stayed primarily in our bedroom—the room with the highest ozone.

My sense of smell increased, I suffered extreme fatigue and dizziness, and then worst of all – the burning started. My chest burned, my face, mouth and eyes burned.

What was happening to me? Having heard of formaldehyde, I began reading and one article caught my attention. I read that EACs are a source of poor indoor air quality because they generate formaldehyde.

It was late September when I turned my EACs to the “ON” position. By early December, the burning pain was unbearable, and I told my husband that I could no longer stay in our home. It was a sad night indeed. I told him what I had read about EACs and formaldehyde, so we decided to turn the equipment off, and to leave the house in search of a hotel. We visited four or five hotels in our area, yet I was unable to tolerate any of them. They all smelled of fragrance or chemicals. We returned home after a few hours and noted that our home did not smell quite as pungent, but it was too late, my sensory nerves were damaged and sensitized.

Reactive airways, bad enough -- trigeminal facial pain, tormenting. TRPA1 and TRPV1 are not only expressed in the lungs but also on the trigeminal nerves. One breathes through the mouth and nose taking air into the lungs. In addition to the nerves in the lungs, an exposure can also sensitize the trigeminal nerves, that are in the face, oral cavity, etc. With sensitization comes a heightened response to chemicals. At this point, I was much better outside than inside. That night, in 40-degree temperatures. I took my pillow and blanket outside to try to find relief. I intended to sleep on the sofa on our screened-in porch, but of course, it was too cold, and I came back in. Still, I hope you understand my desperation.

The extreme pungent smell and particle matter was the result of an ozone-initiated reaction with three pieces of new carpet that I had temporarily stored under our bed. My cosmetics in my bathroom cabinet had also become very strong smelling, to myself and others. Again, evidence of an ozone-initiated reaction.

At the time of my exposure, my husband was a board member at the University of Tennessee, School of Architecture. Through that relationship, we were able to borrow a calibrated ozone measuring device from the School of Engineering. Ozone near our bedroom and bathroom measured at 30 ppb. My husband measured ozone output at multiple vents, leaving the equipment at each location for ten minutes. Dr. Brent Hager, with the Metro Nashville Health Department, noted that the numbers were trending upward when we moved the equipment to read a different area, so we really don't know how high the ozone would have measured. Is the manufacturer underreporting ozone output? We believe so. In fact, Consumer Reports tested Honeywell's ozone output to be even higher than our own equipment.

I refer to Honeywell equipment because that is the brand that we purchased, but I believe that all EACs are detrimental to our health.

Let me read you something from a Honeywell Engineering Manual of Automatic Control for Commercial Buildings – Yes, I said this is coming from Honeywell: “Electronic air cleaners are high efficiency filter devices that produce ozone as a by-product. Ozone is listed as a harmful contaminant, yet it has been used to improve IAQ (Indoor Air Quality) by removing VOCs. If ozone is used as a filtration or cleaning device, it is necessary to follow these devices with activated charcoal or other gas phase filters to remove any residual ozone.” This statement is absurd! I would argue that these filters remove VOCs by changing them from “volatile” to “harmful.”

Why “post filters” for commercial EACs and not for residential equipment? One of the “Modifications to Reduce Ozone Odor,” offered by Honeywell is to install an activated carbon filter. Does Honeywell offer such a filter for home use? They certainly didn't when we purchased our EACs. In fact, a 2002 owner's guide says that “Honeywell does not offer carbon filters.” They go on to say that “Some

carbon filters are combustible and contact with high voltage could result in smoke or fire.” This is not encouraging, and in fact sounds like a design flaw.

Furthermore, the section titled “Modifications to Reduce Ozone Odor” is carefully worded as to minimize the presence of a hazardous chemical. Should we only want to reduce the “odor” and not the actual ozone?

A 1998 version of Honeywell’s EAC owner’s guide reads: “The electronic air cleaner generates a small amount of ozone in normal operation. During the first week or two of operation, the amount may be higher because of sharp edges on some of the new high voltage metal parts. Normal use dulls these edges in a short time.” Our owner’s guide made no such claim, but is this still true? How much ozone is produced before the edges dull?

From a current Honeywell site: “What if I see white dust after installing the F300 Electronic Air Cleaner? The presence of “white dust” is actually an indicator that your Electronic Air Cleaner is working properly.” Really? Science says that an ozone-initiated reaction can produce particle matter. I do wonder if “white dust” and particle matter are one-and-the-same.

Again, from a 2002 Honeywell EAC owner’s guide, “For greatest efficiency, the air cleaner should run all the time. To do this, set the fan switch on your thermostat to On, and make sure that the air cleaner is turned on.” Current owner’s guides give no such instructions. Why? At some point did Honeywell recognize that this would generate more ozone? It certainly does.

I had read that the American Lung Association (ALA) did not approve of EACs and yet my owner’s manual had the American Lung Association logo in the corner. I challenged the ALA and they issues a “cease and desist” order to Honeywell. I was told that Honeywell had taken liberties to use the logo based on a relationship in another area. Again, were they targeting a sensitive population?

I recognize that I am probably the worst of the worst, but truthfully, had I moved into our home already having asthma, reactive airways, or COPD, and had I become worse, I may have simply considered this a progression of my disease.

Let me conclude with a series of observations –

Had I not read that “one” article about EACs relationship to formaldehyde, I may never have suspected our EACs to be the source of my illness.

Had my husband not had access to ozone measuring equipment, we would never have known that our EACs produced more ozone than the manufacturer reported.

Had Dr. Taylor-Clark, who wrote the paper about ozone activating “nerves” via TRPA1, not picked up my phone call, I might never have understood the relationship between ozone and the trigeminal nerves. I might never have understood that I was not having an allergic response to multiple chemicals but was instead having a neuropathic response.

This time last year I traveled to London with my husband. He on business and me, with time on my hands, reached out to a respiratory pharmacologist, Dr. Maria Belvisi, Head of Respiratory Pharmacology, National Heart and Lung Institute, Imperial College London. She and others published “Transient receptor potential (TRP) channels in the airway: role in airway disease.” The short of the story is that I called her, told her that I suffered from TRPA1/TRPV1 sensitization and requested to stop by. We had a face-to-face meeting where she conferenced in the leading lung specialist in London, Dr. Jaclyn Smith. Both are internationally recognized scientists. We had about a 45-minute conversation and I recall her saying that we know that this happens, we’ve just never had anyone come to us like this. Then she asked, “Do you know other people like you?”

Yes, yes, I do, and I am here to speak on behalf of the chemically and environmentally sensitive. I ask that you, the Consumer Product Safety Commission, seek understanding and act now to protect the public. There are more people like me than you might ever imagine.

Thank you.



Photo 1

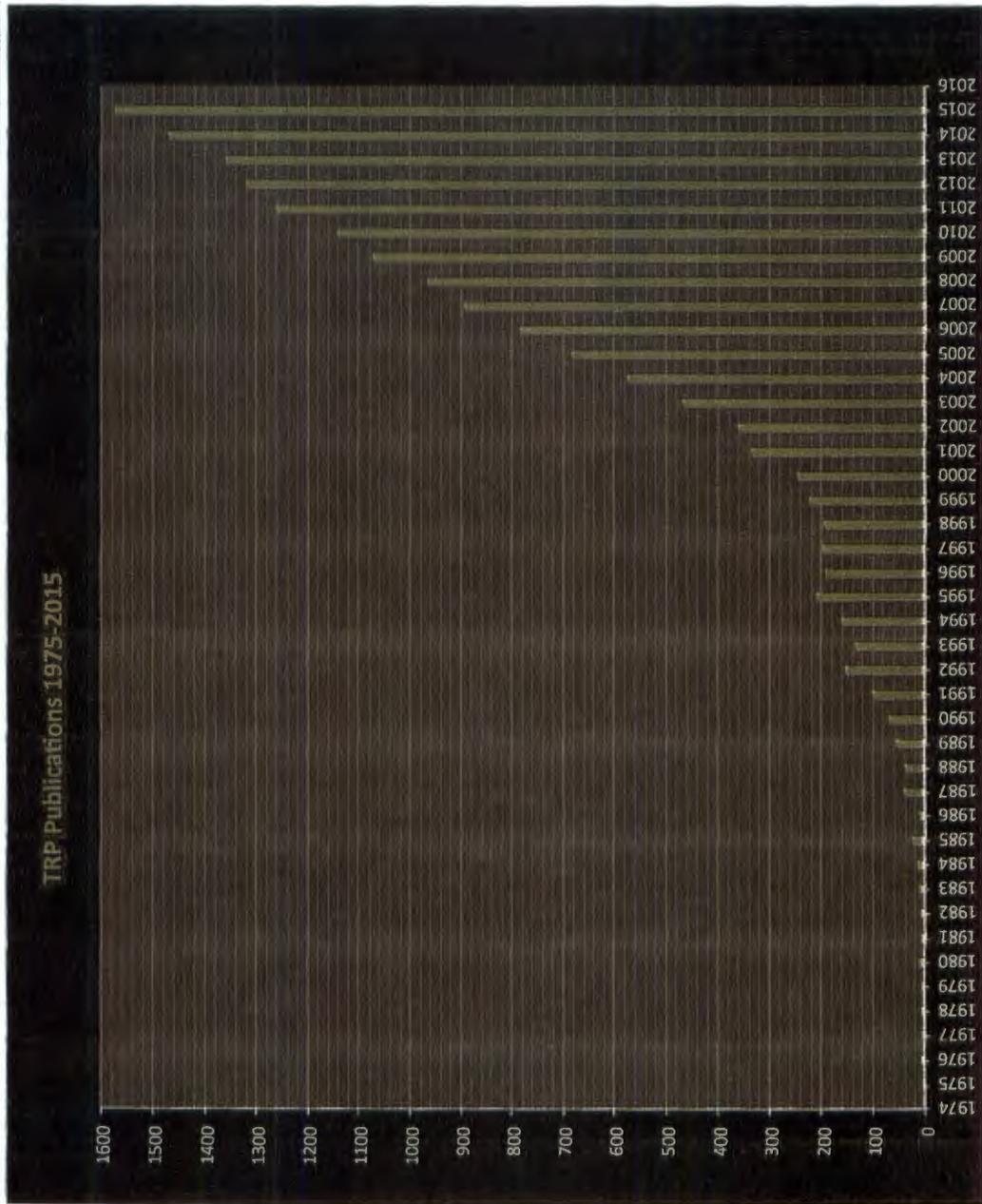
11/19/2008



Photo 2

This chest had been cleaned only 3 days prior

# A Surge in Interest in TRP Channels



This document is property of Hydra Biosciences Inc. Do not reproduce or distribute in any form without prior written authorization from Hydra Biosciences Inc.



HYDRA  
BIOSCIENCES

## **Agenda and Priorities FY 2019 and/or 2020**

Sheila Bearden

[beardenjs@comcast.net](mailto:beardenjs@comcast.net)

615-943-0193

I hold before you a 2006 Technical Report prepared by Dr. Richard Shaughnessy for the CPSC. "Assessing Potential Health Effects and Establishing Ozone Exposure Limit for Ozone-Generating Air Cleaners."

On page 30, Shaughnessy warns that, as a result of continued research, in the "near future" because of the adverse byproducts of ozone-initiated reactions, more stringent ozone limits may be warranted.

On page 31, Concerning sensitive populations – Infants and children, the elderly, those with asthma, COPD – It would be prudent to consider a margin of safety to protect these groups . . . Shaughnessy says, "the question remains as to whether sensitive populations should be advised to avoid exposure to intentionally generated ozone until a margin of safety can be determined . . ."

California is the only state to regulate indoor air quality and they have banned some ozone generating air cleaners, but even they haven't gone far enough. Who takes care of consumers in the other 49 states?

A 2015 paper by the EPA says that, "The body of scientific evidence about ozone's effects on health has significantly expanded since (the) EPA last reviewed the standards in 2008.

The American Lung Association notes, that in a 2017 scientific paper, researchers found evidence that older adults faced a higher risk of premature death even when levels of ozone pollution remained well below the current national standard.

The EPA estimates that 5-20% of the total U.S. population has an unexplained greater susceptibility to ozone.

Perhaps I was unknowingly a part of the sensitive population of which Dr. Shaughnessy warned. You saw the particle matter deposited on our bedside table, products of an ozone-initiated reaction. Our house was not pungent smelling from new building products, but instead became pungent smelling.

Science tells us that this would be acids and aldehydes. Much has been made of setting standards for accumulated ozone; however, in the presence of VOCs, ozone will not accumulate, it will react resulting in harmful byproducts.

Because of our use of electronic air cleaners, I not only developed Reactive Airways Disease, I also developed a facial pain syndrome. Most studies related to ozone focus on the lungs, but our respiratory system also includes our nose and mouth.

Recent science tells us that ozone affects our sensory nerves. So, you see, there are other, less obvious, equally harmful, and often more painful effects of ozone exposures. I have suffered every day for ten years now. Just laying my head on my pillow triggers burning pain. My sensory nerves are hyper-responsive. They are sensitized.

In 2006, science would not easily have been able to explain my burning pain, but in 2015, Dr. David Julius was a major contender for the Nobel Prize in medicine for determining how our sensory nerves respond to irritants.

Based on Dr. Julius' research, in 2010 Dr. Thomas Taylor-Clark issued his paper, "Ozone activates airway nerves via the selective stimulation of TRPA1 ion channels." Did you hear me say that ozone activates nerves? I learned that ozone not only activates TRPA1 pain receptors in the lungs, it also activates TRPA1 receptors on the trigeminal nerves. These innervate our eyes, tongue, scalp and more.

My being sensitized to ozone, a TRPA1 irritant, means that I am now sensitive to "all" TRPA1 irritants. Responses to these channels act like allergies, but they are injuries. It took me three years realize that I suffer from neuropathic pain. Only then did I get a degree of help. So many things now trigger my pain—cleaning products, fragrances, foods, touch, and more.

This is the area of study that most excites me. With permission of Hydra Biosciences, I have provided you with a graph showing the increased interest in these pain/inflammatory channels. (Next to the last page)

I have been studying TRP channels for seven years now. Pain is a powerful motivator. On a trip to London, I met with a respiratory pharmacologist, who also conferenced in the leading lung specialist in London. Dr. Belvisi has recently been

named Vice President and Head of Respiratory, Inflammation and Autoimmunity at AstraZeneca. She and Dr. Jaclyn Smith have expressed an interest in writing with me, not because I am a great writer, but because I show evidence that what recent science says can happen, does happen.

My husband had access to a calibrated ozone measuring device. In the areas of our home where I spent most of my time, the ozone measured 30 ppb. Honeywell says that EACs produces more ozone when they are new. Our measurements were taken when the units were seven months old. Consumer Reports measured the same type of equipment and found the numbers to be closer to 50 ppb. In contrast, Honeywell says that these filters produce only 5 to 10 ppb.

The EPA sets limits for eight-hour exposures and establishes health impact levels for outdoor ozone. Electronic Air Cleaners exposures may be continuous –24 hours, 48 hours—for as long as an individual is in the home. According to the EPA, “the cumulative amount of exposure is a function of both the rate and duration of exposure.”

My mother developed lung cancer and I couldn't be near her if I were sick. In hopes of getting well, I stayed home for two solid weeks. My air cleaners were continuously producing ozone. Instead of getting well, my health declined significantly. My exposure would have been almost 24 hours a day for 14 days. That totals 336 hours of exposure. Would establishing ozone limits based on an 8-hour exposure be acceptable for me?

I can touch on a few things that Honeywell did wrong –

When replying to my email complaint, Honeywell acknowledged that some people have sensitivities to ozone. How would a consumer know that?

Honeywell's website tells us that, “The presence of “white dust” is actually an indicator that your Electronic Air Cleaner is working properly,” when the truth is that, an ozone-initiated reaction can produce particle matter.

Owner's guides say that ozone odor can be reduced by adding an activated carbon filter, yet they sell no such filter. For every complaint a consumer might have, they tell us “all is well.”

I can tell you that all is not well, but we do not just have a Honeywell issue, we have an industry issue. You don't hear more complaints, because a consumer would never imagine that an air cleaner, installed out of sight, under the house, would trigger headaches or other neuropathic pains, yet they do. If my mother, with COPD, or a child with asthma, had become sick in our home, we would never have made the connection. In fact, an elderly friend developed respiratory issues on two occasions after visiting our home. Because I was healthy, I knew something was terribly wrong.

What has been done to follow up on Dr. Shaughnessy's report? He uses the phrases, "may warrant more stringent ozone limits in the near future" and "it would be prudent." That was 12 years ago, now is the time act.

I have a wealth of research and much to offer. If I may be of assistance, I am willing to help.

Thank you for your time.



**William Wallace**  
Senior Policy Analyst  
Consumers Union

# Consumers Union<sup>®</sup>

## POLICY & ACTION FROM CONSUMER REPORTS

**Written Comments of Consumers Union to the U.S. Consumer Product Safety Commission  
on: “Agenda and Priorities FY 2019 and/or 2020”  
Submitted to the Office of the Secretary: March 28, 2018  
Presented by William Wallace, Senior Policy Analyst**

On behalf of Consumers Union (CU),<sup>1</sup> I thank you for the opportunity to testify about the CPSC’s agenda and priorities at the public hearing scheduled for April 11, 2018. We appreciate the chance to present our views to you on the Commission’s agenda and priorities for the next two fiscal years.

Throughout CU’s history, our purpose of identifying marketplace hazards and improving product safety has always been a core part of who we are, and it remains just as important today. In carrying out our work, we assess safety risks, investigate their impact on consumers, and inform the public and the CPSC when we find unsafe products—all on a data-driven basis. We push for safety standards to protect consumers from the risk of injury, including both mandatory consumer product safety standards and voluntary industry standards that should be reached through an open, consensus-based process. We support and defend the critical role of the CPSC, not just for consumers, but also for the sake of a fair marketplace in which companies benefit if they meet their responsibilities for their products to be safe.

With these broader objectives in mind, we highlight topic areas in the following comments that we hope the agency will emphasize in fiscal years 2019 and 2020. These topics are divided into three categories: (1) the CPSC’s role and its capabilities; (2) hazards around the home; and (3) high-tech hazards. Within these categories, we determined the areas we address in these comments through consideration of numerous factors, including our analysis of injury data, the vulnerability of affected consumers, and the sufficiency of current safety protections and activities.

---

<sup>1</sup> Consumers Union is the advocacy division of Consumer Reports (CR), an independent, nonprofit member organization that works side by side with consumers for truth, transparency, and fairness in the marketplace. Founded in 1936, Consumer Reports has the largest nonprofit educational and consumer product testing center in the world, and uses its dozens of labs, auto test center, and survey research center to rate thousands of products and services annually. CR’s premier magazine *Consumer Reports* has more than 3.6 million subscribers, and the award-winning CR.org has 2.9 million paying members and more than 15 million unique visitors monthly, on average.

## **The CPSC's role and its capabilities**

The CPSC is a critical agency, with an indispensable public health and safety mission, that plays a significant role in protecting U.S. consumers despite lacking many of the tools and resources it would need to carry out all that it is capable of doing. It is essential for the CPSC to make effective use of the tools and resources it has; to leverage actions by companies, standards development organizations (SDOs), advocates, and consumers to advance the public interest; to maximize its transparency and public accountability regarding product safety; and to identify ways to improve the agency's work in the future. As it pursues these goals, we urge the agency to focus on several topics in particular.

### *Safety leadership and expertise*

It is critical for the CPSC, and especially the chairman—the most high-profile CPSC figure—to be a vocal advocate for consumer safety. This leadership role should include communication of key safety messages on longstanding safety issues, as well as informing the public about new potential product hazards as quickly and prominently as possible. It also should include public and private advocacy for companies and industry organizations to take key actions in support of safety that they may not want to undertake, and support for mandatory requirements when companies do not act voluntarily. The CPSC should set a high bar for safety culture, safety standards, and responses to safety issues. The agency should repeatedly and consistently urge industry to reach that high bar, and require them to do so when they do not act on their own.

Given that the Consumer Product Safety Act generally requires the CPSC to rely on voluntary standards, it is especially important for the agency to help ensure the voluntary standards-setting process yields timely and significant safety benefits to consumers. The Commission should consider each of the following to be a key agency priority: (1) CPSC testing and other research to provide data and direction to voluntary standard panels; (2) informed, vocal, and influential CPSC staff participation in voluntary standard panels; (3) open and balanced voluntary standard panels and fair SDO processes; (4) continual progress for safety on voluntary standard panels, including timely and robust updates to standards; and (5) retaining the credible use of mandatory standards to achieve safety goals through regulation if voluntary standards would not adequately reduce the risk of injury or if it is not likely that there will be substantial compliance.

In addition, the CPSC must value the safety expertise of CPSC staff. Staff should continue to be empowered to take leadership roles in voluntary standards development. They should be able to conduct research, educate the public, identify and reduce hazards, and pursue compliance and enforcement actions as the law and their experience dictate. As an independent regulatory agency, the CPSC has been directed by Congress to look out for the safety of Americans in a manner relatively insulated from outside pressures. The work of CPSC staff should always reflect this charge.

### *Recalls, market surveillance, and enforcement*

Perhaps the most common way that consumers interact with the CPSC is when they learn of product recalls. Consumer Reports (CR) assists the CPSC in its role overseeing recalls by informing consumers of CPSC recalls through social media posts and articles,<sup>2</sup> and by reporting test results to the agency when comparative testing identifies a product that CR recommends consumers avoid because of a safety risk.

Generally, when a recall is warranted, CU considers it best for consumers if the recall happens as quickly, as completely, and as easily as possible. Recalls vary greatly in how well they fulfill these goals. Last year, CU participated in a CPSC recall effectiveness workshop and made several recommendations to the agency, both in-person and in written comments. We reiterate today that to improve recalls, the CPSC should: (1) reinforce principles and incentives for companies to carry out recalls in an effective manner; (2) hold companies accountable through fines, consent decrees and other agreements, and other types of measures to change corporate behavior following improper or illegal conduct; (3) urge companies to use all available modern communication channels and marketing tools to reach consumers and encourage them to take part in a recall; (4) rigorously track the effectiveness of different tools, approaches, and methods used by companies in carrying out recalls, and use this information to achieve greater clarity about what really works best; (5) publicly issue its goals or expectations for recall performance in order to help ensure that companies dedicate appropriate effort, resources, and expertise to recalls; and (6) explore, with stakeholders, how to strengthen product registration, how to measure the effectiveness of companies' outreach, and how to ensure strong corrective action plans.

In addition, we commend the CPSC for its commitment to market surveillance. It is important for the agency to monitor imports of products at as many ports as possible to prevent entry of dangerous products into the U.S. marketplace. The CPSC should also continue to more broadly monitor the marketplace to ensure that older unsafe products are removed from the second-hand market and childcare facilities, including through close work with online retailers to rid prominent websites of illicit or harmful products.

### *Transparency and public accountability*

Unfortunately, the CPSC operates under severe constraints on its ability to be transparent with the public. Section 6(b) of the Consumer Product Safety Act requires the CPSC—for any information from which the public can readily ascertain the identity of a manufacturer—to either get permission from the company to disclose the information, or to follow a set of unique and frequently time-consuming procedural requirements to get the information out.<sup>3</sup> Section 6(b) and the related regulatory provisions are ill-considered, and often damaging to the agency's ability to

---

<sup>2</sup> Recently, this work included the publication of a roundup of major home and appliance recalls that took place over the last year, such as recalls of 40 million Kidde fire extinguishers, 20 million dressers from several different manufacturers, more than 600,000 dishwashers, approximately 150,000 garbage disposals from ten different brands, and 100,000 gas-powered chain saws. Consumer Reports, "The Home and Appliance Recalls of 2017 You Need to Know About" (Dec. 12, 2017) (online at: [www.consumerreports.org/recalls/home-products-recall-round-up](http://www.consumerreports.org/recalls/home-products-recall-round-up)).

<sup>3</sup> 15 U.S.C. 2055(b).

fulfill its safety mission. The CPSC should be able to inform the public about legitimate safety hazards regardless of whether or not a company wants that to occur. The agency should work to do so as broadly as possible within the confines of the statutory language of Section 6(b), while updating agency interpretations of Section 6(b) to maximize transparency and minimize internal agency administrative burdens to the greatest extent possible. As much as it can, the CPSC must prioritize its statutory mission to protect consumers over the anonymity of companies when their products have created a substantial risk of injury to the public.

While recognizing the significant effect of Section 6(b) on the agency, we urge the CPSC to improve transparency and reinforce its accountability to the public in several ways. First, it should be an agency priority to reduce Freedom of Information Act (FOIA) backlogs and other factors that cause responses to FOIA requests to be delayed—including beyond the dates by which responses are required. As a public interest organization, CU frequently seeks information from the CPSC that the public is entitled to receive pursuant to FOIA. More frequently than not, and often despite the efforts of CPSC's FOIA staff, these requests meet serious delays that, effectively, prevent the public from learning important information about a safety issue until much later than they would otherwise. Second, the agency should develop ways for the public to more readily ascertain whether a company is living up to its obligations under a recall and is effectively getting unsafe products off the market and out of homes. This effort should include greater public availability of what has been agreed to under a corrective action plan, and the routine posting of monthly corrective action plan reports on *cpsc.gov*. Third, it is critically important for companies to follow through on their commitments to issue a recall and carry out related actions. Even if it cannot disclose the names of the companies or the products involved, the CPSC has an obligation to the public to push companies to carry out recalls that they have committed to undertake, and to achieve recalls that happen as quickly, as completely, and as easily for consumers as possible.

In addition, we have long supported, and continue to strongly support, the *SaferProducts.gov* public database, which should also continue to be strongly supported by the CPSC. Thanks to this tool, consumers, medical providers, and safety professionals are better informed about potential safety hazards in the marketplace. Industry also receives valuable feedback regarding hazards associated with their products. In fiscal years 2019 and 2020, the agency should continue its efforts to make *SaferProducts.gov* as up-to-date and consumer-friendly as possible, to increase public awareness and use of this tool, and to use consumer postings to help track trends and identify emerging hazards. We also encourage the agency to conduct frequent follow-up investigations of recurring types of consumer complaints.

### *Funding and staffing*

As we have said previously, the CPSC should receive additional funding and staff to implement fuller programs to prevent consumer harm, including within its hazard identification, voluntary standards development, international outreach, and import surveillance functions. It also should receive additional funding and staff to respond to safety problems in the marketplace, including within its field operations, compliance, and rulemaking functions. We appreciate the efforts of the Chairman and other commissioners to prevent cuts in resources and secure the

additional funds that recently were allocated; at the same time, we recognize that the agency is not currently resourced at a level reflecting that product safety, truly, is a federal priority.

As Congress considered CPSC appropriations, CU urged legislators not to adopt harmful appropriations riders that would undermine CPSC protections for consumers. Most recently, riders were proposed in the House that would have hindered the agency in setting mandatory safety standards for portable generators (a provision that was not enacted) and recreational off-highway vehicles (ROVs) (which was enacted, continuing an appropriations rider previously in place).<sup>4</sup> We will continue to advocate against riders like these that would hamstring the agency's safety work and subvert its critical mission, and we urge the CPSC to always inform lawmakers clearly and forcefully about the damaging effects of provisions like these.

### **Hazards around the home**

In keeping with the overarching recommendations we make, we urge the CPSC to prioritize several hazards that consumers can and do encounter around their home that are hidden, or that may be unknown or poorly understood while still posing a substantial risk.

#### *Furniture and TV tip-overs*

On March 22, 2018, Consumer Reports published a major package of stories—including a narrative podcast—on CR.org about the dangers of furniture tip-over incidents to young children.<sup>5</sup> The main story also appears in the May 2018 issue of *Consumer Reports*, which is currently on newsstands. As highlighted in the story, consumers right now must essentially place their trust in manufacturers, as there is no easy way for consumers to tell from looking at a dresser or its packaging whether it is more or less likely to tip over.

Based on CR's investigation and the results of the testing of 24 dressers representing a cross-section of the market, CU is calling on the CPSC to set a strong, mandatory safety standard, which, among other things, would allow the agency to enforce the rules and more easily gain industry cooperation for recalls. Following up on this recommendation, we will be submitting formal comments to the CPSC by the deadline regarding the agency's advance notice of proposed rulemaking on clothing storage unit tip-overs.

In the meantime, recognizing that mandatory standards can take several years without industry cooperation, CU also is urging furniture companies to take action immediately. We are

---

<sup>4</sup> Consumers Union, Letter to the U.S. House of Representatives on FY 2018 Appropriations (Sep. 13, 2017) (online at: [consumersunion.org/wp-content/uploads/2017/09/CU-letter-to-House-on-FY18-Approps-HR-3354-Division-D-FSGG-9-13-2017.pdf](http://consumersunion.org/wp-content/uploads/2017/09/CU-letter-to-House-on-FY18-Approps-HR-3354-Division-D-FSGG-9-13-2017.pdf)).

<sup>5</sup> Consumer Reports, "Furniture Tip-Overs: A Hidden Hazard in Your Home" (Mar. 22, 2018) (online at: [www.consumerreports.org/furniture/furniture-tip-overs-hidden-hazard-in-your-home](http://www.consumerreports.org/furniture/furniture-tip-overs-hidden-hazard-in-your-home)); Consumers Union, "Current Standards for Furniture Tip-Overs Leave Too Many Children at Risk" (Mar. 22, 2018) (press release) (online at: [consumersunion.org/news/consumer-reports-current-standards-for-furniture-tip-overs-leave-too-many-children-at-risk](http://consumersunion.org/news/consumer-reports-current-standards-for-furniture-tip-overs-leave-too-many-children-at-risk)); Consumer Reports, "How to Anchor Furniture to Help Prevent Tip-Overs" (Mar. 22, 2018) (online at: [www.consumerreports.org/furniture/how-to-anchor-furniture-to-help-prevent-tip-overs](http://www.consumerreports.org/furniture/how-to-anchor-furniture-to-help-prevent-tip-overs)); Consumer Reports, "TV Tip-Overs Still Pose Danger, Despite Lighter Flat Screens" (Mar. 22, 2018) (online at: [www.consumerreports.org/product-safety/tv-tipovers-still-pose-danger-despite-lighter-flat-screens](http://www.consumerreports.org/product-safety/tv-tipovers-still-pose-danger-despite-lighter-flat-screens)).

pushing for the voluntary industry standard overseen by ASTM International to protect more children and cover more dressers by increasing the test weight to 60 pounds and including dressers 30 inches and shorter in the standard. If the standard is strengthened as we recommend, we will urge manufacturers to promote informed consumer choice by clearly marking conforming products to reflect that they meet the new standard. We will be participating in the May 4 meeting of the ASTM Subcommittee F15.42 on Furniture Safety to directly push for the adoption of our recommendations.

### *Portable generators*

Consumer Reports periodically tests and rates generators, including portable generators, and is exploring potential tests to account for portable generators' carbon monoxide emissions. CR also promotes safety by helping consumers use generators safely. Consumer Reports recently published two articles—in February and March of 2018, respectively—outlining the precautions that consumers should take when purchasing and using portable generators.<sup>6</sup>

CU appreciates the extensive and ongoing work by the CPSC to examine the risk of carbon monoxide (CO) poisoning associated with portable generators. As the incident data make tragically clear, education and warning labels alone are not enough to protect consumers from carbon monoxide poisoning. With an average of about 70 deaths and several thousand non-fatal injuries annually,<sup>7</sup> performance requirements are needed, and we urge the CPSC to keep moving forward on its development of a mandatory safety standard.

While CU supports the completion of a mandatory safety standard addressing the carbon monoxide hazard—recognizing that the most effective safety standards are those that apply across the marketplace—we also participated with great interest in recent voluntary standards development activities. This included consideration of a UL standard, which we supported, and a separate standard by the Portable Generator Manufacturers' Association (PGMA), which we could not support in the form presented for voting.

In December 2017, we wrote a letter to PGMA in response to the organization's proposed draft voluntary standard intended for recognition by the American National Standards Institute (ANSI).<sup>8</sup> As a participant in the canvass review of the draft standard, we elected to submit comments, but to abstain from voting either affirmative or negative. The draft added important provisions for the performance and safety of portable generators to the standard, including steps to help reduce carbon monoxide poisoning deaths and injuries, but it also had significant shortcomings. Based on available evidence—and the failure of PGMA to provide us with the supporting data that we requested—there were aspects of the standard that we concluded did not

---

<sup>6</sup> Consumer Reports, "A Portable Generator Needs a Transfer Switch to Safely Power Your Whole House" (Feb. 16, 2018) (online at: [www.consumerreports.org/portable-generators/portable-generator-needs-a-transfer-switch/](http://www.consumerreports.org/portable-generators/portable-generator-needs-a-transfer-switch/)); Consumer Reports, "How to Safely Get a Generator Up and Running in a Hurry" (Mar. 8, 2018) (online at: [www.consumerreports.org/generators/how-to-safely-get-a-generator-up-and-running-in-a-hurry/](http://www.consumerreports.org/generators/how-to-safely-get-a-generator-up-and-running-in-a-hurry/)).

<sup>7</sup> CPSC, Proposed Rule: Safety Standard for Portable Generators, 81 Fed. Reg. 83556-83615 (Nov. 21, 2016).

<sup>8</sup> Consumers Union, "CR letter on the proposed Portable Generator Manufacturers' Association voluntary standard" (Dec. 14, 2017) (online at: [consumersunion.org/wp-content/uploads/2017/12/CR-letter-and-comments-to-PGMA-accompanying-G300-ballot-12-14-2017.pdf](http://consumersunion.org/wp-content/uploads/2017/12/CR-letter-and-comments-to-PGMA-accompanying-G300-ballot-12-14-2017.pdf)).

adequately account for consumer safety, and other aspects where it was impossible for us to determine the validity of claims PGMA made regarding the draft standard's effectiveness at averting fatalities. Seeking not to let the perfect be the enemy of the good, we urged PGMA to expeditiously provide its supporting data and make key changes to the standard that would improve its ability to adequately reduce the risk of injury.

Our primary recommendation was for PGMA to strengthen the instructions on units and in its operator's manual in order to recommend that portable generators never be placed within 15 feet—and, ideally, 20 feet—of windows, doors, vents, or any structure that might be occupied. This instruction on placement would align with the best publicly available data and the advice of public health authorities, including the CPSC. We also urged PGMA to commit to robustly monitor the standard's effectiveness and to review the standard for necessary updates in a timely manner after its effective date. More broadly, we wrote that a comprehensive solution to carbon monoxide injuries and deaths associated with portable generators should incorporate both reduced carbon monoxide emissions criteria and a shutoff mechanism for when concentrations of the gas reach hazardous levels. Finally, we urged that data backing up claims of prevented CO poisoning deaths be made publicly available, to allow evaluation of the potential benefits of the standard. PGMA has not yet amended the draft standard or otherwise responded to meaningfully account for these recommendations.

There has been much work over the past year to develop portable generator safety standards that better address the CO hazard, including substantial efforts by both PGMA members and non-members. Regardless of the venue, all ongoing efforts to meaningfully reduce generator-related CO deaths and injuries should continue. We seek to work with manufacturers, regulators, and other safety advocates to identify the most effective safety and performance provisions and ultimately achieve a single, strong, enforceable standard that eliminates or sufficiently reduces deaths and injuries associated with portable generators.

### *Smoke alarms, carbon monoxide alarms, and appliance fires*

According to the National Fire Protection Association, working smoke alarms increase the chance of surviving a fire by 50%, and between 2009 and 2013, fires in homes with no smoke alarms caused an average of 940 deaths per year (38% of home fire deaths). An additional 510 people per year (21% of home fire deaths) were fatally injured in fires in which smoke alarms were present but failed to operate.<sup>9</sup> According to the Centers for Disease Control and Prevention (CDC), during 2010–2015, a total of 2,244 deaths resulted from unintentional carbon monoxide (CO) poisoning, with 393 of those deaths occurring in 2015.<sup>10</sup>

Consumer Reports often stresses the importance of installing and maintaining smoke and CO alarms, and we at CU look forward to continuing to work with the CPSC to reduce deaths and injuries from fires and carbon monoxide poisoning in the home. The most recent CR buying guide and ratings on these alarms offer consumers comparative information about different

---

<sup>9</sup> National Fire Protection Association, *Smoke Alarms in U.S. Home Fires* (online at: [www.nfpa.org/news-and-research/fire-statistics-and-reports/fire-statistics/fire-safety-equipment/smoke-alarms-in-us-home-fires](http://www.nfpa.org/news-and-research/fire-statistics-and-reports/fire-statistics/fire-safety-equipment/smoke-alarms-in-us-home-fires)).

<sup>10</sup> CDC, *Quick Stats: Number of Deaths Resulting from Unintentional Carbon Monoxide Poisoning* (online at: [www.cdc.gov/mmwr/volumes/66/wr/mm6608a9.htm](http://www.cdc.gov/mmwr/volumes/66/wr/mm6608a9.htm)).

products that were tested.<sup>11</sup> To help keep consumers safe, CR also shared information about how to ensure that smoke and carbon monoxide detectors function properly.<sup>12</sup>

Furthermore, like the CPSC, Consumer Reports has sought to help prevent home fires in the first place by providing consumers with information on proper precautions to take. In November 2017, CR shared CPSC's recommendations for washing clothes stained with flammable materials as part of a story on dryer fires,<sup>13</sup> and shared the CPSC's Thanksgiving-themed warnings with consumers in an article about the danger of kitchen fires.<sup>14</sup> In December 2017, as winter began, CR published a story informing consumers to give space heaters at least three feet of free space to avoid starting fires.<sup>15</sup>

More recently, in a February 2018 article—following a famous appliance fire on the TV show “This Is Us”—CR outlined the fire risk posed by countertop kitchen appliances, such as microwaves and toasters.<sup>16</sup> The same month, CR publicized a warning issued on Facebook by the manufacturer of Instant Pot indicating that some multicooker units could overheat and melt, and CU called on the company to issue a recall if a safety defect existed.<sup>17</sup> The company soon recalled more than 100,000 units, and we shared information with consumers on what steps to take to stay safe and to secure a replacement multicooker.<sup>18</sup>

#### *Window covering cords*

Efforts to address the risk of injury to young children from hazardous, accessible window covering cords have made progress, but there is more to be done. On average, one child dies every month in an incident associated with this hazard,<sup>19</sup> adding up to hundreds of child fatalities in the more than 30 years that the problem has been well understood. CU continues to support the development, by the CPSC, of a mandatory standard to eliminate the risk of strangulation and

---

<sup>11</sup> Consumer Reports, “CO & Smoke Alarm Buying Guide” (Aug. 29, 2016) (online at: [www.consumerreports.org/cro/smoke-carbon-monoxide-detectors.htm](http://www.consumerreports.org/cro/smoke-carbon-monoxide-detectors.htm)).

<sup>12</sup> Consumer Reports, “How to Spot and Stop Carbon Monoxide Poisoning” (Oct. 31, 2017) (online at: [www.consumerreports.org/home-safety/how-to-spot-and-stop-carbon-monoxide-poisoning](http://www.consumerreports.org/home-safety/how-to-spot-and-stop-carbon-monoxide-poisoning)); Consumer Reports, “Check Smoke and Carbon Monoxide Detectors When Moving Into a New Home” (March 9, 2018) (online at: [www.consumerreports.org/smoke-carbon-monoxide-detectors/check-smoke-and-carbon-monoxide-detectors](http://www.consumerreports.org/smoke-carbon-monoxide-detectors/check-smoke-and-carbon-monoxide-detectors)).

<sup>13</sup> Consumer Reports, “How to Prevent Dryer Fires” (Nov. 3, 2017) (online at: [www.consumerreports.org/clothes-dryer/how-to-prevent-dryer-fires](http://www.consumerreports.org/clothes-dryer/how-to-prevent-dryer-fires)).

<sup>14</sup> Consumer Reports, “The Surprising Thanksgiving Kitchen Fire Danger” (Nov. 21, 2017) (online at: [www.consumerreports.org/home-safety/surprising-thanksgiving-kitchen-fire-danger](http://www.consumerreports.org/home-safety/surprising-thanksgiving-kitchen-fire-danger)).

<sup>15</sup> Consumer Reports, “Why Space Heaters Need Their Space” (Dec. 19, 2017) (online at: [www.consumerreports.org/space-heaters/space-heater-safety-tips](http://www.consumerreports.org/space-heaters/space-heater-safety-tips)).

<sup>16</sup> Consumer Reports, “Why the Slow-Cooker Fire on ‘This is Us’ Is Actually Unlikely” (Feb. 7, 2018) (online at: [www.consumerreports.org/slow-cookers/why-the-slow-cooker-fire-on-this-is-us-is-actually-unlikely](http://www.consumerreports.org/slow-cookers/why-the-slow-cooker-fire-on-this-is-us-is-actually-unlikely)).

<sup>17</sup> Consumer Reports, “Instant Pot Flags Potential Problem with Its Gem 65 8-in-1 Multicooker” (Feb. 21, 2018) (online at: [www.consumerreports.org/instant-pot/instant-pot-gem-8-in-1-multicooker](http://www.consumerreports.org/instant-pot/instant-pot-gem-8-in-1-multicooker)).

<sup>18</sup> Consumer Reports, “Instant Pot Recalls 104,000 Gem 65 8-in-1 Multicookers” (Mar. 1, 2018) (online at: [www.consumerreports.org/recalls/instant-pot-recalls-gem-65-8-in-1-multicooker](http://www.consumerreports.org/recalls/instant-pot-recalls-gem-65-8-in-1-multicooker)).

<sup>19</sup> CPSC, “Window Covering Cords Information Center” (online at: [www.cpsc.gov/Safety-Education/Safety-Education-Centers/Window-Covering](http://www.cpsc.gov/Safety-Education/Safety-Education-Centers/Window-Covering)).

prevent future tragedies. In the meantime, we urge all window covering manufacturers to conform as soon as possible to the latest version of the voluntary ANSI/WCMA standard—under which all stock products should be cordless by the end of 2018—and continue to work urgently to bolster the standard so it also requires custom products to be free of accessible cords. For their part, retailers of window coverings should commit, without delay, to only sell cordless products.

### *Table saws*

More than 30,000 table saw injuries occur annually, with an average of ten amputations happening every day on the products.<sup>20</sup> CU was pleased to see the Commission publish a notice of proposed rulemaking last year to address the unreasonable risk of blade-contact injuries on table saws. A performance standard to limit the depth of a cut is a sensible approach that is feasible to meet and, according to the agency's estimates, would yield aggregate net benefits of between \$625 million and \$2.3 billion per year. As it carries out any additional research it may need to undertake, the Commission should keep moving forward on the mandatory safety standard for table saws.

### **High-tech hazards**

CU also urges the CPSC to keep dedicating significant resources to its work on safety hazards involving new or emerging technologies. As recent years have shown, hazards in these products can present a substantial risk of injury to consumers very quickly after a product's introduction into the market. The CPSC should endeavor to understand these hazards rapidly, apply lessons to future technology, and be prepared to quickly identify a hazard and alert consumers about it in order to help avoid injuries or deaths.

### *Battery and electronics system safety*

CU remains concerned about the potential fire hazards of lithium-ion batteries and faulty electrical systems. We commend the CPSC for its work to get unsafe hoverboards out of the marketplace and warn the public about them,<sup>21</sup> and encourage the agency to apply thorough scrutiny to other product categories with potential battery or electrical system hazards. We note that there have been multiple major recalls of laptops for a risk of fire in recent months, and have highlighted identified hazards for consumers.<sup>22</sup> The CPSC should continue its important research

---

<sup>20</sup> Kevin C. Chung and Melissa J. Shauver, *Table saw injuries: epidemiology and a proposal for preventive measures*, National Institutes of Health PubMed Central (Nov. 2013) (online at: [www.ncbi.nlm.nih.gov/pmc/articles/PMC4154236](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4154236)); Sadeq R. Chowdhury, Ph.D., Caroleene Paul, *Survey of Injuries Involving Stationary Saws, Table and Bench Saws, 2007-2008*, U.S. Consumer Product Safety Commission (March 2011).

<sup>21</sup> Consumer Reports, "Threat of Fire Provokes New Round of Hoverboard Recalls" (Nov. 15, 2017) (online at: [www.consumerreports.org/recalls/hoverboard-recall-fire-risks-cpsc](http://www.consumerreports.org/recalls/hoverboard-recall-fire-risks-cpsc)).

<sup>22</sup> Consumer Reports, "HP Recalls 50,000 Lithium-Ion Laptop Batteries Over Fire Risk" (Jan. 4, 2018) (online at: [www.consumerreports.org/hp/hp-recalls-50-000-laptops-over-li-ion-battery-fires-](http://www.consumerreports.org/hp/hp-recalls-50-000-laptops-over-li-ion-battery-fires-)); Consumer Reports, "Lenovo Recalls ThinkPad Carbon X1 Laptops Due to Battery Fire Hazard" (Feb. 6, 2018) (online at: [www.consumerreports.org/recalls/lenovo-recalls-thinkpad-carbon-x1-laptops-due-to-battery-fire-hazard](http://www.consumerreports.org/recalls/lenovo-recalls-thinkpad-carbon-x1-laptops-due-to-battery-fire-hazard)); Consumer Reports, "Fire on Delta Airlines Flight Highlights Danger from Lithium-Ion Batteries" (Mar. 13, 2018) (online at: [www.consumerreports.org/faa/battery-fire-in-delta-cargo-hold](http://www.consumerreports.org/faa/battery-fire-in-delta-cargo-hold)).

on battery safety and continue urging manufacturers to build safe electrical systems that meet effective standards.

### *Drones*

Consumer drones are selling at an increasingly fast pace,<sup>23</sup> yet, as CU noted last year, no federal agency wields sufficient oversight of these products if they have a design or manufacturing defect that creates a substantial risk of injury to the public. Drones could stall and drop out of the sky or drone batteries could catch fire, and a regulatory gap would still exist that allows the potential risk to continue unabated.

The CPSC lacks jurisdiction over drones due to a statutory carve-out for aircraft,<sup>24</sup> even though many consumer drone systems are marketed and purchased in a manner similar to toys and other consumer products. In November 2017, CU sent a letter to Congress expressing our concerns about this issue and urging House members to require stronger oversight of drones' safety by the Federal Aviation Administration (FAA) in the short-term. In the longer term—as we noted in the letter—the CPSC is well positioned to oversee the safety of consumer drones as produced and distributed in commerce while the FAA handles their in-use operation, and ultimately, federal law should reflect this division of oversight.<sup>25</sup>

### *Internet-connected consumer products*

CU welcomes news of the public CPSC hearing scheduled for May 16, 2018, about potential safety issues and hazards associated with internet-connected consumer products. It is appropriate for the agency to hold such a hearing to foster discussion on what role the CPSC will need to play in this space, and to highlight any expertise, tools, and resources that the agency may need to add, if it does not already have them. We agree with the Commission that increased internet connectivity of consumer products is likely to bring both consumer benefits and new risks, including safety risks, and that for the CPSC's purposes the product safety challenges of internet-connected consumer products appears to fall into the two main categories of: (1) prevention or elimination of hazardous conditions designed into products intentionally or without sufficient consideration; and (2) preventing and addressing incidents of "hazardization," or when a product is safe when obtained by a consumer but which, when connected to a network, becomes hazardous through malicious, incorrect, or careless changes to operational code. We will address this subject at greater length at the hearing in May, and look forward to working with the CPSC over the longer term as CR determines appropriate ways to test internet-connected consumer products for safety.

---

<sup>23</sup> See, e.g., "U.S. drone sales have more than doubled from last year," Recode (Apr. 10, 2017) (online at: [www.recode.net/2017/4/10/15245234/us-drone-sales-doubled-from-last-year](http://www.recode.net/2017/4/10/15245234/us-drone-sales-doubled-from-last-year)). Consumer Reports covers issues related to drones and has tested various models so that consumers can have comparative information about them. See Consumer Reports, "How to Buy a Drone of Your Own" (Feb. 1, 2018) (online at: [www.consumerreports.org/robots-drones/how-to-buy-a-drone-of-your-own](http://www.consumerreports.org/robots-drones/how-to-buy-a-drone-of-your-own)).

<sup>24</sup> 15 U.S.C. §2052.

<sup>25</sup> Consumers Union, "CU letter to House Transportation Committee aviation panel on drones and product safety" (Nov. 29, 2017) (online at: [consumersunion.org/wp-content/uploads/2017/11/CU-letter-to-House-TT-aviation-panel-on-drone-safety-11-29-2017.pdf](http://consumersunion.org/wp-content/uploads/2017/11/CU-letter-to-House-TT-aviation-panel-on-drone-safety-11-29-2017.pdf))

## **Conclusion**

In conclusion, CU greatly appreciates CPSC's important efforts to address hazards associated with consumer products, and we applaud the Commission for its leadership and achievements over the past year. We look forward to continuing to work with the agency to fulfill its mission in fiscal years 2019 and 2020.



**Danielle Iverson**

International Federation of Inspection Agencies



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

6718 Kenwood Forest Lane  
Bethesda, MD 20815 USA

Tel : +1 240 507 3392

March 28, 2018

Ms. Alberta E. Mills  
Secretary  
U.S. Consumer Product Safety Commission

Ref: "CPSC Agenda and Priorities FY 2019 and/or 2020,"

Dear Ms. Mills,

The International Federation of Inspection Agencies ("IFIA") is pleased to provide comments and make oral presentations at the hearing on April 11, 2018 on the "CPSC Agenda and Priorities FY 2019 and/or 2020".

IFIA is a trade federation that represents over 60 of the world's leading independent third-party testing, inspection and certification (TIC) companies. IFIA members offer conformity assessment services, including testing, inspection, certification, systems audits, advisory and training, technical and documentary support. These services help manufacturers gain global market access and help ensure that not only regulatory requirements are fulfilled, but also that reliability, economic value, environmental impact and sustainability are enhanced.

We appreciate the opportunity to present at the hearing. Should you have any questions, please don't hesitate to contact Roberta Telles at +1 240 507-3392 / [rtelles@ifia-federation.org](mailto:rtelles@ifia-federation.org).

Sincerely,

Roberta Telles  
IFIA  
Executive Director Americas  
[rtelles@ifia-federation.org](mailto:rtelles@ifia-federation.org)  
M: +1.240.507.3392

Hanane Taidi  
IFIA  
Director General  
[htaidi@ifia-federation.org](mailto:htaidi@ifia-federation.org)  
M: +32473629947

Page 1 of 5

## General comments

IFIA welcomes CPSC's outreach to stakeholders in requesting inputs for the Commissions' Agenda and Priorities for FY 2019 / 2020. IFIA recommends that CPSC continue seeking collaboration with industry and other groups in the fulfilment of its mission in order to leverage resources and multiply its impact.

Specifically, **IFIA recommends close collaboration with the independent testing, inspection and certification (TIC) industry through trade associations such as IFIA.** IFIA members have a global footprint and are present in more than 160 countries and have the technical expertise and capabilities in all aspects of product safety. They provide services that help ensure safety and compliance across all stages of the supply chain, from the design stages to post-retail. Manufacturers, retailers, and importers of all sizes rely on our members as a cost-effective solution to meet their legal obligations and demonstrate compliance with safety standards and regulations.

Below are some suggestions of potential opportunities for collaboration for CPSC to consider:

- 1) Continue partnering with IFIA members to leverage their technical expertise and global footprint in CPSC's training of manufacturers and designers in manufacturing countries, including Bangladesh, China, and Vietnam:**

Part of the services provided by IFIA members is training and advising on product safety requirements and best practices across the globe. These trainings help ensure that safety is being built in the earliest stages of the supply chain, and it is a preventive and cost-effective approach.

IFIA welcomed the opportunity to partner with CPSC in 2017 to deliver training to designers and manufacturers of lithium-ion batteries in China. This was a great example of partnership and collaboration with the private sector that CPSC should continue exploring in order to leverage private sector technical expertise and capabilities to help fulfill its mission. IFIA members welcome similar future opportunities to continue supporting CPSC's mission.

## **2) Leverage IFIA as platform for the dissemination of best practices and other issues**

Given the role that IFIA members play in not only providing testing but also advisory services and training on U.S. product safety requirements, CPSC could leverage IFIA members in educating and reinforcing best practices as members deploy their own individual trainings/webinars and other outreach efforts to the regulated community. IFIA can provide a platform for ongoing discussion and collaboration with the conformity assessment industry.

## **3) Organize stakeholders' roundtable on consumer product testing best practices**

A roundtable could be a useful mechanism for testing labs and other stakeholders to share consumer product testing best practices and underlying technical considerations to address trends and issues. The roundtable could also be used as feedback mechanism from/to testing labs and provide an opportunity to identify areas where it would be beneficial that the labs work together on. IFIA would welcome the opportunity to help organize this roundtable in partnership with CPSC and other groups.

## **4) Engage with industry and counterparts to discuss emerging hazards, including IoT/cybersecurity**

IFIA members are working with industry partners on cybersecurity and IoT related issues to help mitigate safety and performance risks. Their experience can be a valuable resource to CPSC as the Commission looks at IoT emerging issues within CPSC jurisdiction. IFIA also recommends that CPSC exchange views with its international counterparts on this area to exchange best practices and ensure solutions being considered are global in order to avoid creating unique approaches that can burden industry with no added level to safety. IFIA members are actively contributing to the discussions taking place in Europe, with the proposed certification scheme for ICT products that is currently being discussed at the European Parliament and European Council. This proposal would create a EU-wide certification scheme eliminating duplicative national requirements, as some member states are already coming up with their own individual certification solutions.

Although the safety regimes among countries are different and different solutions might be needed depending on a particular market's reality, the exchange of good practices and lessons learned can provide valuable insights to inform future CPSC work on this area.

**5) Leverage private sector conformity assessment when designing conformity assessment programs to fulfill policy needs**

As described in OMB Circular A-119<sup>1</sup>, federal agencies are encouraged to rely on private sector conformity assessment (testing, inspection, certification, auditing, etc.) whenever possible to leverage efficiencies and save the agency's resources.

*"(...) agencies should recognize the possible contribution of private sector conformity assessment activities. When properly conducted, conformity assessments conducted by private sector conformity assessment bodies can increase productivity and efficiency in government and industry, expand opportunities for international trade, conserve resources, improve health and safety, and protect the environment."*

Many governments across the globe increasingly rely on private sector third-party conformity assessment to save resources while fulfilling their mission to protect health, safety and the environment. The CPSC reliance on third-party testing for children's products, along with other measures, is an example of such public-private partnership that has been successful in helping drive compliance and keep children safe.

In addition, there are a variety of conformity assessment tools provided by the independent TIC sector that go well beyond testing that are used by manufacturers, retailers and importers, such as factory audits, capability audits, inspections, design evaluations, safety assessments, certification, among others. All these conformity assessment tools help mitigate risks, ensure compliance and give visibility across complex supply chains, making the TIC sector a trusted partner to industry and governments.

The choice of the appropriate conformity assessment method should always be based on risk assessment and confidence needs applicable to a particular situation, since there is no one size-fits-all in conformity assessment. Third-party conformity assessment provides higher levels of assurance of compliance with safety requirements: An IFIA survey<sup>2</sup> reviewed small household appliances on the U.S. and EU markets

---

<sup>1</sup> [https://www.nist.gov/sites/default/files/reviced\\_circular\\_a-119\\_as\\_of\\_01-22-2016.pdf](https://www.nist.gov/sites/default/files/reviced_circular_a-119_as_of_01-22-2016.pdf)

<sup>2</sup> [http://www.ifia-federation.org/content/wp-content/uploads/IFIA\\_CIPC\\_239\\_2014-2016\\_Market\\_survey\\_report.pdf](http://www.ifia-federation.org/content/wp-content/uploads/IFIA_CIPC_239_2014-2016_Market_survey_report.pdf)

have found that **17% of products that were NOT third-party certified had safety-critical failures (high risk or fire or permanent injury), compared to less than 1% for products with third-party certification.** This survey sheds light on the value of third-party conformity assessment in providing higher levels of confidence in compliance with safety standards and regulations and reinforces **how different avenues for demonstrating compliance deliver different levels of assurance.**

**Gary Cowles**

## **Agenda and Priorities FY 2019 and/or 2020**

### **Testimony of Gary Cowles**

Good morning. My name is Gary Cowles. My wife, Terri, and I, thank you for this opportunity to speak today on behalf of our ten-year-old son, Rusty Cowles. We live on Mobile Bay in Fairhope, Alabama. I am a civil engineer, Terri is a nurse, and we are the parents of four children.

Rusty was the most incredible child – he did things no one thought possible and did them with ease. He was an outdoorsman, he loved to hunt, fish and farm. He could master any skill and move on to the next. His personality was so big! He was a beast on the football field but cried every time he watched *The Blind Side*. He loved babies and dogs. He was a loving child – holding hands with his mom or dad, snuggling up with his grandmother, riding piggyback on his brother George, on the couch watching sports with his brother Edward, or acting out dramatic presentations with his sister Marguerite and her friends. He wanted to be a country singer and have a band with his sister. He was the hardest worker! Chop wood, plow and plant fields, whatever, he was “ALL IN!” He loved to be outside throwing the cast net, fishing in the Gulf of Mexico, or walking in the woods. God had big plans for Rusty.

Rusty was killed on December 17, 2016 when the 2008 Polaris Ranger 800 EFI he was driving sustained a slow quarter turn roll onto its driver’s side and pinned his leg. Because the Ranger had an open fuel tank vent line, gas and vapors leaked out, causing an explosion. I was the first person on the scene but I was too late to save Rusty.

I am here today because I want to prevent other families from experiencing the type of tragedy my family has suffered. We have been trying to understand how this could have happened. We learned that a rollover check valve, well known in the automotive industry, would have prevented the fuel from leaking. If our Ranger had this device, Rusty would be alive today. I am aware that for over 40 years automotive standards required fuel system crashworthiness features on passenger vehicles and trucks, including rollover check valves. Most fuel driven engine vehicles, like motorcycles, personal watercraft and snowmobiles, are subject to standards that require some type of fuel system rollover crashworthiness, including check valves.

We understand that Polaris was well aware of the need for a rollover check valve on the fuel system of its Ranger product line. In 2006, Polaris received reports from its gas tank supplier identifying leaking fuel during a rollover as a potential failure mode for a 2008 Model Ranger. Even though Polaris had this information, they continued to manufacture Rangers without a rollover check valve until 2011. Thousands of the pre-2011 vehicles are still used by unsuspecting consumers every day. We are aware that Polaris has been sued three times by consumers who allege that the lack of a rollover check valve caused severe injury or death. Polaris has taken no steps to recall the pre-2011 Ranger product line with this defect or to warn consumers of this unreasonably dangerous condition.

We urge the CPSC to recall existing Polaris Rangers with an open fuel tank vent line. We also urge the CPSC to require that warnings or notices be issued to consumers so they can be

warned of this defect. Finally, we urge the CPSC to enact mandatory standards that require ROVs to be manufactured with well-known fuel system crashworthiness features to which other vehicle manufacturers are subject to.

It is our hope that action will be taken by the CPSC so other families do not have to suffer the tragedy that our family has endured. We will never forget Rusty and it is our hope that this effort on his behalf will save other lives.



Russell (Rusty) Joseph Cortright Cowles  
September 27, 2006 – December 17, 2016

## Panel 4

**Don Huber**

Director, Product Safety  
Consumer Reports



**Written Comments of Consumer Reports to the U.S. Consumer Product Safety  
Commission on: "Agenda and Priorities FY 2019 and/or 2020"  
Submitted to the Office of the Secretary: March 28, 2018  
Presented by Don Huber, Director, Product Safety**

On behalf of Consumer Reports (CR),<sup>1</sup> thank you for the opportunity to provide comments on the CPSC's agenda and priorities and to testify at the public hearing scheduled for April 11, 2018. We appreciate the opportunity to share our views on the Commission's agenda and priorities for the next two fiscal years. In the following comments, we discuss several issues the CPSC should prioritize in fiscal years 2019 and 2020.

### *Furniture tip-overs*

Over the past year, Consumer Reports conducted extensive research and performed comparative testing of a cross-section of the marketplace of clothing storage units (CSUs) to determine whether a given model is more or less likely to tip over relative to other models. We analyzed CPSC data on thousands of incidents obtained via the Freedom of Information Act (FOIA). We tested 24 models from a variety of major manufacturers. We included models that are 30 inches tall or less, which are not covered by the voluntary standard, ASTM F2057-17.

Our expert view, after analyzing the available CPSC data, is that that the number of injuries and deaths from tip-over-related incidents remain too high. Our investigation sought to determine whether or not CSUs could be subjected to more stringent testing in an effort to mitigate this potentially fatal risk.

The testing performed by CR included a series of progressively more rigorous tests to see how the CSUs performed. The first two tests were modeled after the unloaded and loaded stability tests in ASTM F2057-17. The third test was developed by CR, and involved weight being added to the 50-pound test load of the ASTM standard in one pound increments until the CSU either tipped over, or did not tip when a load of 60 pounds was reached.

More than half of the CSUs tested were able remain upright with a 60-pound load applied. These CSUs were at various price points and were different brands, indicating that it is feasible to build a dresser that can meet a tougher standard than the current voluntary standard. Three of four CSUs thirty inches tall or less failed to remain upright when subjected to a 50-pound load.

CR concluded that the industry's voluntary standard leaves too many children at risk. Based on our investigation, CR is calling for the tip-over test weight for dressers to be increased to 60 pounds, from 50 pounds, and for dressers 30 inches tall and shorter to be included in the standard because they also can tip over. Three of the four dressers CR tested that were 30 inches or shorter failed CR's second test.

While CR thinks it is essential, where possible, to help avoid tip-over incidents by securing dressers to walls, we recognize that taking this step is not always an option for tenants

---

<sup>1</sup> Consumer Reports (CR) is an independent, nonprofit member organization that works side by side with consumers for truth, transparency, and fairness in the marketplace. Founded in 1936, Consumer Reports has the largest nonprofit educational and consumer product testing center in the world, and uses its dozens of labs, auto test center, and survey research center to rate thousands of products and services annually. CR's premier magazine *Consumer Reports* has more than 3.6 million subscribers, and the award-winning CR.org has 2.9 million paying members and more than 15 million unique visitors monthly, on average.

or those not handy with tools. CR thinks it is the industry's responsibility to ensure safer, more stable dressers and that safety should not rely on consumer skill at anchoring a dresser to a wall.

For additional information on CR's investigation, please see the attached copy of the story, "A Hidden Hazard in Your Home," or visit [cr.org/tipover](http://cr.org/tipover).

### *Liquid laundry detergent packets*

The safety of liquid laundry detergent packets remains a significant problem—including, as a result of investigative work in 2017 by Consumer Reports, the risks to adults with dementia.<sup>2</sup> With regard to the risks to young children,<sup>3</sup> the ASTM F3159-15 standard may lead to a meaningful drop in injuries, and we currently are working closely with all stakeholders to ensure that there is adequate data and that there are meaningful reduction goals to measure the standard's effectiveness. However, given the demonstrated ongoing threat to young children, CPSC should consider promulgating an enforceable mandatory standard if the voluntary standard is not effective. We will continue to urge households where children younger than 6 are ever present to skip these products altogether until there is a meaningful decline in injuries, and last year we extended this recommendation to households with cognitively-impaired adults.

### *Safe sleep*

The U.S. has the highest rate of sudden unexpected infant death (SUID) among all developed nations, and we are committed to preventing these tragedies. In February 2018, CR summarized the results of a new Centers for Disease Control and Prevention (CDC) study, outlining why progress has stalled in addressing SUID and what parents can do to keep their babies safer.<sup>4</sup>

The risks to infants from padded crib bumpers are severe.<sup>5</sup> We agree with the November 2016 joint policy statement by several commissioners that there is a "clear risk of injury or death associated with padded crib bumpers" and that parents and caregivers should not use them.<sup>6</sup> The continued presence of padded crib bumpers on store shelves, and especially in-store displays, is

---

<sup>2</sup> See "Consumer Reports Finds Liquid Laundry Detergent Pods Pose Lethal Risk for Adults with Dementia," Consumer Reports (June 15, 2017) (online at: [www.consumerreports.org/media-room/press-releases/2017/06/consumer-reports-finds-liquid-laundry-detergent-pods-pose-lethal-risk-for-adults-with-dementia](http://www.consumerreports.org/media-room/press-releases/2017/06/consumer-reports-finds-liquid-laundry-detergent-pods-pose-lethal-risk-for-adults-with-dementia)).

<sup>3</sup> See "The problem with laundry detergent pods," Consumer Reports (July 16, 2015) (online at: [www.consumerreports.org/cro/magazine/2015/07/the-problem-with-laundry-detergent-pods](http://www.consumerreports.org/cro/magazine/2015/07/the-problem-with-laundry-detergent-pods)); "Laundry Detergent Pods Caused Surge in Chemical Eye Burns in Children," Consumer Reports (Feb. 7, 2017) (online at: [www.consumerreports.org/product-safety/laundry-detergent-pods-sharp-increase-chemical-eye-burns-in-children](http://www.consumerreports.org/product-safety/laundry-detergent-pods-sharp-increase-chemical-eye-burns-in-children)).

<sup>4</sup> Consumer Reports, "SIDS: What You Need to Know to Keep Your Baby Safe" (Feb. 13, 2018) (online at: [www.consumerreports.org/sudden-infant-death-syndrome-sids-what-you-need-to-know-to-keep-your-baby-safe/](http://www.consumerreports.org/sudden-infant-death-syndrome-sids-what-you-need-to-know-to-keep-your-baby-safe/)).

<sup>5</sup> See, e.g., American Academy of Pediatrics, "SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment" (Oct. 24, 2016) (online at: [pediatrics.aappublications.org/content/pediatrics/early/2016/10/20/peds.2016-2938.full.pdf](http://pediatrics.aappublications.org/content/pediatrics/early/2016/10/20/peds.2016-2938.full.pdf)).

<sup>6</sup> Joint statement of CPSC Chairman Kaye and Commissioners Adler, Robinson, and Mohorovic recommending parents and caregivers not use padded crib bumpers (Nov. 3, 2016) (online at: [www.cpsc.gov/s3fs-public/Joint%20Statement%20on%20Padded%20Crib%20Bumpers%20FINAL%2011.3.16.pdf](http://www.cpsc.gov/s3fs-public/Joint%20Statement%20on%20Padded%20Crib%20Bumpers%20FINAL%2011.3.16.pdf)).

misleading to consumers, and we do not support it—in short, the products should not be for sale.<sup>7</sup> We support ongoing work at ASTM International to address the hazards that these products present, as well as state- and local-level efforts to ensure that unsuspecting parents or caregivers do not put their children at risk.

Aftermarket mattresses for certain cribs, playpens, and play yards also pose a risk to infants, and are inconsistent with ASTM F406-15, the voluntary standard for non-full-size baby cribs/play yards.<sup>8</sup> This standard specifically includes a warning label instructing consumers not to use supplemental mattresses or anything other than the original mattress pad. The presence of these aftermarket mattresses on the market may also lead to consumer confusion or unsafe sleep. We were pleased to see the majority of commissioners vote last year to direct CPSC staff to initiate a rulemaking under section 104 of the Consumer Product Safety Improvement Act (CPSIA) to promulgate a mandatory consumer product safety standard that will address the risk of injury associated with the use of crib mattresses, as well as supplemental and aftermarket mattresses used in play yards and portable cribs.

Recently, “baby boxes” have increased in popularity. These products do not currently meet any relevant safety standards, and accordingly, we have reminded parents and caregivers that the safest place for a baby to sleep is a crib meeting CPSC standards.<sup>9</sup> The baby box idea may reflect safe sleep principles—namely, that a bare sleep surface is best, and that parents and caregivers should always place a baby on his or her back to sleep—but we have cautioned parents and caregivers about using any product that does not meet strong safety standards. We encourage CPSC support for the relevant ASTM subcommittees developing standards that would ensure these products are safe.

### *Strollers*

More than 1 million strollers have been included in recalls since the mandatory stroller standard came into effect in September 2015.<sup>10</sup> Earlier, between the publication of the final rule and its effective date, nearly 5 million strollers were included in recalls. Through Consumer Reports’ testing, we have identified several strollers in recent years that have not performed well in our tests, including a handful that we named a “Don’t Buy: Safety Risk.” In overseeing the mandatory stroller standard, CPSC should be vigilant for possible defective products or those that do not meet the standard.

---

<sup>7</sup> See American Academy of Pediatrics, “CPSC Fails to Ban Crib Bumpers Dangerous to Infants” (Nov. 4, 2016) (online at: [www.aap.org/en-us/about-the-aap/aap-press-room/pages/CPSC-Fails-to-Ban-Crib-Bumpers-Dangerous-to-Infants.aspx](http://www.aap.org/en-us/about-the-aap/aap-press-room/pages/CPSC-Fails-to-Ban-Crib-Bumpers-Dangerous-to-Infants.aspx)).

<sup>8</sup> See CPSC, “Safe to Sleep® - Crib Information Center” (online at: [www.cpsc.gov/Safety-Education/Safety-Education-Centers/cribs](http://www.cpsc.gov/Safety-Education/Safety-Education-Centers/cribs)) (accessed July 11, 2017); ASTM International, ASTM F406 - 15 Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards (2015) (online at: [www.astm.org/Standards/F406.htm](http://www.astm.org/Standards/F406.htm)).

<sup>9</sup> “Doctors, Safety Advocates Have Unanswered Questions About Popular ‘Baby Boxes,’” *Consumerist* (May 25, 2017) (online at: [consumerist.com/2017/05/25/doctors-safety-advocates-have-unanswered-questions-about-popular-baby-boxes](http://consumerist.com/2017/05/25/doctors-safety-advocates-have-unanswered-questions-about-popular-baby-boxes)).

<sup>10</sup> Consumers Union Calculations based on CPSC Recall Data (online at: [www.cpsc.gov/Recalls?field\\_rc\\_date\\_value\[min\]\[date\]=&field\\_rc\\_date\\_value\[max\]\[date\]=&combine=stroller](http://www.cpsc.gov/Recalls?field_rc_date_value[min][date]=&field_rc_date_value[max][date]=&combine=stroller))

### *Toys and magnet sets*

Earlier this year, Consumer Reports joined with fellow safety groups in supporting the update of the Code of Federal Regulations so that ASTM F963-17, Standard Consumer Safety Specification for Toy Safety, would become the mandatory toy standard in the United States, and in recommending future attention to emerging hazards involving connected toys or new technology.<sup>11</sup>

Also, CR published an article on toy safety tips in advance of last year's holiday season. CR drew on CPSC data, including agency reports, rules, and guidelines, to help educate consumers about safe gift-buying practices.<sup>12</sup> This story mentioned a letter we and our partner safety organizations sent supporting the Commission's stop sale of high-powered magnet sets sold under the brand name of Zen magnets.<sup>13</sup>

CPSC estimated in 2014 that potentially 2,900 emergency-department-treated magnet set ingestions occurred in the United States from January 1, 2009, through December 31, 2013.<sup>14</sup> We supported the strong mandatory safety standard for these products that was returned to the Commission by the Tenth Circuit Court of Appeals in November 2016, and we urge the Commission to expeditiously replace the standard with new measures that will prevent the kind of extensive, severe injuries that occurred in past years.

Separate from our holiday recommendations, CR also wrote specifically about high-powered magnet sets, particularly those that are marketed as toys and could be dangerous to kids. We highlighted CPSC's involvement with the issue, including its 2014 safety standard, and alerted CPSC staff to the issue of manufacturers assigning contradictory age-grading information to their products online and on the packaging of the products themselves.<sup>15</sup> These practices can lead to confusion for parents and caregivers regarding the suitability of these products and high-powered magnet sets for children.

### *Pending and future CPSIA Sec. 104 standards*

We strongly support and applaud the agency's ongoing efforts under Section 104 of the Consumer Product Safety Improvement Act, through which a broad group of stakeholders

---

<sup>11</sup> Kids In Danger et al., "Comments of Kids In Danger, Consumers Union, Consumer Federation of America, Public Citizen, and U.S. PIRG to the Consumer Product Safety Commission on the Direct Final Rule: Safety Standard Mandating ASTM F963 for Toys (CPSC-2017-0010)" (Jan. 3, 2018) (online at: <https://consumersunion.org/research/joint-comments-to-cpsc-in-support-of-revised-toy-safety-standard/>).

<sup>12</sup> Consumer Reports, "Important Toy Safety Tips for Holiday Gift Buying" (Nov. 27, 2017) (online at: [www.consumerreports.org/child-safety/toy-safety-tips-holiday-gift-buying/](http://www.consumerreports.org/child-safety/toy-safety-tips-holiday-gift-buying/)).

<sup>13</sup> American Academy of Pediatrics et al., Joint Letter to the CPSC Regarding the Stop Sale of Zen Magnets (Nov. 27, 2017) (online at: [consumersunion.org/wp-content/uploads/2017/11/Magnets-Letter-Stop-Sale-Zen-Magnets-FINAL.pdf](http://consumersunion.org/wp-content/uploads/2017/11/Magnets-Letter-Stop-Sale-Zen-Magnets-FINAL.pdf)).

<sup>14</sup> CPSC, Final Rule: Safety Standards for Magnet Sets, 79 Fed. Reg 59961 (Oct. 3, 2014).

<sup>15</sup> Consumer Reports, "Magnets Marketed as Toys Could Be Dangerous to Kids" (Dec. 21, 2017) (online at: [www.consumerreports.org/product-safety/magnets-marketed-as-toys-could-be-dangerous-to-kids/](http://www.consumerreports.org/product-safety/magnets-marketed-as-toys-could-be-dangerous-to-kids/)).

develop strong safety standards in a consensus-based process and the CPSC promulgates a mandatory standard that is either substantially the same or more stringent. As a result of the robust safety standards developed through this process, numerous infant and children's products are manufactured to be far safer than they once were, and compliance must be tested and certified by a third party.

As the CPSC's work continues in this area, the agency should pursue strong final rules addressing hazards associated with booster seats, infant inclined sleep products, and baby changing products. We also expect to see proposed rules in the near future regarding several other product types, as soon as relevant voluntary standards subcommittees have completed important work. We look forward to reviewing these proposals and urge the Commission to continue, in fiscal years 2019 and 2020, to make its Section 104 activities a top priority, given the demonstrated record of success.

### *Mattress flammability*

According to National Fire Protection Association estimates, home mattress fires caused one-third (3,100) of the 9,400 estimated reported home structure fires that began with mattresses and bedding per year in the 2007-2011 time frame; 16% (52) of the 330 mattress and bedding civilian fire deaths per year; 37% (502) of the 1,350 mattress and bedding civilian injuries per year; and 37% (\$132 million) of the \$361 million in direct property damage per year.<sup>16</sup> Mattress fires continue to pose a significant risk to consumers, and the CPSC should keep prioritizing work to reduce associated deaths and injuries during the next two fiscal years.

### *Pressure washers*

Injuries resulting from pressure washers remain a significant risk, as scrutinized in a Consumer Reports story published in March 2016. CR's analysis of CPSC data showed that pressure washers sent an estimated 6,057 people in 2014 alone to an emergency room with injuries related to pressure washer use.<sup>17</sup> Due to an extreme potential risk of laceration, CR is no longer recommending pressure washers that come with nozzles that produce sprays of less than 15 degrees, and is asking manufacturers to stop including tips and settings that produce streams finer than 15 degrees. The CPSC should make the same recommendation.

### *Bike helmets*

In 2015, more than 1,000 U.S. bicyclists died, and there were almost 467,000 bicycle-related injuries, with approximately 85,000 head injuries attributable to bike accidents. Annually, about 26,000 of these bicycle-related injuries to children and adolescents are traumatic brain injuries treated in emergency departments. As has long been established, bicycle helmets reduce

---

<sup>16</sup> National Fire Protection Association, RE: CPSC Request for Comments: Review of the Standard for the Flammability (Open Flame) of Mattress Sets under Regulatory Flexibility Act Sec. 610; Docket No. CPSC-2006-0011 (online at: [www.regulations.gov/document?D=CPSC-2006-0011-0010](http://www.regulations.gov/document?D=CPSC-2006-0011-0010)).

<sup>17</sup> "Pressure Washer Safety Alert," Consumer Reports (Mar. 8, 2016) (online at: [www.consumerreports.org/pressure-washers/safety-alert-under-pressure](http://www.consumerreports.org/pressure-washers/safety-alert-under-pressure)).

head injuries by up to 50%.<sup>18</sup>

Consumer Reports promotes bicycle safety, both by monitoring the helmet market and informing consumers of safe practices.<sup>19</sup> In September 2017, CPSC and Pro-Tec announced the recall of the City Lite and Street Lite multi-sport helmets, following CR first discovering this issue in January 2017 through independent testing.<sup>20</sup> We continue to look forward to working with the agency and all stakeholders to ensure that the CPSC bicycle helmet standard continues to drive the market toward helmets that provide greater protection from impact.

### *Lawn mowers*

According to published academic research, there were 934,394 lawn mower injuries treated in the U.S between 2005 and 2015—an average of 84,944 injuries per year.<sup>21</sup> Between 1990 and 2014, 212,258 children suffered lawn mower-related injuries, many of which resulted in long-term physical, psychological, and financial damage.<sup>22</sup> During these periods, the incidence of lawn mower injuries for children and the general population failed to decline.<sup>23</sup> Considering the severity and persistent incidence of lawn mower-related injuries, the CPSC should dedicate additional staff time and resources to potential design changes and safety equipment that could reduce the risk of injury to consumers.

### *Pool safety*

From 2005 to 2014, an average of 3,536 fatal non-boating-related unintentional drownings occurred annually in the United States, or about ten deaths per day. About one in five people who die from drowning are children 14 and younger. Over 4,100 children younger than age 5 suffer submersion injuries and require emergency room treatment; about half are seriously injured and are admitted to the hospital for further treatment.<sup>24</sup> The CPSC rightly recognizes pool

---

<sup>18</sup> CDC, Bicycle Safety (June 5, 2017) (online at: [www.cdc.gov/motorvehiclesafety/bicycle/index.html](http://www.cdc.gov/motorvehiclesafety/bicycle/index.html)); Bicycle Helmet Safety Institute from the Department of Transportation 2017 report on bicycle injuries, “Helmet Statistics” (June 2017) (online at: [www.bhsi.org/stats.htm](http://www.bhsi.org/stats.htm)); CDC, Head Injuries and Bicycle Safety (Jan. 28, 2015) (online at: [www.cdc.gov/healthcommunication/toolstemplates/entertainmented/tips/headinjuries.html](http://www.cdc.gov/healthcommunication/toolstemplates/entertainmented/tips/headinjuries.html)); American Association of Neurological Surgeons, Sports Related Head Injury (online at: [www.aans.org/en/Patients/Neurosurgical-Conditions-and-Treatments/Sports-related-Head-Injury](http://www.aans.org/en/Patients/Neurosurgical-Conditions-and-Treatments/Sports-related-Head-Injury)) (accessed July 11, 2017).

<sup>19</sup> See, e.g., Consumer Reports, “4 Biking Safety Tips for Commuters” (Sep. 22, 2017) (online at: [www.consumerreports.org/safety/biking-safety-tips-for-commuters](http://www.consumerreports.org/safety/biking-safety-tips-for-commuters)).

<sup>20</sup> Consumer Reports, “Pro-Tec Recalls Bike Helmets After They Fail Consumer Reports' Tests” (Sep. 28, 2017) (online at: [www.consumerreports.org/bike-helmets/pro-tec-recalls-bike-helmets-after-they-fail-consumer-reports-tests](http://www.consumerreports.org/bike-helmets/pro-tec-recalls-bike-helmets-after-they-fail-consumer-reports-tests)).

<sup>21</sup> Christopher Harris, Jonathan Madonick, and Thomas Ryan Hartka, *Lawn mower injuries presenting to the emergency department: 2005 to 2015*, American Journal of Emergency Medicine (Jan. 8, 2018)

<sup>22</sup> Karen Ren et al., *Children treated for lawn mower-related injuries in US emergency departments, 1990–2014*, American Journal of Emergency Medicine (Mar. 13, 2017); Marielena Bachier and Alexander Feliz, *Epidemiology of lawnmower-related injuries in children: A 10-year review*, Society of Black American Surgeons (2016).

<sup>23</sup> *Id.*; *Supra* note 5.

<sup>24</sup> CDC, “Unintentional Drowning: Get the Facts” (Apr. 28, 2016) (online at: [www.cdc.gov/homeandrecreationalafety/water-safety/waterinjuries-factsheet.html](http://www.cdc.gov/homeandrecreationalafety/water-safety/waterinjuries-factsheet.html)).

safety as a critical part of its current portfolio, and the subject should remain a priority as long as injuries and deaths remain elevated.

### **Conclusion**

CR thanks the CPSC for its important work to keep consumer products safe. We look forward to continuing to work with the CPSC to protect consumers from product hazards in fiscal years 2019 and 2020.

## Furniture Tip-Overs: A Hidden Hazard in Your Home

Some makers do it right, but children still die from unstable dressers. And there are no laws to help prevent future tragedies.

By Rachel Rabkin Peachman  
March 22, 2018

---

After church one Sunday afternoon in 2016, Janet McGee waited for her 22-month-old son, Ted, to wake from his afternoon nap. As family members busied themselves in their Apple Valley, Minn., home, McGee checked on Ted every 15 minutes or so. The last time she peeked in, Ted wasn't in bed, and she noticed that the dresser had toppled over.

In an instant, the horrible reality set in. "He's under there, he's under there," McGee remembers thinking. "I lifted the dresser up, and I started digging through the drawers because all of the drawers had fallen out. And there he was at the bottom. His face was purple. His eyes were half open. I screamed for my husband to come. I started CPR on him. My 11-year-old son called 911."

Paramedics rushed Ted to the hospital, but medical staff couldn't revive him. McGee remembers holding his hand at the hospital. "It was cold, and I knew."

### **MORE ON TIP-OVERS**

**[How to Anchor Furniture to Help Prevent Tip-Overs](#)**

**[TV Tip-Overs Still Pose Danger, Despite Lighter Flat Screens](#)**

The weight of the dresser had suffocated the little boy. And though family members were within earshot, no one heard a crash because Ted's body absorbed the impact of the falling dresser. McGee and her husband, Jeremy, assumed their tragedy was a freakish occurrence. But they soon discovered that Ted was just

one of many victims of what safety regulators categorize as a “furniture tip-over,” a sometimes fatal event affecting thousands of U.S. families each year. The McGees also learned that the dresser, an Ikea Malm, had been linked to previous tip-over deaths. Ikea did not decide to recall the product until four months after Ted died.

The tip-over problem is epidemic: Someone in the U.S. is injured every 17 minutes by a furniture, television, or appliance tip-over, according to the Consumer Product Safety Commission. After declining for a few years, estimated tip-over injuries for children younger than 6 involving dressers and other clothing storage units increased in 2016 to 2,800 from 2,100 the year before, or by 33 percent, according to the CPSC.

Dressers and other clothing storage units account for at least 11 percent of furniture tip-over injuries, according to the CPSC. But it's the number of tip-over deaths in the category—there were 195 reported to the CPSC between 2000 and 2016—that particularly makes it a crisis.

## Podcast: Hear Moms Tell Their Stories



The vast majority of the victims are children younger than 6. Many times, they cause the tip-over by climbing on the front of a dresser or by playing inside a drawer. Sometimes they're alone in their room, and a parent, like Janet McGee, finds them.

To protect Ted in his home, the McGees installed safety gates, covered power outlets, and latched all cabinets—but they had never heard of a furniture tip-over. “It was just this little, tiny window of time where your life changes forever,” McGee told Consumer Reports. “Instead of planning his second birthday party that was supposed to be Elmo-themed, we were planning his funeral.”

“I had no idea that they made anything to strap down furniture.”

—**KEISHA BOWLES, CONWAY, ARK.** Bowles' daughter, Sydney Chance, was killed after a dresser and the TV atop it fell on her in 2012. Sydney Chance was 2 years old.

## The Truth About Tip-Overs

As it stands today, the industry operates under a voluntary tip-over testing standard—which means any dresser taller than 30 inches should stay upright with 50 pounds of weight hanging from an open drawer. Because it's voluntary, manufacturers aren't required to conduct the testing, let alone meet the standard, to sell their dressers in the U.S. Some manufacturers meet the standard or go beyond it; others fall short.

In light of the continuing danger, Consumer Reports launched an investigation to assess the stability of dressers in the marketplace. Over the course of a year, CR analyzed thousands of incident reports obtained from the CPSC through a Freedom of Information Act request to better understand the circumstances of injuries and deaths. CR also tested 24 dressers, representing a cross-section of the market, to find which ones could pass several progressively more stringent tip-over tests. Two tests were

modeled after the industry's current voluntary standard, but CR also devised a more rigorous test using up to 60 pounds of weight, a higher threshold that more fully represents the weight range of U.S. children younger than 6. CR also tested some dressers 30 inches and shorter, a slice of the market currently not covered by the voluntary standard.

CR's investigation concluded that the industry standard is inadequate. At the same time, a majority of the dressers CR tested passed the 60-pound test.

“Clearly, the marketplace has found that one can design a dresser at various prices that is safer and more stable,” says James Dickerson, chief scientific officer at Consumer Reports. (See “How Stable Is Your Dresser?” below.)

CR's findings underscore that there isn't one formula for greater stability. However, many of the dressers that passed all CR's tests tended to be heavier, back-weighted, deeper dressers with less drawer extension. Perhaps most significantly, CR found that there's no easy way for consumers to simply eye a dresser and tell whether it is likely to tip over. A more effective and mandatory standard would help consumers trust that dressers for sale in the U.S. would resist tipping over onto young children.

Through interviews with parents of victims and with industry representatives, CR also found that the most effective prevention strategy available today, anchoring dressers to walls using brackets and straps, isn't an easy option for families less proficient with tools or contending with brick walls. Some parents told CR that they had no idea kits for anchoring dressers even existed.

## Deadly Furniture Tip-Overs: What CR's Investigation Found

**Children alone in their rooms.** Almost half of tip-over deaths (46 percent) happen in the bedroom, sometimes after a child has napped. The CPSC has identified certain “hazard patterns,” including children climbing on open drawers.

**TV hazard.** CR recommends that consumers avoid placing TVs on top of dressers. The CPSC says that 53 percent of reported tip-over fatalities between 2000 and 2016 for children younger than 18 involved TVs and dressers tipping over together.

**Weak tip-over standard.** The industry’s voluntary standard leaves too many children at risk. Based on our investigation, CR is calling for the tip-over test weight for dressers to be increased to 60 pounds, from 50 pounds, and for dressers 30 inches tall and shorter to be included in the standard because they also can tip over. Three of the four dressers CR tested that were 30 inches or shorter failed CR’s second test.

**Industry responsible.** CR thinks the most effective way to prevent tip-overs is to secure dressers to walls. But we recognize that it’s not always an option for tenants or those not handy with tools. CR thinks it’s the industry’s responsibility to ensure safer, more stable dressers and that safety shouldn’t rely on consumer skill at anchoring a dresser to a wall.

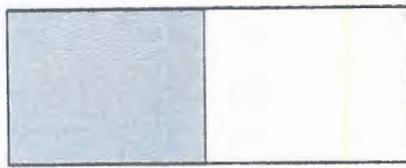
**Some do it right.** CR’s test results show that manufacturers can make dressers stable enough to meet a tougher standard because many already do.

Based on our findings, Consumers Union, the advocacy division of Consumer Reports, is calling on regulators to set a strong, mandatory safety standard, allowing regulators to enforce the rules and more easily gain industry cooperation for recalls. In the meantime, CU thinks the industry should increase the voluntary standard test weight to 60 pounds and include dressers 30 inches and shorter. (See “Where CR Stands: Calling for Tougher Tip-Over

Standards,” below.) The CR investigation comes as the CPSC this year considers issuing stricter, mandatory safety standards.

“Our recommendations would lead to safer dressers for all consumers,” says William Wallace, senior policy analyst for CU. “Raising the test weight would cover more children, and lowering the minimum height would cover more dressers.”

## Where Fatalities Happen



46%

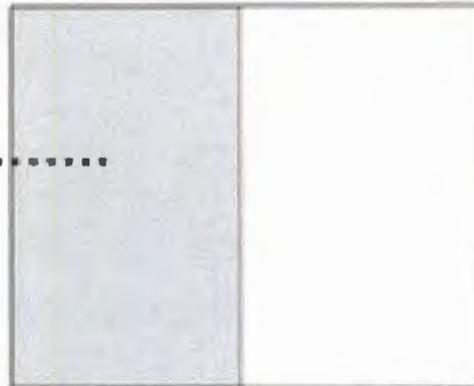
of tip-over fatalities  
happen in the bedroom.

© Consumer Product Safety Commission.

## Where Fatalities Happen

46%

of tip-over  
fatalities  
happen  
in the bedroom.



© Consumer Product Safety Commission.

## The Consumer's Conundrum

Under the current system, consumers must put their trust in manufacturers.

“The normal consumer has no clue,” says Lisa Siefert, a consumer advocate in Barrington Hills, Ill., who founded Shane’s Foundation shortly after her 2-year-old son, Shane, died from a dresser tip-over in 2011. Like McGee, Siefert found her son under his dresser after he had taken a nap. She had assumed the dresser was safe.

Jackie Collas’ 2-year-old son, Curren, died in 2014 after a dresser tipped over onto him in his room at his West Chester, Pa., home. “I just feel like it shouldn’t be left up to the consumer,” Collas says.

Keisha Bowles of Conway, Ark., lost her 2-year-old daughter, Chance, in 2012. Chance and her then-6-year-old brother, Brandon, were playing in and out of each other’s rooms. Bowles was in the bathroom when a dresser with a TV on top of it fell onto Chance, who died later from her injuries. “I had no idea that they made anything to strap down furniture,” Bowles says.

Ann Marie Buerkle, acting chairman of the CPSC, says it’s key to educate consumers about securing dressers and TVs already in their homes. “Even if we put a mandatory standard into effect tomorrow, there are a lot of dressers out there that don’t comply.”

## Our Testing of Tip-Overs

The voluntary safety standard for dressers is managed by ASTM International, an independent organization that brings together manufacturers, government officials, academics, retailers, consumers, and others to establish standards for thousands of products and processes. (Consumer Reports is an active member and participates in working groups, including dressers.) Not all manufacturers participate, and not all comply with its voluntary standards.

In CR's investigation, the Pottery Barn, Epoch Design, and Sauder models we evaluated, among others, passed all three of CR's tests. Other models from various manufacturers passed the first two tests but failed our tougher third test. Five models from three manufacturers—Ameriwood (one model), DaVinci (one model), and South Shore (three models)—did not pass CR's second test.

## Estimated Annual Emergency Department-Treated Injuries

30,700

The estimated number of annual emergency department-treated injuries related to furniture, televisions, and appliances tipping over on a person from 2014 through 2016.

© Consumer Product Safety Commission.

## Estimated Annual Emergency Department- Treated Injuries

30,700

The estimated number of annual  
emergency, department-treated

## **injuries related to furniture, televisions and appliances tipping over on a person from 2014 through 2016.**

### **© Consumer Product Safety Commission.**

Ameriwood and South Shore told CR their dressers meet voluntary industry standards. Three of the four dressers from these manufacturers that failed CR's second test were 30 inches or shorter and would not be subject to the industry's voluntary standard.

DaVinci told CR in an email that the company has already discontinued the model that didn't pass the second test because the company adopted a new 55-pound internal test. "Any items that did not pass were either discontinued or underwent construction changes, which include thicker, heavier back panels," the email said.

CR's testing shows that the industry in many cases could already meet a tougher standard, with 13 of 24 dressers passing the 60-pound test.

“It was just this little, tiny window of time where your life changes forever. Instead of planning his second birthday party that was supposed to be Elmo-themed, we were planning his funeral.”

—**JANET MCGEE, APPLE VALLEY, MINN.** McGee’s son, Ted, was killed after an Ikea Malm dresser tipped over on him in 2016. Ted was 22 months old.

## Impact on Industry

Still, meeting a new standard would not be a simple adjustment, says Joe Shamie, co-president of Delta Children, a global manufacturer of cribs, furniture, baby gear, and dressers. Shamie says it would mean redesigning dressers and probably additional per-unit costs for back weights and extra shipping charges from Asia. “As it is right now, my costs are more expensive than the guy that does not pass the [voluntary] standards,” he says. “If they make the [voluntary] standards tougher, my costs will continue to go up, while his costs will continue to be much lower than mine.”

Shamie, who considers himself a dedicated safety advocate, estimates that Delta’s budget for safety testing is \$2 million per year. “The company culture is set around safety and corporate and social responsibility,” says Shamie, whose father started the business in 1968. “It’s not about the letter of the law; it’s about using a combination of some common sense and seeing how it could apply further. Because children do things that we don’t anticipate.”

Five of the dresser models CR tested were from Delta. Three passed all three tests, and two passed Tests 1 and 2 but failed CR’s 60-pound test.

## How Often Does a Tip-Over Injury Happen?



17 minutes

That's how often someone in the U.S. is injured by furniture, a TV, or an appliance falling on them.

© Consumer Product Safety Commission.

## How Often Does a Tip-Over Injury Happen?



17  
minutes

## 11 MINUTES

**That's how often someone in the U.S. is injured by furniture, a TV, or an appliance falling on them.**

© Consumer Product Safety Commission.

In addition to Delta, CR contacted dozens of other furniture manufacturers and retailers to ask a series of questions about design changes, testing, and current safety standards. Of the 13 manufacturers that responded in full and also produce dressers, eight said they want a mandatory standard. Why? “To keep consumers safe and require a level playing field across all suppliers,” David P. DaPonte, senior manager of global quality assurance and testing at L.L.Bean, said in a written response.

Laura Wood, international sourcing coordinator at Lexington Home Brands, says a mandatory standard would eliminate confusion and debate. “Incidents continue to occur because compliance with the standard, and more specifically understanding of the standard, is not consistent,” she says. “I think [issuing a mandatory standard] could certainly clarify for industry that a mandatory standard is mandatory—you have to do it.”



MEMBER STORIES | FURNITURE TIP-OVERS

## Have you had a furniture tip-over incident?

Not everyone knows that large furniture—like dressers or chests—can tip over and cause injuries, especially to young children. Have you had a furniture tip-over incident in your home? Please tell us what piece of furniture fell, how it happened, and whether it caused injury to you or a loved one.

Share Your Story

## Who Should Be Protected?

Consumer advocates, including CR, think setting a new tip-over testing standard that is reasonable should be based on protecting more at-risk children. A mandatory, 60-pound standard would cover about 95 percent of U.S. children younger than 6 years—a group involved in 82 percent of dresser and clothing storage unit tip-over deaths, according to the CPSC.

Even so, some in the industry say that the current voluntary standard is working and that tip-over mishaps will happen, regardless of new laws or standards.

“Do I think the standard is adequate? Yes, I do believe it’s adequate in protecting the most affected at-risk population,” says Bill Perdue, vice president of regulatory affairs for the American Home Furnishings Alliance, a 400-member industry trade group. “I do, however, believe that there’s always room to improve the standard.”

Perdue contends that tip-over deaths and injuries are largely due to noncompliant products. Tip-over incident reports don’t usually include the dresser model involved, so it’s difficult to tell which specific models are responsible for the incidents. But in the case of fatalities, some dresser models are singled out for scrutiny by regulators and the industry.

In the case of Ted McGee's death, the Ikea Malm dresser that fell on him was still on the market when he died in February 2016, even though it and another Malm model were linked to the deaths of two toddlers in 2014. Both of those two families filed a lawsuit against Ikea in 2015 and reported the incidents to the CPSC. That same year, Ikea issued free anchor kits and urged consumers to stop using Ikea dressers (27 million at the time) until secured to walls. It wasn't until June 2016, four months after Ted's death, that Ikea issued a recall for the Malm.

The McGees sued Ikea in August that year, and the company settled with them and the other two families that December. Ikea didn't respond to CR requests for comment about Ted's death. But the company stressed in email responses to CR that all Ikea dressers should be secured to walls.

### Percentage of Fatal Tip-Over Incidents Involving Children Younger Than 6



82%

Children under age 6 accounted for 82 percent of all reported tip-over deaths involving clothing storage units between 2000 and 2016.

© Consumer Product Safety Commission.

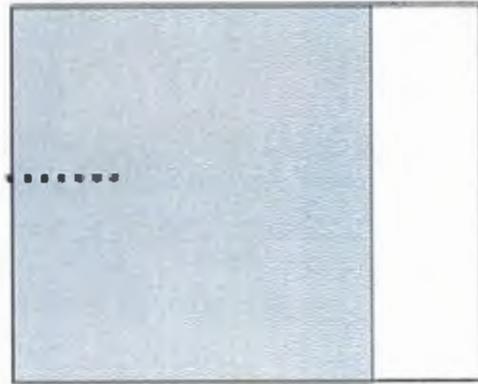
## Percentage of Fatal Tip-Over Incidents Involving Children

Younger Than 6

# Younger than

# 82%

**Children under age 6 accounted for 82 percent of all reported tip-over deaths involving clothing storage units between 2000 and 2016.**



© Consumer Product Safety Commission.

Elliot Kaye, commissioner and past chairman of the CPSC, says having a mandatory standard tends to speed up the recall process. In many cases, the CPSC doesn't have the practical resources to quickly force recalls and must either successfully sue or gain industry cooperation.

“With a voluntary standard, where really there's no enforcement mechanism whatsoever, it's truly voluntary,” Kaye says. “Basically what [many in the industry] are saying is let's wait until more children are killed before we have to do anything, and that to me is—that's morally reprehensible. I'm not comfortable waiting . . . when we know that there are concrete changes that can be made now that will save lives.”

## How Stable Is Your Dresser?

CR conducted tip-over testing on 24 dresser models that represent a cross-section of the retail market, using progressively tougher tests. They were purchased from May 2017 through February 2018. Our tests show that you can't spot a stable dresser with the naked eye.

### HOW WE TESTED

We performed three tests with all the drawers empty.

In **Test 1**, all drawers were open.

In **Test 2**, the top drawer was open and a 50-pound weight was hung from the drawer front.

In **Test 3**, the top drawer was open and the 50-pound weight was increased in 1-pound increments to a maximum of 60 pounds.

MODEL	DIMENSIONS	TEST NUMBER		
		1	2	3
 <b>Bob's Discount Furniture Chadwick Chest</b> \$280	H48.25"XW36"XD17" 99.0 LB.			
 <b>DaVinci Jayden 4-Drawer Dresser</b> \$280	H37.75"XW36"XD18.75" 87.6 LB.			
 <b>DaVinci Kalani 4-Drawer Dresser (discontinued)</b> \$300	H38.25"XW32.75"XD21.25" 83.6 LB.			
 <b>Delta Children Bentley 6 Drawer Dresser</b> \$340	H33.75"XW49"XD19" 111.0 LB.			
 <b>Delta Children Clermont 6 Drawer Dresser</b> \$250	H38"XW47.25"XD18.75" 111.6 LB.			
 <b>Delta Children Sutton 3 Drawer Dresser</b> \$170	H37"XW35"XD19" 83.2 LB.			

<p><b>Delta Children Epic 3 Drawer Dresser</b> \$180</p>	<p>H33"XW36.5"XD18.75" 71.4 LB.</p>	<p>✓</p>	<p>✓</p>	<p>✗</p>
<p><b>Delta Children 3 Drawer Dresser, similar to: Viv + Rae 3 Drawer Dresser</b> \$280</p>	<p>H33.5"XW37"XD20" 74 LB.</p>	<p>✓</p>	<p>✓</p>	<p>✗</p>
<p><b>Epoch Design 5 Drawer Chest</b> \$740</p>	<p>H46.25"XW33.75"XD21" 74.0 LB.</p>	<p>✓</p>	<p>✓</p>	<p>✓</p>
<p><b>Epoch Design Seneca 5 Drawer Chest</b> \$770</p>	<p>H48.25"XW35.75"XD21.25" 164.0 LB.</p>	<p>✓</p>	<p>✓</p>	<p>✓</p>
<p><b>Essential Home Belmont 4 Drawer Dresser Chest (Ameriwood)</b> \$40</p>	<p>H30"XW27.75"XD15.75" 47.0 LB.</p>	<p>✓</p>	<p>✗</p>	<p>✗</p>
<p><b>Ikea Malm 3-Drawer Chest</b> \$100</p>	<p>H30.5"XW31.75"XD19" 96.0 LB.</p>	<p>✓</p>	<p>✓</p>	<p>✗</p>
<p><b>Pottery Barn Kids Catalina Dresser</b> \$500</p>	<p>H31"XW38.5"XD18.75" 89.6 LB.</p>	<p>✓</p>	<p>✓</p>	<p>✓</p>
<p><b>Pottery Barn Kids Catalina Extra-Wide Dresser</b> \$900</p>	<p>H31.25"XW56.25"XD18" 119.2 LB.</p>	<p>✓</p>	<p>✓</p>	<p>✓</p>
<p><b>Sauder Pogo 3-Drawer Chest</b> \$180</p>	<p>H47.25"XW30.25"XD19.5" 99.4 LB.</p>	<p>✓</p>	<p>✓</p>	<p>✓</p>
<p><b>Sauder Shoal Creek 4-Drawer Chest</b> \$230</p>	<p>H42.5"XW34.75"XD18.75" 106.4 LB.</p>	<p>✓</p>	<p>✓</p>	<p>✓</p>
<p><b>Simmons Kids</b></p>	<p>H34"XW47.75"XD19.75" 128.2 LB.</p>			

	<b>Rowen Double Dresser</b> \$300				
FR	<b>South Shore Libra 3-Drawer Chest, similar to: Simply Basics 3 Drawer Dresser</b> \$90	H27.5"XW31.5"XD16" 57.2 LB.			
FR	<b>South Shore Little Treasures 5-Drawer Chest</b> \$165	H43.75"XW31.5"XD18" 89.8 LB.			
WD	<b>South Shore Logik 6-Drawer Double Dresser A</b> \$200	H29.75"XW47.5"XD17.5" 103.6 LB.			
WB	<b>South Shore Logik 6-Drawer Double Dresser B</b> \$200	H27.5"XW51.25"XD19" 108.6 LB.			
FR	<b>South Shore Summer Breeze 6-Drawer Double Dresser A</b> \$270	H32"XW52.25"XD16.5" 111.6 LB.			
FR	<b>South Shore Summer Breeze 6-Drawer Double Dresser B</b> \$230	H31.25"XW52"XD20" 113.2 LB.			
FR	<b>Storkcraft Kenton 6 Drawer Universal Double Dresser</b> \$220	H32.5"XW50"XD18" 102.2 LB.			

Notes: 1) Some models have the same name with a modifier ("A" or "B"). The latter sample (B) was found to have different dimensions from the earlier sample (A). This is reflected in both dimensions and test results. 2) Dimensions are overall dimensions of the assembled product rounded up to the nearest 1/4 inch, measured by CR technicians, including any additional components, such as a changing table or hardware. These dimensions may differ from what appears in the manufacturers' specifications. 3) Purchase price may vary from the currently available price.

## How Stable Is Your Dresser?

CR conducted tip-over testing on 24 dresser models that represent a cross-section of the retail market, using progressively tougher tests. They were purchased from May 2017 through February 2018. Our tests show that you can't spot a stable dresser with the naked eye.

### HOW WE TESTED

We performed three different tests with all the drawers empty.

In **Test 1**, all drawers were open.

In **Test 2**, the top drawer was open, and a 50-pound weight was hung from the drawer-front.

In **Test 3**, the top drawer was open, and the 50-pound weight was increased in 1-pound increments to a maximum of 60 pounds.

MODEL/ DIMENSIONS	TEST NUMBER		
	1	2	3
<b>Bob's Discount Furniture Chadwick Chest</b> \$280 H48.25"xW36"xD17" 99.0 lb.	✓	✓	✓
<b>DaVinci Jayden 4-Drawer Dresser</b> \$280 H37.75"xW36"xD18.75" 87.6 lb.	✓	✓	✓
<b>DaVinci Kalani 4-Drawer Dresser (discontinued)</b> \$300 H38.25"xW32.75"xD21.25" 83.6 lb.	✓	✗	✗
<b>Delta Children Bentley 6 Drawer Dresser</b> \$340 H33.75"xW49"xD19" 111.0 lb.	✓	✓	✓
<b>Delta Children Clermont 6 Drawer Dresser</b> \$250 H38"xW47.25"xD18.75" 111.6 lb.	✓	✓	✓

**Delta Children  
Sutton 3 Drawer  
Dresser** \$170  
H37"xW35"xD19"  
83.2 lb.

✓	✓	✓
---	---	---

**Delta Children Epic  
3 Drawer Dresser**  
\$180  
H33"xW36.5"xD18.75"  
71.4 lb.

✓	✓	✗
---	---	---

**Delta Children  
3 Drawer Dresser,  
similar to: Viv + Rae  
3 Drawer Dresser**  
\$280  
H33.5"xW37"xD20"  
74 lb.

✓	✓	✗
---	---	---

**Epoch Design  
5 Drawer Chest** \$740  
H46.25"xW33.75"xD21"  
131.2 lb.

✓	✓	✓
---	---	---

**Epoch Design  
Seneca 5 Drawer  
Chest** \$770  
H48.25"xW35.75"xD21.25"  
164.0 lb.

✓	✓	✓
---	---	---

**Essential Home  
Belmont 4 Drawer  
Dresser Chest  
(Ameriwood)** \$40  
H30"xW27.75"xD15.75"  
47.0 lb.

✓	✗	✗
---	---	---

**Ikea Malm 3-  
Drawer Chest** \$100  
H30.5"xW31.75"xD19"  
96.0 lb.

✓	✓	✗
---	---	---

**Pottery Barn Kids  
Catalina Dresser**  
\$500  
H31"xW38.5"xD18.75"  
89.6 lb.

✓	✓	✓
---	---	---

**Pottery Barn Kids  
Catalina Extra-  
Wide Dresser** \$900  
H31.25"xW56.25"xD18"  
119.2 lb.

✓	✓	✓
---	---	---

**Sauder Pogo 3-**

--	--	--

**Drawer Chest** \$180  
 H47.25"xW30.25"xD19.5"  
 99.4 lb.

✓	✓	✓
---	---	---

**Sauder Shoal Creek 4-Drawer Chest**  
 \$230  
 H42.5"xW34.75"xD18.75"  
 106.4 lb.

✓	✓	✓
---	---	---

**Simmons Kids Rowen Double Dresser** \$300  
 H34"xW47.75"xD19.75"  
 128.2 lb.

✓	✓	✓
---	---	---

**South Shore Libra 3-Drawer Chest, similar to: Simply Basics 3 Drawer Dresser** \$90  
 H27.5"xW31.5"xD16"  
 57.2 lb.

✓	✗	✗
---	---	---

**South Shore Little Treasures 5-Drawer Chest** \$165  
 H43.75"xW31.5"xD18"  
 89.8 lb.

✓	✗	✗
---	---	---

**South Shore Logik 6-Drawer Double Dresser A** \$200  
 H29.75"xW47.5"xD17.5"  
 103.6 lb.

✓	✗	✗
---	---	---

**South Shore Logik 6-Drawer Double Dresser B** \$200  
 H27.5"xW51.25"xD19"  
 108.6 lb.

✓	✓	✗
---	---	---

**South Shore Summer Breeze 6-Drawer Double Dresser A** \$270  
 H32"xW52.25"xD16.5"  
 111.6 lb.

✓	✓	✗
---	---	---

**South Shore Summer Breeze 6-Drawer Double Dresser B** \$230  
 H31.25"xW52"xD20"  
 113.2 lb.

✓	✓	✓
---	---	---

**Storkcraft Kenton  
6 Drawer Universal  
Double Dresser \$220**  
H32.5"xW50"xD18"  
102.2 lb.



Notes: 1) Some models have the same name with a modifier ("A" or "B"). The latter sample (B) was found to have different dimensions from the earlier sample (A). This is reflected in both dimensions and test results. 2) Dimensions are overall dimensions of the assembled product rounded up to the nearest ¼ inch, measured by CR technicians, including any additional components, such as a changing table or hardware. These dimensions may differ from what appears in the manufacturers' specifications. 3) Purchase price may vary from the currently available price.

## Where CR Stands: Calling for Tougher Tip-Over Standards

Consumer Reports recommends that consumers anchor dressers to the wall. But CR also is calling on regulators to set stronger, mandatory tip-over testing standards. In the meantime, industry should take steps to strengthen the current voluntary standard in these key ways:

**Protect more children.** The current standard—an empty dresser must not tip over when 50 pounds is hung from an open drawer—doesn't cover enough children and should be increased to 60 pounds, which would cover 95 percent of children younger than 6, according to the CPSC.

**Include shorter dressers.** The standard should be expanded to cover units 30 inches tall and shorter because CR's investigation shows that some of these dressers can tip over.

**Labeling.** If the standard is strengthened, as we recommend, manufacturers should clearly mark products to reflect that they meet the new standard.

**Congress should act, if needed.** If manufacturers don't agree to toughen the voluntary standard, the CPSC should issue a mandatory standard. This process could take years without industry cooperation. Congress, however, could speed things up. The STURDY (Stop Tip-overs of Unstable, Risky Dressers on Youth) Act, introduced in 2016 by Sens. Bob Casey, D-Pa., Amy Klobuchar, D-Minn., and Richard Blumenthal, D-Conn., and Rep. Jan Schakowsky, D-Ill., would have directed the CPSC to issue a stronger, mandatory standard if industry failed to adequately strengthen its voluntary standard within 180 days. The bill did not pass. Policymakers and industry should act quickly on our findings and issue a tougher standard.

**Editor's Note:** This article also appeared in the May 2018 issue of Consumer Reports magazine.

---

© 2006 - 2016 Consumer Reports



**Remington Gregg**

Counsel for Civil Justice and Consumer Rights

Public Citizen

Congress Watch Division



215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • [www.citizen.org](http://www.citizen.org)

March 28, 2018

RE: Comments on the Consumer Product Safety Commission's Agenda and Priorities for FY 2019 & 2020

---

Public Citizen is grateful for the opportunity to submit comments to the Consumer Product Safety Commission (CPSC or Commission) for the CPSC Agenda and Priorities Hearing for Fiscal Years 2019 and 2020.<sup>1</sup> Public Citizen is a national non-profit organization with more than 400,000 members and supporters. We represent the public interest through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues that include product safety and consumer rights in the marketplace.

## **I. Introduction**

Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda of action each year for the upcoming fiscal year. The law also requires the Commission to solicit public input before establishing its priorities. We are grateful for the opportunity to provide both written and, at a later date, oral input to the Commission. At the outset, we express our support for the Commission's Strategic Plan 2016-2020 (Strategic Plan) and look forward to working with the Commission to ensure successful implementation.<sup>2</sup> This comment will focus on two issues that Public Citizen plans to work closely on with the CPSC during the next fiscal year: ensuring a more data-driven agency and increased transparency to effectuate the agency's mission.

## **II. Creating an Even More Robust Data-Driven Agency**

The CPSC's Strategic Plan states that "agency access to useful, accurate, and timely data is a cross-cutting priority focus" and that the agency "consistently looks for ways to improve the quality, transparency, reliability, and availability of data essential for achieving the agency's

---

<sup>1</sup> Notice of Public Hearing, Commission Agenda and Priorities, 83 F.R. 8853 (March 1, 2018).

<sup>2</sup> [https://www.cpsc.gov/s3fs-public/CPSC\\_2016-2020\\_Strategic\\_Plan.pdf](https://www.cpsc.gov/s3fs-public/CPSC_2016-2020_Strategic_Plan.pdf).

strategic objectives, goals, and mission.”<sup>3</sup> We strongly support the CPSC’s goal of using data to become a more efficient and effective agency for consumers and therefore urge the Commission to work to continue collecting timely and comprehensive data that will help the agency more effectively advance its mission.

We strongly support the consumer product safety database SaferProducts.gov, which was created by Section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). We appreciate the CPSC’s commitment to this critically important consumer tool and encourage the Commission to enhance its utility. If administered correctly, with some small modifications, it could far better serve the mission of providing a central national repository for critical product safety information, and become a more effective tool to avert death or injury to the public.<sup>4</sup>

For example, we urge the Commission to further strengthen SaferProducts.gov by increasing its visibility and use by the public. We recommend that the CPSC make the website’s visibility a top priority and dedicate resources to advertising it on social media and in any media statements or responses issued by the Commission, and implement the recommendations in the Saferproducts.gov report issued by the Consumer Federation of America, Consumers Union, Kids in Danger (KID), Public Citizen, and the U.S. Public Interest Research Group (U.S. PIRG).<sup>5</sup> We also encourage the Commission to promote its availability through partnerships with state consumer protection agencies, consumer advocacy organizations, and industry to ensure the website is promoted through major consumer hubs, such as external websites and through social media.

Moreover, CPSC should explore innovative and tech-savvy ways to convey information on product recalls. This might include feedback loops that allow the Commission to measure the effectiveness of the information that is disseminated. For example, the Commission could consider agency action that pilots a program that allows consumers at the time of purchase to opt-in to receiving text messages if a product is recalled. Then, the Commission should study whether recall participation was increased because of the notification system as compared to other, similar recalls. This type of feedback loop would give the CPSC real metrics to understand the number of people who are receiving information on a recall, which in turn would

---

<sup>3</sup> *Id.*

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

<sup>5</sup> See generally, Consumer Federation of America, *Safer Products.gov: Five Years Live*, available at [https://consumerfed.org/wp-content/uploads/2016/11/11-29-16-SaferProducts\\_Report.pdf](https://consumerfed.org/wp-content/uploads/2016/11/11-29-16-SaferProducts_Report.pdf).

help the Commission better understand if companies, or itself in instances of mandatory recalls, are effectively disseminating critical information about dangerous products to the public.

Last year, the Commission hosted a workshop on recall effectiveness. We were eager to collaborate with the Commission on finding innovative ways to improve the outreach and effectiveness of recalls. Along with Consumer Federation of America and Kids in Danger, we submitted a list of recommendations to make the workshop productive and impactful, such as inviting technology and marketing experts as well as academics to the workshop for their input.<sup>6</sup> Unfortunately, these recommendations were not incorporated into the workshop, nor has there been follow-up to that meeting other than a recently released report.<sup>7</sup> We urge the Commission to continue this important conversation by holding additional meetings on the topic as well as by thoughtfully expanding the attendance list for such meetings in order to gain insights from persons with applicable expertise, especially those who have experience in mass communications with the public and innovating with the federal government.

### **III. Increased Transparency in the Decisionmaking Process**

The CPSC should do more to increase transparency in the decisionmaking process by improving information disclosure to the public. We place particular significance on strengthening information disclosures issued pursuant to section 6(b) of the Consumer Product Safety Act (CPSA). Since the Commission issued a Notice of Proposed Rulemaking in February 2014 to amend the 30-year old rule implementing section 6(b), the rulemaking has seen little traction.<sup>8</sup> We have supported the rulemaking's modest proposal to modernize and streamline the regulation and urge the Commission to continue with the proposed rulemaking without further delay.

As currently interpreted by the Commission, section 6(b) restricts the CPSC from publicly disclosing any information from which the public can readily ascertain the identity of a manufacturer or private labeler of a consumer product, unless the Commission takes reasonable steps to ensure the information is accurate, that disclosure is fair in the circumstances, and the disclosure is reasonably related to effectuating the purposes of the CPSA and other laws administered by the Commission.<sup>9</sup>

Unfortunately, Section 6(b) has restrained the CPSC in its ability to proactively disclose safety hazards to the public. To our knowledge, no other federal agency that deals with public health and safety is subject to similar public disclosure restrictions. 6(b) negatively affects consumers

---

<sup>6</sup> See Appendix A for a copy.

<sup>7</sup> U.S. Consumer Product Safety Commission (CPSC), *Recall Effectiveness Workshop Report* (Feb. 22, 2018), available at [https://www.cpsc.gov/s3fs-public/Recall\\_Effectiveness\\_Workshop\\_Report-2018.pdf?R1VyLltri8M\\_\\_id.2vkAkIHozjaSCab](https://www.cpsc.gov/s3fs-public/Recall_Effectiveness_Workshop_Report-2018.pdf?R1VyLltri8M__id.2vkAkIHozjaSCab).

<sup>8</sup> Information Disclosure Under Section 6(b) of the Consumer Product Safety Act, 79 Fed. Reg. 10712 (proposed Feb. 26, 2014)(to be codified at 16 C.F.R. pt. 1101).

<sup>9</sup> 15 U.S.C. §2055(b).

by unnecessarily shielding critical product safety information from public view. Section 6(b) is outdated, anti-consumer, and intended solely to protect the reputation of businesses that put harmful products on the market. Landmark right-to-know laws like the Freedom of Information Act (FOIA) do not have a similar, overbroad restriction for information disclosures from other agencies and instead are constrained only by the FOIA's tightly-focused exemptions focused on interests such as protecting personal privacy of individuals. There is no legitimate justification for 6(b)'s limits to transparency, and Congress should eliminate it. We encourage the CPSC to make the case to Congress. Public Citizen intends to do the same.

Until Congress eliminates Section 6(b), the CPSC must prioritize the rulemaking process to increase proactive disclosures by the Commission and otherwise update section 6(b)'s outdated implementing regulations. However, even with proposed changes, section 6(b) will remain overly pro-industry because it would still allow manufacturers to weigh in on—or outright object to—product safety information before the Commission may disclose such information to the public.<sup>10</sup> Essentially, 6(b) requires the Commission to negotiate every recall announcement with the manufacturer or company. All the while, people—including children—are being hurt by dangerous products still allowed on store's shelves.

This section of the CPSA law is emblematic of the avoidable obstacles that thwart the Commission's ability to modernize and advance consumer safety. Advances in technology and communication since the law's adoption in have gone unaddressed. Unnecessary delays swallow up efficient dissemination of public safety information. One obvious example is the Commission's inability to publicly disseminate information that has already been publicly disclosed which simply gives business and manufacturers another built-in opportunity to influence the process before releasing critical product safety information. For example, the Commission cannot post information on its website that was previously released without notification to the manufacturer.<sup>11</sup> This is a burdensome requirement on the Commission and delays the release of important information.

Section 6(b) puts American lives and health at risk with burdensome procedures and delays that block public disclosure of crucial information on dangerous products. Section 6(b) is a relic that handcuffs the CPSC's core regulatory function of warning the public about potentially defective products and compels the CPSC to waste already scarce budgetary resources on procedures that do not serve any consumer protection or product safety goal.

Public Citizen supports the goals of the proposed rule to modernize and improve 6(b), which would greatly serve consumers and maximize transparency and openness by: (i) ensuring the

---

<sup>10</sup> 16 C.F.R. 1101.

<sup>11</sup> See generally Statement of Acting Chair Robert S. Adler (Feb. 14, 2014), *available at* <https://www.cpsc.gov/about-cpsc/commissioner/robert-bob-s-adler/statements/statement-acting-chairman-robert-s-adler-0>.

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

The rulemaking changes will not solve the overall problem of secrecy that 6(b) enables, but it would make the process simpler and relieve the agency from unnecessary administrative burdens.

In the meantime, the Commission must dedicate sufficient resources in order to respond to FOIA requests in a timely manner and consistent with its statutory obligations. The average reported time for responding to simple and complex requests is 25 and 67 working days, respectively.<sup>12</sup> We urge the Commission to redouble its efforts to speed up its response time and continue to reduce its FOIA backlog.

### **Conclusion**

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

Respectfully submitted,



Remington A. Gregg  
Counsel for Civil Justice and Consumer Rights  
Public Citizen  
Congress Watch Division

---

<sup>12</sup> FOIA.gov (“Create a Request”)(last visited March 28, 2018).

Appendix A



June 23, 2017

Honorable Ann Marie Buerkle  
Acting Chairman  
Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, Maryland 20814

**Input of Consumer Groups for the Commission's Recall Effectiveness Workshop**

We appreciate the Consumer Product Safety Commission (CPSC) holding a workshop on recall effectiveness and welcome discussing this important consumer protection issue. As consumer organizations who work closely with the CPSC, we look forward to continuing to work with the agency to protect the public from hazards and dangerous products, and look forward to ongoing dialogue.

Our groups suggest that the CPSC focus the limited time available during the workshop on discussing concrete proposals for improving recall effectiveness. The workshop should devote the bulk of its time to brainstorming and discussing innovative ideas to increase the effectiveness of recalls. The workshop can achieve this by encouraging discussion on the following:

- **Improving communication with the public**  
The workshop should explore innovative and tech-savvy ways to convey information on recalls. This might include feedback loops that allow the Commission to measure the effectiveness of the information that is disseminated. For example, the Commission could consider agency action that allows consumers to opt-in to receiving text messages if a product is recalled. This type of feedback loop would give the CPSC real-time metrics to understand the number of people who are receiving information on a recall.
- **More robust approaches to recall effectiveness and communication**  
In order for recalls to be effective, consumers must be aware of a recall and know how to comply with the recall. Therefore, the workshop should explore how to expand and diversify reach to consumers that includes including press releases, social media, and

paid media. The CPSC should also consider the most effective ways to communicate with particular populations who likely own specific recalled products.

- **Incentives for consumer responsiveness to recalls**

Firms charged with implemented recalls should provide incentives to consumers to encourage consumer compliance. The workshop should include a discussion about incentives and how innovation could occur regarding the frequency and type of such incentives.

The workshop should focus on working with recalling companies to create more robust and effective corrective action plans (CAP). This could include preparedness for consumer response to recalls, outreach to supply chain, and coordination between manufacturers and retailers.

- **Invite technology and marketing experts to the workshop**

The Commission should invite technology and marketing experts from academia, government, public interest and consumer organizations, and other stakeholders to attend the workshop to provide input on how to more effectively interact with the public. They should be provided advance notice so that they have an opportunity to prepare recommendations to present to the Commission during the workshop.

Our groups would be happy to provide suggestions for topics and experts and to share our experiences in working on recall effectiveness. The CPSC should provide participants with read ahead material before the workshop to ensure that all participants can fully engage. Please do not hesitate to contact the organizations below for more information on the topics discussed.

Respectfully submitted,

Remington A. Gregg  
Counsel for Civil Justice and Consumer Rights  
**Public Citizen**

Rachel Weintraub  
Legislative Director and General Counsel  
**Consumer Federation of America**

Nancy A. Cowles  
Executive Director  
**Kids In Danger**



**Russell Kendzior**

President and Chairman of the Board  
National Floor Safety Institute



March 28, 2018

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

**Re: Commissions Agenda and Priorities for Fiscal Year 2019 and or 2020**

The National Floor Safety Institute (NFSI) is requesting that the U.S. Consumer Product Safety Commission (CPSC) consider making elder fall prevention a priority for their fiscal year 2019 agenda by:

1. Requiring flooring manufacturers to uniformly label their products' slip-resistance (Coefficient of Friction) per the American National Standards Institute (ANSI) B101.5-2014 "Standard Guide for Uniform Labeling Method for Identifying the Wet Dynamic Coefficient of Friction (Traction) of Floor Coverings, Floor Coverings with Coatings, and Treated Floor Coverings."
2. Expand surveillance via the NEISS data collection system to target and identify same level falls
3. Consider providing slip, trip and fall prevention research funding which would provide valuable insight as it relates to the cause and effect relationship as it relates to elder falls.
4. Evaluate the effectiveness of past injury prevention projects which have been funded via community outreach partners which historically focused on individual strength conditioning and exercise programs like that of tai-chi.

**Background**

In 2015 the NFSI submitted a petition to the CPSC requesting that they require manufacturers of floorcoverings to uniformly label their products' slip-resistance (Coefficient of Friction) per the American National Standards Institute (ANSI) B101.5-2014 "Standard Guide for Uniform Labeling Method and although the petition received a wide range of support it was not supported by CPSC staff and ultimately fell short of the commissioners approval by a vote of 2-3. Since that time the problem associated with elder falls has reached epidemic levels and we are hereby requesting that the commission re-consider this matter and make elder fall prevention a priority for their 2019 agenda.

NFSI research has revealed that 55% of all same-level slips and falls, occur as the result of a hazardous (slippery) walkway. Given such, it is estimated that half of all same level falls, which take place in the home, are the result of a same level slip and fall.

Currently flooring manufacturers do not provide consumers any information as it relates to the safety (ie: slip resistance - coefficient of friction) of their products which we believe directly contributes to the improper selection and use of floors which in-turn directly contributes to the growing rate of same level slips and falls.

Accidental falls disproportionally affects the elderly more than any other demographic segment of our society. According to the NSC, "Falls were the third leading cause of unintentional-injury related death in the United States in 2010. leading cause of unintentional-injury-related death for people age 70 or older and the second leading cause for ages 64-69 for each year of age; deaths resulting from falls peaked at 1,178 for individuals age 87."

In the absence of slip resistance data via a uniform test method and associated product label the consumer is on their own when it comes to selecting an appropriate or safe floor for their individual use and often assume that all floors are safe which is untrue. Different types of floor coverings have wide-ranging differences in slip resistance, which the materials have widely differing COF levels, many of which may be inappropriate for specific use. However, the consumer, specifically the elderly, only finds out that they made the wrong choice after they have fallen and injured themselves. The failure by the floor covering industry to consciously not inform the consumer as to their products safety is one of the leading factors as to why so many elderly Americans slip and fall.

According to the U.S. Census Bureau approximately ten thousand (10,000) baby-boomers are retiring each day and according to the Harvard University Health Letter <sup>1</sup> the baby-boomer generation will have an average life expectancy of 81.6 years of which many may live to age 90. According to the National Safety Council's Injury Facts (2014 edition) of the 38,300,000 individuals who sought medical attention due to an unintentional injury, 1,930,000 took place in the home. Sixty-three thousand (63,000) Americans died in their home as a result of an unintentional injury. Of the estimated \$793.8 billion cost for unintentional injuries (2012) \$220.3 billion was spent on injuries which occurred in the home.

In 2005, 20,200 Americans lost their life as a result of an accidental fall which rose to 27,800 in 2014 and in 2017 topped 33,000. Over the past decade fall related fatalities have risen by nearly 52% and continue to rise. Today the lifetime risk of accidental death as a result of a fall is nearly equal to that of automobile accidents. A 38% increase of those who are most impacted are the nation's elderly age 65+. In 2005, elderly 16,400 Americans lost their life as a result of an accidental fall that number has risen to 23,100 in 2014 and 28, 487 in 2017.

Between the years 2004 and 2012 the economic impact of nonfatal unintentional injuries rose by 38% from \$574.8 billion in 2004 to \$793.8 Billion in 2012.

According to the National Health Interview Survey, 2011, 42.9% of females and 27.7% of males will fall and seek medical attention. Of the 37,872,000 injury episodes, 12,343,000 occurred in the home and 6,941,000 occurred outside of the home. The study revealed, "Falls and motor vehicle incidents were the leading causes of injury-related emergency department visits, accounting for 26% and 11% of the total, respectively. In total, about 10.5 million visits to emergency departments in 2010 were due to unintentional falls and nearly 4.5 million were due to motor vehicle incidents." Of the 29,310,000 unintentional injuries as identified via the E-code system, 10,512,000 were the result of a fall (E880.0-E886.9, E888).

In 2011, falls represented the leading cause of non-fatal injuries, which required emergency room treatment for all age groups. Sadly, since our 2015 petition the slip and fall crisis has worsened. 2017 NSC data reveals an increase in fall fatalities. According to the CDC, "In 2015, the direct medical costs of older adult falls, adjusted for inflation, were \$34 billion. With the population aging, both the number of falls and the costs to treat fall injuries are likely to increase."

We ask the Commission to prioritize elder fall prevention by requiring manufacturers to test and label their products per the ANSI/NFSI B101.5-2014 labeling standard (below) indicating the slip-resistance specifically the wet Dynamic Coefficient of Friction (DCOF) for the flooring material as tested per the ANSI/NFSI B101.3-2012 standard. The label provides consumers an intuitive easy to understand graphic depicting the level of traction of the product as such so they can make an informed purchasing choice as it relates to their personal safety.



Our proposal is in compliance with the second and fourth goals of the CPSC 2016-2020 Strategic plan which calls for preventing hazardous products from reaching consumers and strategic Objectives

- 2.1 - Improve identification and assessment of hazards to consumers
- 2.1.2 - Improve quality and specificity of hazard information
- 2.1.3 - Improve agency capacity to identify and assess chronic hazards"
- 2.3 - Increase capability to identify and stop imported hazardous consumer products
- 4.2.2 - Expand communications with targeted audiences

***Not all floors are safe and have differing levels of slip resistance. But how does the consumer know? We believe that the public has a right to know how safe the floors they seek to purchase are and such information should be provided at the point of purchase via an easy to understand label.***

The NFSI B101 committee intentionally created the B101.5 standard for the intended purpose of informing the public as to the slip risk associated with flooring materials whereby they could then make a more informed buying decision. We believe that if the consumer was informed as to the traction range of a product that they would avoid selecting low-traction floors which in-turn would reduce the risk of a slip and fall. Research contained in the enclosed appendix has demonstrated a direct link between traction levels and the risk of a slip and fall, unfortunately today's consumer does not have any information as it relates to the safety of flooring products which thus placing them at risk.

The proposed request is similar to that of the governments mandatory labeling of food products whereby important nutritional information is provided in a uniformly standardized label, which the consumer can use to make food-purchasing decisions. Certain food contents like that of a particular low traction floor

can be detrimental to public health whereby the use of a mandatory product label can assist the consumer in making a more informed decision. Furthermore, flooring manufacturers along with their retail and distribution network can assist in providing point of purchase information explaining the purpose of the label and encourage consumers to use the label as a part of the overall buying decision.

In short, the problem associated with same-level slips and falls is serious and real and expected to get worse as our elderly population continues to grow. Since our 2015 petition not a single flooring manufacturer tests their products via a uniform test method nor uniformly labels their products to any nationally adopted consensus standard.

The floor covering industry continues to ignore the health and safety of the American public and in-turn is intentionally exposing our nations at-risk population to the unnecessary risk of a slip and fall event and related injuries. In their February 2, 2016 letter to the CPSC in opposition to our 2015 petition the four group Presidents of the Mohawk Corporation, the nation's largest flooring manufacturer regarded "standards as useless by many in the flooring industry" and that the proposed product label would be "confusing and misleading" and further stated that: "the wet or dry traction of floors are self-evident to consumers simply by walking on the product, or running a hand over it, under expected conditions." Such absurd statements are reflection of an industry in denial and in-turn places the general public at risk. We believe a more uniform, unbiased and scientific based method would serve the consumer better and lead to a decrease in same level slips and falls and humbly request that you make fall prevention a national priority.

Sincerely,



Russell J. Kendzior  
President and Chairman of the Board  
National Floor Safety Institute  
P.O. Box 92607  
Southlake, TX 76092  
(817)749-1705

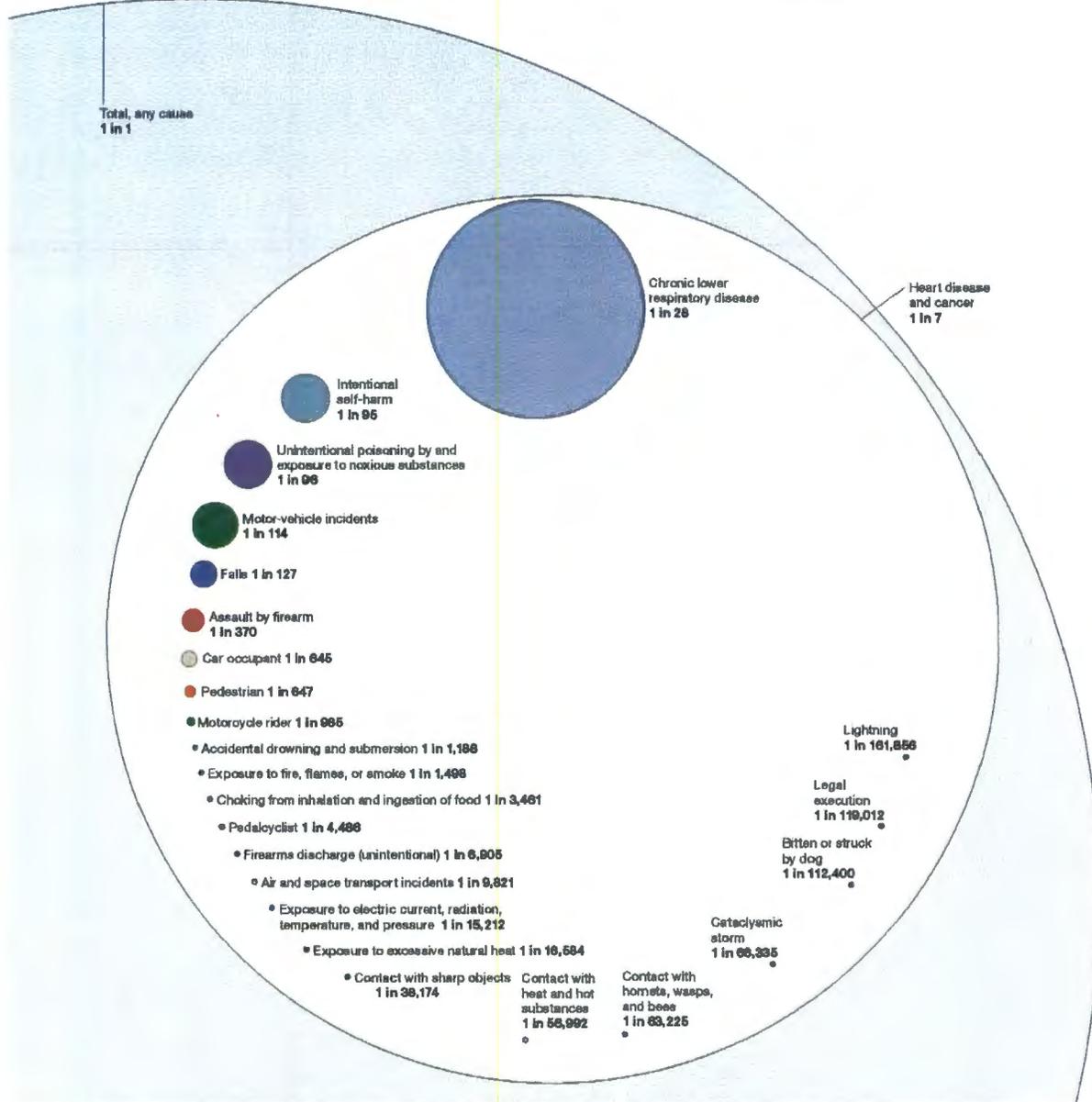
**Appendix**  
(2017 NSC Accident Facts)

**ALL INJURIES**

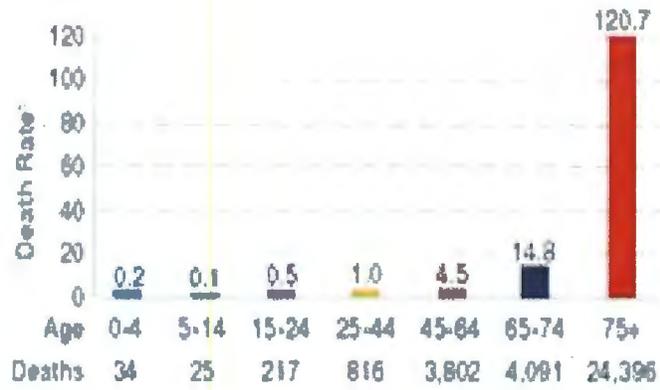


The Odds of Dying From... (cont.)

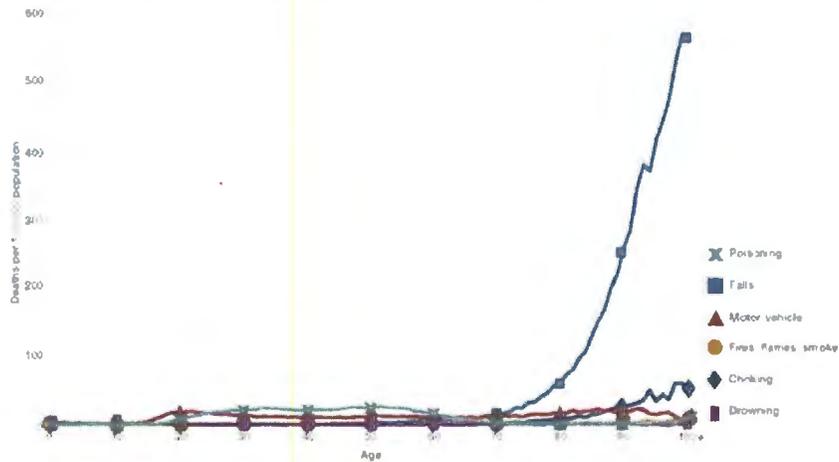
Lifetime odds of death for selected causes, United States, 2014\*



Source: National Safety Council estimates based on data from National Center for Health Statistics—Mortality Data for 2014 as compiled from data provided by the 57 vital statistics jurisdictions through the Vital Statistics Cooperative Program. Population and life expectancy data are from the U.S. Census Bureau. For mortality figures, estimated one-year and lifetime odds, and external cause classification codes based on the 10th Revision of "The International Classification of Diseases" (ICD) for the causes illustrated, see table on pages 41–42.  
\*Latest official figures.



Unintentional-injury-related deaths per 100,000 population by age and event, United States, 2014

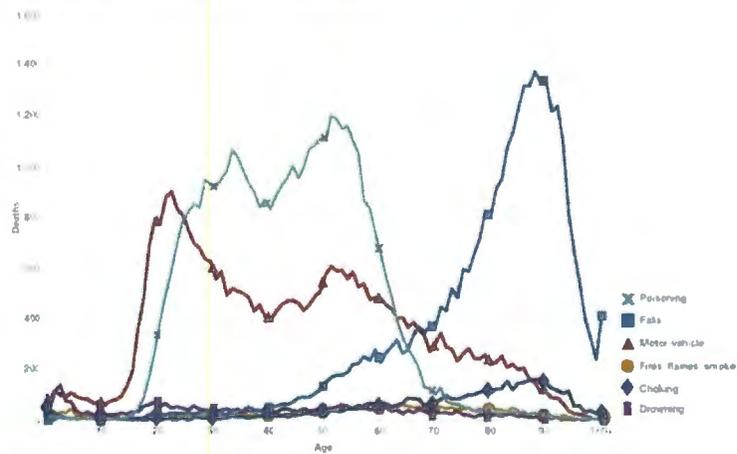


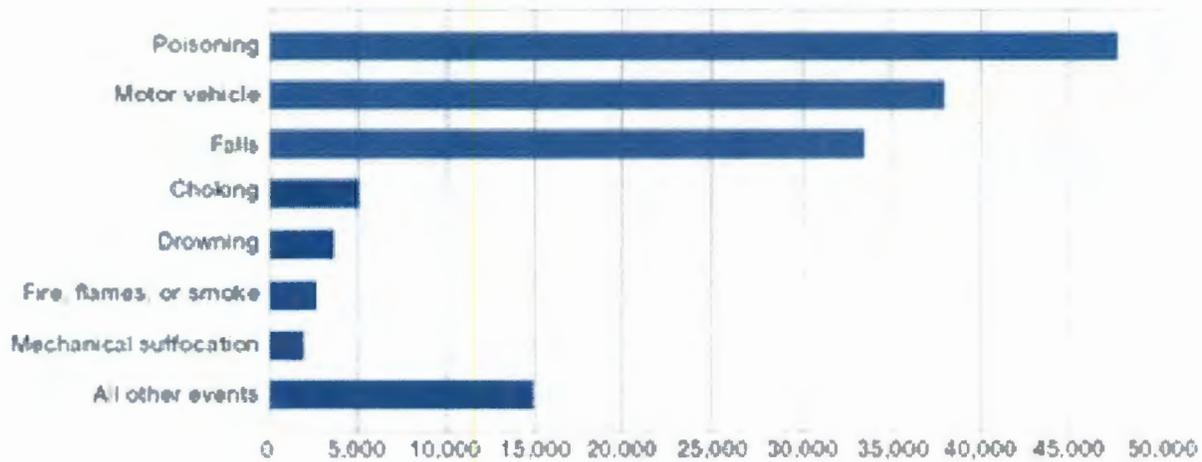
**ALL INJURIES**

Leading Causes of Unintentional-Injury-Related Death by Age, 2014



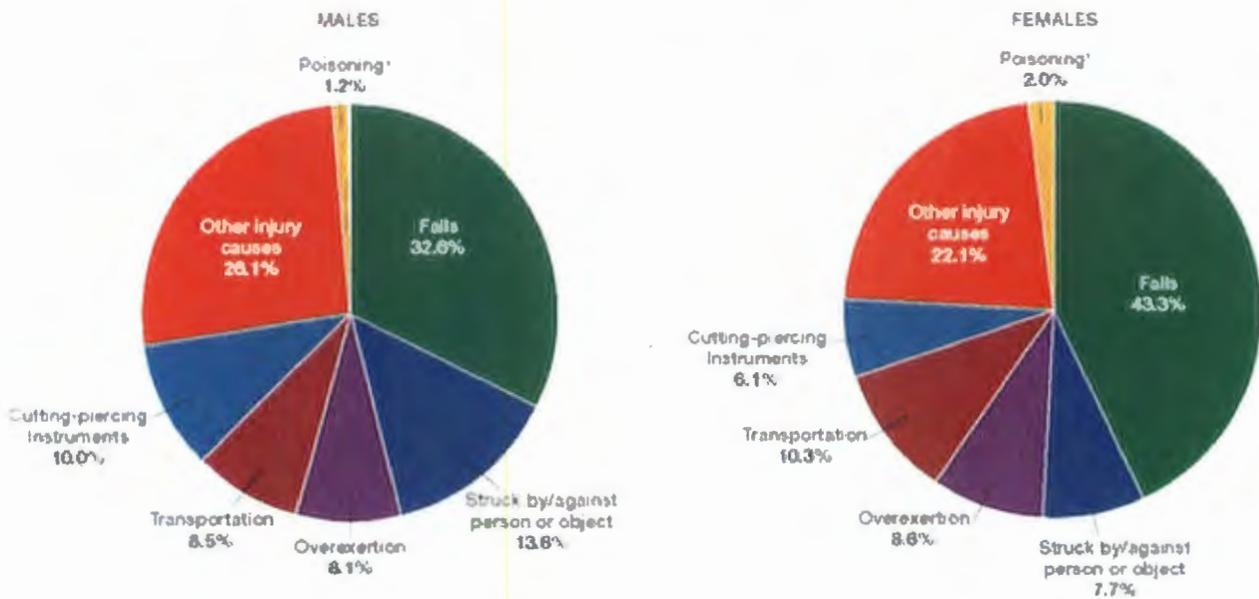
Unintentional injury related deaths by age and event, United States, 2014



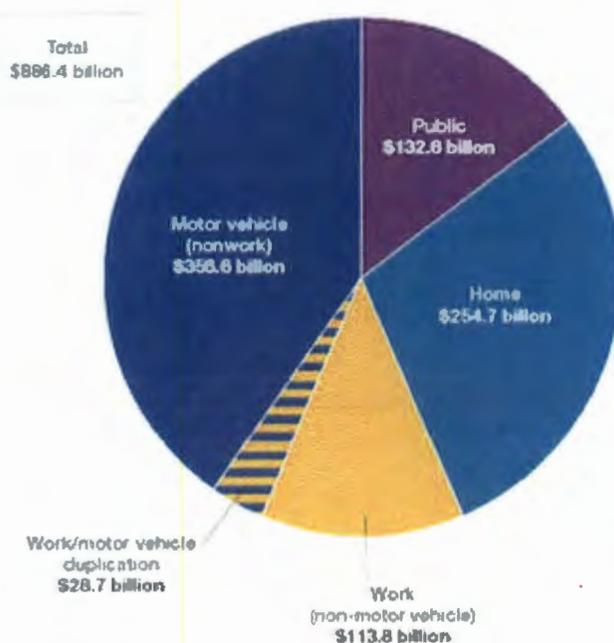


1.- Harvard Health Publications, Harvard Medical School: "Average Life Expectancy: Measuring yours."

Leading external causes of injury and poisoning episodes by sex, United States, 2014



Costs of unintentional injuries by class, 2015

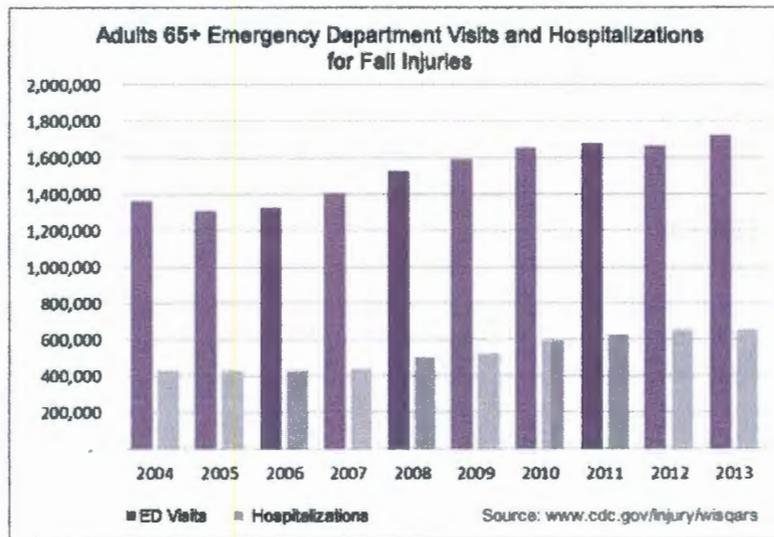


### How big is the problem?

- One in three adults aged 65 and older falls each year.<sup>2</sup> Of those who fall, 20% to 30% suffer moderate to severe injuries that make it hard for them to get around or live independently, and increase their risk of early death.<sup>3</sup>
- Older adults are hospitalized for fall-related injuries five times more often than they are for injuries from other causes.<sup>4</sup>
- Annually, emergency departments treat about 2.5 million nonfatal fall injuries among older adults; more than 30%, or about 734,000 of these patients have to be hospitalized.<sup>5</sup>

### How are costs calculated? (The costs of fall-related injuries are often shown in terms of direct costs.)

- Direct costs are what patients and insurance companies pay for treating fall-related injuries. These costs include fees for hospital and nursing home care, doctors and other professional services, rehabilitation, community-based services, use of medical equipment, prescription drugs, changes made to the home, and insurance processing.
- Direct costs do not account for the long-term effects of these injuries such as disability, dependence on others, lost time from work and household duties, and reduced quality of life.



### How costly are fall-related injuries among older adults?

- In 2013, the total direct medical costs of fall injuries for people 65 and older, adjusted for inflation, was \$34 billion.<sup>1</sup>
- Among community-dwelling older adults, fall-related injury is one of the 20 most expensive medical conditions.<sup>7</sup>
- In 2002, about 22% of community-dwelling seniors reported having fallen in the previous year. Medicare costs per fall averaged between \$14,306 and \$21,270 (in 2013 dollars).<sup>8</sup>
- Among community-dwelling seniors treated for fall injuries, 65% of direct medical costs were for inpatient hospitalizations; 10% each for medical office visits and home health care, 8% for hospital outpatient visits, 7% for emergency room visits, and 1% each for prescription drugs and dental visits. About 78% of these costs were reimbursed by Medicare.<sup>9</sup>

### How do these costs break down? (Age and Sex)

- The costs of fall injuries increase rapidly with age.<sup>1</sup>
- Costs of both fatal and nonfatal falls are higher for women than for men.<sup>1</sup>
- Medical costs for women, who comprised about 60% of older adults, are two to three times higher than the costs for men.<sup>1</sup>

### Type of injury and treatment setting

- Approximately three-fourths of fall deaths, and three-fourths of total costs, are due to traumatic brain injuries (TBI) and injuries to the lower extremities.<sup>1</sup>
- Injuries to internal organs are responsible for about 28% of fall deaths and account for about 29% of costs.<sup>6</sup>
- Fractures are both the most common and most costly nonfatal injuries. Just over one-third of nonfatal injuries are fractures, but these account for about 61% of total nonfatal costs.<sup>1</sup>
- Hospitalizations account for nearly two-thirds of the costs of nonfatal fall injuries and emergency department treatment accounts for about 20%.<sup>1</sup>
- On average, the hospitalization cost for a fall injury is over \$35,000.<sup>10</sup>
- Hip fractures are the most serious and costly fall-related fracture. Hospitalization costs account for about 44% of the direct medical costs for hip fractures.<sup>10</sup>

Nursing home residents fall frequently. About 1,800 older adults living in nursing homes die each year from fall-related injuries and those who survive frequently sustain injuries that result in permanent disability and reduced quality of life.<sup>1</sup>

### **How big is the problem? (Long-Term care / Nursing Homes)**

- More than 1.4 million people 65 and older live in nursing homes.<sup>2</sup> If current rates continue, by 2030 this number will rise to about 3 million.<sup>3</sup>
- About 5% of adults 65 and older live in nursing homes, but nursing home residents account for about 20% of deaths from falls in this age group.<sup>4</sup>
- Each year, a typical nursing home with 100 beds reports 100 to 200 falls. Many falls go unreported.<sup>4</sup>
- Between half and three-quarters of nursing home residents fall each year.<sup>5</sup> That is twice the rate of falls among older adults living in the community.
- Patients often fall more than once. The average is 2.6 falls per person per year.<sup>6</sup>
- About 35% of fall injuries occur among residents who cannot walk.<sup>7</sup>



## ALL INJURIES

### Leading Causes of Nonfatal Unintentional Injuries

Falls are the leading cause of nonfatal unintentional injuries that are treated in hospital emergency departments, according to data from the All Injury Program, a cooperative program involving the National Center for Injury Prevention and Control, the Centers for Disease Control and Prevention, and the Consumer Product Safety Commission. Nearly 9.2 million people were treated in an emergency department for fall-related injuries in 2014. Falls were

the leading cause of nonfatal injuries for all age groups except for the 10- to 14 and 15- to 24-year-old age groups, for which struck by or against an object or person was the leading cause. Struck by or against, overexertion, and motor vehicle crashes involving vehicle occupants also were leading causes for most age groups (please see color key at the bottom of the opposite page).

Leading causes of nonfatal unintentional injuries treated in hospital emergency departments by age group, United States, 2014<sup>a</sup>

Rank	All ages	Age group									
		Younger than 1	1-4	5-9	10-14	15-24	25-34	35-44	45-54	55-64	65 or older
1	Falls 9,163,960	Falls 129,404	Falls 815,860	Falls 622,225	Struck by/ against 535,500	Struck by/ against 665,847	Falls 764,225	Falls 725,920	Falls 943,379	Falls 1,001,304	Falls 2,791,469
2	Struck by/ against 4,093,298	Struck by/ against 28,577	Struck by/ against 317,648	Struck by/ against 366,752	Falls 533,032	Falls 832,979	Overexertion 596,781	Overexertion 509,447	Overexertion 444,754	Overexertion 275,675	Struck by/ against 261,308
3	Overexertion 3,132,271	Other bite/ sting <sup>b</sup> 12,042	Other bite/ sting <sup>b</sup> 165,636	Other bite/ sting <sup>b</sup> 117,951	Overexertion 282,976	Overexertion 639,065	Struck by/ against 589,679	Struck by/ against 418,622	Struck by/ against 395,394	Struck by/ against 264,024	Overexertion 222,387
4	Motor vehicle occupant 2,412,109	Foreign body 10,891	Foreign body 122,229	Cut/pierce 100,315	Cut/pierce 111,791	Motor vehicle occupant 594,353	Motor vehicle occupant 613,641	Motor vehicle occupant 370,962	Other specified <sup>c</sup> 394,617	Motor vehicle occupant 243,760	Motor vehicle occupant 191,849
5	Cut/pierce 1,959,505	Inhalation/ suffocation 10,441	Overexertion 78,491	Overexertion 83,021	Pedalcyclist 84,383	Cut/pierce 406,046	Cut/pierce 390,725	Other specified <sup>c</sup> 306,042	Motor vehicle occupant 342,551	Other specified <sup>c</sup> 215,974	Cut/pierce 147,739
6	Other specified <sup>c</sup> 1,751,916	Other specified <sup>c</sup> 8,266	Cut/pierce <sup>d</sup> 79,423	Pedalcyclist 70,964	Unknown/ unspecified 72,270	Other specified <sup>c</sup> 291,966	Other specified <sup>c</sup> 339,244	Cut/pierce 295,099	Poisoning 273,232	Cut/pierce 195,389	Poisoning 119,160
7	Poisoning 1,231,033	Fire/burn 6,067	Other specified <sup>c</sup> 83,395	Foreign body 61,112	Motor vehicle occupant 69,008	Other bite/ sting <sup>b</sup> 165,547	Poisoning 220,487	Poisoning 209,679	Cut/pierce 265,317	Poisoning 181,339	Other bite/ sting <sup>b</sup> 103,064
8	Other bite/ sting <sup>b</sup> 1,216,927	Cut/pierce 5,507	Fire/burn 48,389	Motor vehicle occupant 86,611	Other bite/ sting <sup>b</sup> 68,770	Poisoning 175,946	Other bite/ sting <sup>b</sup> 161,712	Other bite/ sting <sup>b</sup> 139,422	Other bite/ sting <sup>b</sup> 141,378	Other bite/ sting <sup>b</sup> 102,454	Other specified <sup>c</sup> 92,209
9	Unknown/ unspecified 722,611	Unknown/ unspecified 5,445	Unknown/ unspecified 38,409	Dog bite 43,369	Other transport <sup>e</sup> 37,456	Unknown/ unspecified 132,016	Unknown/ unspecified 112,258	Unknown/ unspecified 91,609	Unknown/ unspecified 97,250	Unknown/ unspecified 68,220	Other transport <sup>e</sup> 80,011
10	Foreign body 531,277	Overexertion 4,993	Dog bite 33,771	Other transport <sup>e</sup> 33,210	Dog bite 31,790	Other transport <sup>e</sup> 91,605	Other transport <sup>e</sup> 76,068	Other transport <sup>e</sup> 68,952	Other transport <sup>e</sup> 67,338	Other transport <sup>e</sup> 48,252	Unknown/ unspecified 75,150
<b>All causes of nonfatal unintentional injury</b>											
Number	28,725,927	234,572	1,660,144	1,656,216	1,925,790	4,646,755	4,159,992	3,425,716	3,667,832	2,805,269	4,314,635 <sup>a</sup>
Per 100,000 population	9,010.0	5,941.0	11,809.6	8,129.9	9,316.2	10,565.7	9,557.3	8,455.6	8,439.6	7,002.1	9,330.3 <sup>a</sup>

Source: NEISS All Injury Program, Office of Statistics and Programming, National Center for Injury Prevention and Control, the Centers for Disease Control and Prevention, and Consumer Product Safety Commission.

<sup>a</sup>See color key on opposite page.

<sup>b</sup>Other than dog bite.

<sup>c</sup>Injury associated with any other specified cause that does not fit another category. Includes electric current, explosions, fireworks, radiation, animal scratch, etc. Excludes all causes listed in the table and bb/pellet gunshot, drowning and near drowning, firearm gunshot, suffocation, machinery, natural and environmental conditions, pedestrians, and motorcyclists.

<sup>d</sup>Includes occupant of any transport vehicle other than a motor vehicle or motorcycle (e.g., airplane, space vehicle, railcar, boat, all-terrain vehicle, animal and animal-drawn conveyances, battery-powered carts, ski lifts, and other cable cars not on rails).

<sup>e</sup>Includes 4,475 cases with age unknown.

### **How serious are these falls?**

- About 1,800 people living in nursing homes die from falls each year.<sup>1</sup>
- About 10% to 20% of nursing home falls cause serious injuries; 2% to 6% cause fractures.<sup>1</sup>
- Falls result in disability, functional decline and reduced quality of life. Fear of falling can cause further loss of function, depression, feelings of helplessness, and social isolation.<sup>5</sup>

### **Why do falls occur more often in nursing homes?**

Falling can be a sign of other health problems. People in nursing homes are generally frailer than older adults living in the community. They are usually older, have more chronic conditions, and have more difficulty walking. They also tend to have thought or memory problems, to have difficulty with activities of daily living, and to need help getting around or taking care of themselves.<sup>8</sup> All of these factors are linked to falling.<sup>9</sup>

### **What are the most common causes of nursing home falls?**

- Muscle weakness and walking or gait problems are the most common causes of falls among nursing home residents. These problems account for about 24% of the falls in nursing homes.<sup>5</sup>
- Environmental hazards in nursing homes cause 16% to 27% of falls among residents.<sup>1,5</sup>
- Such hazards include wet floors, poor lighting, incorrect bed height, and improperly fitted or maintained wheelchairs.<sup>5, 10</sup>

The National Council on Aging (NCOA) Falls Free 2015 National Falls Prevention Action Plan (NFPA) addresses the immediate need to reduce elder falls and outlines specific goals and strategies. The NFPA Home Safety Goal A. states that “All older adults will have knowledge of and access to effective home safety measures (including information, assessments, and home modifications) that reduce home hazards, improve independent functioning, and lower the risk of falls.” Evidence based data had demonstrated that the elderly are disproportionately at an heightened risk of a same level slip and fall event.

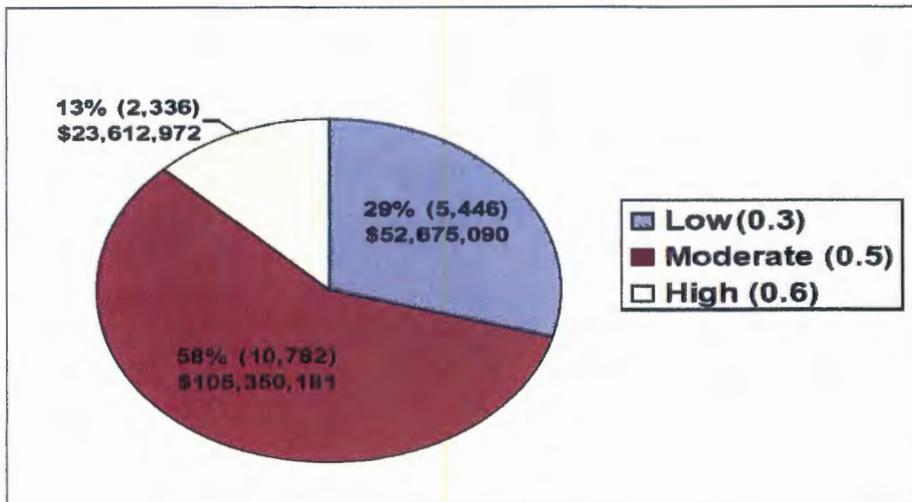
The NFPA strategy to accomplish Goal A. is to “Raise awareness and disseminate information about home safety practices and options for caregivers and older adults to reduce falls.” The action plan further seeks to: “Develop and promote standards related to product safety, service quality, skill level of home modification providers, and expected outcomes to assist consumers in making informed decisions about home safety.” The National Floor Safety Institute was a participant at the 2015 Whitehouse Conference on Aging, which established the plan whereby our proposed mandatory labeling requirement, is in direct support of the NFPA goals and strategies.

### **Recent Insurance Industry Research**

In 2007, the CNA Insurance company published a study entitled “Slips and Falls Study: Objective Auditing Techniques to Control Slips and Falls in Restaurants” which they correlated the relationship between a floors COF and the associated rate of claims. One of the conclusions recommended that consumers “Know what the “out-of-the-box” slip resistance is on the floor materials in your facility.” In 2015, CNA released a second study entitled “Measuring the Risk of Slips and Falls: An Injury Reduction Study Using Tribometry.” The study sought to correlate the wet COF of walkways to that of same-store claims data and revealed a direct correlation between wet COF and slip and fall claims.

The study concluded that floors whose wet COF was ranked in the “High-Traction” range represented only 13% of injury claims while floors whose wet COF were either Moderate to Low-Traction represented 87% of slip and fall related injury claims.

## Analysis of Claims by COEF



**CNA**

The evidence is clear. The wet COF of floors can be relied upon as an excellent predictive model for identifying and preventing slip and fall events and related injuries. Furthermore, the study revealed that low traction floors present a high rate of slip and fall injuries than that of higher traction floors.



**Timothy Frink**

## **Testimony to the Consumer Product Safety Commission April 11, 2018**

Most of you know from my previous testimony last year, that my three-year-old granddaughter, Brianna Jones was killed in her home due to a blind cord accident in the summer of 2012. This tragic accident has caused untold grief for our children, ourselves, and our extended family. Christianna and Christopher were both veterans of multiple tours of duty during the war in Iraq. The accident was the trigger event for the severe PTSD that resulted in the loss of both parents military careers. Five years later we all still grieve the loss of our precious granddaughter. Our lives will never be the same, due to this very preventable accident.

I was pleased to hear that the window covering industry had finally agreed to new voluntary safety standards and will stop selling stock corded blinds in retail stores and online starting December 15 of this year. I applaud the efforts of the Consumer Product Safety Commission to make these long overdue changes to the safety standards. I am so thankful for your hard work and your dedication to this effort to try to protect the lives of our young children. I also am thankful that the industry has agreed to these new standards.

Unfortunately, custom corded products will still be available in stores and online and could be just as deadly for all of our children. I did a cursory search and discovered that I can order corded window products for as little as \$12.99 on Walmart.com and they are also available online at Lowes, Amazon, and many other online stores. According to the Department of Commerce, online sales grew 16% last year and now account for 13% of all retail sales. The continued growth of online sales will result in far more sales of window products. As long as consumers can order corded products online, this new standard will have a limited impact upon the safety of our children.

Maybe you are thinking that since “only one child” died in 2017 that we don’t need a mandatory banning of all corded products. Our education efforts and product labels are finally working. However, since there are still millions of these products in homes and hundreds of thousands being sold every year, how many more children will be killed or severely brain damaged due to these incidents?

The death of a child is truly heartbreaking and a tragic loss, but just as tragic and perhaps more heartbreaking is a severely brain injured child. You see we also know firsthand the pain and hardship of that loss. Our daughter Katie was severely injured at age 6 by a drunk driver 31 years ago on Christmas Eve. She suffered serious

brain damage and is now paralyzed on her right side, unable to walk without assistance, has the mind of a child with very limited speech and suffers reoccurring epileptic seizures. She has a very hard life and sometimes so do her caregivers. The type of brain injury that Katie has is very similar to the type of injury caused by lack of oxygen that blind cord injuries can cause.

In many ways caring for a loved one with this type of injury is like living with an ever present broken foot. It is with you always, it affects every hour of your daily life. All your dreams, plans, and hopes for the future of your child, and your future are shattered and forever gone. Your lives will never be the same. We challenge you to ban these extremely dangerous consumer products not only because they can kill, but they can also destroy the lives of untold thousands of Americans.

A recently released study, "Pediatric Injuries Related to Window Blinds, Shades, and Cords" reported that "from 1990 to 2015, there were an estimated 16,827 window blind-related injuries among children younger than 6 years of age treated in emergency departments in the United States. From 1996 through 2012, we identified 231 window blind cord entanglement incidents among children under 6 years of age." Two-thirds of entanglement incidents, about 155 children, included in the IDI database resulted in death.

The conclusion of this study states that "Despite existing voluntary safety standards for window blinds, these products continue to pose an injury risk to young children. Although many of the injuries in this study were nonfatal and resulted in minor injuries, cases involving window blind cord entanglements frequently resulted in hospitalization or death. A mandatory safety standard that eliminates accessible window blind cords should be adopted."

Our children were willing to sacrifice their young family and even lay down their own lives to keep us safe and free from terrorism. Shame on those companies that are unwilling to sacrifice profits even though their products are killing and maiming our children! It is my hope and prayer that none of you will ever have a precious family member killed or horribly injured through a preventable blind cord accident. We urge the Consumer Product Safety Commission to work with the window covering industry to enact a mandatory ban on the online and retail sale of all window products with cords longer than 8.7 inches.

Sincerely,  
Timothy Frink

## Written Comments Agenda and Priorities FY 2019 and/or 2020

- (1) Carol Pollack-Nelson, Ph.D.  
Independent Safety Consulting, LLC
- (2) Bob Wilke, President  
Hobby Manufacturers Association
- (3) Daniel Mustico, Vice President  
Government & Market Affairs  
Outdoor Power Equipment Institute, Inc.
- (4) Sarah Owen  
Global Government Affairs Manager  
UL LLC
- (5) David French, Senior Vice President  
Government Relations  
National Retail Federation
- (6) Kathleen McGuigan  
Senior Vice President & Deputy General Counsel  
Retail Industry Leaders Association
- (7) The Magnet Safety Association  
Submitted by Nancy Nord, Esq., OFW Law
- (8) Stephen Pasierb, President & CEO  
The Toy Association
- (9) Linda Kaiser  
Parents for Window Blind Safety

(10)Chris LoPresti  
Partner, Bonnie

(11)James Daley  
Child Safety Advocate



Written Comments  
Agenda and Priorities FY 2019 and/or 2020

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

*Carol Pollack-Nelson, Ph.D.  
Independent Safety Consulting, LLC  
13713 Valley Drive  
Rockville, Maryland 20850  
301-340-2912  
pollacknel@comcast.net*

March 26, 2018

Office of the Secretary  
U.S. Consumer Product Commission  
5440 East-West Highway  
Bethesda, Maryland 20814

*Re: Agenda and Priorities FY 2019 and/or 2020*

To the Honorable Chairman Buerkle and Commissioners:

Thank you for the opportunity to comment on the CPSC Agenda and Priorities for FY2019 and/or 2020. I regret that I am unable to present my comments in person.

There are four things I hope you will consider for the CPSC's future agenda:

1. Allocate funds to examine the effectiveness of CPSC's educational campaigns on consumer behavior and injury rates. The CPSC is one of many organizations that allocates funds and staff time to the development and implementation of various information and education campaigns. Two examples are "Anchor It" and "Pool Safely". It is hoped that these education campaigns reach the intended audience and have the desired impact on behavior. However, to my knowledge, there is no assessment of the impact of these campaigns. Gaining insight into the effectiveness of these campaigns and the effectiveness of different communication strategies is needed so that future campaigns are designed for maximum effect.
2. Allocate funds for behavioral research. Understanding consumer behavior, perception, and motivation is integral to anticipating injuries. Research can and should be conducted to better understand consumer purchasing and use decisions. In updating the Age Determination Guidelines, the contractor conducted this type of research, however, it was rather limited. Gaining a fuller understanding of consumer purchasing and use behaviors of children's toys and other consumer goods will give all stakeholders direction in whether and how product design and marketing needs to change.
3. Develop guidance and guidelines for industry about on-line marketing and point of purchase information. Depending on the study, some researchers estimate as many as 80% of consumers purchase products on-line. While some on-line retailers provide thorough and consistent

information about their products, others do not. For example, there are many children's toys that have two different age grades on the web page for the product. Those selling products on line need guidance from the agency about expectations for marketing copy, images, instructions, and warnings.

4. Finally, and most importantly, I would like to see the agency hold a one-day seminar on Safe Sleep. The CPSC has fatality data for a wide range of products in which babies and children sleep. For many of these products we have decades of data that can guide us. Hearing from CPSC staff about the data, what is a problem vs what is not a problem would be helpful for all stakeholders. A clear understanding of the data is needed in order to guide future actions (e.g., voluntary standards). In addition, it would be most helpful for CPSC staff to annually update a safe-sleep report of the incident data.

Thank you for the opportunity to comment on the agency's 2019/2020 agenda and priorities. I am available to answer any questions.

Thank you,

Carol Pollack-Nelson



Written Comments  
Agenda and Priorities FY 2019 and/or 2020

Bob Wilke  
President  
Hobby Manufacturers Association

# **Comments of the Hobby Manufacturers Association**

**Before the**

**Consumer Product Safety Commission**

**2019 Regulatory Priorities**

## **About HMA**

Established in (year), The Hobby Manufactures Association (HMA) is a trade association representing over (number) manufacturers, importers, publishers, producers and suppliers of all model hobby products, general hobby products, and related hobby accessories. Our mission is to promote the public awareness of the hobby industry, communicate with and for the members on matters of common interest with a united voice, and to promote trade shows and conventions.

## **CPSC 2019 Priorities**

The US Consumer Product Safety Commission (CPSC) is charged with the incredibly important goal of protecting the public from unreasonable risks associated with consumer products.

The hobby industry is built upon the many products that surround the pastimes which bring joy and satisfaction to a wide age group. In regards to the Consumer Product Safety Commission's monetary and attention allocation in the upcoming 2019 and 2020 fiscal years, the general hobby division of the HMA would like to bring special attention to -- and recommend adjustments to -- the safety activities and enforcement efforts regarding high powered loose as-received hobby magnets.

## **ASTM F963-11 Enforcement**

Existing regulations should be enforced. The comprehensive ASTM F963 Toy Standard upon which CPSIA relies has effective and mindfully crafted language regarding powerful loose as-received hobby magnets:

5.17 Magnets—The packaging and instructions of hobby and crafts items and science kit-type items for children over 8 years of age which contain a loose as-received hazardous magnet or a loose as-received hazardous magnetic component shall carry safety labeling

in accordance with 5.3. The labeling shall consist of the signal word “WARNING” and contain, at a minimum, the following text or equivalent text which clearly conveys the same warning: “This product contains (a) small magnets(s). Swallowed magnets can stick together across intestines causing serious infections and death. Seek immediate medical attention if magnet(s) are swallowed or inhaled.”

Currently, there are numerous firms selling hazardous magnets to US consumers without the appropriate warnings. These can be found on internet marketplaces such as eBay and Amazon, or being sold directly on individual websites. At the very least, the HMA believes the CPSC must dedicate resources to enforcing ASTM F963 in order to prevent the sale of high powered hazardous magnets which are not labeled for safe use.

### **Permit Development of Magnet Safety**

The hobby industry relies on proper labeling and instructions for safe use of many hobby products that could be otherwise dangerous; as not everything can, or should, be for use by children.

One such US firm that isn't shy about educating end-users of the hazards involved with high powered magnets is Zen Magnets LLC. "Opening a 216-count package of Zen magnets these days requires you to wade through more cautions, disclaimers, red alerts and hazard advisements than you'll find on your average gas-powered chainsaw rental agreement", reports Denver's Westword newspaper.

It is the belief of the HMA that consumers who wish to safely explore and experiment with high powered loose as-received hobby magnets should be allowed to do so in a manner that does not infringe on the hobby kit and craft kit language in ASTM-F963. Respectively, the CPSC resources should be used only to enforce, not contravene, ASTM-F963.

### **Bob Wilke**

 Hobby Manufacturers Association, President

[bobw@hobbytown.com](mailto:bobw@hobbytown.com)

p. 402.434.5065 | f. 402.434.5055



Written Comments  
Agenda and Priorities FY 2019 and/or 2020

Daniel Mustico  
Vice President, Government & Market Affairs  
Outdoor Power Equipment Institute, Inc.



March 27, 2018

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

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

**Re:** OPEI comments to CPSC “Agenda and Priorities FY 2019 and/or 2020”

The Outdoor Power Equipment Institute (“OPEI”) appreciates this opportunity to provide comments to the CPSC’s Agenda and Priorities for FY 2019 and/or 2020.

### **Introduction**

OPEI is a major international trade association representing the manufacturers and their suppliers of non-road gasoline powered engines, utility vehicles, and consumer and commercial outdoor power equipment (“OPE”). OPE includes lawn mowers, garden tractors, trimmers, edgers, chain saws, snow throwers, tillers, leaf blowers and other related products. In addition to gas-powered consumer products our industry also manufactures products powered by diesel, propane, electric (AC), and battery. U.S. manufacturers of OPE and their suppliers employ 150,000 Americans and contribute \$13 billion to annual U.S. GDP.

OPEI is an ANSI-accredited Standards Developing Organization (“SDO”), responsible for the administration of industry proposals for voluntary safety standards applicable to member manufacturer products. This effort serves as a core OPEI function assisting member manufacturers in their individual and collective efforts to promote consumer product safety as their first priority.

Please consider the following comments responsive to the four questions specified in the subject request.

**1. What are the priorities the Commission should consider emphasizing and dedicating resources toward in the fiscal year 2019 Operating Plan and/or the fiscal year 2020 Congressional Budget Request?**

OPEI commends the CPSC for its expressed priorities outlined in the agency’s *FY 2019 Performance Budget Request to Congress*, namely a) focus on risk, b) import surveillance, c) collaboration and outreach to stakeholders, and d) reliance on data. Consistent with these priorities, OPEI recommends that CPSC focus on the following:

**a. Voluntary standards**

To assure that agency resources are focused on the highest-priority consumer product safety risks, we urge the CPSC to continue to strengthen its reliance on and participation in voluntary standards development as the preferred means of addressing product safety.

CPSC has historically participated in the development of OPEI-proposed ANSI standards as an active “canvass” body participant. To-date such participation has taken the form of CPSC staff registering an abstention vote, often accompanied by prescriptive technical comments. OPEI believes that this approach has served industry proposed standards well, since it achieves

both agency involvement and a continued separation of the unique roles of the CPSC and the SDO.

OPEI recommends that CPSC continue to build its working relationships with accredited Standards Developing Organizations and help lead efforts at educating the public about the use of voluntary standards to address the important issue of consumer product safety in the United States. Such efforts are critical to increasing public understanding, acceptance, and participation in the standards development process.

**b. Work with industry**

Important to voluntary standards development and all compliance efforts is a strong working relationship between industry and the CPSC. OPEI appreciates the positive efforts undertaken in recent years through a constructive relationship between our industry and CPSC commissioners and staff. We urge that this success be built upon during FY 2019 and 2020 with a continued commitment to data-driven dialogue and problem solving. These relationships are critical in assuring that concerns are considered in an expedited fashion and thorough manner.

In a more general context, OPEI commends the CPSC for its stated commitment to providing more accessible and transparent fora for the consideration of agency procedural and product priorities. The 2017 “Recall Effectiveness Workshop” was an excellent example of such initiatives, and OPEI recommends that the agency continue to make such opportunities available to industry and the public at large.

**c. Data-quality and collection**

OPEI commends CPSC’s stated prioritization of assuring that integral and publicly available data is the primary basis for agency decision-making.

OPEI relies on the National Electronic Injury Surveillance System (“NEISS”) database, and other agency collected data available under Freedom of Information Act (“FOIA”) request, as an important basis for our incident review in the ANSI standard development process. These tools and their continuance are an imperative public service. As we provided to CPSC last year, we would like to echo the following recommendations for consideration.

While NEISS provides a broad set of incident reports involving consumer products, and as such is an important resource, CPSC should never stop exploring methods to provide more detailed and accurate information by way of the NEISS database. NEISS is a good indicator of trends but cannot be relied upon for detailed information.

NEISS product coding must be maintained consistent with products in the marketplace to assure that NEISS incidents correlate to well defined product groupings. This is best assured through active cooperation between CPSC staff and affected stakeholders, possibly as part of voluntary standards development engagement.

FOIA requests generally can always be processed in a timelier fashion, and CPSC should strive to make continuous improvements.

If CPSC incident data is to be the basis for cooperative consumer safety and standards development efforts between CPSC and industry, it is imperative that CPSC have advance engagement with industry to discuss data of concern, before issuing public statements and/or reports. This trust and ability to make attempts at reaching consensus are imperative to cooperation and an effective voluntary standards development process.

**d. Recall effectiveness**

OPEI members use and value the “Fast Track” recall program as a streamlined means for getting recalls launched in partnership with the CPSC, with the express shared goal of quickly communicating information to consumers concerning company products. However, OPEI members have found that time and time again the execution of a “fast track recall” takes months after a Corrective Action Plan (“CAP”) is submitted. Instead of focusing on substantive details, most often these delays are a result of negotiating minor aspects of press releases, posters, Facebook messages or other public outreach activities outlined in the CAP. The resulting delays undermine the spirit of the agency and fast track recalls, and expose manufacturers to extended risk.

Therefore, OPEI recommends that CPSC dedicate resources to study past fast track recall implementation issues and consider improvements to fast track recalls to assure timely, effective public outreach strategies. OPEI also believes that an updated fast track guidance document, including a variety of examples of outreach materials and common distribution models, would be helpful. Such an effort should be undertaken in collaboration with consumer product manufacturers. Also, annual symposiums where both CPSC staff and industry can engage may also improve fast track efficiency. OPEI would be happy to participate in such programs designed to review and improve the important fast track recall program.

OPEI also recommends that CPSC work with interested industries in developing a “trusted company” designation under the fast track recall program. Such a program could reward companies which consistently propose effective CAPs, which are approved by the CPSC. Most importantly, such a program would yield the shared industry / CPSC objective of timely and effective recall efforts.

**e. Guidance on agency compliance efforts**

With respect to more general agency compliance efforts and protocol, OPEI recommends that the agency consider new guidance for compliance officers aimed at improved standardization of process, decision-making, and outcomes. Industry is adversely impacted when agency staff is inconsistent in their process, creating regulatory uncertainty for consumer product manufacturers. OPEI recommends consideration of an agency workshop to collect different stakeholder perspectives on this topic and important input on future guidance.

**2. What activities should the Commission consider deemphasizing in the fiscal year 2019 Operating Plan and/or the fiscal year 2020 Congressional Budget Request?**

OPEI recommends that the CPSC expeditiously vote to withdraw inactive and/or unsubstantiated rulemakings from the agency’s agenda, as they continue to create regulatory uncertainty and detract from more important agency priorities.

**a. Recreational Off-Highway Vehicles (ROVs) rulemaking**

The FY 2019 budget request<sup>1</sup> lists the subject rulemaking as Data Analysis and/or Technical Review (DA/TR). OPEI urges the CPSC to dedicate the necessary resources to withdraw the rulemaking since all safety concerns which prompted the effort have been addressed in the 2016 edition voluntary standard ANSI/OPEI B71.9, *American National Standard for Multipurpose Off-Highway Utility Vehicles*. Additionally, OPEI urges the CPSC to treat ROV analysis and/or technical review in the same manner as thousands of other products under the Commission’s jurisdiction moving forward, without a special review or budget appropriations. This ANSI/OPEI B71.9-2016 standard was developed and publicly approved through close

---

<sup>1</sup> U.S. CPSC Fiscal Year 2019 Performance Budget Request to Congress, February 12, 2018

cooperation with the agency to assure that it addressed all noted concerns, and with the implicit understanding that if successful it would allow for the withdrawal of the subject rulemaking<sup>2</sup>. To this end, CPSC staff provided this very recommendation to the Commission in late 2016, and yet the issue remains as an active rulemaking<sup>3</sup>.

Our industry's work with CPSC throughout this rulemaking and the resulting revision of ANSI/OPEI B71.9 serve as a principal example of the important partnership which exists between industry and government. This cooperative work was predicated on the understanding that if an appropriate voluntary standard could be adopted, the rulemaking to adopt a mandatory standard would be withdrawn. For these reasons, combined with CPSC staff's recommendation to the same effect, OPEI requests prioritization of this rulemaking for withdrawal.

**b. CPSC Docket No. CPSC-2013-0040 (Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices)**

OPEI recommends that the subject rulemaking opened in 2013 be withdrawn. In summary, OPEI provided the following as a basis for opposition to the proposal in our formal comment letter dated January 22, 2014.

OPEI is concerned that the proposed regulations would unnecessarily delay the voluntary recall process and create hurdles for industry participation and cooperation. OPEI believes that, currently, the voluntary recall process effectively accomplishes the Commission's goals of quickly removing recalled products from the distribution chain and consumer hands, and of communicating information to the public about the recalled product and remedy offered.<sup>4</sup> In the event that a company or firm fails to report a potentially hazardous product, or to comply with staff requests, the Commission may take action against the noncompliant firm via other methods, such as a mandatory recall or consent order.

Furthermore, the proposed rule, and in particular the sections that would give the Commission discretion to impose legally-binding obligations on companies that choose to participate in the voluntary recall program, is not an "interpretive" rule, but creates new, legally-binding and enforceable obligations which are subject to notice and comment rulemaking under Section 553(b) of the Administrative Procedure Act ("APA"). Furthermore, because, in view of our reading of applicable case law, the proposed rule is subject to APA Section 553(b), the terms of the Regulatory Flexibility Act apply. OPEI, and we expect many other stakeholders, would have compelling grounds to assert that the CPSC is not complying with established procedural and analytical requirements designed to protect the regulated community and ensure reasoned decision-making.

---

<sup>2</sup> Chairman Elliot Kaye February 25, 2016 testimony before US House of Representatives Committee on Appropriations, Subcommittee on Financial Services and General Government, "Our process is based on our statutes, that once (OPEI publishes the revised B71.9 standard), we will then have our staff make an assessment and send up a recommendation to the Commission, and then we'll vote accordingly. If it happens the way it seems to be happening, I know our staff has indicated, to date, that they've been pleased with the direction that the voluntary standards has taken, then I would imagine that we would proceed accordingly based on their recommendation."

<sup>3</sup> CPSC Staff Report "Evaluation of Voluntary Standards for Recreational Off-Highway Vehicles (ROVs)", November 2016; "Conclusion: Staff believes that the revised voluntary standards are likely to (1) reduce the occurrence of ROV rollovers by increasing lateral stability and prohibiting divergent instability; and (2) reduce the occurrence of occupant ejection during rollover events by increasing seat belt use and improving side retention. Moreover, staff believes ROV compliance with the voluntary standards is trending toward increased compliance, a positive development that staff expects will ultimately lead to an adequate reduction in the risk of ROV rollover and occupant ejection once the standards become effective. For these reasons, staff recommends that the Commission terminate rulemaking on ROVs."

<sup>4</sup> 78 Fed. Reg. 69797

For these reasons, OPEI opposes the proposed changes, and again recommends that this rulemaking be withdrawn.

**c. CPSC Docket No. CPSC-2014-0005 (Information Disclosure Under Section 6(b) of the Consumer Product Safety Act)**

OPEI recommends that the subject rulemaking opened in 2014 be withdrawn. In summary, OPEI provided the following as a basis for opposition to the proposal in our formal comment letter dated April 28, 2014.

While OPEI appreciates the CPSC's goal of increasing the efficiency of the disclosure process under Section 6(b) of the Consumer Product Safety Act ("CPSA"),<sup>5</sup> and along those lines, supports the use of electronic media in the notification process, OPEI has several concerns that the proposed amendments to 16 C.F.R. Part 1101 will result in the disclosure of inaccurate information. Specifically, OPEI notes that the CPSC has not provided any guidance on how the Commission would apply the sections proposing the disclosure of "publicly available" or "substantially similar" information. Because notification is not required if a product presents an imminent hazard or is in violation of a rule, there are no safety concerns with continuing to notify firms prior to disclosure of "publicly available" or "substantially similar" information.

Furthermore, the proposed amendments would remove the protections important to the cooperative relationship between industry and the CPSC. Requiring a statutory justification to withhold firm comments would weaken the channels of communication between the CPSC and industry and actually reduce Commission efficiency.

OPEI also believes that, through the NPRM, the CPSC would be abdicating its role to take reasonable steps to assure that disclosure under Section 6(b) is fair in the circumstances. Maximizing transparency and openness in the disclosure of information is not the goal of Section 6(b). Rather, that goal is to ensure that the disclosure of information from which the identity of a manufacturer or private labeler may be readily ascertained is accurate, fair in the circumstances, and reasonably related to the purposes of the Consumer Product Safety Act ("CPSA").<sup>6</sup> In the name of efficiency, the CPSC is ignoring its statutorily-mandated responsibilities and is inappropriately attempting to revise a Congressional statute through rulemaking.

For these reasons OPEI opposes the proposed changes, and again recommends that this rulemaking be withdrawn.

**3. What retrospective review of rules should the Commission consider in the fiscal year 2019 Operating Plan and/or the fiscal year 2020 Congressional Budget Request?**

OPEI has no specific comments on the subject document, but supports the CPSC's continued efforts at reducing the regulatory burdens placed on consumer product manufacturers.

**4. CPSC's 2018-2022 Strategic Plan**

**(1) Focusing the agency's resources on the highest-priority consumer product safety risks;**

OPEI agrees that this should be the predominant criteria for the dedication of CPSC resources, in parallel with the Commission's consideration of the following best practices:

- a. Reliance on existing voluntary standards and/or CPSC engagement with voluntary standards developers to propose new or revised standards suitable to the needs of the market and the identified safety risks;**

---

<sup>5</sup> 15 U.S.C. 2055(b)

<sup>6</sup> See 15 U.S.C. 2055(6)(b)(1)

- b. Early notification of affected consumer product manufacturers in advance of CPSC publication of findings, or the launch of rulemaking;
  - c. Early engagement with affected consumer product manufacturers to review available data and strive to reach consensus findings;
  - d. CPSC reliance on science-based findings.
- (2) continuing to support import surveillance by incrementally developing the Risk Assessment Methodology (RAM) system to identify and stop noncompliant imported products from entering the U.S. marketplace;**

OPEI supports this effort as a CPSC priority, and urges the agency to efficiently use all resources available to address this problem.

- (3) emphasizing outreach and education by engaging all stakeholders through forums and workshops; and**

OPEI supports CPSC's strategic priority to engage with the public through whatever means are efficient and cost-effective. OPEI and its members appreciate the access provided by-way of public meetings with both Commissioners and staff in pursuit of our shared goals.

- (4) expanding the sources and types of data analysis used to identify and assess product safety risks and inform compliance decisions.**

OPEI urges the CPSC to continue its efforts at improving the data collected by the agency as the basis of its decision-making. We further urge CPSC to consult with industry when questions about collected data exist. Such dialogue will assure that public data is accurate and the best tool for assessing product hazards and standards-based remedies.

## Conclusion

OPEI appreciates the opportunity to provide input to this important request, and recommends the following summary priorities, important to our members.

- a. Reliance on voluntary standards as spelled out in statute and the current CPSC strategic plan;
- b. Early engagement with consumer product manufacturers to discuss and resolve concerns, in advance of public action;
- c. Reliance on science and publicly available data to prioritize consumer product safety risks;
- d. Continuous improvement of data resources to instruct voluntary standards development first, and mandatory rulemaking as a last resort;
- e. Withdrawal of inactive rulemakings, as they create uncertainty in the market;
- f. Continued access and engagement between industry and stakeholders, by way of forums, workshops, and individual meetings.

Please contact me if you have questions or a request for follow-up information.

Best regards,



Daniel J. Mustico  
 Vice President, Government & Market Affairs  
 Outdoor Power Equipment Institute, Inc.  
 1605 King Street  
 Alexandria, VA 22314  
 (703) 678-2990; [dmustico@opei.org](mailto:dmustico@opei.org)



Written Comments  
Agenda and Priorities FY 2019 and/or 2020

Sarah Owen  
Global Government Affairs Manager  
UL LLC



SUBMITTED VIA ELECTRONIC MAIL TO CPSC-OS@CPSC.GOV

March 28, 2018

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

**Subject: Agenda and Priorities FY 2019 and/or 2020**

UL appreciates the opportunity to provide the US Consumer Product Safety Commission (CPSC) with considerations for the Commission's *Agenda and Priorities for FY 2019 and/or 2020*. UL is submitting these comments in writing only; unfortunately, we are not able to offer oral testimony at the April 11, 2018 public hearing.

UL is a global, independent, safety-science company that has championed progress and safety for more than 120 years. Guided by our mission, UL's 14,000 professionals promote safe working and living environments for all people. UL uses research, standards, and conformity assessment to continually advance and meet ever-evolving safety challenges, and partners with businesses, manufacturers, retailers, trade associations, and international regulatory authorities to provide solutions and to address the risks of increasingly complex global supply chain.

As CPSC considers its agenda and priorities for Fiscal Years (FY) 2019 and 2020, UL recommends the Commission's continued focus in several areas as outlined below.

**Continued Reliance on Voluntary Standards and Private Sector Conformity Assessment**

UL appreciates the long history of CPSC's collaboration with UL, including the participation of CPSC staff in UL's standards development activities. CPSC has been a valuable contributor to our standards work, helping UL standards technical panels (STPs) address evolving safety needs in a changing world. This public-private partnership has an undeniably positive impact on public safety, and UL is grateful for the ongoing engagement. To that end, UL welcomes continued robust participation by CPSC representatives in our STPs.

UL also supports CPSC's continued reliance on voluntary consensus standards to measure industry commitment to safety. Demonstrated conformance with these standards – via third-party testing, inspection and certification, for example – is an efficient and effective way to meet safety needs. UL is pleased that we have been able to offer many solutions to CPSC and the market over the years to address known safety challenges, most recently for products such as personal e-mobility devices, including hoverboards (ANSI/UL 2272), and lower carbon monoxide-emitting portable generators that also include shutoff technology (ANSI/UL 2201). CPSC should continue to leverage these private sector solutions to drive safety improvements.

**Focus on High Energy Density Batteries**

Consumer demand for high-powered electronics has proliferated significantly in recent years, giving rise to the near-ubiquity of high energy density batteries such as lithium-ion technology. Coupled with growing deployment of residential energy storage, the potential for safety incidents involving these batteries has risen in parallel. UL agrees with CPSC that it is critical to take a systems-oriented approach to ensuring that battery cells are properly managed and operate within safe parameters. Promoting best design and manufacturing practices will help mitigate the potential for associated fires and overheating hazards. As such, UL strongly supports CPSC's work to address these concerns and

appreciates documentation of the Commission's activities in recent updates to CPSC's battery website and publication of the "Staff Report on High Energy Density Batteries Project" (February 2018).

UL was pleased to partner with CPSC and others to deliver the day-long workshop on "Lithium Ion Batteries in Consumer Products Safety – Training for Designers and Manufacturers" held in Shenzhen, China, in May 2017. Collaborations of this nature harness the power of public-private partnerships to educate producers on the design and manufacture of safe battery systems. As discussed in a series of meetings with the commissioners (October 2017) and CPSC technical staff (March 2018), UL stands ready to explore additional opportunities to collaborate with the agency on battery science research, standards development, and stakeholder education.

### **Data Modernization and Expansion**

UL supports CPSC's efforts to improve its data analytic capabilities and data collection activities. CPSC is a data-driven agency, and having good, robust data is critical to driving decisions in both the mandatory rulemaking and voluntary consensus standards development processes. Where practicable, CPSC should devote resources to leverage new automated technologies (e.g., natural language processing, machine learning) that would enable greater efficiency in data collection and analysis.

As an organization driven by a safety mission similar to CPSC's, UL relies heavily on data as an indicator of where additional improvements may be necessary to further advance safe working and living environments for people everywhere. UL values opportunities to share data with agencies like CPSC to further our mutual objective to mitigate risks and safety hazards. To that end, UL welcomes CPSC – subject to any legal parameters - sharing the data it collects to help inform ongoing standards development activities and creation of new solutions to facilitate industry adoption.

### **Internet of Things (IoT) and Other Emerging Technologies**

Transformational innovation revolutionizes nearly every aspect of our lives. Rapid digitalization and continuous technological advancement promise improvements in efficiency and drive the way we live, work, and play. With seemingly unlimited possibilities, humans today have more choices than ever and can build connections in ways unimaginable even a decade ago. The challenge is to manage the new risks associated with new innovations and smooth the way for their safe adoption.

As the number of smart and connected devices continues to proliferate at an astounding rate, CPSC will encounter new challenges in managing associated safety and security risks. This undoubtedly will be complicated by the need to balance safety and security with other desired attributes such as interoperability and privacy. UL is in a position to help evaluate risks and vulnerabilities to create safer, more secure and sustainable products by applying safety science in the development of relevant standards and conformity assessment programs. By collaborating with industry, government, and other stakeholders, UL strives to facilitate the timely adoption of new innovations by anticipating and managing associated risks.

UL supports CPSC's efforts to explore IoT and emerging technologies, and commends CPSC for planning a forthcoming public stakeholder meeting on IoT-related issues. As CPSC considers how it will tackle safety challenges arising from IoT and other innovative technologies, UL recommends that it take a "whole-of-government" approach when considering policy solutions that may be needed. In addition, CPSC should continue to leverage and build on what is already being done in the private sector, emphasizing the continued value of public-private partnerships to solve these challenges.

**Other Issues**

In addition to the issues already discussed, UL supports CPSC's continued work to address furniture tip-overs, promulgate a mandatory rule on table saws, and support the transition to smoke alarms listed/certified to the newest edition of ANSI/UL 217, *Standard for Smoke Alarms, 8<sup>th</sup> Edition*. To the extent UL can further assist CPSC on these topics, we are willing to do so.

UL appreciates the ongoing engagement and collaboration we enjoy with CPSC on a number of fronts. Thank you for your consideration of these recommendations. Please do not hesitate to contact me at [sarah.owen@ul.com](mailto:sarah.owen@ul.com) or 202.530.6163 if you have any questions or require clarification on any of the issues identified.

Sincerely yours,



Sarah A. Owen  
Global Government Affairs Manager



Written Comments  
Agenda and Priorities FY 2019 and/or 2020

David French  
Senior Vice President  
Government Relations  
National Retail Federation



March 28, 2018

Office of the Secretary,  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, Maryland 20814

**Re: CPSC Hearing, “Agenda and Priorities FY 2019 and/or 2020”**

Dear Chairman Buerkle and Commissioners:

On behalf of the National Retail Federation, we submit the following comments in connection with the agency’s Agenda and Priorities Hearing. We welcome our continued partnership with the CPSC to work toward our common goal of striving to improve the safety of consumer products in the U.S. This letter provides an overall summary of NRF members’ suggested priorities for the CPSC. We welcome the opportunity to discuss any of the issues in further detail.

NRF is the world’s largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation’s largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing \$2.6 trillion to annual GDP, retail is a daily barometer for the nation’s economy.

**Areas Where the CPSC Should Increase Efforts and Resources**

1. **Stakeholder Engagement and Agency Transparency.**

NRF acknowledges and greatly appreciates recent efforts of the CPSC to increase stakeholder engagement at the agency, notably including the July 2017 Recall Effectiveness Workshop, and ongoing efforts to garner stakeholder input on the pending E-filing import initiative and pending mandate. However, these organized efforts to solicit engagement seem intermittent. It is also unclear what the end result will be.

NRF would like to reiterate our long-standing recommendation that the CPSC establish a stakeholder advisory committee to regularly engage and advise the agency on the many and complex issues under its jurisdiction. We believe such an advisory body is needed

more now than ever, and we stand ready to assist the CPSC in any way, including via direct participation in any such advisory group the agency may establish.

With regard to agency transparency, NRF appreciates Chairman Buerkle's many public statements on this issue, as well as the related issue of civility and responsiveness among the staff in engagement with regulated industries and companies. We believe, however, that more needs to be done. One example is NRF's long-standing request that the CPSC finalize its now multi-year "review" of the Retailer Reporting Program. We continue to believe this is an important partnership program between the agency and industry that could continue to benefit both parties and that it should be re-opened to new entrants.

We are also concerned with continually evolving agency decisions regarding import inspection, reporting and recall demands from the Offices of Import Surveillance and Compliance. It appears that the decisions are virtually never formally announced or vetted to the public in any way. These decisions do not typically involve the disclosure of necessarily non-public investigatory policies and practices, or specific company facts, but rather issues of broad applicability that, under federal law as well as good public policy should be publicly announced and discussed. These are but two examples of where pronouncements of transparency should become policies of transparency.

## 2. Recall Effectiveness

Again, NRF members greatly appreciate the renewed interest of the agency in better understanding and measuring the effectiveness of product recalls and (hopefully) adjusting expectations and requirements accordingly. To that end, NRF would like to suggest that the agency:

- a) continue to make this issue a priority and to not let the first workshop be the last;
- b) address the difficult issues as well as the less difficult issues, e.g., differentiating recall requirements based on hazard level and formally incorporating incident frequency into decisions about recall closure; and
- c) ensure that the effort results in tangible, public discussions as well as decisions, in a timely fashion.

## 3. Emerging Technologies

As with the issue of import surveillance/enforcement and recall effectiveness, the CPSC should continue to devote additional resources to fully understanding emerging technologies like the "Internet of Things," nanotechnology, chemical management, e-commerce and social media before seeking to develop or implement regulations affecting those and other areas. This will involve the direct and regular engagement of regulated stakeholders, including retailers, that have direct experience and expertise with these

technologies and potential issues. We believe these new and emerging issues provide the Commission with ample opportunity for not only workshops and related group engagement (preferably via a formalized advisory mechanism), but also individual, private company engagement to fully understand these rapidly evolving issues. This will help the Commission to proceed in a way that continues to promote innovation and continued partnership.

### **Areas Where the CPSC Should De-emphasize Efforts and Resources**

#### 1. “Dead” Rulemakings and Rules

We believe that if a proposed rule, ban, standard or regulation has been dormant for several years, with little or no prospect of revival or finalization, the Commission should formally vote to terminate and withdraw it. This is especially true if a rule involves issues of significant impact, controversy or concern among agency stakeholders. Unfortunately, the Commission has voted to keep several of its most controversial rulemakings in pending status, notably the voluntary recall, 6(b) and product certification proposed rules. Likewise, existing agency regulations that are no longer relevant or in force should be formally retracted.

#### 2. Unnecessary Litigation

NRF notes that there has been an increased frequency of litigation by the agency and an apparently growing number of judicial opinions finding that there were insufficient factual or legal bases to bring those suits. These actions can severely drain CPSC staff time and resources--resources that may be of higher value elsewhere. NRF respectfully recommends that there be a renewed effort to ensure there are sufficient grounds for the Commission to bring a lawsuit against a regulated entity before actions are commenced, which notably should include a consideration of the severity of the product hazard and consumer risk at issue.

#### 3. Regulating Chemicals in Products

NRF is concerned by the relatively recent Commission vote to grant a petition to begin the process to review a ban organohalogen flame retardants in various categories of consumer products. This concern does not stem from any conclusions about whether such chemicals are hazardous or not, but rather whether the CPSC has the resources necessary to adequately address this and similar issues of chemical safety.

While it is a traditional and fully appropriate role for the CPSC to regulate and pursue enforcement actions regarding acute chemical hazards (toxicants, strong irritants, etc.), the agency simply does not have either the budget nor sufficient expertise to understand or address chronic chemical hazards, either in the abstract or with regard to actual consumer exposures from products. This is a far more appropriate set of

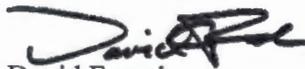
highly complex issues for the EPA to address, as that that agency in fact has the resources to do so. NRF would also note the EPA's recently enhanced regulatory and enforcement authorities under TSCA reform. The CPSC should seek to work with the EPA and other relevant agencies on this and similar issues of chronic chemical exposure.

4. Extra-Statutory Enforcement Actions

Finally, NRF would like to reiterate a strong concern it has expressed in the past to the Commission regarding occasional actions by either/both commissioners or agency staff to essentially seek to coerce industries or individual companies into taking various "voluntary" actions, under the implied or direct threat of more formal agency action. We have specifically noted, for example, recent correspondence from the agency to various retailers indicating that failure to meet specific voluntary standards on "hoverboards" would lead to negative enforcement action by the agency, regardless of any finding that such products may in fact be defective. Whether or not these products should meet these standards (and we would note that most do), the point is that this specific action, as well as similar actions on other product safety issues, blatantly exceeds the agency's statutory authority and established regulatory procedures. Worse, it belies all notions of good government, let alone due process, and such heavy-handed tactics, devoid of any sufficient or specific factual basis, should stop.

Thank you again for the opportunity to submit these comments. NRF looks forward to continuing to work closely with the Commission on these and other important issues of mutual interest.

Sincerely,



David French  
Senior Vice President  
Government Relations



Written Comments  
Agenda and Priorities FY 2019 and/or 2020

Kathleen McGuigan  
Senior Vice President & Deputy General Counsel  
Retail Industry Leaders Association

*Via Electronic Filing*

March 28, 2018

Alberta Mills  
Office of the Secretary  
U.S. Consumer Product Safety Commission  
Office of the Secretary | Rom 820  
4330 East-West Highway  
Bethesda, MD 20814

**Re: The Retail Industry Leaders Association (RILA) Comments to the Commission's  
Agenda and Priorities for Fiscal Years 2019 - 2020**

Dear Secretary Mills:

The Retail Industry Leaders Association (RILA) respectfully submits the following comments to the U.S. Consumer Product Safety Commission (CPSC or Commission), regarding its Fiscal Years 2019 and 2020 Agenda and Priorities. RILA appreciates the opportunity to provide the perspective of its members regarding agency priorities and requests that the Commission and agency staff consider RILA's views while developing both the Fiscal Year 2019 Operating Plan and 2020 Budget Request.

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

As the CPSC continues to implement its 2016-2020 Strategic Plan, RILA submits these comments in the spirit of collaboration and partnership consistent with the guidance provided by the agency's "Policy on Establishing Priorities for Commission Action."<sup>1</sup> The comments below seek to provide input into the Commission's priorities, rulemaking, regulatory enforcement efforts, and the level of resources RILA believes the Commission should allocate to various agency activities in 2019 and 2020.

### **Executive Summary**

As the Commission determines its 2019 and 2020 priorities, RILA respectfully submits its recommendations, summarized below:

*First*, the CPSC should continue its efforts to formally engage the consumer product safety community. The Commission's 2017 Recall Effectiveness Workshop clearly demonstrated that all parties – the CPSC, consumer advocates, manufacturers, and retailers alike – benefit from

---

<sup>1</sup> 16 C.F.R. § 1009.8.

participating in open dialogue and discussion. It is through such engagement that solutions to challenging product safety issues can be developed and effectively implemented. While encouraged by the CPSC's recent engagement activities, RILA continues to recommend that the agency establish a formal stakeholder engagement process to ensure consistent and continued collaboration regardless of future changes in agency leadership.

*Second*, the Commission should invest in data analytics talent and technology to drive agency data-driven decision making and to more effectively identify emerging product safety hazards and defect trends. As part of this effort, the CPSC should expand and formalize the Retail Reporting Program (RRP) to develop an industry/government partnership program, whereby participating companies electronically provide product safety incident information to the CPSC and in return receive defined benefits.

*Third*, as larger numbers of new internet-connected (IoT) products make their way to the U.S. marketplace, retailers are being increasingly challenged to assess products for cybersecurity, privacy protection and safety risks. Retailers look to the CPSC and other federal agencies with concurrent jurisdiction for guidance and partnership on these issues. RILA urges the CPSC to collaborate with the other relevant federal agencies to develop a comprehensive framework for risk assessments of IoT products. If the agency decides to move forward with potential regulation of IoT products, RILA advocates for the adoption of a risk-based reasonableness approach, similar to the FTC's data privacy standard. RILA also encourages the Commission to dedicate resources to educating and training CPSC staff on new technologies and the varied capabilities of IoT products to better enable the agency to assess and mitigate product safety risks.

*Fourth*, the CPSC should formally adopt a tiered-recall process with different levels of public communication and corrective actions tied to the level of risk and likelihood of injury. Stakeholders at the Commission's Recall Effectiveness Workshop fervently advocated for a tiered-recall process in order to battle "recall fatigue." While RILA recognizes the difficulty in specifically categorizing recalls, the current "one size fits all" approach does not clearly communicate safety risks to consumers, and as a result, consumers are not motivated to respond to product recalls. Additionally, in-store product recall posters are widely viewed to be ineffective in conveying recall information to consumers, therefore, RILA members advocate for removal of mandatory use of in-store recall posters.

*Fifth*, RILA renews its request for greater transparency with respect to the Commission's calculation of civil penalties. CPSC's vague guidance, listing a variety of aggravating and mitigating factors – with no rationale for how any specific factor is taken into account – does not adequately provide a meaningful resource. The CPSC should look to other agencies, including the Department of Justice (DOJ) and Securities and Exchange Commission (SEC), for examples of meaningful guidance with respect to how the agencies apply aggravating and mitigating factors in civil penalty situations. RILA also continues to urge the CPSC to provide clarity on reporting obligations and guidance on product safety compliance programs.

*Sixth*, RILA members support the CPSC's efforts to strengthen its import surveillance activities through its Risk Assessment Methodology (RAM) for targeting high-risk and potentially unsafe

and non-compliant products prior to importation into the United States. RILA supports the Commission's review of the data collected from the agency's Alpha E-filing Pilot to determine its value to enhance import surveillance. RILA also renews its recommendation that the CPSC develop a Trusted Trader Program for low-risk importers, which would allow the Commission to allocate its limited resources to target higher-risk importers and products. RILA urges the CPSC to move forward with the development of such a program now, and not wait for Customs and Border Protection's (CBP) development of its own similar program.

*Finally*, the Commission should dedicate more resources to a retrospective review of rules, guidance, practices, and policies that are outdated and burden industry. In particular, RILA encourages the CPSC to (1) withdraw rulemaking on the proposed amendment to 16 CFR § 1110 as inconsistent with the agency's current focus and approach; (2) withdraw rulemaking on the proposed amendments to 16 CFR § 1115, which would significantly slow down the time frame for voluntary recalls by essentially turning corrective action plans into de facto settlement agreements; and (3) use enforcement discretion for issuance of certificates of compliance, where appropriate, similar to its use for low-risk adult apparel products.

#### **I. The CPSC Should Continue to Increase Constructive Engagement, Collaboration, and Cooperation with All Stakeholders**

RILA has long advocated for the CPSC to increase its outreach and engagement with all stakeholders to enable the agency to more effectively and efficiently accomplish its product safety mission. The foundation for engagement and collaboration activities is a recognition that the CPSC, international and state safety agencies, product manufacturers, distributors, retailers, consumers, consumer advocates, testing labs, and other stakeholders all share a common goal of ensuring the safety of all consumer products sold to U.S. consumers. While there are many ways to achieve this goal, active engagement is extremely useful for all parties in terms of the practical knowledge gained and the buy-in fostered among those who engage in the workshops, seminars, forums, and other activities that CPSC has started and should emphasize in the future.

RILA appreciates the leadership of Acting Chairman Ann Marie Buerkle, who has been steadfast in her commitment to fostering a collaborative environment between the agency and all stakeholders,<sup>2</sup> and is encouraged by the CPSC's inclusion of collaboration, education, and outreach as a core agency priority in its fiscal year 2019 Budget Request.<sup>3</sup> Additionally, RILA

---

<sup>2</sup> Acting Chair Buerkle has made multiple statements encouraging collaboration. *See e.g.*, "The work we do at CPSC is so important and we are a far better agency when we collaborate and recognize the contributions of everyone who wants to help us advance our mission . . . I will work to enhance relationships so that CPSC can leverage the knowledge, insight, and expertise of the entire consumer product safety community." Ann Marie Buerkle Elevated to Serve as acting Chairman of U.S. Consumer Product Safety Commission, February 10, 2017, <https://www.cpsc.gov/content/ann-marie-buerkle-elevated-to-serve-as-acting-chairman-of-us-consumer-product-safety>. *See also*, February 19, 2018 speech during 115<sup>th</sup> North American International Toy Fair, <https://www.toyassociation.org/PressRoom2/News/2018-news/cpsc-acting-chair-encourages-continued-collaboration-and-engagement-with-toy-industry.aspx>

<sup>3</sup> The CPSC's 2019 Budget Request specifically states the following:

**Collaboration, Education, and Outreach:** The CPSC will emphasize collaboration, education, and outreach by engaging all stakeholders through forums, seminars, webinars, technical stakeholder-to-government discussions, and workshops. The CPSC will accomplish this by continuing to emphasize

members are thankful for the CPSC's recent strides toward a greater amount of stakeholder collaboration and engagement, including last year's workshop on recall effectiveness and the upcoming workshop on the Internet of Things (IoT).

While recognizing the significant steps the agency has already taken and plans to take for greater collaboration, RILA continues to advocate for more formal and structured collaboration initiatives. RILA once more renews its recommendation that the Commission establish a permanent stakeholder group, under the Federal Advisory Committee Act, similar to CBP's Advisory Committee on Commercial Operations (COAC). Stakeholder groups, such as the COAC, can create an open, constructive dialogue between the agency and the regulated community, consumer advocates and other stakeholders and provide consistent and structured insight to the agency as it carries out its core statutory mission. RILA believes formalizing the agency's stakeholder engagement is required in light of the potential for priority shifts at the agency. Regardless of the makeup and leadership of the Commission, it is in the agency's best interests – and most importantly in consumers' best interests – to encourage continued collaboration between the agency and all stakeholders.

## **II. The CPSC Should Proactively Identify Emerging Product Safety Risks by Investing in Data Collection/Predictive Analytics Technology and by Establishing a Formal Government/Industry Partnership Program to Collect and Harness Hazard Data from Industry Stakeholders**

Regardless of party affiliation, the Commissioners speak with one voice about the importance of data-driven decision making.<sup>4</sup> Data collection and analysis goes hand-in-hand with the CPSC's increased prioritization of data-driven decision making. RILA agrees that the CPSC's ability to effectively gather and analyze data is critical to executing the agency's mission and strongly supports the emphasis on data analytics in the CPSC's 2016-2020 Strategic Plan which promotes increased agency capacity for predictive modeling and enhancing staff analysis of emerging hazards.<sup>5</sup>

To implement the goals of the Strategic Plan, RILA urges the CPSC to invest in the development of advanced IT tools geared towards capabilities such as data analytics, artificial intelligence (AI), natural language processing, and machine learning as well as internal and external talent with related skill sets. At one time, use of advanced information processing and analytics tools were novel or cutting edge. Today, industry and government agencies increasingly are

---

and expand the work of the agency's Small Business Ombudsman, proactively engaging industry and international stakeholders at all levels, and providing information and education to consumers so that they can make informed decisions. The CPSC will also collaborate with other federal agencies and industry through research and sharing data to leverage the broader stakeholder community to advance consumer product safety.

<sup>4</sup> Commissioner Robinson, for example, testified before the Senate and strongly advocated for data gathering and analysis as one of the five key areas in carrying out the CPSC's critical public health and safety mission. Statement of Marietta S. Robinson Before the US House Committee on Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade, March 5, 2015, available at <http://docs.house.gov/meetings/IF/IF17/20150305/103094/HHRG-114-IF17-Wstate-RobinsonM-20150305.pdf> See also, Hearing, "Data Sources and Consumer Product-Related Incident Information," Statements of Commissioners Buerkle and Robinson, June 25, 2015.

<sup>5</sup> Performance Goal 2.1.1, CPSC Strategic Plan 2016-2020, p. 24.

incorporating advanced data analytics into everyday business operations and decision making. There is a significant amount of product safety-related data currently available to the CPSC from multiple sources including Section 15(b) reports, Saferproducts.gov, and NEISS incident data. By using AI, natural language processing, machine learning and data analytics to aggregate and analyze multiple data streams, the agency could significantly advance its ability to proactively identify emerging product safety issues and trends.

As part of the agency's efforts to expand its data collection and analysis capabilities, RILA proposes that the current RRP be expanded into a more formal industry/government partnership program. Such a program would allow the CPSC to strategically harness the significant amount of safety-related consumer feedback that companies receive from customers every day to better inform the agency's identification of emerging product safety hazards and defect trends within product categories and even with specific products. This type of program could assist the CPSC by significantly reducing the time it currently takes to identify hazard patterns with new products and emerging technology.

RILA has previously submitted detailed comments and testimony on the value of real time, product specific safety-incident data from retailers and manufacturers to the CPSC and highlighted opportunities for improvement and expansion of the current RRP into a robust industry/government partnership program.<sup>6</sup> Briefly, such a program would allow qualifying companies to provide the agency with well-defined data sets that are sufficiently robust to provide the agency with actionable intelligence and also satisfy the Section 15(b) initial reporting obligation of the participating company. Industry participation in the new partnership program could be encouraged by allowing such cooperation to serve as a mitigating factor in a civil penalty action.

To be clear, RILA is not advocating for a "safe harbor" or exemption from Section 15(b) reporting obligations. Program participants would still be required to meet any applicable obligations to file a full Section 15(b) report with the Commission. Instead, RILA is proposing examples of the types of defined benefits for a proposed industry/government partnership program that could motivate potential participants to dedicate resources and undertake the considerable effort necessary to develop the internal capabilities and systems required to electronically provide this type of valuable data to the agency.

To date, the Commission has viewed the potential usefulness of the RRP data through the lens of the current program structure and the agency's limited data analytics capabilities. Rather than focusing on the current ad-hoc RRP pilot, which does not have standardized processes or procedures, the Commission instead should explore the potential benefits of a formal electronic reporting partnership program coupled with enhanced agency data analytics capabilities outlined above.

The CPSC is at a crossroad. It can choose to embrace advances in technology and data analytics or it can continue to collect and analyze data the way that it has always done. In today's ever-changing environment, there is no such thing as maintaining the status quo. Failure to embrace

---

<sup>6</sup> CPSC Hearing on Data Sources and Consumer Product-Related Incident Information, June 26, 2015 and RILA Testimony on Data Sources and Consumer Product-Related Incident Information, June 26, 2015.

change will result in the agency falling further and further behind on its ability to meet its core mission, while embracing change and technology will ensure that the CPSC retains its position as a leading consumer protection agency.

### **III. The CPSC Should Work Collaboratively with its Government Agency Partners to Develop a Comprehensive Framework for Risk-Based Assessment of New Innovative Technologies**

As U.S. consumers are keenly aware, the nature of manufacturing and the retail industry is changing dramatically. The time period from a new novel idea on a drawing board to a final product sold to U.S. consumers is becoming increasingly compressed. In addition, more and more products now are connected to the internet (IoT products). As the CPSC has recognized, this development provides great consumer benefits and utility, but it also comes with concerns for consumer privacy and the safety of the product.<sup>7</sup>

There is a critical need for new and emerging technologies to be risk-evaluated by regulators and the regulated industry before serious safety situations arise. Currently, as new IoT products come into the marketplace, retailers are presented with the challenge of assessing and evaluating internet-connected devices to try to ensure that products (1) have adequate cybersecurity; (2) protect consumers' privacy; and (3) are otherwise safe for consumer use. Retailers cannot undertake this mission alone. It requires guidance, partnership, and collaboration among the entire regulated community and with regulatory bodies.

The CPSC is not the only regulatory body, and RILA is certainly not the only stakeholder, with an interest in and concerns about IoT devices. Many federal agencies,<sup>8</sup> industry groups,<sup>9</sup> consumer advocates,<sup>10</sup> and states are grappling with these issues. Each new IoT product that comes to market may implicate regulatory concerns for a variety of different agencies, including the Federal Trade Commission (FTC), National Institute of Standards and Technology (NIST), Department of Transportation (DOT), Department of Commerce (DOC), and many others. The CPSC recently announced that it is participating in the federal interagency working group on

---

<sup>7</sup> CPSC staff has previously reported that IoT technology offers improved ability to register products and can help to increase recall effectiveness, an issue that has been at the top of the Commission's priority list for some time. *See* CPSC Staff Report, *Potential Hazards Associated with Emerging and Future Technologies*, January 18, 2017. *See also*, "Internet connectivity is . . . capable of introducing a potential for harm (a hazard) where none existed before the connection was established." March 14, 2018 Draft Notice: Public Hearing "[The Internet of Things and Consumer Product Hazards](#)."

<sup>8</sup> *See e.g.*, Department of Homeland Security, *Strategic Principles for Securing the Internet of Things (Ia)*, November 15, 2016; Department of Transportation, National Highway Traffic Safety Administration, *Cybersecurity Best Practices for Modern Vehicles*. (Report No. DOT HS 812 333, October 2016); and Department of Commerce, National Telecommunications & Information Administration, *Multi-stakeholder Process: Internet of Things (IoT) Security Upgradability and Patching*, Notice of Open Meeting 82 Fed. Reg. 29845, June 30, 2017.

<sup>9</sup> *See e.g.*, Association of Home Appliance Manufacturers, "[Home Appliance Connectivity: Limitless Potential](#)," February 16, 2016.

<sup>10</sup> *See e.g.*, [The Digital Standard](#), a collective effort to create a digital privacy and security standard to help guide the future design of consumer software, digital platforms and services, and Internet-connected products. The effort is led by Consumer Reports, Disconnect, Ranking Digital Rights and the Cyber Independent Testing Lab, with the assistance from Aspiration and participation from a broad community of researchers, testers and hobbyists.

IoT-related issues.<sup>11</sup> RILA members strongly support the CPSC's continued participation in this working group to ensure that each agency's actions fall squarely within its statutory jurisdiction while promoting collaboration among the relevant federal agencies to develop a comprehensive framework and risk-based approach for assessing risks and regulating IoT products. Too much is at stake – from consumer safety and security to the future of technological development and economic productivity – for government agencies and industry to handle this in a siloed and uncoordinated manner.

As the CPSC wades into the waters of assessing and potentially regulating IoT products, RILA urges that the CPSC consider adoption of a risk-based reasonableness approach, similar to FTC's data privacy standard. Importantly, the FTC does not impose *per se* liability for data breaches, and instead requires companies to have a "reasonable" data security program that takes into account (1) the sensitivity of data collected; (2) scale and scope of operations; and (3) the level of risk if a data breach should occur. Moreover, if the CPSC develops regulation in this area, it is critical that the mere possibility of a malicious breach does not automatically render an IoT product "defective" or a "substantial product hazard" subject to an immediate recall. CPSC should explore risk assessment, compliance and enforcement processes that include review of the overall security framework and protections for an IoT product, analysis of current and potential safety risks to consumers, identification of any remedial measurement required, and assessment of the likelihood of future incidents. This common-sense approach should provide some degree of predictability for manufacturers, importers, distributors, and retailers while protecting consumers.

RILA urges the Commission to dedicate the necessary staff and resources in its priorities for Fiscal Years 2019 and 2020 to continue engagement with partner government agencies and other stakeholders to develop a comprehensive risk-based approach to risk assessment and regulation of IoT products. Additionally, resources should be dedicated for training and education of CPSC staff on IoT technology and related issues to enable staff to better review and assess risks related to IoT products and develop appropriate corrective measures and enforcement procedures that will foster and not hinder the development of new IoT products that consumers want.

#### **IV. To Increase Recall Effectiveness and Eliminate Ineffective Requirements, the CPSC Should Formally Adopt a Tiered-Recall Process, Enhance Current Recall Information Provided to Retailers and Consumers and Remove the Mandatory Recall Poster Requirement**

The CPSC, consumer advocates, manufacturers and retailers, are equally motivated to remove noncompliant and potentially unsafe products from consumers' homes and frustrated by consumers' lack of response to product recalls despite the best efforts of all parties to communicate product risks to consumers. At CPSC's Recall Effectiveness Workshop in July 2017, many attendees noted that CPSC's current approach of treating all public corrective actions the same regardless of the severity of risk or likelihood of injury to consumers has resulted in "recall fatigue" where consumers tune out or ignore product recalls. Attendees repeatedly suggested that the CPSC explore a tiered recall process similar to the process for food

---

<sup>11</sup> George Borlase, Ph.D., "[The Internet of Things – Promise and Product Safety](#)," Lecture, 2018 International Consumer Product Health and Safety Organization Annual Meeting and Training Symposium, February 20, 2018.

safety recalls used by the Food and Drug Administration's (FDA). RILA members supported this suggestion during the Workshop and urged the CPSC to explore a tiered recall approach in which the product recall public communications and corrective action plans reflect the level of risk and likelihood of injury to consumers.

In the CPSC's Recall Effectiveness Workshop Report, staff noted stakeholders' robust discussion of a tiered recall system under the heading "Consider greater differentiation of recalls." It appeared that CPSC was willing to explore the idea of tiered recalls. As a result, stakeholders eagerly anticipated that the CPSC would articulate its next steps in exploring this type of approach to recalls during a session called "A Tiered Recall System – A Case Study" at the 2018 International Consumer Product Health and Safety Organization Annual Meeting and Training Symposium. Disappointingly, no additional action steps or future outreach on the issue was discussed. Instead, the CPSC's message simply emphasized the difficulty in specifically determining whether any particular recall fits into a category of more or less risk.

RILA members understand that every recall is unique, and that categorizing recalls by perceived risk is difficult to do. However, the fact that the issue is difficult should not be an excuse for the CPSC to shy away from tackling the task of developing a tiered recall system. This is especially true when the CPSC has the example of the FDA's use of a tiered recall system for the similarly complicated issue of food safety recalls. If the Commission truly wants to make recalls more effective, it must take on the challenge of effective consumer communication and eliminate recall fatigue. RILA urges the CPSC to continue exploring a tiered approach towards different levels of product safety risks.

One way that the agency can improve recall effectiveness is by including complete product information, including the applicable universal product code ("UPC") of the recalled product, in the product recall press releases and other public communications. This information is readily available to product manufacturers so adding this information to recall press releases will not impose any additional burden on the recalling party. Additionally, inclusion of UPCs in press releases and public communications will eliminate consumer confusion and aid retailers in determining if a specific product is subject to a recall and should be pulled from inventory.

As part of the agency's efforts to eliminate required actions that are ineffective in communicating product recalls to consumers, RILA also advocates for removal of the mandatory use of in-store recall posters for all recalls. The assessment that in-store recall posters are largely ineffective in communicating recalls to consumers was widely supported by stakeholders and CPSC staff at the Recall Effectiveness Workshop. Even though in-store posters are not a requirement under any regulation, the CPSC has required in-store recall posters in its Fast Track Recall Guidance<sup>12</sup> and in daily practice for all recalls except recall alerts. Given the substantial number of recalls announced each year, and the recall fatigue issue discussed above, posting and maintaining recall posters in stores presents a significant burden, particularly for large national and regional retailers such as RILA members who have thousands of stores nationwide. Removing the mandatory use of in-store recall posters would save significant resources without negatively impacting consumer safety.

---

<sup>12</sup> <https://www.cpsc.gov/Business--Manufacturing/Recall-Guidance/CPSC-Fast-Track-Recall-Program>

## V. **The CPSC Should Be More Transparent in its Enforcement Decisions, Exercise Greater Judgment in Penalty Investigations and Provide Better Guidance on Product Safety Compliance Program Best Practices**

Over the past several years, RILA members have expressed concern about the Commission's public goal of imposing ever-increasing high-dollar civil penalties, which have mainly fallen on large companies that can bear the costs. Often, past penalties have been based on an alleged failure to timely report where the CPSC has had the benefit of hindsight to second guess decisions made by reporting companies. Instead of engaging in this type of "look back" activity, RILA urges that the CPSC focus its limited resources on three activities: 1) finding and pursuing penalties in cases of egregious violations; 2) increasing transparency into its enforcement decisions and 3) providing the regulated community with better guidance on product safety compliance best practices and clarity on when to report.

One example of the CPSC focusing on egregious violators is the recent joint CPSC/DOJ case that resulted in the halting of importation of extremely dangerous children's products containing lead, phthalates, and impermissible small parts.<sup>13</sup> In that case, the companies that CPSC worked with DOJ to stop were not headline-bringing companies – in fact most consumers were likely unaware of Lily Popular Varieties & Gifts. However, the agencies' combined efforts meaningfully contributed to making the marketplace safer by removing these illegal toys and halting the company's ability to continue importing and selling truly dangerous products intended for children. The CPSC should continue its focus on egregious violators and high-risk importers.

RILA members recognize that there will be situations where it may be justified to impose a civil penalty, however, the CPSC's current penalty guidance is vague and does not provide regulated industries with any amount of predictability for fine amounts. While a list of aggravating and mitigating factors exists, it is unclear how any of these factors are applied, in what way, and when they are considered. It also is unclear to what extent, if at all, CPSC takes a company's cooperation and self-reporting into account in civil penalty assessments. Rather than reiterate previous testimony, RILA incorporates by reference its comments to the 2017 Request for Information,<sup>14</sup> and in particular, its comments in Section II regarding "Increased Transparency and Consideration of Mitigating Evidence for Civil Penalties."

Providing the regulated community with a better understanding of how the CPSC calculates penalties, including specific mitigating and aggravating factors, would be consistent with the approaches taken by other federal agencies. RILA encourages the CPSC to consider amending the civil penalty factors or issuing agency guidance similar to DOJ's and SEC's guidance on use of Foreign Corrupt Practices Act enforcement. For example, DOJ and SEC put out a "Resource Guide to the U.S. Foreign Corrupt Practices Act,"<sup>15</sup> including a 130-page guide dedicated to

---

<sup>13</sup> Department of Justice Press Release, August 4, 2017, available at <https://www.justice.gov/opa/pr/district-court-enters-permanent-injunctions-against-new-york-companies-and-individuals>

<sup>14</sup> [RILA Comments on Request for Information on Potentially Reducing Regulatory Burdens Without Harming Consumers](#), September 30, 2017.

<sup>15</sup> *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, by the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, available at <https://www.justice.gov/iso/opa/resources/29520121114101438198031.pdf>

“Guiding Principles of Enforcement.” In it, the SEC and DOJ note the importance of self-reporting and cooperation, and their impact on penalties and enforcement decisions.<sup>16</sup>

Currently, the CPSC staff take an overly broad approach to discovery when initiating an investigation. The costs and burden of e-discovery and otherwise responding to staff requests during an investigation can be exorbitant even when the CPSC ultimately concludes that no penalty is warranted. Accordingly, the CPSC should exercise greater judgment in opening penalty investigations, and in tailoring document and information requests to the needs of the particular investigation.

Guidance on compliance program best practices, including more clear guidance on when companies should report under Section 15(b), would help to spur efforts by industry to enhance internal product safety processes, procedures and programs. Currently, there is no one comprehensive user-friendly resource on compliance program best practices. Companies, instead, must sort through numerous civil penalty settlement agreements and miscellaneous passages in multiple dated guidance documents to guess at what is important to the agency.

Additionally, although the CPSC consistently states “when in doubt, report” that statement does not reflect the legal reporting obligations applicable to manufacturers, distributors, importers and retailers. Particularly considering the Commission’s increased imposition of multimillion dollar civil penalties for alleged violations of Section 15(b) reporting requirements, more useful guidance on this issue should be provided by the agency. RILA believes the use of hypothetical examples that illustrate timely vs. late reporting scenarios could be helpful to those trying to comply with the law. Issuance of this type of guidance would provide much needed clarity, allowing companies to be more confident in knowing when to report. RILA urges the Commission to dedicate staff resources and funding in FY 2019 and 2020 to review and implement the action steps suggested above.

#### **VI. Improving CPSC’s Access to High Value Import-Related Data and Establishing a Trusted Partnership Program Will Enhance CPSC’s Import Surveillance Activities.**

RILA members support the CPSC’s efforts to strengthen its import surveillance activities through enhancement of its RAM for targeting high-risk and potentially unsafe and non-compliant products prior to importation into the United States. In this regard, RILA offers the following suggestions for the agency to consider as it moves forward with its import surveillance priorities for FY 2019 and 2020.

RILA fully supports the CPSC’s decision to pause its development of a proposed electronic product safety-related filings program for imported products to review the data collected from the agency’s Alpha E-filing Pilot. This data review will ensure the value of the collected information for import surveillance purposes and reduce unnecessary administrative burdens and costs for importers. As part of this process, the CPSC should clearly articulate, and stakeholders should have the opportunity to comment on, the metrics the agency will use to evaluate the value of the Alpha E-Filing Pilot data for purposes of enhancing the CPSC’s import surveillance

---

<sup>16</sup> *Id.*, at 54-5 (“an organization’s self-reporting, cooperation, and acceptance of responsibility may lead to fine reductions under § 8C2.5(g) by decreasing the culpability score.”).

program. Additionally, it is critical that the Commission explore the use of technology to ease the costs and administrative burdens of any potential import-related e-filing requirement. The agency should move forward with a Beta Pilot only after these tasks are accomplished.

RILA also renews its recommendation that the agency develop a robust government-industry partnership or Trusted Trader program that includes significant trade benefits for importers willing to subject their product safety compliance programs, import processes, and supply chains to CPSC scrutiny. A Trusted Trader program for low-risk importers will allow the CPSC to allocate its limited resources to target high-risk importers and products. Therefore, the development of a Trusted Trader program is a key component to a robust risk-based CPSC import surveillance program.

RILA appreciates the Commission's decision to allocate staff resources towards the development of a Trusted Trader program and placement of this initiative in the CPSC's 2016-2020 Strategic Plan.<sup>17</sup> However, RILA remains concerned that CPSC's 2019 Budget Request appears to delay the creation of a CPSC Trusted Trader program until after CBP completes development of its similar program. As noted in RILA's prior comments,<sup>18</sup> there is no valid reason for the CPSC to delay the development of a mutually beneficial government-industry partnership program pending another agency's uncertain timeline.

Instead, a CPSC Trusted Trader Program, which includes companies that currently participate in the CPSC/CBP Importer Self-Assessment – Product Safety program, based upon the risk-based approach to import surveillance already agreed upon in the interagency process should be developed and implemented now. Ultimately, the new CPSC Trusted Trader program can be incorporated into any final CBP industry partnership program with minimal modifications. RILA urges the Commission to move forward now and allocate sufficient resources in Fiscal Years 2019 and 2020 to develop a risk-based, voluntary Trusted Trader Program with clearly defined obligations and benefits for program participants.

A recent report on the counterfeits market by the Government Accountability Office (GAO)<sup>19</sup> supports RILA's position on the need for a CPSC Trusted Trader Program, which will enable the CPSC to focus resources on high-risk importers and shipments. In the report, GAO noted "20 of 47 items GAO purchased from third-party sellers on popular consumer websites were counterfeit." The risk of counterfeit goods that do not meet U.S. product safety requirements is a serious threat to consumer safety, and the CPSC should allocate significant resources to addressing this threat. Unfortunately, as acknowledged by CPSC's Director of the Office of Import Surveillance, Jim Joholske, in his testimony to the Senate Committee on Finance, the CPSC faces real challenges, in terms of level and allocation of resources, in tackling this growing threat to consumer safety.<sup>20</sup> The CPSC can more efficiently and more effectively

---

<sup>17</sup> 2016-2020 Performance Goal 2.2.1.

<sup>18</sup> RILA Comments on 2017 and 2018 Agenda and Priorities, June 1, 2016. See also, RILA-NRF Joint Testimony on Electronic Certificates of Compliance, September 18, 2014.

<sup>19</sup> Intellectual Property: Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeits Market, GAO-18-216, Published: Jan. 30, 2018, Publicly Released: Feb. 27, 2018, available at <https://www.gao.gov/mobile/products/GAO-18-216>

<sup>20</sup> See e.g., "The volume of these shipments, and the limited amount of data required when the shipment arrives in the United States make targeting difficult. With CPSC's small size and limited resources, we currently do not have

allocate its limited import surveillance resources with a Trusted Trader Program, which will allow the agency to place greater focus on combating counterfeit and potentially unsafe and non-compliant consumer products.

As the CPSC moves forward with its review and development of any future phases of the E-Filing Pilot and development of a Trusted Trader program, RILA urges the CPSC to continue to broaden stakeholder engagement. It is only through constructive dialogue between the agency and impacted stakeholders that the agency can develop a final import surveillance program that will safeguard consumers while avoiding needless regulatory burdens on legitimate trade.

## **VII. The Commission Should Dedicate More Resources to Retrospective Review of Rules, Guidance, and Practices while Pursuing a Balanced Approach to New Rulemakings**

In its notice for this hearing, the CPSC requested input on which rules the agency should consider for retrospective review in 2019. Similarly, in June 2017, the Commission issued a Request for Information on Potentially Reducing Regulatory Burdens Without Harming Consumers.<sup>21</sup> Rather than duplicating RILA's prior comment<sup>22</sup> here, RILA highlights four key areas raised in those comments that have not been discussed above.

First, the CPSC should amend existing regulations or withdraw ongoing rulemakings that are unnecessarily burdensome, or when they cause confusion and uncertainty as to regulatory requirements. For example, RILA members have specifically sought withdrawal of the proposed amendments to 16 CFR § 1110. The CPSC has significantly changed direction and focus on the issue of a potential import related e-filing requirement since the agency's original publication of the proposed rule. Therefore, the proposed rule should be formally withdrawn to eliminate confusion. The CPSC can issue a new proposed rule once the agency has completed its review of the value of the E-Filing Alpha Pilot data for import surveillance purposes and determined that it is appropriate to proceed with a new import e-filing requirement.

In addition, the CPSC should withdraw its proposed rulemaking regarding voluntary recalls under 16 CFR § 1115. RILA members, and many other commenters, objected to the proposed amendments as appearing to take industry's voluntary cooperation with the CPSC to remove potentially dangerous products from the marketplace and use it in an adversarial manner – essentially turning every corrective action plan into a de facto settlement agreement. As multiple commenters noted, the proposed amendments would gut the successful Fast Track Recall program and harm consumers by delaying product recalls.

---

investigators stationed at locations where these small packages arrive, other than at one location at JFK airport.” Testimony of CPSC's Director of the Office of Import Surveillance Jim Joholske to the U.S. Senate Committee on Finance, March 6, 2018, available at

<https://www.finance.senate.gov/imo/media/doc/06MAR2018JOHOLSKESTMNT.PDF>

<sup>21</sup> 82 FR 27636, available at <https://www.federalregister.gov/documents/2017/06/16/2017-12434/request-for-information-on-potentially-reducing-regulatory-burdens-without-harming-consumers>.

<sup>22</sup> [RILA Comments on Request for Information on Potentially Reducing Regulatory Burdens Without Harming Consumers](#), September 30, 2017.

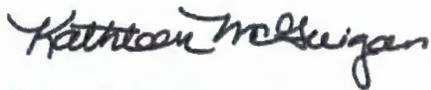
The CPSC also should take greater efforts to use enforcement discretion with respect to issuance of certificates of compliance and in other areas. CPSC's use of enforcement discretion has already resulted in an estimated \$250 million per year reduction in the impact to industry with respect to low-risk adult apparel products. RILA members urge the CPSC to take the same approach for other certificates of compliance and other areas where similar changes can be made without harming consumers.

Lastly, RILA continues to urge the CPSC to consider guidance documents, other proposed rules, agency practices, and other agency policies that might be outdated and burden industry as part of its retrospective review program and dedicate resources to this effort. One example of an outdated rule, is the 16 CFR 1615, 1616 Standard for the Flammability of Children's Sleepwear. The sizing references for "Tight-fitting" are based on outdated, obsolete measurements. The CPSC should review and update this rule to reflect current sizing measurements for children.

### **Conclusion**

RILA appreciates the opportunity to provide these written comments on the CPSC's FY 2019-20 priorities and budget. RILA and its members share the Commission's commitment to improving consumer product safety and look forward to continuing to work collaboratively with the agency to advance our shared safety goals.

Sincerely,



Kathleen McGuigan  
Senior Vice President & Deputy General Counsel  
[kathleen.mcguigan@rila.org](mailto:kathleen.mcguigan@rila.org)  
(703) 600-2068

Written Comments  
Agenda and Priorities FY 2019 and/or 2020

The Magnet Safety Association

**Comments of the Magnet Safety Association  
Before the  
Consumer Product Safety Commission  
2019 Regulatory Priorities  
March 28, 2018**

The Magnet Safety Association (MSA) is an industry organization that represents United States-based manufacturers and distributors of high powered magnets sold to consumers. Our mission is to promote public awareness of the safe use of high powered magnets through responsible labeling, promotion, distribution and sales practices; foster magnet innovation and adoption in consumer technology in a safe and responsible manner; and provide expertise on proposed magnet safety regulations including voluntary industry standards for magnets and magnet technology. MSA members have all agreed to follow our Magnet Safety Guidelines, a copy of which is appended to these comments (Attachment A).

As discussed below, the actions of the CPSC since 2012 impeded the ability of the industry to proactively promote consumer awareness of the safe use and utility of magnets. Because those agency actions have now been judicially curtailed, we believe it is appropriate that the MSA, the CPSC, and other stakeholders concerned about magnet safety find ways to effectively collaborate to address our shared safety goal.

### **Overview**

Emerging technology is making ever-increasing use of high-powered magnets, particularly in electronics and in a broad range of household and consumer products, including magnet sets often sold as adult desk toys or stress relievers. These magnets are small—usually 5mm or smaller in size—are high-powered and are often sold in sets, although individual magnets are also available. They are often referred to as small rare earth magnets, or SREMs.

Magnets are becoming smaller, more powerful, more accessible and less expensive. Therefore, a primary role of the MSA is to foster increased public awareness about safe magnet applications and use.

To encourage safe use of our products and to discourage irresponsible sales practices, in 2012, various magnet sellers initiated work with the ASTM to try to develop standards for the packaging, marketing and sale of high-powered magnets to consumers. The industry also proposed to the CPSC a joint campaign to educate the public and healthcare professionals about the safe use of magnets.

Unfortunately, these efforts were not successful because of the regulatory direction of the CPSC to ban small high-powered magnets that make up much of what MSA members sell. Through the CPSC's efforts, in 2012-2013, to recall many magnet sets and the subsequent 2014 ban of the product, the industry's efforts to create an environment for the safe use and enjoyment of our products were derailed. That the Commission's regulatory efforts could not withstand judicial scrutiny argues loudly against the approach taken by the agency.

The MSA is very concerned that the regulatory posture taken by the CPSC in recent years with respect to SREMs sold to consumers has resulted in those products with strong safety warnings and packaging being under attack from the agency while similar products sold with no concern for safety are readily available. This result creates disincentives for safe practices and a resulting unsafe marketplace—in large part, *because* of the regulatory actions of the CPSC. MSA believes that an established regulatory framework that requires strong warnings and secure packaging, augmented by an aggressive consumer education program, will accomplish more tangible safety results than the Commission's ill-advised efforts to ban the products we sell ever could.

The members of MSA urge the Commission to initiate rulemaking to promulgate a safety standard as outlined in the petition filed by Zen Magnets in 2017. If the agency determines that it does not have the authority or ability to issue such a rule, then we request that the agency proactively encourage voluntary standards developers such as ASTM to develop a voluntary consensus standard which we can then promote. MSA stands ready to help the CPSC accomplish either.

### **Beneficial Uses of SREMs**

The CPSC justified its banning regulation on the fact that the product had low utility compared to the injuries associated with the product.<sup>1</sup> Partially, this is because the agency only saw the product as an adult desk toy or stress reliever and concluded

---

<sup>1</sup> The reviewing court found that the agency did not fully consider the beneficial uses of the product and also found that the agency's analysis of the injury data was flawed.

that such uses had little utility to consumers. If the agency were to fully examine the product today, MSA fully believes that it would come to a different conclusion.<sup>2</sup>

While its benefits as a stress reliever are important and should not be downplayed, the product has other beneficial uses that the CPSC has not considered. For example, the product has many applications for science, technology, engineering and math (**STEM**) **education**. While the STEM application is not as widely appreciated in the U.S. classroom (in part, we believe, because of the CPSC's actions to restrict the product), magnets are being widely used in classrooms in other countries, especially Asia. For example, one MSA member has created an "education bundle" for STEM educators—lesson plans for using magnetic principles, as illustrated by SREMs, in teaching geometry, mathematics, and physics. SREMs are being used in other settings to encourage youth to learn about STEM principles. For example, a MSA member company has been invited by the Science Olympiad to create a workshop for young people, focusing on the principles of magnetism using SREMs. While Dr. Boyd Edwards, during the adjudicative proceeding against Zen Magnets, discussed in some detail how he uses magnets in his teaching, MSA can point to many other professors and educators who also use SREMs in the classroom. See, for example, the comment from a high school biology teacher who stated during the rulemaking comment period "I use magnets such as these [i.e. SREMs] as an invaluable teaching tool when discussing proteins structure and function." Use of SREMs in the classroom is not an isolated or one-off practice and its use is now growing.

Related to the STEM educational benefits of the product are the **artistic and creative benefits** to the user. The web sites of MSA members have many examples of sculptures and art works created by users. See for example, <https://zenmagnets.com/gallery/> and <https://www.dotpedia.com/> for two examples. The creative and educational uses of the product are increasingly being recognized by consumers. See for example, this recent Parade Magazine article extolling both the creative and educational experience for SREM users, <https://parade.com/627489/rachelweingarten/stem-and-science-toys-for-girls-and-boys/>.

SREMs have provided the foundational building blocks for new products based on the innovative and technical advances flowing from SREMs development and use. MSA is aware of new products that directly trace their development to SREMs

---

<sup>2</sup> The agency's utility analysis is curious since it allows for a great deal of agency "value judgment" about how consumers value products. It is especially interesting that button batteries account for exponentially higher injuries and deaths to children—with the same injury profile of young children swallowing the small shiny batteries. Yet the agency has agreed to work with the industry to beef up product packaging and educate consumers about the dangers of battery ingestion.

and which are a direct result of the SREM product being developed, used and marketed. See for example: <https://nanoport.io/components/connector>. Also see <https://www.kickstarter.com/projects/veritasium/snatoms-the-magnetic-molecular-modeling-kit>. By way of further example, the MacDiarmid Institute for Advanced Materials and Nanotechnology (New Zealand) is using SREMs to assist in its research and product development mission. The **technology advances** that SREMs are responsible for were never considered by the CPSC.

Finally, the **therapeutic and stress relief benefit** of the product should not be given short shrift, as MSA believes happened during the CPSC rule analysis. MSA is aware of a number of people who have experienced profound benefit from the product. As an example, a MSA member company reported being contacted by one individual (Mike) who reported that his son “had a severe injury to all the fingers on one hand. Mike relayed that [SREMs] were the only thing he would play with that helped him with getting his dexterity back.” And, as another example, the same company was contacted by David (24 years of age) who “suffers from severe depression and anxiety. He uses [SREMs] to refocus his energy and de-stress during particularly difficult social situations.” Mike and David are real people, among many others, who benefited from using SREMs and take no solace in the government discounting their experiences with the product.

### **The Changing Marketplace**

The CPSC’s actions over the past five years have resulted in a marketplace that is less safe than that which could have been created through stakeholder collaboration. The CPSC has focused its regulatory firepower and taxpayer resources on U.S. companies, members of MSA, with strong safety warnings. To date those efforts have been unsuccessful. The agency has seen its banning regulation judicially overturned and its recall efforts aggressively challenged. While the CPSC’s recent focus has been directed largely at one company with no record of injury and very strong warnings, it has taken its eyes off the rest of the market.

Even a cursory internet search shows that small strong magnets, imported primarily from China, are being marketed on many sites. Imported magnets sold online are readily available, have inconsistent warnings and often have no safety warnings on the packaging. Here are just two examples of some of the many products now being sold without the appropriate safety warnings:

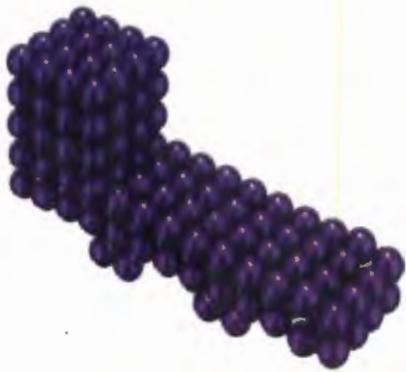
amazon  
 Toys & Games magnet spheres

WASHING-TON 20037 Departments

TOYS & GAMES Deals STEAM Toys Preschool Toys Boys Toys Girls Toys Best Sellers New Releases

EASTER TOY FAVORITES

Back to search results for 'magnet spheres'



Roll over image to zoom in

ToyInfo  
**Magnetic Stones Energy Sphere Golden Magnet Balls 0.16" for Science and Magnetic Education 216Pcs, Desk Creative Toy (Purple)**  
 ★★★★★ 16 customer reviews | 5 answered questions

List Price: \$40.00  
 Price: **\$19.95 & FREE Shipping**  
 You Save: \$20.04 (50%)

Get \$70 off instantly. Pay \$0.00 upon approval for the Amazon Prime Rewards Visa Card

Note: Not eligible for Amazon Prime

Only 1 left in stock - order soon.  
 Get it as soon as March 20 - 28 when you choose Standard Shipping at checkout  
 Ships from and sold by Team Enterprises, Texas

Purple

 \$19.95
  \$18.99
  \$16.95
  \$25.95
  \$30.00
  \$21.00

- This magnetic toy brick is a set of 216 magnetic balls, every single ball is magnetic, diameter 0.16".
- It is a creative desk toy for you to relieve stress and develop intelligence. By playing magnet balls you could improve microcirculation while using in wrists and fingers.
- Magnetic balls can have endless combinations so as to develop your imagination and creativity. It is not easy but up to your patience and creativeness.
- This toy is portable for travelling and easy for having fun with friends in group. Guess whether you could able to create the most difficult structure?
- The magnetic balls contain small parts. Recommend age 10 years up, please play under parents or adult's accompany.

- Note: age recommendation is age 10 years and up. Here is another example:

amazon  
 Toys & Games magnet spheres

WASHING-TON 20037 Departments

TOYS & GAMES Deals STEAM Toys Preschool Toys Boys Toys Girls Toys Best Sellers New Releases

EASTER TOY FAVORITES

Back to search results for 'magnet spheres'



**5MM BUCKYBALLS**  
 512 balls (bright silver) include cut card & storage bag




ToyInfo  
**Magnetic blocks Sculpture Toys with 512pcs and 5mm for Intelligence Development and Stress Relief or Decoration Bright Silver(Included Cut Card & Storage Bag)**  
 ★★★★★ 16 customer reviews

List Price: \$36.99 /prime  
 Get \$70 off instantly. Pay \$0.00 upon approval for the Amazon Prime Rewards Visa Card

Out of Stock.  
 Want it Thursday, March 22? Order within 7 hrs 17 mins and choose Two-Day Shipping at checkout. Delivered by Smart Electronics and fulfilled by Amazon. Gift-wrap available.

Show

- [Make More Shapes] 5MM 512PCS Large Office Toy, You can make any shape you imagine, such as jewelry, model, architecture, animals, or more interesting shapes.
- [More Funny] Very funny, you will found that difficult to stop playing with it, it can free your children away from video games and inspire their imagination.
- [More Satisfying] Our product have good magnetic, sticking very closely, it is good for made the shape, you could separate it with our cutting card which come from our package.
- [Best for Anxiety and Autism] Play in home and office, this toy can mesh and stretch stress away, it is really effectively for relieve anxiety and autism.
- [Come with the Manual] The instructions which we provide can helping you promote from primary to senior.

- Note: no age guidance other than “primary to senior” and sold as “toy”. Other examples are easily found.

MSA is very concerned that the growing presence of such products will thwart our efforts to build an appreciation for the power and safe use of magnets among consumers of our products. We question the logic of allocating resources to try to shut down U.S.-based companies with strong safety practices while products with no warnings are being imported and sold by major online retailers without apparent concern from the agency. That this is happening illustrates the need for the agency to devote resources during Fiscal Year 2019 to the promulgation of a mandatory safety standard that allows for the sale of magnets with appropriate warnings and packaging or for the agency to work with voluntary standards groups to achieve this objective.

### **Elements of a Sensible Safety Regulation**

The petition filed by Zen Magnets in August 2017 set out the elements of a regulation that would be protective of safety while still allowing for products with strong warnings and packaging to be sold.

MSA would support a regulation that includes the following elements:

- **Label warning requirements**
  - that comply with recognized warning terminology and graphical features, and
  - that make clear the ingestion hazard.
- **Instructions**
  - that describe how to use and account for magnets to avoid ingestion/aspiration hazards;
- **Packaging**
  - that deters child accessibility and that reinforces safety warnings, and
  - that includes warnings permanently affixed to package and that require user to actively break warning seal.
- **Marketing** that emphasizes the adult nature of the product including:
  - for retail sales, an agreement that the product will not be sold with children's products, or in a retail environment that is made up predominantly of children's products, and
  - for direct sales, age-gating or similar requirements to curtail sales to children under 14 years of age.
- A **consumer education** effort should augment the regulation.

If the agency determines that it does not have the authority or ability to promulgate such a regulation, the MSA is committed to working with an appropriate consensus standards-writing group, such as ASTM, to develop and promote such a standard.

CPSC's encouragement and assistance in these activities would facilitate such an effort.

## **Conclusion**

MSA's member companies are keenly aware of the laudatory motives that drove the CPSC to recall and regulate SREMs. In some cases as parents of young children ourselves, we certainly do not want to see the products we sell involved in the injury or death of a child. However, we also understand that our products are valued and being used safely by millions of consumers and that the demand for and the beneficial uses of our products are growing. We have seen that the CPSC's efforts to ban SREMs have not resulted in removing the product from the marketplace but instead have harmed companies trying to do the right thing while creating incentives for less safety-minded companies to sell their products without restraint.

This result has turned the notion of sensible safety regulation on its head. We are committed to correcting this situation and resolve to work collaboratively with the CPSC to help bring about a regulatory regime that allows consumers to enjoy the benefits of our products in a safe and productive manner. We hope that the CPSC is willing to work with us to accomplish this objective.

**(Attachment A)**

**Magnet Safety Association**

**Mission:**

Our mission is to promote public awareness of the safe use of high powered magnets through responsible labeling, promotion, distribution and sales practices; foster magnet innovation and adoption in consumer technology in a safe and responsible manner; and provide expertise on proposed magnet safety regulations including voluntary industry standards for magnets and magnet technology.

**MSA Magnet Safety Guidelines:**

Any member selling consumer magnets with a flux index over 50 agrees that it will implement:

- Labeling that makes clear the ingestion/aspiration hazard in a prominent manner and unsuitability for children under 14 years of age;
- Instructions that describe how to use and account for magnets to avoid ingestion/aspiration hazards;
- Packaging that deters child accessibility and that reinforces safety warnings; and
- Marketing that emphasizes the adult nature of the product including:
  - For retail sales, an agreement that the product will not be sold with children's products, or in a retail environment that is made up predominately of children's products, and
  - For direct sales, age-gating or similar requirements to curtail sales to children under 14 years of age.



Written Comments  
Agenda and Priorities FY 2019 and/or 2020

Stephen Pasierb, President & CEO  
The Toy Association



1200 G Street NW • Suite 200 • Washington, DC 20005  
t. 202.459.0354 • e. info@toyassociation.org

March 28, 2018

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

**RE: Comments from U.S. toy industry and The Toy Association, Inc. on CPSC Budget Priorities for FY 2019 and 2020**

The Toy Association™, Inc. represents more than 1,000 businesses – toy manufacturers, importers and retailers, as well as toy inventors, designers and testing labs – who are all involved in bringing safe and fun toys and games for children to market. Approximately 3 billion toys are sold in the U.S. each year, totaling \$26 billion at retail, and our members account for approximately 90% of this market.

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

We appreciate the Consumer Product Safety Commission's (CPSC) continued engagement and outreach to the regulated community and thank the Commission for soliciting input from interested stakeholders on the CPSC's priorities for Fiscal Years 2019 and 2020. Below is an outline of the toy industry priorities we request the Commission take into consideration, not necessarily in order of priority:

**Import Surveillance Efforts**

CPSC has done an increasingly effective job in capturing violative products at the ports of entry, before they make their way into the hands of consumers. The agency is to be commended for its work in continuing to improve the process at the ports. While improvement is certainly desirable in more surgical targeting and faster release of goods found to be compliant, The Toy Association remains supportive of targeted import surveillance that does not unduly burden legitimate trade.

We urge continued improvement in the implementation of the Risk Assessment Methodology (RAM) to more accurately target violative products at ports of entry while allowing compliant products to flow unimpeded. We would urge that the agency continue to improve RAM targeting to better focus only on the riskiest cargo and ensure that any held shipments are examined in a timely manner, ideally less than five calendar days.

Improvements made to the RAM program will also help in the fight to stop counterfeit goods from entering the U.S., so we would ask CPSC to put ample resources in this area.

The Toy Association's members have struggled with shipments being stopped and detained repeatedly, often for extended periods of time, and then ultimately released without any finding of fault, or in some cases without any examination taking place. Because toys are highly regulated, and mostly imported under a single HTS classification, Chapter 95, toys are targeted more frequently than many other products regulated by CPSC. Since the bulk of toy companies are small businesses, this disproportionate targeting has an outsized impact on their profitability. Detention and examination costs, unhappy customers, missed sales opportunities, and cancelled orders are just some of the issues our members have reported. One suggestion we have previously raised, and wish to propose again, is to allow importers to sample detained shipments for testing at a CPSC-approved private laboratory, as other regulatory agencies currently allow.

Another area we hope CPSC will continue to consider is the idea of a "trusted trader light" program which would reduce the number of inspections an importer faces. As the agency looks to develop such a program, we would urge you to be mindful that any such program should be accessible to large and small companies. Joining the CBP's Trusted Trader program (or even the CTPAT program) is very costly, time consuming, and out of reach for many companies, especially small businesses. We envision those participating in the "trusted trader light" program would be companies willing to go through some extra safety checks to enable an easier entry process. The trusted trader program should also benefit participants by them being subject to fewer data requests. Employing a "trusted trader light" program could decrease the workload for CPSC while at the same time increasing the "hit" rate for identifying violative products, a win-win for CPSC, industry, and consumers.

The Toy Association supports the agency's import surveillance program and encourages continued efforts to increase the efficiency and effectiveness of this program. As CPSC moves to a beta pilot of the e-filing program, we would ask that the agency focus on collecting only information critical to finding dangerous products. As the agency ramps up its participation in the ACE single window program, it is important to consider the amount of time estimated by importers to submit the necessary information for one product. According to a report<sup>1</sup> issued by CPSC last spring on the Alpha pilot, it took participants 10 hours to retrieve all the necessary information needed, then another 10-15 hours per product to manually enter it into the system. This is not an insignificant amount of time. As the agency considers moving forward in determining what certificate information must be submitted, it must bear in mind that the amount of time a company will need to dedicate to this effort would be extremely costly, with very little safety benefit seen by the consumer.

### **Combat Intellectual Property Infringing Goods**

Intellectual Property (IP) infringement has become an increasingly significant issue for the toy industry, due in part to the increased proportion of retail sales concluded online. IP-infringing toys are extremely concerning on a number of levels, especially their potential ramifications for children's safety. Not only is a brand compromised and intellectual property stolen, but it is also likely that the toy has not undergone the rigorous safety testing and certification required to be sold in the U.S., putting children at risk. We urge the agency to continue its diligent efforts, working even more closely with other government agencies to help combat these fake goods. Further scrutiny of e-commerce platforms, and one-off shipments of products coming in unchecked at the ports through courier services and the mail, should be a budget priority for CPSC in the coming years.

---

<sup>1</sup> eFiling Alpha Pilot Assessment and CPSC Staff's Recommendations for eFiling Beta Pilot, found on March 24, 2018 at: [https://www.cpsc.gov/s3fs-public/eFiling%20Alpha%20Pilot%20Evaluation%20Report%20-%20May%2024%202017.pdf?JNhQrliOFpoDjoZSTmpZ7\\_XRof.cNiO](https://www.cpsc.gov/s3fs-public/eFiling%20Alpha%20Pilot%20Evaluation%20Report%20-%20May%2024%202017.pdf?JNhQrliOFpoDjoZSTmpZ7_XRof.cNiO)

This year the Government Accountability Office (GAO) conducted a study<sup>2</sup> where they purchased 43 products on e-commerce sites to check for counterfeit goods. Twenty of the 43 products purchased were found to be counterfeits. GAO made recommendations in this report that were primarily for Customs and Border Protection (CBP) to enact, as they are the main agency charged with reviewing and stopping cargo shipped into the U.S. However, those recommendations are such that it would be wise for CPSC to consider implementing them as well. These recommendations included asking CBP to evaluate its efforts to enhance intellectual property rights enforcement and assess potential additional information sharing with the private sector. The Toy Association and our members stand ready to provide any additional information CPSC or other government agencies require to stop dangerous, counterfeit toys from getting into the hands of our smallest consumers.

### **Continue to Look for Ways to Reduce Third Party Testing Burdens**

The Toy Association and our members have been very pleased with, and appreciative of, the efforts CPSC has taken to date to ease testing burdens. Particularly, the final rule published last year to exempt certain plastics from phthalate and heavy metals testing has been very helpful. This is an effort that we have been encouraging the agency to pursue over the past several years and we hope the agency will act quickly on several of the suggestions made by industry and others last fall. Toy testing is a critical component of product safety assurance. However, toy companies and more specifically, small toy companies, still struggle with crippling costs associated with unnecessary and redundant third-party tests, an unintended consequence of the requirements under CPSIA. We look forward to continuing to work with CPSC staff to find ways to reduce these costs, while still developing safe and compliant toys and games.

### **Information and Education Programs and Partnerships**

CPSC has made many strides recently to increase consumer awareness of safety programs and initiatives, especially on social media. These campaigns could reach an even wider audience with stronger and more stakeholder partnerships. CPSC should continue to look for opportunities and appropriate partners to help improve consumer awareness on current and emerging product safety issues of importance. With the agency's limited budget, this can make better use of limited resources in amplifying a message and its outreach, and further advance the agency's mission of protecting consumers. We urge the agency to consider pursuing meaningful programs to inform and educate the public on issues of consumer safety and utilize all tools and potential partners at their disposal. Last year we were able to partner with CPSC on some holiday messaging and we look forward to doing that again, with additional partnering opportunities in the future. We would urge CPSC to reach out not only to The Toy Association, but also to other industry groups to work together on educational campaigns.

### **Conclusion**

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

We would encourage CPSC to focus its staff and resources on the areas and issues for which it holds both expertise and statutory jurisdiction, while allowing other agencies to lead when they hold main authority on an issue.

---

<sup>2</sup> Intellectual Property: Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeits Market, found on March 24, 2018 at: <https://www.gao.gov/assets/690/689713.pdf>

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

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Pasierb". The signature is stylized with a large, looped "S" and a cursive "P".

Stephen Pasierb  
President & CEO



Written Comments  
Agenda and Priorities FY 2019 and/or 2020

Linda Kaiser  
Parents for Window Blind Safety



Written Testimony of Linda Kaiser, President, Parents for Window Blind Safety  
To the U.S. Consumer Product Safety Commission  
Agenda and Priorities FY 2019 and/or 2020

In 2002, Parents for Window Blind Safety was founded to educate the public about the hazards posed by window covering products with hazardous cords. When I founded Parents for Window Blind Safety, it was never just about my daughter but about the hundreds of future children who I knew were going to tragically lose their life from these hazardous products. I could not live knowing how easy it would have been to save the life of my daughter without trying to make a change in this industry.

For the first time in 15 years, the segregated window covering standard, although experimental, gave me hope that the members of the window coverings industry are beginning to have similar visions of safety as myself and other safety experts. As an advocate who has been promised for years that the hazard would be eliminated or even significantly reduced, you can only imagine my hesitation to believe this new standard will actually work without action by the U.S. Consumer Product Safety Commission to implement a strong rule with significant consequences for manufactures who refuse to comply or who intentionally try to bend rules in order to make gains in the market.

While removing cords from stock products is a step in the right direction, I have deep concerns about the implementation of this standard, the remaining hazards, compliance, loophole strategies which have created quite a buzz among several international manufactures, and how the CPSC will handle manufactures who are willing to use the stock/custom loophole to make gains in the market with their products.

The same strangulations hazards are present on all custom product that have long cords.

The data clearly shows children are able to gain access cords in several ways while unsuspecting consumers follow safety tips for custom products that put children at risk i.e. cord cleats, tassels, continuous loops not installed.

Risks that are still in the new standard include:

- Long accessible operational cords on custom products such as horizontal blinds, roman shades, cellular shades, vertical blinds, roller shades etc.,
- Long accessible retractable cords, looped cords,
- Operating cords that form hazardous loops by way of cord connectors when 2 or more cords are joined together,
- Inner cords on bamboo roll up shades, and
- Faulty tension or tie down devices that can be pulled out of walls.

Knowing that all of these hazards will exist on future custom products in the United States, I humbly ask that the CPSC continue to prioritize window covering safety. We cannot assume that this experimental standard will work based on unsubstantiated market estimates. My plea to you as an advocate, a mother who has lost a child from hazardous cords, is that window coverings continue to be a priority at the CPSC, that a

budget include education efforts for consumers where both advocates, experts and window covering industry representatives are involved. We also urge the CPSC to monitor compliance and seek to strengthen such compliance so that if manufactures do not comply, the penalty is strong enough to deter others from using compliance loopholes.

Now that the manufactures want to move in a more positive direction for safety and have committed to open the process for custom products very soon, the CPSC, who is the authority on safety, has a major job to do in correcting the public's mindset about what is safe and what is not safe. How will the CPSC do this as an agency? This type of education will take more than just social media posts in October. One of the most important jobs of the CPSC is to protect consumers. At this point, we cannot applaud and say, "well done," because we all know there are still hazards on custom products that consumers will overlook because they read that this issue was already addressed with stock products.. As an agency, it is your duty to adequately inform the public of all dangers that continue to exist with consumer products in the home. Consumers will not know how to identify whether a product is dangerous unless we call a spade a spade. Long cords are hazardous, period.

Data indicates that educational campaigns, safety devices that require additional installations, regular active consumer intervention, and attempts to change consumer behavior to use the product properly have not proven to protect children in the United States in the past 30 years, 20 years, or even the past 7 years. It is vital that the CPSC continue to make window covering safety a top priority, play an active role in compliance, and press for the hazards on custom products to be designed out of the product through the standard.

Thank you for your time and for all of your hard work on this issue over the years, especially your hard working staff who has been at the agency since our organizations founding. I am sorry that I could not attend the 2018 priorities meeting this year. I look forward to continue to work with you on window covering safety issues.

With Gratitude,

  
Linda Kaiser



Written Comments  
Agenda and Priorities FY 2019 and/or 2020

Chris LoPresti  
Partner, Bonnie

April 9, 2018

U.S. Consumer Product Safety Commission  
Attn: Acting Chairman Ann Marie Buerkle  
4330 East West Highway  
Bethesda, Maryland 20814-4408

Acting Chairman Buerkle:

We believe the CPSC's top priority for FY 2019/2020 should be recall effectiveness.

As recent studies have noted, including those produced by the CPSC, the average recall effectiveness rate is approximately 10%. This number is far too low, especially because there are well-documented, cost-effective solutions that can dramatically improve recall effectiveness.

As highlighted in the Recall Effectiveness Workshop and in the CPSC's presentation at ICPHSO 2018, direct notice recall communications are over 500% more effective than traditional notice practices.

Section VI of the March 2012 edition of the CPSC Recall Handbook recommends:

- direct notice to consumers known to have the product—identified through registration cards, sales records, catalog orders, retailer loyalty cards, or other means;
- purchase of mailing lists of populations likely to use the product;

There are many existing technologies and technology companies that can provide the data to support direct notifications. In fact, many of the same organizations that are administering a recall already use these technologies in their marketing departments to identify and acquire customers. Not only does that mean it's technically feasible, but it also means these organizations already have an approved budget and an internal process for acquiring and using third party data. If it is cost-effective to perform targeted marketing and direct communication for the possibility of acquiring a new customer, we believe it is cost-effective to identify and notify those same customers when a product is defective or puts them in danger.

There is no reasonable justification for a company to use 2018 technology on the sales and marketing side of their business and 1980s technology on the safety and customer service side of their business.

**We urge the commission to dedicate resources to improving recall effectiveness and enforcing the CPSC's own published recall process guidelines. A 90% failure rate is not acceptable when lives are at stake.**

Sincerely,

Chris LoPresti  
Partner, Bonnie  
*Helping your family live a safer life.*

718 7th Street NW  
Washington, DC 20001

Written Comments  
Agenda and Priorities FY 2019 and/or 2020

James Daley  
Child Safety Advocate

Written Testimony of James Daley, Child Safety Advocate

U.S. Consumer Product Safety Commission

Agenda and Priorities FY 2019 and/or 2020

April 11, 2018

After sending off one of your children to spend the weekend with his friend's family, the last thing you will ever think about is not seeing that loved one again. The very next morning a phone call comes in that will change the way you will live . . . forever. The pain cannot be explained in words. I can tell you, it can hurt at any time and in any place. The pain could be felt while driving a car, thinking of a memory from the past. Heartache could be felt in an article of clothing, watching a certain TV show, listening to a song, or being at a sporting event. The pain could be felt seeing a family member, or one of his friends, or going to his school. Seeing a picture on the wall or on your phone or in a family members' home can cause uncontrollable pain. A change in the seasons could trigger painful emotions. Holidays can bring moments of loneliness. His birthday brings all emotions at once. Being in the church you used to attend together can bring sorrow. Hearing his voice in your memory can bring tears. Remembering a project you both worked together on brings forth the question, why did this happen? Seeing a work of art he created or a gift received by him always brings painful hurt, for he was the very gift given to his parents at his birth.

After months of blaming others and myself. I started researching the facts. The results were startling to say the least. This was no isolated incident. It happened before. Many, many times before his accident and many times after.

- From 2004-2013 there were 979 fatalities in the under 21 age range. This made up 30% of all age ranges, according to the US Department of Transportation.
- From 2014-2016 ATVs & ROVs had 454 fatalities in the under 20 age range making up 23% of all age ranges, according to the Consumer Federation of America.
- From 2004-2013 of all those fatally injured, only 12% were wearing helmets and 85% were unhelmeted, according to the US Department of Transportation.

After reading both ATV and ROV owner's manuals, both take a tough stance on age requirements, helmet usage and staying off roads. However, those points are not getting through to the public. The ROV owner's manual includes many warnings about how no one under 16 should operate this vehicle. If owners of these vehicles don't read or follow the manufacturers guidelines it does not matter if it's stated 7 or 70 x's 7 times. When automobiles first came out with seatbelts before laws were in place to wear them, the manufacturer warned about the safety of not wearing them. Many people did not heed that warning. Now, laws are in place to ensure that people wear them always while driving or being a front seat passenger. Some resisted at that time. After countless studies reflected the lives saved, now, few, if any, resist and most follows the law.

You must be over 16 to operate an automobile in most states, and people of all ages must wear seatbelts. why the push back to pass laws on saving children's lives by preventing them from operating adult-sized recreational vehicles? Why can't we have a law for helmet requirements for those under 21?

We have laws with age restrictions for automobiles and motorcycles. We have helmet laws for motorcycles and bicycles in most states. What pain is felt if wearing a helmet? What pain is felt if a child is not allowed to operate an adult sized ATV or ROV? I can tell you, it is nothing compared to the pain of losing a child. I lost my 15-year-old son, Ben Daley, on November 27, 2015 when he went with friends on vacation to Pennsylvania and rode an OHV. Although I would like to believe my son learned many things from me, I know, I learned something from him. He told me once, if you don't like something. . . do something about it. I do not like the current laws on the books for OHVs, So, I am working to prevent others from suffering the tragic loss that we are enduring.

Now is the time for laws to protect our children. No one should simply look the other way when another child is fatally injured on a vehicle made for adults.

## **Supplemental 4/18/18**

Portable Generator Manufacturers' Association



Secretary/Treasurer:  
THOMAS ASSOCIATES, INC.

**Portable Generator Manufacturers' Association Supplemental Testimony  
Susan Orenga, Executive Director  
Presented by Greg Wischstadt, President**

**Hearing: CPSC Annual Agenda and Priorities Fiscal 2019-2020  
April 17, 2018**

Acting Chair Buerkle, Commissioners, thank you once again for the opportunity to submit additional testimony to the Consumer Product Safety Commission for consideration. PGMA is submitting this additional testimony in an effort to provide a more thorough review of its perspectives and also to address the comments that were made by various Commissioners during the hearing.

PGMA and its members are dedicated to the safe use of power portable generators. Protecting consumers from product misuse is PGMA's most important mission. The new version of PGMA G300 represents a major step forward in portable generator safety. It has been shown to address 99% of the reported carbon monoxide related fatalities resulting from misuse of portable generators in enclosed and partially enclosed settings. For comparison, the emissions reductions required in the current NPRM were estimated to be only 42% effective at the avoidance of fatalities.

The collective efforts of both CPSC staff and the portable generator industry should be viewed as an enormous success. It has only been two years since the industry along with all stakeholders began the revision to ANSI/PGMA G300 in 2016, as marked by the first technical summit held in Baltimore on March 17, 2016. The progress that has been made in such a short period of time would not have been possible if industry and the CPSC staff were not able to effectively work together towards the best solution to this hazard.

**Response to Commissioner Robinson:**

There were a number of points raised by Commissioner Robinson during her questioning period that were directed towards PGMA and its efforts to improve the safety of portable generators. Unfortunately, we were not afforded the opportunity to respond to any of these points since there was never a question posed. Nonetheless, we are concerned that many of the points made were inaccurate and may improperly impact the direction of the Commission as it relates to the Fiscal priorities for 2019 and 2020. We would like to share our view of the points raised so that you will have opportunity to properly consider all perspectives related to PGMA's requests in our original testimony.

We attempt to respond to Commissioner Robinson's points (as taken from our transcription of the recorded webcast of the CPSC meeting on April 11, 2018) one by one as follows:

1. Commissioner Robinson: "Representations made by PGMA in a recent press release were misleading and untrue."
  - a. PGMA: We believe the press release referred to here is a bulletin that was issued on December 21, 2017. This bulletin announced the successful canvass of the new version of PGMA G300-2018, which now includes requirements for a carbon monoxide shutoff device in addition to all of the other safety aspects already covered in the standard. The release announced the overwhelming positive support of the new standard as evidenced by the percentage of canvass members who voted in support of it, >90%, including CPSC staff. It is unclear which of these claims Commissioner Robinson believes are false or misleading.
2. Commissioner Robinson: "Staff has spent well over a decade, trying unsuccessfully, to get PGMA and its members to use available technology to make portable generators safer."
  - a. PGMA: Since its inception, PGMA has been an advocate for portable generator safety standards and has actively supported research and development efforts to improve safety. PGMA was formed in 2009 with the mission to advocate for portable generator safety standards. Shortly thereafter, PGMA pulled a PINs notification with ANSI announcing its intention to create a comprehensive safety standard for portable generators. The first edition of the safety standard received ANSI recognition in June of 2015—ANSI/PGMA G300. Shortly thereafter, in March 2016, PGMA held the first of several technical summits to allow interested parties and stakeholders a venue to share thoughts as to how ANSI/PGMA G300 could be improved to address the carbon monoxide hazard posed by the misuse of portable generators. PGMA then began rigorous testing to evaluate technical solutions to the hazard. After CPSC's publication of the Portable Generator NPRM in November of 2016 and the fulfillment of PGMA's FOIA request for the CPSC's CONTAM models in May of 2017, PGMA's efforts accelerated to our present state.
  - b. PGMA: In addition to PGMA's efforts to revise the safety standard, PGMA undertook several other awareness efforts related to potential carbon monoxide hazards. These efforts include:
    - i. Support for the NARUC CA-1 Resolution Recognizing the Importance of Educating Consumers on Portable Generator Carbon Monoxide Safety in 2013;
    - ii. Development of the "Safety First" Program in 2013;
    - iii. Launching a comprehensive PR campaign targeting geographical areas and times of increased generator usage (seasonal) to educate consumers on the safe and proper use of portable generators in 2014;, and
    - iv. Launching the "[Take it Outside™](#)" campaign focusing only on the carbon monoxide hazard in October of 2015, which continues today.
3. Commissioner Robinson: "Your members would not adopt the suggestion to include longer extension cords with purchased generators."
  - a. PGMA: Portable generators are used for a variety of purposes. Not all of these purposes require a long extension cord for proper usage. For this reason, portable generators are offered in multiple configurations including with and without long extension cords. Thereby allowing the consumer to make the

choice based on their particular application and usage. In addition, extension cords appropriate for generators generally are readily available in most places where portable generators are sold allowing a consumer who has chosen to purchase a generator without a cord to obtain a longer cord if needed.

4. Commissioner Robinson: "Underwriters Laboratories has now adopted a standard that includes both shutoff and emissions reductions."
  - a. PGMA: Commissioner Robinson, and other stakeholders in the past, seem to suggest that both detection and shutoff along with emissions reductions technologies are necessary to adequately address the carbon monoxide hazard. However, there has been no evidence, testing, analysis, or anything else that would support this conclusion. By contrast, PGMA, at the request of several stakeholders including CPSC staff, has publicly shared its analysis on the effectiveness of the detection and shutoff technology, which recently received an independent third party validation of the results. Namely that 99% of the reported carbon monoxide related fatalities resulting from misuse of portable generators in an enclosed or partially enclosed setting could have been avoided by implementation of shutoff technology. We are not aware of any evidence that suggests that the emission reductions technology in addition to shutoff technology would provide any added safety benefits. Further, there is concern that the addition of emissions reductions technologies can result in multiple unintended consequences, which have also not been thoroughly investigated or analyzed. These unintended consequences include: only slowing the carbon monoxide hazard down, the potential for fire hazards resulting from increased exhaust temperatures, and significant price increases that will make generators less accessible to those who need them in times of emergency.
5. Commissioner Robinson: "It was hoped that PGMA's data would support the PGMA's recommendation to apply a shutoff device only to this hazard."
  - a. PGMA: As noted in PGMA's written testimony, PGMA has responded to every request made by stakeholders, including the publishing and subsequent third party validation of its analysis in order to be as transparent with its efforts as possible. (Please refer to the bullets on page one of our original testimony). The data provided supports the PGMA-G300-2018 Standard.
6. Commissioner Robinson: "Shutoff would be the cheap and easy way to go."
  - a. PGMA: PGMA is not attempting to identify the "cheap and easy" way to address the hazard. Its first priority has always been comprehensive: to address the hazard while not creating any new concerns or new hazard patterns. The detection and shutdown methodology is the only approach that has been proven effective while at the same time avoiding new concerns. As PGMA has reported on multiple occasions there are concerns with the emissions reduction strategy that include: only slowing the carbon monoxide hazard down, the potential for fire hazards resulting from increased exhaust temperatures, and significant price increases that will make generators less accessible to those who need them in times of emergency. .
7. Commissioner Robinson: "Staff concluded that shutoff alone is not the answer because of a number of things, but two primary things. One, carbon monoxide migrates, period. So, where the carbon monoxide is dangerous enough to kill may not be at the generator and without lowering the CO emissions rate, the level of parts per million that you would need it at, at the generator, to avoid nuisance shutoffs, it would not be such that you could prevent deaths."

- a. PGMA: PGMA is not aware that staff has concluded that shutoff alone is not the answer. Staff voted in favor of the G300 standard in PGMA's most recent canvass illustrating their support for the shut-off only approach. Moreover, it's not clear that staff has even evaluated CO migration situations. In the NPRM staff chose to focus on only the carbon monoxide deaths that occurred when the generator was operated in an enclosed or partially enclosed space. In the cases selected for CONTAM analysis, carbon monoxide was simulated "migrating" between interior spaces but not from an outdoor location to an enclosed space. The PGMA CONTAM simulation of shutoff technology indicated that when carbon monoxide "migrates" from one interior space to another the shutoff approach is highly effective when employed at the generator location. In all of these simulation cases the carbon monoxide concentration was highest at the location where the generator was operating and not in an adjacent space. These are not the "migrating" cases to which Commissioner Robinson referred. PGMA can presume that staff chose only to focus on conditions where generators are operated in an enclosed or partially enclosed space because they represent roughly 95% of all reported incidents, meaning that only 5% of the incidents related to a set of conditions where the generator was running outdoors. PGMA and its analysis chose to follow the same approach as staff and focused its efforts on opportunities that potentially address the largest source of incidents, , the 95% of the incidents that occur where generators are operated in an enclosed or partially enclosed space. There has been no published work by CPSC staff or anyone else that indicates that emissions reductions will reduce the migration of CO from generators that are used outdoors to levels that will not result in carbon monoxide poisonings. Also as noted in the technical summits, CO concentrations are typically highest at the generator as shown by empirical testing.
  - b. PGMA: The shutoff thresholds within the PGMA G300 standard were carefully selected as a balance between effectively eliminating fatalities and avoidance of nuisance shutoff that could lead to the consumer disabling the shutoff system. Focus on the nuisance avoidance was a priority that was given by the CPSC staff.
8. Commissioner Robinson: "PGMA has consistently ignored multiple requests from Commissioner Robinson and CPSC staff to provide our analysis and data. Staff was told that they could not even get the PowerPoint presentations from the technical summit."
- a. PGMA: CPSC staff was present at the technical summit held in Washington DC on July 13, 2017 and was subsequently provided with presentation materials on October 12, 2017. In addition, staff has been provided with a comprehensive technical paper outlining PGMA's analysis and data supporting PGMA's results, as well as third party verification on its results. This report would have been sent earlier, but PGMA was waiting to receive the third party verification based on a request made by the CPSC. Staff has indicated that there is nothing more they require of PGMA or its members.
9. Commissioner Robinson: "PGMA has represented their standard as having been proven effective. It cannot be proven unless CPSC staff engineers have had a chance to look at all the data to determine that it could be effective."
- a. PGMA: The technical data, analysis, and empirical testing of the PGMA members' data have been presented and opened for questioning and scrutiny amongst the standards development stakeholders on the "steering committee" on several occasions including; July 13, 2017, August 16, 2017, September 14,

2017, and November 11, 2017. In each of these sessions data was shared and in no case was any evidence contradicting PGMA's conclusions presented. The CONTAM analysis conducted by PGMA, which was the basis for the 99% fatality avoidance claim, was subsequently written into a formal technical report and verified by an independent engineering firm. This report has now been distributed to CPSC staff and the Commission. Through the tens of thousands of hours of "real world" testing in all case scenarios, PGMA believes that this substantial effort has been more than thorough to prove effectiveness.

10. "PGMA states that compliance has been demonstrated but the standard isn't even going into effect for two years, so that clearly isn't true."
  - a. The only comprehensive safety standard for portable generators, ANSI/PGMA G300-2015, has been in effect since mid-2015. Since then many of our members' products have already been self-certified as compliant to the standard. This, along with the substantial amount of effort that our members have invested into the new standard, should stand as evidence of PGMA member intentions to comply with the shutoff requirements within the revised version of PGMA G300.

Response to Acting Chairwoman Buerkle:

We would like to address the request made by Acting Chairwoman Buerkle that PGMA consider adopting an effective date earlier than the current date of March 31, 2020.

This date was chosen to reflect the efforts to comply that manufacturers will need to undergo and the necessity to address this potential hazard as quickly as possible. The dates chosen by CPSC staff in the NPRM package suggested a two-tier compliance deadline where some products would comply within a year of publication and some products would have three years to comply. Manufacturers adopting G300-2018 will be required to comply in less than two years for all portable generators within the scope of the standard.

PGMA members have stated that if manufacturers were forced to adopt an alternative standard or a CPSC rule that includes emissions reductions, manufacturers would not be able to fully comply with full product ranges prior to the PGMA standard effective date of March 31, 2020. In this case, it would be necessary to either limit consumer product choices or adopt a much delayed effective date. The complexity of emissions reductions is significantly greater than the complexity of detection and shutoff as has been stated in multiple comments to the NPRM.

The effective date represents the last date that generators that comply with PGMA G300-2018 will have to comply. It is highly likely and expected that in order for manufacturers to comply with this date for their full product ranges that portable generators will be developed and begin production well in advance of the effective date. However, at your request,, the PGMA Board of Directors will discuss to determine if it may be possible to adopt an earlier effective date in the standard.

Again, we would like to thank CPSC staff for their efforts throughout the rulemaking process. The work completed by CPSC and NIST has been extremely beneficial for PGMA to complete the work on the voluntary standard, PGMA G300-2018. We must work collaboratively in the future to measure the effectiveness of the voluntary standard. PGMA looks forward to this collaboration with the CPSC and our continued joint efforts to improve consumer safety.

Given that the revised voluntary standard has been demonstrated to be effective, adopted by the canvass group, and compliance is likely, we feel that it is no longer necessary for CPSC to continue with mandatory rulemaking. We request that CPSC terminate the proposed rule and allow the voluntary standard to achieve its goals. The voluntary standard is a robust, comprehensive, and effective safety standard, providing significant benefit to all consumers.

Thank you once again for your time and consideration.

**Supplemental 4/18/18**

Sheila Bearden

## Hammond, Rocky

---

**From:** Sheila Bearden <beardenjs@comcast.net>  
**Sent:** Wednesday, April 18, 2018 4:48 PM  
**To:** CPSC-OS  
**Cc:** Thomas, Treye  
**Subject:** April 11, 2018 Budget Hearing  
**Attachments:** SCAN0051.jpg; SCAN0052.jpg; SCAN0048.jpg; SCAN0049.jpg; SCAN0050.jpg

Dear Acting Chairwoman Buerkle and Commissioners Kaye, Adler and Robinson,

I consider it an honor and privilege to have had the opportunity to speak before you last week. I had no idea what to expect, and I must say that I was humbled to be before the Commission.

Having six grandchildren of my own, I hurt for those suffering the loss of a child, and I can only imagine their pain. I too fight for our children. I know that respiratory or other neuropathic issues do not compare to an immediate and tragic death, but preventing unnecessary environmental injuries and life-long disabilities is a fight worth fighting.

The fight I fight is based on sound scientific evidence. Ozone is a harmful nerve sensitizer. Consumers with sensitivities, or like myself, those unknowingly sensitive, purchase these "air cleaners" in hopes of providing a healthy environment. These filters are sold by reputable companies, so of course, consumers will buy into their claims. Are suppliers trained to speak of the benefits of EACs and never to speak of the dangers? Why is ozone not mentioned? I learned first-hand that my heating and air contractor had never been warned that some people may be sensitive to ozone. With the EPA warning that 5-20% of the population is unusually sensitive to ozone, this is significantly worth mentioning. How can a consumer possibly foresee that harm might come to them? They cannot.

Why the discrepancy between the amount of ozone that the manufacturer says that their equipment produces and the readings that Consumer Reports and our own calibrated ozone measuring device detected? This must be investigated. I do not trust the manufacturers to self-regulate. Clearly ozone matters, and I believe that they are under reporting.

The American Lung Association and the EPA warn of the dangers of ozone -- <http://www.lung.org/our-initiatives/healthy-air/outdoor/air-pollution/ozone.html>

<https://www.epa.gov/ozone-pollution/health-effects-ozone-pollution>

Honeywell must have had hundreds, if not thousands, of complaints about excess particle matter for them to make such a big deal of trying to explain away "white dust" in their owner's guide. We also know that for every consumer that complains about something like this, there are multiples who do not.

Read what the Honeywell guide says, and I believe that you will see what I see. They list numerous things that may be causing the dust, but never once do they mention that a chemical reaction may be the source of the dust. Scientists have told us that ozone reacts with new carpets and paints to produce aldehydes, acids and particle-matter. Their scientists know this, so again I say, they are not trustworthy to self-regulate.

From a 2016 F300 EAC Owner's guide -- "About lint or "white dust" White dust is made up of particles that settle out of the air before they get to the return air duct. You can help prevent this white dust from settling by running your fan constantly and: . Be sure the return registers are not blocked with furniture. . Be sure the discharge ducts are clean (best

done before installing the air cleaner). Be sure your clothes dryer is vented to the outside and is not plugged. If you have new rugs or drapes or new woolen blankets, be aware that the lint from these items will reduce with age. In new or remodeled homes, plaster dust or paint pigment may contribute to white dust, but will reduce with time. Use of a humidifier may contribute to white dust, especially if filled with undistilled water.  
<https://customer.honeywell.com/resources/techlit/TechLitDocuments/69-0000s/69-0756.pdf>

Are you aware that in 2008 Honeywell issued a press release announcing that Boeing had awarded them a contract to supply catalytic ozone converters to a number of their planes? The press release says, "An ozone converter is used to reduce ozone levels in the cabin that can cause passenger discomfort." Again, there is no reason it should be acceptable for "air cleaners" to produce ozone.  
<http://www51.honeywell.com/honeywell/news-events/press-releases-details/07.14.08CatalyticOzoneConverter.html>

Regarding the attached photos, I did not bring them with me last week because they aren't the most pleasant to view, but this is my life. This is what it looks like to be TRPA1 sensitized. I often get mouth blisters and though they are not always as bad as the ones in this photo, they are always painful. These were caused by my wearing the lip balm Carmex, which contains camphor, a TRPA1 activator. The eyes were from being in a home with burning candles and the list goes on. You may have noticed that when I first started talking to you, my voice was a bit hoarse. I wasn't emotional and I wasn't overly nervous. The gentleman next to me was wearing a cologne that affected the nerves in my throat. I never know whether I will be hoarse until I speak. When the EACs were running in our home, people calling would often ask if they had awakened me from a nap. My voice would be hoarse, and I couldn't explain it then, but now I know it as an irritant induced neuropathic response.

Just like a smoker has a greater risk of developing COPD or lung cancer as they age, I know that my risks are now similar, if not the same. I've attached results of my two tests for reactive airways. The first was in December 2008 and the methacholine challenge test was "negative." Over the next few years, I continued to tell my pulmonologist -- I DO have reactive airways, to which he always reminded me that my test was "negative." Finally, six years later, my primary care physician decided to test me again and my methacholine test was "positive." You see, after the sensitization, the damage continued. My two different results paint a clear picture of the dangers of ozone.

As I said, we hear more about the lungs, but read from Environmental Health and Toxic Exposure, Sullivan & Krieger (A book I checked out from the University of Tennessee library)

"Exposure to sensory irritants in air promotes a burning and painful sensation in the nasal passages, head, and cornea caused by stimulation of trigeminal nerve endings. Such sensory irritation is important to help protect against occupational and environmental exposures. Activation of the trigeminal nerve endings in the nasal passages depends on the chemical nature of the material. Trigeminal nerves can also be activated by physical irritants, such as dust, particulates, and biologicals. Trigeminal nerves in the nose are also sensitive to pressure changes, mechanical changes, and chemical activation. Airborne chemicals can induce activation or stimulation of unmyelinated and myelinated trigeminal fibers." . . .

"Airway epithelial damage by airborne chemicals can result in exposure of afferent nerve endings to subsequently inhaled irritants." . . . "Low-level volatile organic chemicals (VOCs) can be additive and produce irritation at concentrations far lower than individual threshold limit values." page 395

From the chapter titled Low-Level Chemical Sensitivity and Chemical Intolerance -- "Another form of inflammation involves the trigeminal nerve endings in the upper airways and nasal passages. This is termed neurogenic inflammation and is generated by chemical irritants. The nasal passage is innervated by fibers of the trigeminal nerve, which form the common chemical senses. Trigeminal nerve ends are scattered throughout the nasal passages and surface of the eyes.

The common chemical senses respond to airborne irritants and chemical with signs and symptoms of pain, irritation and inflammation. page 420

My husband and I are smart people, and we did not understand the dangers of ground level ozone. A majority of people probably do not. I thought the outdoor ozone alerts were for people with unhealthy lungs, my mother included. We knew nothing of indoor ozone or of ozone-initiated reactions. Worse yet, my doctors knew nothing of the dangers of EACs.

When I see that the Commission has difficulty recalling a dresser after children have been killed, I better understand the complexity of the tasks before you. I do wonder what you can do to help my cause. Ideally, I believe there is no world in which an air cleaner should produce ozone.

Would requiring a post filter be sufficient, I don't know? I do know that a warning on an owner's manual will not be sufficient. Owner's manuals are not delivered until after the purchase. When we built our new home, we had several dozen manuals handed to us. Had we read our EAC manual, nothing would have warned us. In fact, it would have reassured us that we had nothing to worry about. Where are the warnings that ozone is a lung irritant? Would an ad campaign be beneficial? Public service announcements?

I have no doubt that a multitude of others have suffered injuries.

My husband, was CEO of one of the largest architectural firms in the southeast and was a board member at the University of Tennessee School of Architecture. Through his connections, we were allowed access to a calibrated ozone measuring device.

My husband was also Chairman of the Board of St. Thomas Health Services, a five-hospital system affiliated with Ascension Health. I had the best doctors, and they didn't realize the dangers of EACs. I was not working full-time when my injury occurred. As a CPA, I had the mental capacity and the time to research. As a dentist, my son-in-law, helped me understand the trigeminal nerves.

I have a supportive family and friends. Having lived a normal life until age 52, no one questioned my claims of sensitivities.

Just as my research began, scientists were uncovering the mysteries of how our sensory nerves respond to irritants.

You see, I had many advantages. All are not as fortunate as I am, and because of this, I feel called to warn others. My 70-year-old mother was near death, and because of her breathing difficulties, we had taken her to the emergency department. In extreme fatigue and much pain, all I could do was rest my head at the foot of her bed. She said to me, as a mother would, "I'm sorry that you feel so bad." Under ordinary circumstances, I would have told her that she shouldn't be worried about me, but this was no ordinary circumstance. I looked at her, knowing that she was dying, all I could say was, "Mom, when you get to heaven, ask God to help me." The research article that helped me, "Ozone activates airway nerves via the selective stimulation of TRPA1 ion channels." was published on my birthday, February 1 of that next year. Believe as you will, but I choose to believe that this was a gift from my mother and a gift from God.

I feel called to action, and I need your help.

Sincerely,

Sheila Bearden



Saint Thomas West Hospital  
4220 Harding Rd  
Nashville, TN 37205  
Phone: (615) 222-6605

Name: BEARDEN, SHEILA S  
MR#: S-00702166  
FIN: S-2414263170  
Admit Date: 1/19/2015  
Dischg Dtt: 1/19/2015  
Sex: Female Age: 58 years

Pulmonary Dictation

Performed information:  
Sign information:

Canonico MD, Angelo E (1/20/2015 03:47 CST)  
Canonico MD, Angelo E (1/26/2015 12:51 CST)

PF

SAINT THOMAS WEST HOSPITAL  
NASHVILLE, TENNESSEE

PULMONARY FUNCTION TEST

PATIENT: BEARDEN, SHEILA S DATE: 01/19/2015  
MR #: 702166 DICTATING MD: ANGELO E CANONICO, MD  
FIN #: 2414263170 ATTENDING MD: RYAN D MIRE MD

REFERRING PHYSICIAN: Dr. Ryan Mire.

The patient demonstrated good understanding, provided good effort for the study.

1. Spirometry is normal. The FEV1 is 2.91, 100% of predicted.
2. Overall lung volume showed some mild restriction. The total lung capacity is 3.75, 76% of predicted.
3. DLCO is 86% of predicted. Following the pulmonary function tests, the methacholine challenge test was performed. The methacholine challenge test was positive. The FEV1 fell 32%.

Angelo E Canonico, MD

AC:1263663  
DD: 01/19/2015 05:35 PM CT  
DT: 01/26/2015 03:43 AM CT  
SUN: 76471860  
DIN: 638753

cc:  
Ryan D. Mire, MD

(Electronically Signed on 01/26/15 12:51)

Canonico MD, Angelo E

*Proc - Pulm*  
Pulmonary Function Test

BEARDEN, SHEILA S - S-00762408-  
(11531)

PF

SAINT THOMAS WEST HOSPITAL  
NASHVILLE, TENNESSEE

PULMONARY FUNCTION TEST

PATIENT: BEARDEN, SHEILA S  
MR #: 702190  
FIN #: 2814263170

DATE: 01/19/2015  
DICTATING MD: ANGELO E CANONICO, MD  
ATTENDING MD: RYAN D MIRE MD

REFERRING PHYSICIAN: DR. Ryan Mire.

The patient demonstrated good understanding, provided good effort for the study.

1. Spirometry is NORMAL. The FEV1 is 2.31, 100% of predicted.
2. Overall lung volume showed some mild restriction. The total lung capacity is 3.75, 76% of predicted.
3. DLCO is 84% of predicted. Following the pulmonary function tests, the methacholine challenge test was performed. The methacholine challenge test was positive. The FEV1 fell 12%.

Angelo E Canonico, MD

AC/1260863  
DD: 01/19/2015 05:05 PM CT  
DT: 01/20/2015 03:43 AM CT  
S.M: 76471860  
DJN: 639753

cc:  
Ryan D. Mire, MD

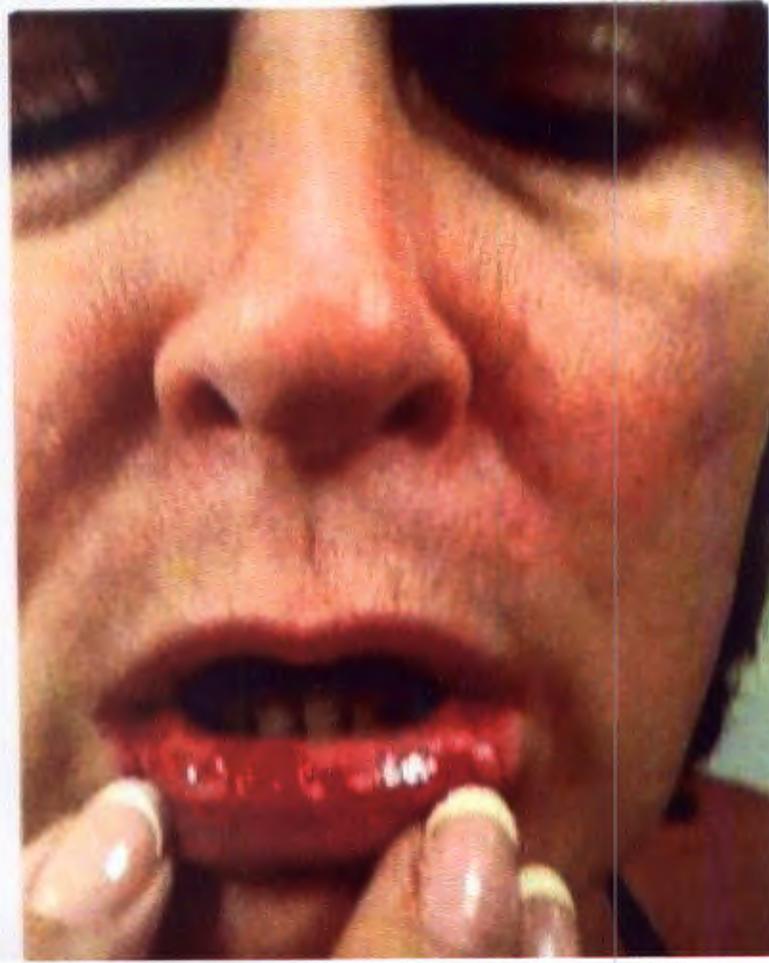
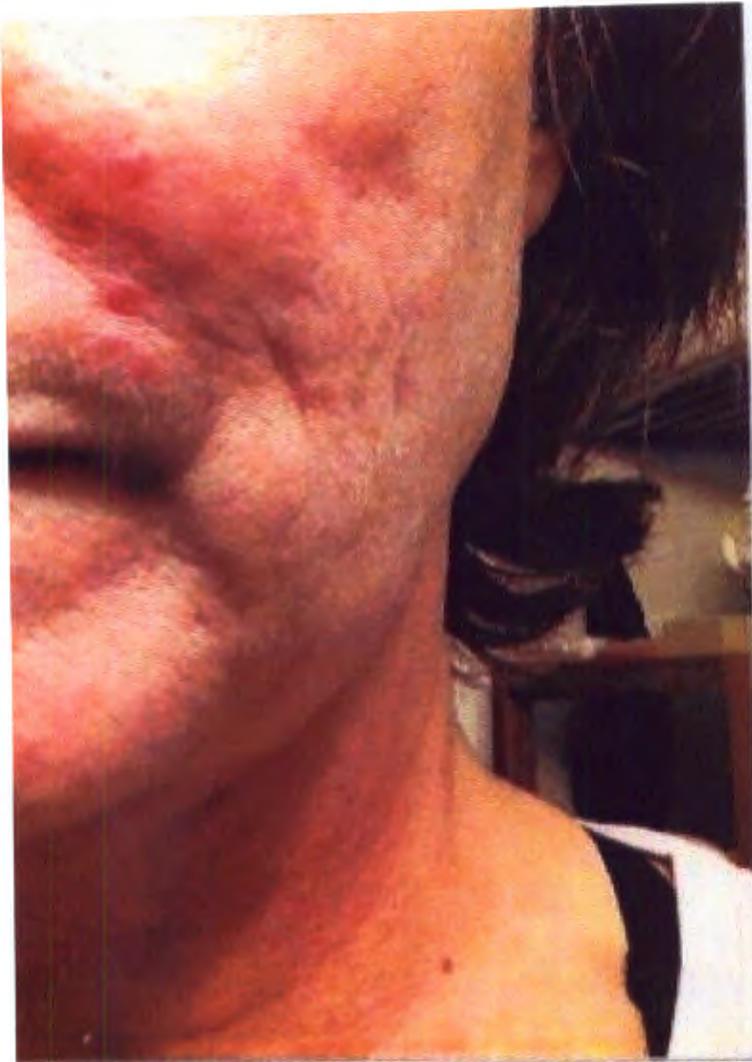
Completed Action List:

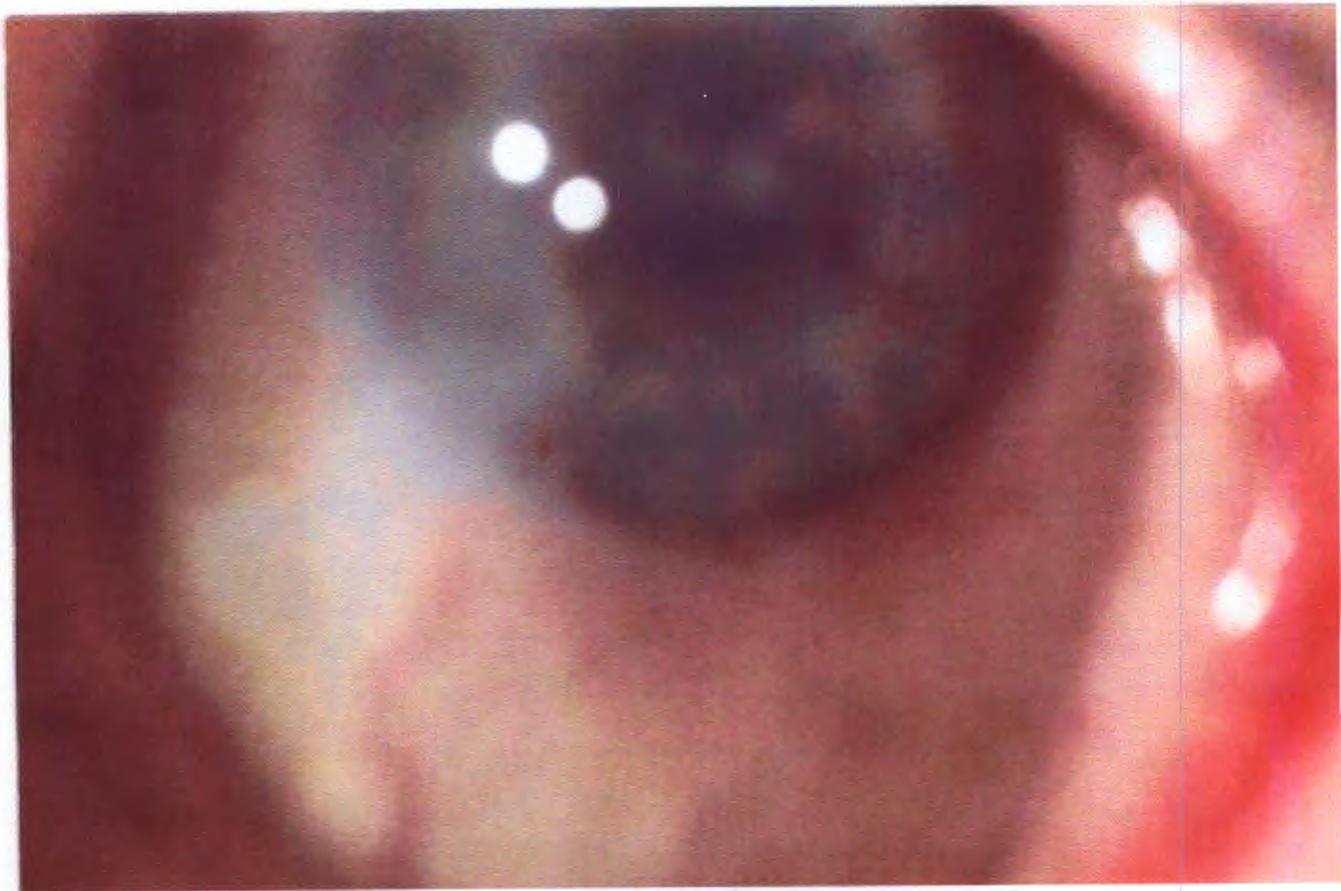
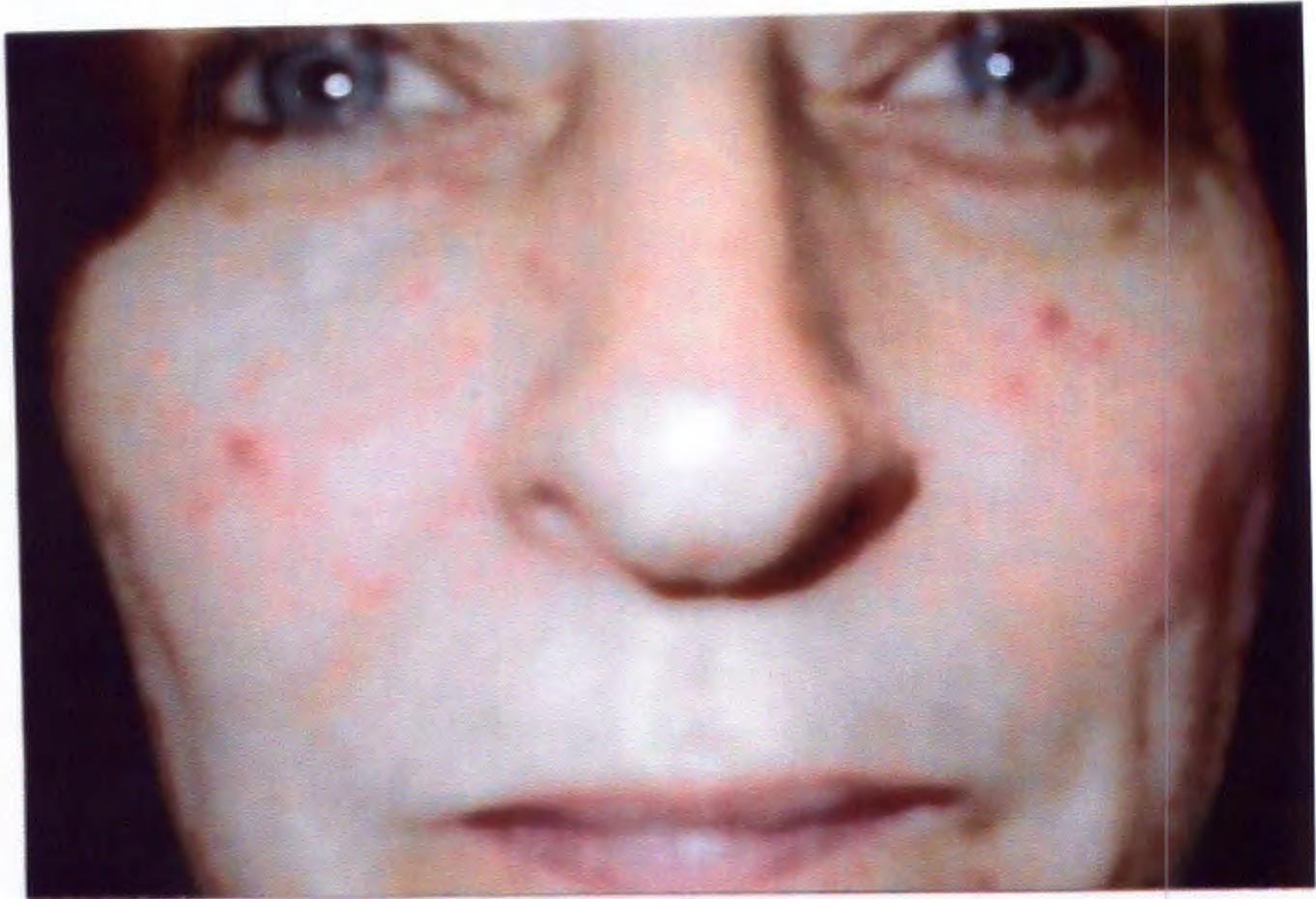
- \* Transcribe by on 19 January 2015 17:05
- \* Perform by Canonico MD, Angelo E on 20 January 2015 03:47

Result Type: Pulmonary Function Test  
Result Date: 20 January 2015 03:43  
Result Status: Preliminary/Unauth  
Result Title: PF

Printed by: Mire, Ryan D  
Printed on: 01/20/2015 17:19

Page 1 of 2  
(Continued)





11331

ST. THOMAS MEDICAL GROUP, P.L.L.C.  
4230 Harding Road, Suite 400  
Nashville, TN 37205  
PULMONARY PROGRESS NOTES

Patient: BEARDEN, SHEILA S  
MRN: 304189  
DOB: 02/01/1956  
Physician: PETERS, MARK  
Date of visit: 12/08/2008

**HISTORY:** This is a 52-year-old female who presents today for followup regarding chest tightness, throat burning. She had a Methacholine challenge test. She has had no intercurrent respiratory complaints.

**PAST MEDICAL HISTORY:** Per my consult of December 5, 2008.

**EXAM:** BP: 150/90. Pulse: 78. Respiratory rate: 18.

**LAB: METHACHOLINE CHALLENGE TESTING** to a level 5 equal to 25 mg/ml. Methacholine was negative. Therefore, there is no inducible airway obstruction.

**IMPRESSION:**

1. Negative Methacholine challenge test.
2. Symptoms most consistent with ongoing gastroesophageal reflux.
3. Possible environmental inhalational exposure/sensitivity.

**RECOMMENDATIONS:**

1. Referral to Dr. Joe Parker.
2. Consider toxicology referral.
3. Follow up with me as needed.

MTP/dla

cc:  
Keegan Smith, M.D.  
222 - 22<sup>nd</sup> Ave, N., Suite 100  
Nashville, TN 37203





## Hammond, Rocky

---

**From:** Sheila Bearden <beardenjs@comcast.net>  
**Sent:** Wednesday, April 18, 2018 11:57 PM  
**To:** CPSC-OS  
**Cc:** Thomas, Treye  
**Subject:** RE: April 11, 2018 Budget Hearing  
**Attachments:** SCAN0055.JPG; SCAN0056.JPG; SCAN0054.JPG

Dear Acting Chairwoman Buerkle and Commissioners Kaye, Adler and Robinson,

Please consider these documents as you weigh the dangers of Electronic Air Cleaners. The first document is a letter written by Dr. Brent Hager, then Director of Environmental Health Services, Metro Public Health Department, Nashville/Davidson County, Tennessee.

The second document is an email response to me from Janice Nolen, Assistant Vice President, National Policy and Advocacy, American Lung Association.

She writes to me, "We have worked hard and spent a lot of money to get Honeywell to pull products and messaging that references the American Lung Association, including sending multiple "cease and desist" letters. Our involvement in this is not finished." I have not followed up with the ALA, but seeing this message again, reminds me that I should.

Again, thank you for your time last week.

Sheila Bearden

Email secured by Check Point

# Metro Public Health Dept

Nashville / Davidson County

August 14, 2009

Mr. and Ms. James Bearden  
824 Nanearle Place  
Nashville, TN 37220

Dear Mr. and Ms. Bearden:

Ms. Sheila Bearden contacted this office requesting a meeting and help from respiratory issues which followed the occupancy of your new home. Our first meeting occurred May 14, 2009 and, at that meeting, Ms. Bearden presented various articles related to her on-going respiratory and health concerns. The discussion centered on the possible connection of the Honeywell F300 Electronic Air Cleaners (EAC) in the two central Goodman heat and air conditioning units. Ms. Bearden stated the fans on the two units were left on for several weeks when the house was first occupied and as construction was nearing completion.

Also at this meeting, it was revealed the two EAC units had already been removed and a pleated high efficiency filter had been placed in the in-line opening. In the Application section of the installation manual, it states **"The F300 Electronic Air Cleaner is used in forced air heating, cooling, or ventilating system. It removes airborne particles from the air circulated through it. All models have an internal air flow switch that automatically energizes the air cleaner cells when the system blower is on."**<sup>(1)</sup> The concern is that during this time when the fan is on continuously, the levels of ozone could be elevated within the housing unit and the levels might cause some respiratory issues. There are many variables that could have affected the indoor levels of ozone encountered and these include:

1. Volume of air contained within the home;
2. % relative humidity and other chemicals and particulates in the air - as the humidity increases, the production of ozone generation decreases;<sup>(2)</sup>
3. Temperature of the interior;
4. Amount of air exchange with the outside;
5. Other possible sources of ozone like contactors arcing;
6. Current levels of ozone in the outside ambient air;
7. Types of surfaces and materials present in the home;
8. Length of time spent within the home, as well as the location;
9. Distance of the person from the outlet;
10. Higher fan speeds reduce the amount of ozone production;<sup>(2)</sup>
11. Interior ozone levels with EAC operating units are believed to be higher than in homes without such units; and
12. Reactions with other components, chemicals, products and materials can affect the level received.

Karl F. Dean  
Mayor

William S. Paul, MD, MPH  
Director of Health

311 23rd Avenue North  
Nashville TN 37203-1511

Phone: (615) 340-5616  
Fax: (615) 340-5665

[www.health.nashville.gov](http://www.health.nashville.gov)

#### Board of Health

William N. Hance, JD  
Chair

Ruth Stewart, MD  
Vice Chair

Samuel Okpaku, MD, PhD  
Secretary

Henry W. Foster, Jr., MD

Janie E. Parmley, RN

Samuel L. Felker, JD



Promoting and  
Protecting Health

Mr. and Mrs. James Bearden  
August 14, 2009  
Page 2

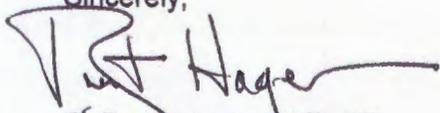
With these and other variables, the exact levels of ozone encountered in this home are largely unknown. ConsumerReports.org in a December 2007 article states *"These products' performance has not changed significantly, but our advice has. We now believe that air purifiers that emit even small amounts of ozone (less than 50 parts per billion) are not your best choice. Research is increasingly warning against adding ozone to indoor air."*<sup>(3)</sup> In this same article, the Honeywell F300 was shown to be in the 26-50 ppb range.<sup>(4)</sup> In an August 6, 2009 article by Shirin Shah in Health News: California Ban on Ozone Air Purifiers. *"The California EPA Air resources Board recommends that ozone generators, (air cleaners that produce ozone), not be used in the home as they're harmful to health"*. This article went on to say *"However, these devices are emitting ozone, which (as stated before) can be harmful, especially for children, the elderly, and people with asthma, emphysema, bronchitis, or other respiratory diseases. Ozone irritates the eyes, nose, and throat, and may trigger asthma attacks"*.<sup>(5)</sup> In a technical Report for U.S. Consumer Product Safety Commission, it states *"Human exposure to ozone, even at relatively low levels (80 to 160 ppb), has been found to cause a variety of adverse health effects including decreased measures of pulmonary function and increases in reported symptoms such as headache, eye irritation and cough (US EPA, 1996)"*.<sup>(6)</sup> A WALL STREET JOURNAL article stated *"But another growing concern is that the chemical reactions caused by ozone could be leading to hazardous byproducts. A number of studies have shown that ozone can react with household chemicals and surfaces to produce harmful secondary chemicals"*.<sup>(7)</sup>

I understand Ms. Bearden has been in contact with Treye Thomas, PhD of the Consumer Products Safety Commission. Dr. Sanmi Areola, Toxicologist with Metro Public Health Department, knows Dr. Thomas and they have conferred on this issue.

In summary, based on the preponderance of evidence at this time, we do not recommend and, in fact, discourage the use of EAC units within the home and would likely support legislation against their use in the normal household.

Please contact me at (615) 340-5653 if you have questions or comments.

Sincerely,



G. Brent Hager, PhD, PE  
Director  
Environmental Health Services

cc: Dr. Sanmi Areola  
Metro Legal  
Metro Codes

**James and Sheila Bearden**

**From:** "Janice Nolen" <JNolen@lungusa.org>  
**To:** "James and Sheila Bearden" <beardenjs@comcast.net>; "Margaret Smith" <msmith@alatn.org>  
**Sent:** Wednesday, April 07, 2010 9:57 AM  
**Subject:** RE: Honeywell F300 Ozone Issues

Hello Sheila,

My sincere apologies for taking so long to respond to you, but it's my busiest period of the year.

We have worked hard and spent a lot of money to get Honeywell to pull products and messaging that references the American Lung Association, including sending multiple "cease and desist" letters. Our involvement in this is not finished.

Janice

Janice E. Nolen

Assistant Vice President

National Policy and Advocacy

American Lung Association

jnolen@LungUSA.org

1301 Pennsylvania Ave NW, Suite 800

Washington, DC 20004-1725

P 202-785-3355

C 202-486-0285

F 202-452-1805



Does Your State Make the Grade?  
**State of Tobacco Control 2009**

**From:** James and Sheila Bearden [mailto:beardenjs@comcast.net]  
**Sent:** Tuesday, March 30, 2010 11:06 PM  
**To:** Margaret Smith; Janice Nolen  
**Subject:** Honeywell F300 Ozone Issues

Janice,

I'm trusting that you remember my document from last year concerning the Honeywell F300 Electronic Air Cleaner and the problem with ozone emissions. Have you had the opportunity to talk with Honeywell about this and/or were you able to forward my document to a Honeywell representative or speak with someone at Honeywell? I still have health issues.

Sheila Bearden

----- Original Message -----

**From:** James and Sheila Bearden

**To:** jnolen@lungusa.org

**Cc:** Margaret Smith

**Sent:** Thursday, August 27, 2009 1:50 PM

**Subject:** ALA opinion of in duct EACs

## Hammond, Rocky

---

**From:** Sheila Bearden <beardenjs@comcast.net>  
**Sent:** Thursday, April 19, 2018 12:46 PM  
**To:** CPSC-OS  
**Subject:** EHC\_Emerging\_Issue-OzoneandIndoorAirChemistry (002).pdf  
**Attachments:** EHC\_Emerging\_Issue-OzoneandIndoorAirChemistry (002).pdf

Please also share this with the commissioners.

This is again evidence that the heating and air industry has been made aware of concerns about indoor ozone and indoor air chemistry. I have attached and "Emerging Issue" report that was distributed to the industry in 2011.

Thank you,  
Sheila Bearden

Email secured by Check Point

## Ozone and Indoor Chemistry

### What is the issue?

Recent research has found that outdoor ozone levels far lower than the current outdoor standard of 75 ppb (EPA, 2008) contribute to increased mortality as well as an increase in Building Related Illness (Bell et.al. 2006, Levy 2007, Apte et.al. 2007/2008). Levels as low as 20 ppb have been shown to increase mortality and statistical approaches suggest that "safe O<sub>3</sub> levels would be lower than 10 ppb" (Bell et.al. 2006). Both ozone and ozone reaction products have been implicated in adverse health impacts from exposure indoors (Weschler 2006, Wisthaler & Weschler 2007). Indoor ozone levels are typically 0.2-0.7 times outdoor levels (Weschler 2000) and vary roughly proportionally to air change rates from 0.5 to 10 per hour respectively and are even higher at high air change rates not uncommon in naturally ventilated residences and other buildings where indoor O<sub>3</sub> levels approach outdoor levels. People spend more than 90% of their time indoors where more than 50% of their exposure to ozone occurs, but the exposure to reaction products indoors may be an even more important health concern (Weschler, 2006). This research suggests that the introduction of ozone to indoor spaces should be reduced to ALARA (as low as reasonably achievable) levels.

Methods to decrease the concentration of ozone and its indoor by-products involve steps to limit the introduction of ozone into an occupied space, whether by internal emission, or entry from outdoors, as well as steps to reduce ozone reactants (such as terpenes) and by-products of ozone indoor chemistry, such as carbonyls, secondary organic aerosols (SOA), and ultrafine particles (UFP) (Singer et al, 2006; Morrison, 2008). The selection of surface materials for air-handling equipment, ductwork and interior surfaces can significantly influence ozone and ozone reaction product concentrations (Morrison et al, 1998; Kunkel 2010; Wang and Morrison, 2006).

### What action should be considered?

To minimize health impacts of ozone and associated by-products, the following actions should be considered (particularly for individuals and populations at high-risk for adverse consequences, such as infants, the elderly and those with chronic respiratory illnesses):

1. Remove ozone from outdoor air at the outdoor air intake, or as early in introduction to the occupied space as possible, using ozone removal technologies that do not result in by-product formation.
2. Minimize indoor ozone emissions by reducing the use of equipment that produces ozone (e.g. laser-based printers, and photocopiers, and some air cleaning technologies).
3. Minimize indoor ozone by filtering or exhausting the ozone produced by pertinent equipment.
4. Reduce concentrations of terpenes and other reactive organic compounds as well as carbonyls and other products of indoor ozone chemistry in indoor spaces through source reduction and gas phase removal equipment.
5. Use high efficiency particulate filters (e.g. MERV 13 or greater) to remove ozone reaction products in the form of SOA and UFP from outdoor and recirculated air (Fadeyi 2009)

## References:

- Apte M.G., I.S.H. Buchanan, and M.J. Mendell. 2007/2008. "Outdoor Ozone and Building Related Symptoms in the BASE Study," *Indoor Air* v. 18, no. 2. (also available at Lawrence Berkeley National Laboratory, Berkeley CA 94720, LBNL-62419 (available [www.lbl.gov](http://www.lbl.gov)).
- Bell, M. L., Peng, R.D., Cominici, F. (2006). "The exposure-Response Curve for Ozone and Risk of Mortality and the Adequacy of Current Ozone Regulations." *Environmental Health Perspectives* 114(4): 532-536.
- Corsi, R. L. (2006). Comment RR-07-1-4 Assessment of Maximum Ozone Emissions in Residential, Office, and School Buildings. CPSC Health Sciences Staff Report on the Work Product Resulting from CPSC Contract No. CPSC-S-04-1369, Assessing Potential Health Effects and Establishing Ozone Exposure Limits for Ozone generation Air Cleaners - Draft - September 26, 2006 CPSC: 21-75.
- EPA, 2008, National Ambient Air Quality Standards (NAAQS) <http://www.epa.gov/air/criteria.html>
- Fadeyi, M.O., Weschler, C.J., Tham, K.W. (2009). "The impact of recirculation, ventilation and filters on secondary organic aerosols generated by indoor chemistry." *Atmospheric Environment*, **43**: 3538-3547.
- Franklin, M., Schwartz, J. (2008). "The Impact of Secondary Particles on the Association between Ambient Ozone and Mortality." *Environmental Health Perspectives* 116(4): 453-458.
- Kunkel, D.A., Gall, E.T., Siegel, J.A., Novoselac, A, Morrison, G.C. and Corsi, R.G. (2010). "Passive reduction of human exposure to indoor ozone." *Building and Environment*, Volume 45, Issue 2:445-452.
- Levy, J. (2007). "Mortality Risks From Ozone Exposure." *Risk in Perspective* 15(2).
- Morrison, G. et al, (1998). Indoor Air Quality Impacts of Ventilation Ducts: Ozone Removal and Emissions of Volatile Organic Compounds. *J. Air & Waste Manage. Assoc.* 48:941-952
- Morrison, G. (2008). Interfacial Chemistry in Indoor Environments. *Environmental Science & Technology* 42 (10) 3495-3499. May 15, 2008
- Schwartz, J. (2008). "Ozone and Mortality - An update." *Risk in Perspective* 16(2).
- Singer, B. C.; et al. (2006) Indoor Secondary Pollutants from Cleaning Product and Air Freshener Use in the Presence of Ozone. *Atmos. Environ.* 40, 6696-6710.
- Trisch, E. W., Gent, J.F., Holford, T.R., Bealnger, K., Bracken, M.B., Beckett, W.S., Naeher, L., McSharry, J.E., and Leaderer, B.P. (2006). "Low-Level Ozone Exposure and Respiratory Symptoms in Infants." *Environmental Health Perspectives* 115(6): 911-916.
- Wang, H.; Morrison, G. C. (2006) Ozone-Initiated Secondary Emission Rates of Aldehydes from Indoor Surfaces in Four Homes. *Environ. Sci. Technol.*, 40, 5263-5268.
- Weschler, C. J., and Shields, H.C. (2000). "The influence of ventilation on reactions among indoor pollutants: modeling and experimental observations." *Indoor Air* 10: 92-100.
- Weschler, C.J. (2000). "Ozone in Indoor Environments: Concentration and Chemistry". *Indoor Air*, Volume 10, Number 4: 269-288.
- Weschler, C. J. (2006). "Ozone's Impact on Public Health: Contributions from Indoor Exposures to Ozone and Products of Ozone-Initiated Chemistry" *Environmental Health Perspectives* 114(10): 1489-1496.
- Wisthaler, A. and C. J. Weschler (2009). "Reactions of ozone with human skin lipids: Sources of carbonyls, dicarbonyls, and hydroxycarbonyls in indoor air." *Proceedings of the National Academy of Sciences*

*Note: Emerging Issue Reports are developed and approved by the ASHRAE Environmental Health Committee (EHC). The Ozone and Indoor Chemistry Emerging Issue Report was approved by EHC in January 2011.*

## Hammond, Rocky

---

**From:** Sheila Bearden <beardenjs@comcast.net>  
**Sent:** Thursday, April 19, 2018 3:17 PM  
**To:** CPSC-OS  
**Subject:** [Possibly Spam]: TRPA1 Mutation vs Sensitization

**Importance:** Low

Information to be included in consideration of the dangers of Electronic Air Cleaners

I asked the following question of a scientist, Greg Dussor, PhD, who is involved with the Pain Neurobiology Research Group at the University of Texas Science Center. Their laboratory is interested in, "the fundamental principles underlying neuronal plasticity leading to chronic pain." Here are my question and then his answers.

My questions –

Can one be TRPA1 sensitized and not have a TRPA1 gain-of-function mutation?

Can one have a negative IgE response to formaldehyde, patch testing on the back, and still have a robust TRPA1 inhalation response?

I have seen diagrams where TRP responses can go on to mediate IgE responses, but they aren't one-and-the-same, right?

Answers –

You can easily have a sensitized TRPA1 channel without a mutation. There is a long list of ways the channel can be modified by phosphorylation even though it is not mutated. This happens with all the TRPs (many other receptors as well). It's one of the main ways your pain sensing neurons can shift their thresholds so quickly. You can also have increased neuronal membrane expression of the channel. Either way, the effects of TRPA1 would be increased.

I think your second question is also possible. If you have a TRPA1 mutation, you're likely hypersensitive to TRPA1 activation across the body (likely, not absolutely). But if the channels are sensitized/upregulated without a mutation, this can certainly be location specific. Maybe it's the case they are sensitized in the neurons signaling from the airways, and in the meninges covering the brain, but not the area of the skin where the patch was. You don't have to be sensitized everywhere.

Sensitization of TRP channels is clearly not the same as an allergy. Yes, if you activate TRPs you will release substances from neurons that can degranulate mast cells, activate neutrophils and macrophages etc, and cause an immune reaction. But that's not the same as having an overabundance of antibodies to a particular allergen. I'm not sure the formaldehyde skin test is the best method to differentiate those two situations.

TRP activators are often lipophilic and can diffuse freely through membranes and tissues, so if you inhale them they can end up going beyond the lungs. Plus if sensory neurons are activated in one location, they can subsequently cause an increase in circulating cytokines/chemokines etc., and that can lead to sensitization of neurons in other locations, especially if they're just below threshold anyway. I wouldn't be surprised that inhaling TRP activators would lead to pain in other locations (e.g. headache, GI pain, etc.)

Ultimately it does not matter if I was born with a mutation and sensitivities or if I became sensitized because of the exposure. Either way, the EACs are responsible for my pain and suffering.

Again, thank you, and you will Dr. Dussor's information below.

Sheila

Greg Dussor, PhD  
Associate Professor  
Eugene McDermott Endowed Professor  
Behavioral and Brain Sciences, BSB-14  
The University of Texas at Dallas  
BSB 10.538  
800 W Campbell Rd.  
Richardson, TX 75080  
972-883-2385 (phone)  
972-883-2491 (fax)  
[gregory.dussor1@utdallas.edu](mailto:gregory.dussor1@utdallas.edu)  
<http://bbs.utdallas.edu/painneurosciencelab/>

Email secured by Check Point

## Hammond, Rocky

---

**From:** Sheila Bearden <beardenjs@comcast.net>  
**Sent:** Thursday, April 19, 2018 12:34 PM  
**To:** CPSC-OS  
**Subject:** [Possibly Spam]: Published by the U.S. Department of Commerce -- testing by ASHRAE ( American Society of Heating, Refrigerating, and Air-Conditioning Engineers)

**Importance:** Low

I am requesting that this be included with my previously emailed information regarding the dangers of Electronic Air Cleaners

Thank you,  
Sheila Bearden

This paper is significant for at least three reasons. First because it shows how that the heating and air industry has concerns about ozone initiated reactions and ozone concentrations. It is also significant because the testing was done at the Engineering Laboratory, National Institute of Standards and Technology 100 Bureau Drive Gaithersburg, MD 20899 and content submitted to an published by ASHRAE. You will better understand the cover page. I suppose the Engineering Laboratory falls under the authority of the U. S. Department of Commerce

The third and most reason that this paper is significant is that testing was done in an actual house. Look at the ppb of the EACs that they tested. Reading this paper, I was wrong about the situation being solved by adding carbon post filters. I've copied a few paragraphs below, but the entire paper is worth reading. [https://ws680.nist.gov/publication/get\\_pdf.cfm?pub\\_id=914097](https://ws680.nist.gov/publication/get_pdf.cfm?pub_id=914097)

### **Effectiveness of an In-Duct Electrostatic Precipitator in Nanoparticle Removal with Consideration of Ozone Emissions**

Donghyun Rim, PhD; Dustin Poppendieck, PhD; Lance A. Wallace, PhD; Andrew Persily

ABSTRACT Human exposure to ultrafine particles (UFP, < 100 nm) has been shown to have adverse health effects such as respiratory impacts and cardiovascular mortality. UFP concentrations can be elevated in occupied buildings due to prevalence of UFP sources within buildings such as combustion, heating elements, and electric motors, as well as entry with outdoor air. **In-duct electrostatic air filters** (ESP) have been an efficient particulate control device for reducing UFP concentrations (10 nm to 100 nm) in buildings, although they have the potential to increase indoor ozone concentrations due to corona discharge. The objective of the present study is to demonstrate a procedure for investigating the reduction of ultrafine particles, especially particle sizes < 10 nm, and the increase in ozone concentrations due to the use of residential ESP **filters in a realistic residential installation**. Experiments monitored size-resolved UFP levels ranging from 3 nm to 100 nm and ozone concentrations in a manufactured test house. An in-duct air cleaner was installed and operated in the central air handling unit of the house. The experiments involved two filter operating modes: ESP on and ESP off. The results indicate that for particles sized 8.2 nm to 9.8 nm the removal efficiency for the tested ESPs was less than 10 %. Adding a media filter in series with the energized filter increased removal efficiencies to 25 %, suggesting that surface area is important to removal for particles < 10 nm. **Continuous operation of the tested ESPs raised indoor ozone concentrations up to six times higher than outdoor concentrations**. When

using three different commercial filters containing activated carbon downstream of the installed ESP, the overall effective ozone generation rate was reduced by 25 % for one filter and not reduced by two other filters.

Some studies have shown ESPs generate ozone at significant levels (Boelter and Davidson 1997, ASHRAE 2012), while other studies have measured low ozone concentration or no ozone generation (Bowser and Fugler et. al. 2002, Wargocki et. al. 2008). The generation of ozone from ESPs can be problematic in and of itself, as well as due to secondary ozone reactions can occur in the residence producing gases and particles that affect human health (Weschler 2004). Figure 2 shows examples of ozone concentration profiles observed with the ESP filter operating and the various carbon filters installed. The ozone concentration increased by a maximum of 70 ppbv after continuous operation of ESP filter in the test house for about 18 h (Figure 2a). For a frame of reference, the U. S. EPA National Ambient Air Quality Standard 8-hour standard for outdoor air is currently 75 ppbv (U.S. EPA 2005). Ozone can be removed by reaction with activated carbon (Kunkel et. al. 2010). Three different commercial brands of media filters containing activated carbon were tested for their ability to remove ESP generated ozone. The filters varied in their construction as well as the mass of embedded activated carbon (Table 3). Figure 2b shows that a commercially available filter containing activated carbon removed on average 39 % of the ozone. While not shown in the figure, the filter performance degraded to about 26 % removal after 100 hours of operation. Among the three activated carbon filters tested, the filter shown in Figure 2b (Filter 1) was the only one that removed a substantial amount of ozone. The average whole house deposition value of ozone in the test house, due to losses associated with ductwork and surfaces in the house, was 376 m<sup>3</sup>/h (RSD 23 %).

Email secured by Check Point

## Hammond, Rocky

---

**From:** Sheila Bearden <beardenjs@comcast.net>  
**Sent:** Thursday, April 19, 2018 12:56 PM  
**To:** CPSC-OS  
**Subject:** Meents\_Agonist sensitization of TRPA1\_JPhysiol\_Preprint (003).pdf  
**Attachments:** Meents\_Agonist sensitisation of TRPA1\_JPhysiol\_Preprint (003).pdf

Please add this to information concerning the dangers of Electronic Air Cleaners.

The attached paper is important because it tells us that sensitization of TRPA1 is caused by "long-term exposure to harmful stimuli."

In summary, we have shown that prolonged agonist application sensitizes the TRPA1 channel both in nociceptive neurons and when heterologously expressed and that this slow process is agonist-driven and is intrinsic to the channel itself. Sensitization is accompanied by a slowly developing shift of voltage-dependent activation towards more negative membrane potentials and thus represents a slow gain-of-function. Agonist-induced sensitization of TRPA1 may provide a mechanism for the detection of long-term exposure to harmful stimuli, which would be especially valuable in the airways, where many irritants activate TRPA1.

Email secured by Check Point

## Hammond, Rocky

---

**From:** Sheila Bearden <beardenjs@comcast.net>  
**Sent:** Thursday, April 19, 2018 1:45 PM  
**To:** CPSC-OS  
**Subject:** Dangers of indoor ozone TRPA1 and TRPV1

Additional information concerning the dangers of Electronic Air Cleaners.

The chain of events was like this – Dr. David Julius, by cloning TRPV1, determined how our sensory nerves respond to irritants. Then Bessac and Jordt, while in the Julius Lab, discovered TRPA1. TRPA1 is known to trigger pain and inflammation. It was Taylor-Clark who discovered that ozone activated TRPA1. It took me quite a while to sort everything out in my mind, so I hope that this is helpful.

Scientists discovered that multiple irritants activate the same TRP channels, that TRP channels can be sensitized and that there is a synergy in multiple TRP channels being activated simultaneously.

The first article below is one of the easiest to understand. The second is by the same author, Sven-Eric Jordt. He, while in David Julius lab, discovered TRPA1. Both articles mention MCS or Multiple Chemical Sensitivity. One receptor activated my multiple irritants. I recommend reading both articles in total.

### **Breathtaking TRP Channels: TRPA1 and TRPV1 in Airway Chemosensation and Reflex Control**

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2735846/>

### **Trigeminal TRPs and the scent of pain**

[Sven-Eric Jordt](#)

A new study by Kunkler et al. in this issue of Pain sheds light on a potential mechanism through which irritants can trigger headache [13]. Using laser Doppler analysis the authors show that application of chemical irritants to the nasal mucosa of rats increases blood flow in meningeal vessels in the dura. The irritants used by the authors are agonists of the sensory neuronal transient receptor potential ion channel, TRPA1, which was recently identified as a target for a broad spectrum of environmental irritants [3]. These include acrolein and croton aldehyde, the major electrophilic irritants in cigarette smoke, oxidants such as chlorine and ozone, formaldehyde, tear gas agents and industrial chemicals. If inhaled, these chemicals activate TRPA1 channels in trigeminal nerve endings in airway mucosa, leading to irritation and pain, as well as sneezing, cough and glandular secretions. Studies investigating the role of TRPA1 in a mouse model of asthma found that the ion channel promotes the local allergic response in the airways, and is essential for the irritant-induced release of calcitonin gene-related peptide (CGRP) from sensory nerve endings [4]. CGRP is an essential mediator of neurogenic inflammation, causing vasodilation and serving as a chemotactic signal for inflammatory immune cells.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3053048/>

This article is more complex but ends by saying, “ Thus, ozone is not an indiscriminate neuronal activator, but rather it potently and selectively activates a subset of airway C-fibres by directly stimulating TRPA1.”

## **Ozone activates airway nerves via the selective stimulation of TRPA1 ion channels**

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2825608/>

The next two papers are from the University of Kentucky and Dr. Lee was involved with both. They have some similarities, with the second one being the more recent. The papers speak of the synergy of TRPA1 and TRPV1 being activated at the same time. Ozone and Formaldehyde activate TRPA1, but remember that an ozone-initiated reaction generates acids which activate TRPV1.

### **Interaction between TRPA1 and TRPV1: Synergy on pulmonary sensory nerves.**

<https://www.ncbi.nlm.nih.gov/pubmed/26283426>

### **Role of calcium ions in the positive interaction between TRPA1 and TRPV1 channels in bronchopulmonary sensory neurons**

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4469923/>

This is a good paper because it names ozone and some of the many other TRPA1 activators.

### **TRPA1 and other TRP channels in migraine**

A large amount of evidence shows that TRPA1 plays a key role in the detection of pungent or irritant compounds, including principles contained in different spicy foods, such as allyl isothiocyanate (mustard oil) in horseradish [33], allicin and diallyldisulfide in garlic [34], and cinnamaldehyde in cinnamon [35]. Gingerol (in ginger), eugenol (in cloves), methyl salicylate (in wintergreen), carvacrol (in oregano), thymol (in thyme and oregano) [36], are also able to gate TRPA1. In addition, environmental irritants and industry pollutants, such as acetaldehyde, formalin, hydrogen peroxide, hypochlorite, isocyanates, ozone, carbon dioxide, ultraviolet light, and acrolein (a highly reactive  $\alpha,\beta$ -unsaturated aldehyde present in tear gas, cigarette smoke, smoke from burning vegetation, and vehicle exhaust), have been recognized as TRPA1 activators [37-45].

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3844362/>

A good paper about low-level exposures

### **The Exposure–Response Curve for Ozone and Risk of Mortality and the Adequacy of Current Ozone Regulations**

#### **Discussion**

In summary, our nationwide study provides strong and consistent evidence that daily changes in ambient O<sub>3</sub> exposure are linked to premature mortality, even at very low pollution levels, including an idealized scenario of complete adherence to current O<sub>3</sub> regulations. We also found robust evidence of this relationship between O<sub>3</sub> exposure and mortality when we used data that included only O<sub>3</sub> levels nearing background concentrations, which typically range from 10 to 25 ppb (Fiore et al. 2003, 2004). Therefore, any anthropogenic contribution to ambient O<sub>3</sub>, however slight, still presents an increased risk for premature mortality.

<http://infohouse.p2ric.org/ref/52/51915.pdf>

This is also an important paper because it shows some of the many TRPA1 activators. I made a mistake in the last email that I sent to you earlier. I said that camphor activates TRPA1, but it actually activates TRPV1. I am both TRPA1 and TRPV1 sensitized. An ozone-initiated reaction generates both TRPA1 and TRPV1 irritants. Not only that, and they are co-expressed on cell surfaces, so an upregulation of one can cause the upregulation of the other. My mouth also blistered like this after eating something with a small amount of turmeric which is a TRPA1 activator.

### **The role of flavor and fragrance chemicals in TRPA1 (transient receptor potential cation channel, member A1) activity associated with allergies**

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4404258/>

This is a good summary by Magdalene Moran (and others) with Hydra Biosciences. Magdalene was kind enough to send me the graph that I supplied to the you about the increased interest in TRP channels. This from a pharmaceutical perspective but has useful information.

### **Transient receptor potential channels as therapeutic targets**

[http://netrix.mta.nsd.sztaki.hu/data/cikk/12/86/81/cikk\\_128681/Biro\\_NRDD\\_Review\\_2011.pdf](http://netrix.mta.nsd.sztaki.hu/data/cikk/12/86/81/cikk_128681/Biro_NRDD_Review_2011.pdf)

Email secured by Check Point