Public Hearing
Commission Agenda and Priorities
FY 2018 and/or FY 2019
July 26, 2017
Oral Presentations and Written Comments
July 12, 2017

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 2018 and FY 2019”

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

CPSIA Implementation

Mandatory Standards
Through the implementation of the Consumer Product Safety Improvement Act (CPSIA) and Danny’s Law, the CPSC has put much time and energy into developing mandatory standards for durable infant and toddler products. Staff has been thorough and determined to develop strong standards that address all known hazards as much as possible. Currently, the CPSC has a mandatory standard for 16 of the 26 durable infant and toddler products currently planned for standards, including new standards for sling carriers that will be effective in January 2018. We urge CPSC to continue to prioritize this work, giving staff the time and resources they need to develop strong standards that will reduce injuries and deaths from nursery products.

We were dismayed to see five of these products – Changing Products, Folding Chairs, Gates, High Chairs and Stationary Activity Centers fall off the list headed for final rules or proposed rules and be delegated back to Data Analysis and Review in the Mid-year review last month. While CPSC has worked with the ASTM subcommittees on developing Section 104 rules and it has generally been an effective way to proceed, nothing in the regulations requires CPSC to delay enacting these protections while they wait for ASTM to act. In fact, it is the certitude of a strong mandatory standard that keeps ASTM moving forward on their own rules. Particularly disheartening is the delay in the high chair rule.

Eleven thousand children under 5 are rushed to emergency rooms each year from injuries related to high chairs – and that doesn’t include those taken to urgent care facilities (an ever increasing percentage of injuries are treated in these facilities),
their family doctor or treated at home. This standard should be given highest priority, not moved to the back of line.

While CPSC took action to add Crib Bumper Pads to the Section 104 rules and begin rulemaking, we would prefer to see a ban of padded crib bumper pads. The American Academy of Pediatrics has a strong recommendation against using crib bumper pads. The amount of time and money that will go into designing a test method for suffocation risk from these unnecessary products would be better spent joining Maryland, Ohio, the city of Chicago, and most state child care regulations in the country and banning the sale of padded bumper pads. A standard that doesn’t address the risk and gives a stamp of safety to an inherently unsafe product is more dangerous than no standard. We would ask that if a mandatory standard is developed that it prohibit padded bumpers. As more mesh liners enter the market, if they are exempted from the prohibition, the CPSC should include performance requirements that assure their safety. While there is no evidence of a suffocation hazard currently with these products, data should be closely watched.

Four commissioners wrote a letter urging consumers not to use crib bumpers. We wish it had gone farther and urged retailers to stop selling them – as long as a product is on store shelves, next to all the other baby items, it is unreasonable to assume parents will intuitively know it is unsafe.

I’d also like to address the list of products included in Section 104. This list was originally created in 2001, and updated in 2008 when CPSC began work on the CPSIA. Other products such as slings and Infant Inclined Sleep Products were added later as incidents pointed to the need for a safety standard. We believe that the list should always seek to include all infant and toddler durable products. Parents will assume that any juvenile product they buy to care for their infant or toddler will be tested for safety to a strong standard. Just as standards evolve as new designs introduce new potential hazards, the group of products covered under Danny’s Law should evolve as new products enter the market. 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 product registration cards in a conspicuous location and a way to register online. The program has been in place since 2010. The information gathered must only be used to notify the consumer in the event of a recall or safety notice. We were dismayed to learn recently that at least one major brand, has violated that, sending a consumer 8 marketing emails in the two months after she registered. Because of Section 6(b), we do not know how often this happens and if any action is ever taken against companies who violate the law. The benefit of direct notification is so important to effective recalls: violations such as this should be taken seriously. Consumers are already biased to believe that companies will play fast and loose with their personal information – this confirmation of a company doing just that with this legally protected information – will confirm that bias and have a direct negative impact on product registration numbers. Speaking of numbers – it would be very helpful to see public information on the numbers of products being registered, the percent of product owners in a recall who can be notified directly because of the product registration cards and if those response rates are higher than general public notification rates. We recommend CPSC prioritize increasing use of product registration and stopping violations.
SaferProducts.gov
The CPSIA also charged the CPSC to create a product database for consumers and manufacturers. SaferProducts.gov is the result of this mandate. Tens of thousands of consumers have filed reports with the database and an average of 800,000 visit each year to review product reports that provide key information for research and buying decisions. It is an invaluable resource for safety, and should be marketed widely to increase its usefulness. The CPSC should prioritize using low-cost efforts to increase the database’s visibility and use.

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

While SaferProducts.gov was set up to require public posting of consumer reports of product incidents and injuries, repealing 6(b) would allow many other reports and safety issues to be made public. 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. We urge the CPSC to continue to look for ways to weaken section 6(b)’s impact on public information and safety and to join us in calling on Congress to consider a repeal.

Safe Sleep Environments
Among children’s product safety issues, a safe sleep environment is an overriding concern to KID. Suffocation - most of it in a sleeping environment - is the leading cause of unintentional death in infants. Danny Keysar died in a recalled portable crib. 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. I know that the CPSC also prioritizes the safety of these products. The number of sleep related deaths in infants is too high and is not showing signs of decreasing – it is a public health emergency.

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

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

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

In 2016, KID worked with Shane’s Foundation to review data and testing results for furniture stability. Working with UL laboratory technicians at the UL Furniture Center of Excellence in Holland, MI, KID conducted performance tests on a sample of 19 dressers and chests. Only nine of the 19 units passed performance tests based on the current tip-over safety standard, ASTM F2057, and only two of the units passed all of the tests. Unsafe furniture and TVs result in frequent tip over accidents; in fact, every 30 minutes in the United States, a child is rushed to the emergency room as a result of falling furniture and TVs. These incidents are preventable. KID recommends CPSC take the following actions:

1. #AnchorIt, a safety campaign launched by the CPSC, and other educational efforts should be expanded to reach families today with the need to anchor furniture with a tip restraint. In addition, further research into tip restraints that are easier to attach, and do not require tools, should be encouraged to increase the likelihood that consumers will use them.
2. Furniture manufacturers should be encouraged to look to design solutions to tipping furniture.
3. A strong standard to prevent furniture tip-over should include additions to the current standard that mimic real world use such as a carpet-like surface for testing, additional weight used in testing to protect children up to and including age 5 using the most recent anthropometric data. And a test to assure that furniture would remain stable when all drawers are filled to capacity with clothing, as KID did in its tests.

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

Because of their potential for choking, pacifiers were one of the only children’s products required to meet a CPSC standard prior to the passage of Danny’s Law in 2008. Yet, with continuing reports and recalls, we ask CPSC to begin a review of the pacifier standard and compliance.
Ingestion Hazards
Parents are usually well aware of choking hazards. Ingestion hazards are less understood but present clear dangers. These include button cell batteries, small powerful magnets, liquid nicotine and certain polymer balls that expand with fluid. Serious internal injuries, poisoning and death can be the result. In addition, as wearable technology and smart products multiply, there could be emerging hazards we have yet to identify. The CPSC should encourage manufacturers to use technologies that eliminate or further ameliorate the ingestion risk of these hazards.

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

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.

Recall Effectiveness
All the work the CPSC does to investigate, plan and announce recalls is wasted effort if the recall is not effective. We have to lose the mentality that recalling a product is an end goal. Getting it fixed so it is safe to use or back from the consumer is the end goal. KID reviews children’s product recalls each year. As part of that report, we look at the recall effectiveness numbers we are able to obtain through Freedom of Information (FOIA) requests for monthly corrective action plan reports.

KID’s most recent recall report, which evaluates recall effectiveness in 2015, shows that just 10% of recalled products in the hands of consumers are corrected or destroyed. Though this is a significant improvement from 2014, when just 1% of recalled products were accounted for, these numbers are far too low. To be sure, it is not a complete dataset. Some of the recalls have not reports filed. Other information is redacted. Some reports were never received. I am sure the CPSC can provide a much clearer picture of the numbers from the redacted or missing copies if it were not for Section 6(b).

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

Benchmark requirements for notification measures such as using registration card data and social media and outcome measures such as capture rate should be developed and enforced. Consumers also deserve to know how effective companies are at retrieving dangerous products. KID continues to recommend an annual report to Congress on all open recalls with the current capture rate and action taken outlined. That simple step will encourage manufacturers to improve their own numbers in those reports.
I encourage the CPSC to continue efforts to improve both the corrective action process and the process of maintaining and sharing that data. As new standards, stronger compliance programs and other actions by manufacturers, CPSC, retailers and others ensures fewer recalls, we should make sure those which are announced, are as effective as possible. We look forward to the CPSC’s workshop on recall effectiveness to hear other innovative ideas for getting these already identified as dangerous products out of homes.

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.
August 2, 2017

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

Additional Comments of Nancy Cowles, Executive Director
Kids In Danger and Rachel Weintraub, Legislative Director and General Counsel,
Consumer Federation of America
To the U.S Consumer Product Safety Commission on
“Agenda and Priorities FY 2018 and FY 2019”

Thank you for the opportunity to submit additional comments on the CPSC’s agenda and priorities following the hearing. Our organizations, Kids In Danger (KID) and Consumer Federation of America (CFA) are providing these joint comments.

CPSIA Implementation

Section 104 Rules

It is our strong belief that the intention of the drafters and the legislation itself is that Section 104 of the CPSIA is an ongoing rulemaking process to provide additional protection for the most vulnerable consumers: infants and toddlers, and not restricted in any way to the list provided in the legislation. We foresee that as new products enter the market or hazards are discovered with products already on the market but without a standard, the process would be used to assure parents that all durable infant and toddler products are tested for safety to a strong standard.

SaferProducts.gov

Tens of thousands of consumers have filed reports at SaferProducts.gov and an average of 800,000 visit each year to review product reports that provide key information for research and buying decisions. While the number is impressive, it is a small fraction of consumers making buying decisions or involved in incidents with consumer products. We have a few concrete suggestions to improve the database and increase its usage.

First, while CPSC did add an “Associated Recall” field in the reports, it is not populated accurately, leaving many recalled products unmarked as such in the database. CPSC should work with programmers to automate this process so it accurately reflects recalls on incident reports in the database.

Secondly, SaferProducts.gov is an invaluable resource for safety, and should be marketed widely to increase its usefulness. As CPSC’s presence on social media
grows, it should be used to encourage consumers to use the database both for product research and for reporting incidents. Simple reports or graphics highlighting data from the database would be effective in driving more traffic and usage. The CPSC should prioritize using low-cost efforts to increase the database's visibility and use.

**Monthly Correction Action Plan Report Publishing**
KID and CFA are pleased to learn of the agency’s goal to publish monthly corrective action plan reports online. We would urge you to publish the full reports without redaction as any redaction reduces the usefulness of the data in improving recall effectiveness.

**Emerging Hazards: Fidget Spinners**
There have been media reports of injuries involving fidget spinners—the newest craze for many children and a frequent item in birthday party goody bags. Fidget spinners are very likely to be dropped multiple times and can break into smaller pieces. While they are no more hazardous than other toys that have small parts, they should be held to the same standard—tested to F963 and other toy requirements at CPSC.

**Safe Sleep Environments**
Baby boxes, cardboard sleeping environments for babies, were raised by the commissioners. KID is working on the ASTM task group looking for ways to cover this product under the Bassinet standard to at least set minimum safety standards. However, it is not a panacea for the infant mortality we see in this country. In fact, the product is often not used for sleeping but for storage. Fewer than half the babies in Finland ever spend any time in the boxes, and those that do, use is limited. Given that the cost is similar to a much more sturdy play yard that lasts up through the high risk first year, it is not the best option for safety. There is also the privacy concern of what the company that makes the product is doing with the personal data of those given the box and the liability waiver that some families are asked to sign. Here is a link to a recent review of the boxes.
http://www.babybargains.com/baby-box-review-unsanitary-unsafe-uncertified/

**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.
Chuck Samuels

Association of Home Appliance Manufacturers
July 12, 2017

Via Email

Todd A. Stevenson
Office of the Secretary
U.S. Consumer Product Safety Commission
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Re: Agenda and Priorities FY 2018 and/or 2019

Dear Mr. Stevenson:

Charles Samuels will make an oral presentation on behalf of the Association of Home Appliance Manufacturers (AHAM) during the Consumer Product Safety Commission’s (CPSC or Commission) July 26, 2017, public hearing on the Commission’s agenda and priorities for fiscal year 2018 and/or 2019. Per the requirements of the June 13, 2017, Federal Register Notice, AHAM submits the following written text summarizing the oral presentation Mr. Samuels will make on July 26, 2017.

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 five 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 July 26 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 that commitment and 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 2018/2019. 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. Despite our successful cooperative work, we see room for improvement through joint, or at least coordinated, research—where both CPSC and AHAM come to the table with a common goal and funding. 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 July 26, 2017, hearing on the Commission’s agenda and priorities for fiscal year 2018 and/or 2019 and would be glad to further discuss these matters with you should you so request.

Respectfully submitted,

Jennifer Cleary
Senior Director, Regulatory Affairs
Diana Zuckerman, Ph.D., President
National Center for Health Research
The National Center for Health Research is a nonprofit research center staffed by scientists, medical professionals, and health experts who analyze and review research on a range of health issues. Thank you for the opportunity to share our views concerning the Consumer Product Safety Commission’s (CPSC) priorities for fiscal year 2018 and 2019. We respect the essential role of the CPSC, as well as the challenges you face in selecting the most important priorities.

Two priorities that are clearly consistent with CPSC priorities are the safety of children’s products. We are very concerned about exposures to phthalates in children’s toys and other products as well as endocrine-disrupting chemicals and other safety concerns related to recycled tire crumb rubber.

The CPSC has been a champion for children with its careful analysis of phthalates in toys and products for children under 3 years of age. As you know, phthalates are also in other products that pregnant women and children are frequently exposed to. Through dust and other means, phthalates migrate from products into our environment and bodies. Multiple phthalate metabolites are detectable in nearly all people in the U.S. Many phthalates are endocrine disruptors that can have long-term effects on our health and children’s development.

Our Center was instrumental in shaping the law resulting in permanent and temporary bans on six phthalates in children’s toys and child care articles. However, these bans need to be expanded. Over 2 years ago, CPSC proposed the rule “Prohibition of Children’s Toys and Child Care Articles Containing Specified Phthalates” following the Chronic Hazard Advisory Panel (CHAP). This rule is absolutely essential in providing additional protections for children.

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

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

It is also important for CPSC to expand its work on phthalates to include products that can cause prenatal exposures as well as those that can harm older children and other vulnerable adults.
Phthalate exposure has been found to increase risk for early puberty and problems with reproduction. This exposure also affects pregnant and breastfeeding women and thus their children, which can affect brain and reproductive system. Phthalates in household dust can be extremely harmful regardless of what products it comes from.

Artificial turf made with recycled tire crumb rubber raises similar issues because it is widely used and can release chemicals that affect the health of children of all ages, pregnant women, and other adults. Artificial turf is currently used on more than 12,000 athletic fields and numerous playgrounds in the U.S. and most parents are unaware of the risks it poses.

Scientific evidence suggests that crumb rubber poses potential safety hazards when used on playground and playing field surfaces. Recycled tire rubber includes phthalates, polycyclic aromatic hydrocarbons (PAHs), volatile organic compounds (VOCs), heavy metals, and other chemicals known or suspected to cause harmful health effects. In addition to disrupting hormones, some PAHs may increase a person’s chance of developing cancer. While one time or sporadic exposures are unlikely to cause long-term harm, repeated exposures over years, especially during critical developmental periods clearly raise the likelihood of harm.

Artificial turf made with crumb rubber products can also cause short-term harms. It generates dust which may exacerbate asthma for children. These products heat up much more than ambient temperature, which can cause heat stress and burns. In addition, some studies have indicated increased risk for joint injuries and mild traumatic brain injury. In other words, we can conclude that grass is a relatively safe alternative. We can’t say that of artificial turf and crumb rubber.

As is often the case when researchers are paid by those with conflicts of interest, some studies suggest that the risk is minimal. However, the studies that are more reassuring do not comprehensively evaluate health risks from exposure to recycled tire crumb material. In addition, many studies of air quality pertaining to crumb rubber and similar products use stationary measures, while particulate matter becomes airborne during activity, so these measurements may not accurately reflect exposures during play activities. Our conclusion from the research is that definitive studies of the harm caused by crumb rubber products are very difficult to conduct, but there are clear reasons to be concerned about children being harmed by them.

We are encouraged that the CPSC is working with other federal agencies to investigate the safety of crumb rubber on playgrounds and playing fields.

However, we strongly urge you to provide warnings to families and athletes as soon as possible. The public has limited access to information about the chemicals that make up these products, which can affect our health and that of our children. All Americans rely on the CPSC to protect us and our children from unsafe products.

In summary, we strongly urge the CPSC to consider our views as it finalizes the proposed rule on phthalates in children’s toys and child care articles, and consider how these rules could be expanded to cover other products that cause exposure.


William Wallace
Consumers Union
Written Comments of Consumers Union to the U.S. Consumer Product Safety Commission on “Agenda and Priorities FY 2018 and/or 2019”
Submitted to the Office of the Secretary: July 12, 2017
Presented by William C. Wallace, Policy Analyst

On behalf of Consumers Union, the policy and mobilization arm of Consumer Reports,¹ thank you for the opportunity to testify about the CPSC’s agenda and priorities. Consumer Reports is an independent, nonprofit organization that works side by side with consumers to create a fairer, safer, and healthier world. We appreciate the chance to present our views to you on the Commission’s agenda and priorities for the next two fiscal years.

Throughout CR-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. As our organization evolves to account for a new media landscape, new ways to interact with consumers, and new mechanisms for effecting change, we have bolstered our capabilities in recent months through major staff additions—including new senior leaders on policy advocacy, grassroots mobilization, and scientific integrity, and a new director of product safety. We also have developed an improved ability to line up activities across our organization to support policy and marketplace goals that serve consumers’ interests.

With this talented group joining our existing team of experts, we at CR-CU are well positioned to marshal our organization’s diverse capabilities for meaningful consumer impact. 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 several topic areas in the following comments that we hope the agency will emphasize in fiscal years 2018 and 2019. We determined these areas through consideration of numerous factors, including our analysis of injury data, the

¹ As the world’s largest independent product-testing organization, Consumer Reports uses its more than 50 labs, auto test center, and survey research center to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million subscribers to its magazine, website, and other publications.
Home hazards

We urge the CPSC to prioritize several hazards that consumers can and do encounter around their home—or, in the case of some electronics, in their pocket—that are “hidden,” or that may be unknown or poorly understood while still posing a substantial risk.

Furniture and TV tip-overs

We appreciate the agency’s work to improve public awareness of the hazard from furniture and television tip-overs. This includes the agency’s excellent “Anchor It!” campaign to encourage parents and caregivers to securely anchor furniture and TVs. However, the risk of injury or death to young children remains significant.\(^2\) With approximately 33,100 emergency department-treated injuries and 489 fatalities per year associated with tip-overs,\(^3\) and a child injured every 24 minutes, on average, as a result of a TV or furniture tip-over incident,\(^4\) the Commission should use every tool at its disposal to ensure hazardous products are addressed in a manner that eliminates known risks.

We also look forward to working with the CPSC, our non-profit and public health partners, and all stakeholders to improve the voluntary industry standards covering the safety of clothing storage units. We are active members of the ASTM subcommittee F15.42 on furniture safety, and are exploring the best ways to evaluate these products. We have pressed for a stronger standard and have called on manufacturers to take more meaningful actions to improve the stability of their products—but we have not seen the kind of urgency and industry-wide accountability that consumers need. Accordingly, in the coming months, we plan to intensify our efforts related to tip-over hazards.

Carbon monoxide and smoke alarms

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

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alarms were present but failed to operate.\textsuperscript{5} 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.\textsuperscript{6}

Consumer Reports stresses the importance of installing and maintaining smoke and CO alarms, and looks forward to continuing to work with the CPSC to reduce deaths and injuries from fires and carbon monoxide poisoning in the home. Our most recent buying guide and ratings on these alarms—released online in August 2016—offers consumers comparative information about different products that we tested.\textsuperscript{7} Additionally, in March 2017, Consumer Reports named three CO alarms purchased on Amazon and eBay as “Don’t Buy: Safety Risk” products because they failed critical performance tests and were not certified to meet the UL carbon monoxide alarm standard.\textsuperscript{8} We reported our findings to the CPSC and to both retailers, which removed the products from their websites.

\textit{Liquid laundry packets}

The safety of liquid laundry detergent packets remains a significant problem—including, as a result of recent investigative work by Consumer Reports, the risks to adults with dementia.\textsuperscript{9} With regard to the risks to young children,\textsuperscript{10} 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 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 we recently extended this recommendation to households with cognitively-impaired adults.

\textit{Window covering cords}


\textsuperscript{6} CDC, Quick Stats: Number of Deaths Resulting from Unintentional Carbon Monoxide Poisoning (online at: www.cdc.gov/mmwr/volumes/66/wr/mm6608a9.htm).


Efforts to address the risk of injury to young children from hazardous, accessible window covering cords remain inadequate. On average, one child dies every month in an incident associated with this hazard, adding up to hundreds of child fatalities in the more than 30 years that the problem has been well understood. To prevent future tragedies, the CPSC should develop a mandatory standard to eliminate the risk of strangulation, and should propose such a rule without delay. In May 2013, we and eight other groups petitioned the CPSC to promulgate a mandatory safety standard for window coverings. We are glad the Commission has advanced the petition since that time, and urge it to keep moving forward.

Battery and electronics system safety

In the second half of 2016 alone, the CPSC recalled more than 2.5 million units due to lithium-ion battery fire hazards, nearly two million of which were Samsung Galaxy Note 7 smartphones. In early September 2016, Consumer Reports had called for Samsung to officially recall the Galaxy Note 7 after we learned that defective products were still being sold in some retail outlets even after the company announced it would cease all sales. In the following weeks, Samsung and the CPSC officially announced the recall of all the phones.

In light of the problems with Samsung Galaxy Note 7 phones and other recent safety issues involving the electrical systems of other products, such as hoverboards, we are concerned about the continued potential fire hazards of lithium-ion batteries. We urge the CPSC to continue its important research on battery safety and continue urging manufacturers to build safe electrical systems that meet effective standards.

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

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11 CPSC, "Window Covering Cords Information Center" (online at: www.cpsc.gov/Safety-Education/Safety-Education-Centers/Window-Covering).
14 Consumers Union calculations based on CPSC Recall List (online at: www.cpsc.gov/Recalls).
15 See “Samsung Should Officially Recall the Galaxy Note 7,” Consumer Reports (Sept. 2, 2016) (online at: www.consumerreports.org/smartphones/consumer-reports-samsung-should-officially-recall-galaxy-note7/).
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.\textsuperscript{18} 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.

**High-powered magnet sets**

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.\textsuperscript{19} 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.

**Floor slip injuries**

CPSC staff has estimated that between 2012 and 2014, there were nearly 570,000 emergency department-treated injuries and 197 fatalities that occurred due to accidental slips and falls, with older Americans being the most at risk.\textsuperscript{20} While we recognize that the CPSC chose not to move forward on a recent petition for rulemaking related to disclosure of slip resistance for flooring, we look forward to working with the agency to determine effective approaches for reducing slip-and-fall injuries.

**Outdoor products**

Consistent with our home improvement testing program and frequent coverage of outdoor recreation, Consumer Reports dedicates significant attention to the safety of consumer products that are intended for outdoor use. There are several of these products whose hazards merit special emphasis from the Commission in the next two fiscal years.

**Portable generators**

We appreciate the 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,\textsuperscript{21} we agree with the Commission that performance requirements are needed.


\textsuperscript{20} CPSC, Briefing package on Petition CP 16-1 (Dec. 7, 2016) (online at: www.cpsc.gov/content/petition-cp-16-1-labeling-requirements-regarding-slip-resistance-of-floor-coverings).

Consumer Reports periodically tests and rates generators, including portable generators, and is exploring potential changes to the testing to account for portable generators’ carbon monoxide emissions. We also recognize, however, that effective safety standards are those that apply across the marketplace.

Accordingly—and especially given the inadequacy of current voluntary standards—we support the CPSC’s proposed rule, and urge the Commission to keep moving forward on its development of a mandatory safety standard. In addition to limiting CO emissions in products covered by the rule, the agency should consider the potential role of a shutoff mechanism as a failsafe. A comprehensive CO safety standard would include both a prevention-based approach—through emissions reductions—as well as a detection system that can shut down the generator when the CO emissions level exceeds a set limit. We look forward to continuing to work together with both the CPSC and industry to achieve changes that would protect consumers from harm.

**Pressure washers**

Injuries resulting from pressure washers remain a significant risk, as scrutinized in a Consumer Reports story published in March 2016. Our 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. Due to an extreme potential risk of laceration, we are no longer recommending pressure washers that come with nozzles that produce sprays of less than 15 degrees, and are asking manufacturers to stop including tips and settings that produce streams finer than 15 degrees. The CPSC should consider making 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 head injuries by up to 50%

Consumer Reports’ most recent story on bike helmets, which included updated ratings of numerous products, outlined how biking may present a greater risk of head injury to consumers

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than is commonly understood. 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.

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. The CPSC rightly recognizes pool safety as a critical part of its current portfolio, and the subject should remain a priority as long as injuries and deaths remain elevated.

Drones

Consumer drones are selling at an increasingly fast pace. As these products reach the market, some will inevitably contain safety defects, as a GoPro model did in November 2016. No federal agency—neither the CPSC nor the Federal Aviation Administration (FAA)—wielded sufficient oversight of that recall. To ensure that product safety issues related to drones are prevented to the greatest extent possible and resolved effectively when they do occur, the CPSC should be playing a role. The agency has too much relevant expertise not to be involved when product safety hazards emerge that involve drones. While 15 U.S.C. 2052(a)(5)(F) excludes aircraft from the definition of “consumer product,” we have urged Congress to clarify agency roles. If the FAA is not going to oversee drones adequately from a product safety perspective, or adequately utilize the CPSC’s expertise, then the CPSC should be able to coordinate recalls and protect consumers from drone safety defects that could hurt them.

Table saws

More than 30,000 table saw injuries occur annually, with an average of ten amputations happening every day on the products. We were pleased to see the Commission publish a notice

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24 Consumer Reports, “Find the Best Bike Helmet” (June 30, 2016) (online at: www.consumerreports.org/bike-helmets/find-the-best-bike-helmet).
28 Id.
of proposed rulemaking in May 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 receives comment and carries out any additional research it may need to undertake, the Commission should keep moving forward on the mandatory safety standard for table saws.

**Infant and toddler products**

*Safe sleep*

The risks to infants from padded crib bumpers are severe.\(^{30}\) 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.\(^{31}\) The continued presence of padded crib bumpers on store shelves is misleading to consumers, and we do not support it—in short, the products should not be for sale.\(^{32}\) 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, play pens, 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.\(^{33}\) 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 recently 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

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that the safest place for a baby to sleep is a crib meeting CPSC standards. 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.

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 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 2018 and 2019, to make its Section 104 activities a top priority, given the demonstrated record of success.

Strollers

Over 1 million strollers have been included in recalls since the mandatory stroller standard came into effect in September 2015. 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.

Chronic hazards

Pending matters

We remain concerned about the serious health risks posed by certain phthalates, and while we were pleased to see the agency publish a proposed rule in 2015, we have been


35 Consumers Union, Calculations based on CPSC Recall Data (online at: www.cpsc.gov/Recalls?field_re_date_value[min][date]=&field_re_date_value[max][date]=&combine=stroller)
disappointed by the delay since. We strongly support the majority of the rule’s provisions, and CPSC should finalize its phthalates rule without additional delay.

Consumers rightly expect products in their homes to meet flammability standards—but not at the expense of being exposed to potentially toxic chemicals. CPSC should address non-polymeric, additive organohalogen flame retardants in children’s products and other specific product categories under the Federal Hazardous Substances Act (FHSA), and encourage manufacturers to instead use barriers and inherently non-flammable materials.

**Research and testing**

The CPSC has an important role to play in researching and assessing chronic hazards to human health that may lie in consumer products. This should include CPSC-directed work, such as the Healthy Children research program; interagency work, such as the crumb rubber research underway with the CDC and Environmental Protection Agency, and possibly also additional work in partnership with universities or other expert researchers. The CPSC and other government agencies are grappling with how to decipher trends from data on chronic hazards, and we at Consumer Reports are doing the same, supporting your work as we undertake our own.

**CPSC capabilities**

The CPSC is a critical agency that lacks the resources it would need to carry out all that it is capable of doing. The agency 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 commend the CPSC for its commitment to monitor imports of products at as many ports as possible to prevent entry of dangerous products into the U.S. marketplace. 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.

We have long supported, and continue to strongly support, the SaferProducts.gov public database. Thanks to this tool, consumers, medical providers, and safety professionals are better informed about potential safety hazards in the marketplace. Industry also receives valuable feedback regarding hazards associated with their products. In fiscal years 2018 and 2019, 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.

On the public communications side, it is critical for the CPSC to be a vocal advocate for consumer safety the way it has been in the past—such as on issues like the Samsung washing machine and Galaxy Note 7 recalls, hoverboards, and the Ikea recalls for furniture that could too
easily tip onto young children. In addressing these and other pressing issues, the CPSC in recent years has played a critical role in informing the public about potential hazards as quickly and prominently as possible. The agency should continue serving in that role.

Conclusion

In conclusion, we greatly appreciate CPSC’s important efforts to address hazards associated with consumer products, and applaud the Commission for its leadership and achievements over the past year. We look forward to continuing to work with the agency to fulfill its mission in fiscal years 2018 and 2019.
Ben Hoffman, MD, FAAP, Chair

AAP Council on Injury, Violence and Poison Prevention Executive Committee

American Academy of Pediatrics
July 12, 2017

Comments of
Ben Hoffman, MD, FAAP
Chair, 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, FY2018"
Good morning Chairman Buerkle, and Commissioners Adler, Kaye, Mohorovic, and Robinson:

My name is Dr. Ben Hoffman, and I am here today on behalf of the American Academy of Pediatrics (AAP). The AAP is 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 am a pediatrician and currently serve as Chair of the AAP’s Council on Injury, Violence, and Poison Prevention Executive Committee. I am a Professor of Pediatrics at the Oregon Health Sciences University (OHSU) in Portland, OR, and I am Medical Director of the Tom Sargent Child Safety Center at OHSU.

The AAP appreciates the opportunity to make recommendations to the U.S. Consumer Product Safety Commission (CPSC) on its agenda and priorities for the 2018 fiscal year. Unintentional injuries remain the number one cause of death in children 1-19, and the fifth leading preventable cause of death for newborns and infants under 1. The AAP strongly supports all efforts to reduce the incidence of child unintentional injury and related morbidity and mortality. Pediatricians look to the guidance of CPSC in communicating to parents the safety of durable infant and toddler products and toys, environmental hazards, and household dangers. Parents and caregivers trust that the products they provide for their children are safe because CPSC monitors hazards to proactively prevent harm to children. The AAP appreciates the large jurisdiction that the CPSC has, and the many different hazards it must address. However, many

of our recommendations to the Commission this year are identical to the recommendations we made to the CPSC last year. Our takeaway from this is that the CPSC’s work is far from done, and needs to move more quickly. Rather than reduce regulations, we believe the CPSC has the capacity to do more as the regulatory agency entrusted with making the products with which children sleep, live, grow, and play as safe as possible.

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

Safe Sleep Messaging

The AAP appreciates CPSC’s ongoing work to promote safe sleep, but much work remains to reduce the high incidence of sudden unexplained infant death (SUID). While much progress was made on SUID early in the government efforts, we have seen very little progress in reducing SUID in a decade or more, and in some high-risk groups the rates are going in the wrong direction. The U.S. Centers for Disease Control and Prevention (CDC) estimate that in 2015 there were about 3,700 SUID cases in the U.S.\(^2\) The CPSC is in a unique position to help address the public health problem of SUID through its jurisdiction over infant products and opportunities to communicate with families, caregivers, and health care providers. We call on CPSC to use its position to promote improved understanding of how best to promote safe sleep among high-risk families, and to reduce the hazard posed by certain infant sleep products.

The CPSC’s awareness campaign has been a useful tool for pediatricians seeking to help parents understand what constitutes a safe sleep environment for babies, and we are glad to see that the information is available in Spanish as well as English. The Commission should continue its work promoting safe sleep behaviors and removing unsafe sleep products from the marketplace including work with other federal agencies and stakeholder groups, including the AAP. We continue to see new, unregulated sleep products on the market every month, and we remain deeply concerned that parents are placing their infants in these products thinking they are safe, when there is in fact no standard or testing done to make sure they will not suffocate a child. We strongly believe that the CPSC has a role to play in keeping such products off the market. I am happy to have a follow-up discussion with the Commission about specific unregulated sleep products of concern.

In addition, CPSC should strengthen its safe sleep messaging by banning crib bumpers. We appreciate that the CPSC staff has been directed to develop a performance standard for crib bumpers to reduce suffocation hazards, and we are grateful for the work done by Commissioner Kaye’s staff to thoroughly analyze the incidents of infant suffocation involving crib bumpers and other unsafe sleeping environments. We 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 potential risk of suffocation, strangulation or entrapment.

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 recently 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.

Laundry Detergent Packets

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

This April 2016 study followed an article from November 2014, also published in *Pediatrics*, which found that children younger than 3 years accounted for 73.5% of cases
examined. These products are uniquely hazardous to children and exposures to them continue at an alarming rate. The AAP has participated in the ASTM process, and we were glad to see the ASTM F3159-15 voluntary standard published last fall, 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 incorrect metrics. Specifically, we are concerned that the wrong denominator may be used to measure whether the ASTM voluntary standard is truly reducing harm to children from these packets: the rate of incidents should be calculated by dividing the number of exposures to the packets, divided by the rate of affected population. However, some propose to divide 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 drastically reducing harmful exposures, when in fact the number of incidents of harm to children are not going down.

We urge CPSC to stay engaged in the ASTM process, and to ensure that follow-up of the implementation of the standards entails public health surveillance tracking of the number of child exposures to laundry detergent packets to assess the standard’s effectiveness.

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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 starting in July. We urge the Commission to continue and expand its efforts to enforce the law. Pediatricians stand ready to work with CPSC compliance staff to support your critical enforcement efforts.

Window Coverings

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

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

High-Powered Magnet Sets

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\(^4\) and Health Canada\(^5\) 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 more than two 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.

Recent research shows that the CPSC and Health Canada efforts to ban high-powered magnet sets was working to protect children. Researchers set out to study the impact of Canada's recall by comparing data on magnet ingestion at the Hospital for Sick Children during the two

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years before the recall (2011 and 2012) and two years after the recall (2014 and 2015). In the two early 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." The authors could not determine whether an education campaign alone could have had the same impact as a recall.

We were therefore deeply concerned by a decision by a panel of judges on the Tenth Circuit Court of Appeals to vacate the CPSC rule to ban dangerous, high-powered magnets. We urge the CPSC to reinstate this ban expeditiously, as the court's ruling to overturn the CPSC ban on high-powered magnets jeopardizes children's health and safety; we simply cannot afford to let these life-threatening magnets find their way back into the hands of our children.

**TV and Furniture Tip-Overs**

The AAP is eager to see CPSC and industry do more to prevent furniture and TV tip-overs. We were deeply saddened that seven children had to die from unsafe IKEA dressers. These deaths should have, and could have, been prevented. We were glad to see IKEA finally recall millions of units of the ubiquitous Malm dresser. However, we are concerned by reports that IKEA's recall efforts have been ineffective and that consumers seeking to do the right thing

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have not gotten adequate or timely responses from IKEA. According to a letter sent to the Commission on June 28th by Shane’s Foundation, Kids in Danger, and Consumer Federation of America, not only has IKEA been ill-prepared to handle consumers wanting to have the dangerous dressers taken out of their homes, but IKEA has now begun selling dressers under the Malm name again, exacerbating an already confusing situation. It is unclear why a large multinational corporation such as IKEA was so ill-prepared for such a large recall, and it is unclear why the CPSC did not do more to ensure IKEA was adequately complying with the recall.

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.

Like furniture tip-overs, TV tip-overs can result in horrific injuries or even death. A July 2013 Pediatrics article found that between 1990 and 2011, an estimated 380,885 patients under eighteen were treated in emergency departments for a TV-related injury; this equals an average of 17,313 children a year, or 2 children every hour. The median age of patients was 3 years, children under five represented 64.3% of patients, and boys comprised 60.8%. Despite previous studies identifying the risks of TV tip-over injuries, newspaper articles highlighting local tragedies, and the CPSC itself listing TV and furniture tip-overs in their top five hidden

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8 http://www.philly.com/philly/news/20160630_Can_t_get_through_on_Ikea_s_recall_hotline_We Tried_35_times_Here_s_what_happened.html
9 http://pediatrics.aappublications.org/content/132/2/267.full
hazards, safety standards for TV stability do not include the requirement that TVs be sold with anti-tip or anchoring devices. Both furniture and TV tip-overs are entirely preventable events.

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

**Button Cell Batteries**

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

More than 3,500 incidents of button battery ingestion are reported to U.S. poison control centers each year, and these incidents may be vastly under-reported. The number of children with serious injury or death more than quadrupled in the five years between 2006 and 2010, compared to the five years prior. A study published in the May 2012 issue of *Pediatrics* found that between


1990 and 2009, an estimated 65,788 patients under eighteen years of age presented to U.S. emergency departments (EDs) due to a battery-related exposure.\(^{12}\)

The most serious injuries are usually associated with 20 mm diameter 3-volt lithium batteries, about the size of a nickel, because they are more powerful than button batteries used in years past. If a lithium battery becomes lodged in the esophagus, it can cause tissue injury and necrosis within hours, leading to perforation or death if not removed urgently.

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

**Flame Retardants**

The AAP is a party to the petition led by EarthJustice and Consumer Federation of America urging CPSC to use its Federal Hazardous Substances Act authority to ban organohalogen flame retardants in four product categories: durable infant or toddler products, children’s toys, child care articles, and other articles intended for use by children; furniture sold for use in residences; mattresses and mattress pads; and the plastic casing of electronic articles. Organohalogen flame retardants are widely present in the environment and human exposure is

\(^{12}\) http://pediatrics.aappublications.org/content/129/6/1111.abstract?sid=c30da399-4e6a-479a-941d-3b5d4cd274fd.
extensive. These chemicals pose serious public health concerns, particularly for children. They are associated with adverse effects including: reproductive impairment; neurological effects, including decreased IQ in children, learning deficits, and hyperactivity; endocrine disruption and interference with thyroid hormone action; genotoxicity; cancer; and immune disorders. The AAP urges CPSC to advance a rulemaking to ban these chemicals in all four product classes to protect children from their harmful effects.

**Recreational Off-Highway Vehicles**

Recreational Off-Highway Vehicles (ROVs) have become increasingly popular over the past few years for both recreational and work purposes. Our pediatricians see first-hand the tragedies and disabilities that can result from children on ROVs. The mechanism in the majority of ROV crash events causing injury and/or death is a vehicle rollover. When this happens, an occupant can easily be struck or pinned by the vehicle, especially if they are not using the ROV’s restraint system. 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. CPSC’s own data show that from 2003 to 2011, children under 16 represented one-quarter of all injured ROV operators and more than one-third of passengers. Seat belt use among youth operators was 12 percent, and eighty percent of youth-operated crashes were rollovers. The AAP always has and will continue to advocate for the safety of all children. No child under the age of 16 should operate an ROV, and we must do all we can to ensure children do not operate these
vehicles. Children should not even be passengers in ROVs, as safe methods of securing children in these vehicles have not been established.

However, despite our best efforts to prevent child use of these machines, children continue to suffer injuries and deaths while driving or riding on them. We urge CPSC to continue prioritizing this issue through ongoing monitoring of morbidity and mortality associated with ROVs to assess the effectiveness of the current voluntary safety standard. If that standard is not sufficient to prevent these injuries and deaths, CPSC should move expeditiously to advance a strong mandatory standard that reduces the known injury and fatality hazards associated with these vehicles.

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.
Kathleen McGuigan, Senior Vice President & Deputy General Counsel

Retail Industry Leaders Association (RILA)
Via Electronic Filing

July 13, 2017

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

Dear Secretary Stevenson,

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 2018 and 2019 Agenda and Priorities. RILA appreciates the opportunity to provide the perspective of its members regarding agency priorities and hopes that the Commission and agency staff carefully consider RILA’s views while developing both the Fiscal Year 2018 Operating Plan and 2019 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 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.” 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 for various agency activities in 2018 and 2019.

Executive Summary

The CPSC and RILA members have a tradition of working together to address consumer product safety issues. In the area of enhancement of import surveillance, several RILA members participate the combined CPSC/Customs & Border Protection (CBP) Importer Self-Assessment Product Safety Pilot (ISA-PS) program and, most recently, two RILA members participated in the CPSC’s E-filing Alpha Pilot. Some RILA members also participate in the CPSC’s Retailer Reporting Program (RRP), which provides product safety-incident information to the CPSC to assist the agency in proactively identifying new emerging safety risks and product defect trends.

1 16 C.F.R. § 1009.8.
In addition, RILA’s member retailers regularly cooperate with the CPSC to promote CPSC’s consumer education programs and third-party product recalls. Through these efforts and others, RILA’s members work with the CPSC to find practical ways to enhance the safety of consumer products sold to American consumers and to quickly recall potentially defective and noncompliant products. As the agency continues its leadership transition, RILA’s members look forward to continuing and strengthening this collaborative partnership.

As the Commission determines its 2018 and 2019 priorities, RILA respectfully submits its recommendations, summarized below:

First, the CPSC should increase and formalize opportunities for constructive engagement collaboration and cooperation with all stakeholders. Strengthening effective engagement between the agency and all affected stakeholders help drive better decision making and rulemaking by ensuring issues are fully vetted, decisions are supported by data, and regulations and programs are targeted to be most effective and streamlined to minimize burdens on regulated industry.

Second, the Commission should pursue a balanced and reasonable approach to rulemaking. The CPSC should focus on a variety of options for addressing important product safety issues including strengthening voluntary standards, enhancing product labeling and warnings and implementing consumer education campaigns. A key component to a balanced and reasonable approach to regulations is regularly scheduled retrospective reviews of the current regulations with the goal of eliminating unnecessary, ineffective and overly burdensome regulations.

Third, it is essential that the Commission provide clear guidance for best practices in product safety compliance programs and transparency in regulatory enforcement decisions, particularly in civil penalty determinations.

Fourth, the CPSC should invest in internal and external talent and resources to enhance the agency's data collection and predictive analytics capabilities. As part of this effort, RILA members urge the CPSC to formalize and expand the current Retail Reporting Program Pilot and develop a broader stakeholder electronic reporting program. Using this enhanced predictive analytics capability to analyze this expanded data set, the CPSC will be able to proactively identify product defect trends and emerging product safety risks.

Fifth, the CPSC should work collaboratively with government agency partners and stakeholders to develop a framework for risk-based assessment of new innovative technologies, which will address product safety risks while encouraging innovation. CPSC’s efforts in this area should compliment and be consistent with efforts already under way within other federal agencies and voluntary industry working groups.

Sixth, RILA members support the Commission’s efforts to strengthen its import surveillance capabilities. However, before moving forward with any future product safety-related filing requirement for imported products, it is essential that the CPSC articulate the metrics the agency will use to evaluate the data received from the Alpha E-filing Pilot. The goal of this review must be to limit specific data required on any future filing only to what is necessary to enhance the CPSC’s import surveillance activities. Additionally, prior to moving forward to a Beta Pilot, the
agency should explore and incorporate technology to minimize administrative burdens on import filers.

Finally, RILA renews its recommendation that the CPSC develop a robust Trusted Trader Program with clearly defined benefits and obligations for participating parties as an integral part of the agency's risk-based import surveillance program. Such a program will allow the CPSC to focus its limited resources on high-risk importers and shipments of high-risk products while facilitating low-risk compliant trade.

Each of these points are discussed in more detail below.

I. The CPSC Should Increase Opportunities for Constructive Engagement, Collaboration, and Cooperation with All Stakeholders, Including Establishing a Formal CPSC Federal Advisory Committee

The CPSC, product manufacturers, retailers, consumers, safety advocates and state agencies share a common goal of ensuring the safety of all consumer products sold to U.S. consumers. To this end, RILA members were pleased to see stakeholder collaboration included as a part of the agency's 2016-2020 Strategic Plan. Stakeholders, individually and collectively, can provide invaluable insight to regulators on the practical implications of rulemaking and enforcement, advise the Commission and agency staff on the inner workings of global supply chains, and offer meaningful manufacturing, import, and distribution expertise. Strong stakeholder collaboration and input yields a data-driven, cooperative, and practical approach to agency rulemaking, information collection, program development and implementation.

Retailers appreciate the Commission's recent efforts to engage stakeholders through the upcoming public workshop on the critically import topic of recall effectiveness. We are hopeful that the outcome of the workshop will be concrete action steps that the agency can take to: proactively identify emerging product safety risks and defect trends; improve communication of recalls to more effectively relay nature of safety risks; increase use of technology to deliver targeted recall information to affected consumers; and finally, more accurately define the measurement of the effectiveness of recalls beyond the current narrow focus solely on product return rates.

The Commission's stakeholder engagement efforts should not be limited to a single event and the decision of whether to engage with stakeholders should not be left to the discretion and preference of a specific agency leadership team. To ensure ongoing stakeholder engagement, RILA renews its recommendation that the Commission establish a permanent stakeholder group, under the Federal Advisory Committee Act, similar to the 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 and provide consistent and structured insight to the agency as it carries out its core statutory mission.

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2 See 2016-2020 Strategic Objective 4.3.
Finally, state legislation and regulation play an increasingly active role in regulating the safety of consumer products, including bans on the sale of specific products, added product labeling and warning requirements and required reporting on chemicals in products. For retailers with national or large regional operations, the checkerboard of different federal and state requirements creates significant compliance challenges and costs. As part of its efforts to broaden its outreach to all stakeholders, RILA encourages the CPSC to engage with key state safety regulators on priority product safety issues. Such efforts will increase transparency and encourage convergence of regulatory approaches, as well as allow companies to streamline and reduce costs for product safety compliance programs.

II. The Commission Should Pursue a Balanced and Reasonable Approach to Rulemaking with the Goal of Advancing Product Safety While Not Unduly Burdening Industry

A significant amount has been written recently about the costs and burdens on industry and the U.S. economy resulting from excessive and overreaching government regulations. A

Moving forward, prior to issuing new regulations, the CPSC should first determine if the proposed regulation advances a substantial product safety interest and whether there are less burdensome means, such as a new voluntary safety standards, added warning or labeling requirements, or consumer education campaign, that could accomplish the desired safety goal.

Acting Chair Buerkle recently outlined her priorities and intention to take a balanced and reasonable approach to regulation. RILA members fully support this approach and applaud the CPSC’s recent action to remove several controversial proposed rulemakings from its regulatory agenda, including proposed amendments to the Voluntary Remedial Actions and Guidelines for Voluntary Recall rule (16 C.F.R. § 1115), and the proposed amendments to information disclosure rules under Section 6(b) of the Consumer Product Safety Act (16 C.F.R. § 1101). The removal of these process-focused rulemakings will allow the agency to focus its limited resources on other efforts and programs that truly advance product safety.

Also as part of efforts to streamline government regulations, administrations regardless of party have sought to eliminate repetitive, ineffective and obsolete requirements. Earlier this year, President Trump issued Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs” directing agencies to balance the burdens of new regulations by removing or eliminating overly burdensome and obsolete requirements. Similarly, in 2016, the CPSC unanimously adopted its Plan for Retrospective Review of Existing Rules and recently issued a request for comments asking shareholders to highlight potential regulations that can

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5 Although Executive Order 13771 does not apply directly to independent agencies such as the CPSC, the Administration has requested and the new CPSC leadership has agreed to apply the spirit of the Order to its rulemaking efforts.
6 CPSC, *Plan for Retrospective Review of Existing Rules, April 1, 2016.*
eliminated or updated without undermining consumer safety. RILA strongly supports the Commission’s efforts in this area and encourages the agency to greatly increase resources toward this project in its 2018 Operating Plan and 2019 Budget Request.

III. The CPSC Should Provide Transparency to its Enforcement Decisions and Clear Guidance on Product Safety Compliance Program Best Practices

Last year, RILA and its members expressed concern regarding the former Chairman’s 2016 statements regarding his desire to see “civil penalties in the double-digits” and the subsequent upward trend of civil penalty cases and high-dollar settlements. In 2016, the CPSC announced a record-breaking $15.45M settlement with Gree Electric, marking the first post-CPSIA maximum penalty settlement. This trend for multi-million dollar civil penalty settlements has continued in 2017. The CPSC’s single-minded focus on obtaining high-dollar penalties settlements has created an adversarial relationship between the agency and the regulated community, and undermined past agency-industry collaborative efforts to strengthen industry-wide compliance programs.

RILA members urge the Commission to move beyond the pursuit of splashy headlines from high-dollar penalty settlement. Unfortunately, in focusing the agency’s limited resources on civil penalty investigations and actions against larger companies because they can bear these record-breaking settlements amounts and, in most cases, have provided an easy-to-access record to the agency by self-reporting, the agency has not had the resources to focus on more egregious and willful violations by other actors. Although finding companies who have not self-reported will be more difficult and including smaller companies may not produce record-breaking settlement amounts, the agency should refocus its limited resources to finding and pursuing penalties in cases involving the most serious violations to most effectively deter future violations and advance consumer product safety.

In addition, the CPSC’s continued failure to include critical facts, analysis of the enforcement action guided by statutory and regulatory frameworks, and specific aggravating and mitigating factors considered by the Commission in its penalty decision, leaves the regulated community with little guidance to enable companies to review and enhance product safety compliance programs. Recent statements by Acting Chair Buerkle and Commissioner Mohorovic have argued that the Commission should provide more guidance on compliance programs to industry and be more transparent in penalty decisions. RILA agrees. Transparency and candor by the Commission on best practices for compliance programs, and how penalties are calculated including specific mitigating and aggravating factors will spur efforts by industry to enhance compliance programs. Commissioner Mohorovic’s statement

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includes a thoughtful list a suggested actions steps that the CPSC can take to work with the regulated community to accomplish this goal. For example, the CPSC Office of the General Counsel could issue guidance on how the CPSC evaluates the effectiveness of product safety programs similar to the Evaluation of Corporate Compliance Program Guidelines issued by the Department of Justice earlier this year and hold webinars and training forums for the regulated community. RILA urges the Commission to dedicate sufficient staff resources and funding in FY 2018 and 2019 to review and implement these suggested action steps.

IV. The CPSC Should Invest in Data Collection and Predictive Analytics Technology and Work with Stakeholders to Enhance and Leverage Its Data Collection and Hazard Analysis Capabilities to Proactively Identify Defect Trends and Emerging Product Safety Risks

The CPSC’s 2016-2020 Strategic Plan promotes increasing the agency’s capacity for predictive modeling and enhancing staff analysis of emerging hazards. RILA members support the agency’s commitment to data-driven decision making in rulemaking and regulatory enforcement, and the CPSC’s efforts to enhance its data collection and analysis capabilities. To this end, RILA has detailed in prior comments and oral testimony the value of real time, product specific safety-incident data provided under the Retailer Reporting Program (RRP) pilot and opportunities for program’s improvement and expansion.

To date, the agency has based its review of the usefulness of the data received through the current ad-hoc RRP pilot, which does not have standardized processes or procedures, and instead, operates through independent agreements with the participating companies. RILA continues to believe that the usefulness of the RRP data would be more properly evaluated if the Commission explored the potential benefits of an expanded formalized electronic reporting program. By investing in advanced data analytics tools, the CPSC would be able to use RRP data, along with the vast amount of additional product safety data received by the CPSC through traditional Section 15b reports and other sources, to proactively identify emerging product safety hazards and defect trends. Defective and noncompliance products would be removed from the marketplace more quickly preventing untold consumer injuries and property damage. RILA urges the CPSC to incorporate investment in internal and external talent and advance data analytics tools and dedicate the necessary resources to support the expansion of the RRP program in its 2018 Operating Plan and 2019 Budget Request.

V. The CPSC Should Work Collaboratively with its Government Agency Partners to Develop a Framework for Risk-Based Assessment of New Innovative Technologies

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11 Department of Justice, Criminal Division, Fraud Section, Evaluation of Corporate Compliance Programs, February 8, 2017.
13 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.
The United States has a long history of fostering invention and the development of new innovative products that meet consumer needs and expectations. Business and product innovation is a core strength of the U.S. economy and a major generator of jobs. One key area of innovation is the development of internet-connected home devices, appliances, tools, toys and other objects known as the Internet of Things (IoT). These innovative products are in high demand by consumers because they provide increased and convenient access to information and new and enhanced product functionality. While at the same time, these products create security, privacy and safety challenges.

Today, innovation is occurring at an ever-increasing rate while regulatory agencies struggling to keep pace. Currently, there are a multitude of federal agencies and industry groups grappling with IoT-related issues. Depending on the nature of the IoT product, it may be regulated by multiple federal agencies, including the CPSC and the Federal Trade Commission (FTC). Both the CPSC and the FTC have recently issued reports noting the significant benefits to consumers and the risks involved with internet-connected Smart technology. Specifically, CPSC’s report noted that IoT Smart technology offers important product safety-related opportunities (e.g., automatic product registration, increased recall effectiveness) and challenges (e.g., potential for system hacking and failed software updates that affect performance). In addition, the report called out the CPSC’s lack of internal resources and staff to be able to address these multiple challenges.

Moving forward, it is critically important that the Commission engage with partner government agencies and other stakeholders to develop a comprehensive risk-based approach to regulation of IoT products to address privacy, cybersecurity, and consumer product safety concerns while continuing to promote product innovation. The CPSC’s efforts in this area should not duplicate, but instead, should complement and be consistent with efforts already under way within other federal agencies and voluntary industry working groups. Such an approach must recognize the unique nature and benefits of IoT products and the difficult challenge that product manufacturers face when trying to create impenetrable cybersecurity barriers to block hackers.

RILA urges the CPSC to adopt a risk-based reasonableness product safety standard for IoT products similar to the FTC’s standard for data privacy. The FTC has rejected per se liability for data breaches, and instead, requires that companies have a “reasonable” data security program that takes into consideration the sensitivity of data collected, scale and scope of operations and level of risk if a data breach occurs. Similarly, the sole fact that an IoT

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15 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 assistant from Aspiration and participation from a broad community of researchers, testers and hobbyists.
product has suffered a security breach should not automatically render the item “defective” or create a “substantial product hazard” and require a recall. Rather, the CPSC should develop a standard and enforcement processes that includes review of the overall security framework and protections for an IoT product, analysis of the current and potential safety risks to consumers, identification of any remedial measurement required, and assessment of the likely of future incidents. Using this process and based on the totality of factors, the CPSC can then determine whether or not an IoT product should be recalled.

RILA urges the Commission to dedicate the necessary staff and resources in its priorities for Fiscal Years 2018 and 2019 to engage with partner government agencies and other stakeholders to develop a comprehensive risk-based approach to regulation of IoT products. Additionally, resources should be dedicated to the development of a reasonableness IoT product standard and enforcement processes that will foster and not hinder the development of the new innovative IoT products that consumers want.

VI. Enhancement of CPSC’s Import Surveillance Activities.

RILA members support the CPSC’s efforts to strengthen its import surveillance activities through enhancement of its Risk Assessment Methodology (“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 2017 and 2018.

a. Any Future CPSC Import Filing Requirement Should be Limited to the Specific Data Necessary to Enhance the CPSC’s Import Surveillance Activities and Incorporate Technology to Minimize Administrative Burdens on Filers

RILA fully supports the CPSC’s recent decision to pause its development of a proposed electronic product safety-related filings for imported products to review the data collected from the agency’s Alpha E-filing Pilot to ensure the value of the collected information and to reduce unnecessary administrative burdens and costs for importers. As part of this process, the CPSC should clearly articulate the metrics it will use to evaluate the value of the Alpha Pilot information for purposes of enhancing the CPSC’s import surveillance program. Additionally, the Commission should explore the use of technology to ease the costs and administrative burdens of any future e-filing requirement. The agency should move forward with a Beta Pilot only after these tasks are accomplished.

b. A Trusted Trader Program is an Integral Part of a Risk-Based Import Surveillance Program

RILA 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. However, recent comments by agency leadership and staff have raised concerns that the creation of a CPSC Trusted Trader program could be delayed until after CBP completes development of its trusted trader program. RILA urges the Commission to move forward now and not delay the development of a mutually beneficial government-industry partnership program pending another agency’s uncertain timeline.

Instead, a CPSC Trusted Trader Program, which should include companies that currently participate in the CPSC/CBP ISA-PS program, can be developed and implemented now based upon the risk-based approach to import surveillance already agreed upon in the interagency process. Ultimately, the new CPSC Trusted Trader program can be incorporated into any final CBP trusted trader program with minimal modifications. Therefore, RILA urges the CPSC to allocate sufficient resources in Fiscal Years 2018 and 2019 to develop a risk-based, voluntary Trusted Trader program with clearly defined obligations and benefits for program participants.

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 and 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.

Conclusion

RILA appreciates the opportunity to provide these written comments on the CPSC’s FY 2018-19 priorities and budget, and requests the opportunity to provide additional oral comments on these issues at the CPSC’s upcoming Priorities Hearing scheduled for June 26. 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
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18 2016-2020 Performance Goal 2.2.1.
Introduction

Good morning Acting Chairman, Commissioners, and staff. I am Kathleen McGuigan, Senior Vice President and Deputy General Counsel for the Retail Industry Leaders Association (RILA). By way of background, RILA’s members include the largest and most innovative retailers. The retail industry employs over 42 million Americans and accounts for $1.5 trillion in annual sales.

I want to thank you for the opportunity to testify before you today regarding the Commission’s Agenda and Budget Priorities for Fiscal Years 2018 and 2019. RILA has previously provided detailed written comments on the level of resources it believes the Commission should allocate for various agency activities in 2018 and 2019. It is not my intention to repeat what we previously submitted. My testimony today highlights and expands upon four issues raised in our written comments.

1. Formalizing CPSC Engagement with Stakeholders

First, I want to express the gratitude of our membership for the opportunity to participate in yesterday’s Recall Effectiveness Workshop. To bring about significant improvement in the effective communication of product hazards to consumers to quickly remove defective and noncompliant products from the marketplace will take real partnership among all stakeholders. Yesterday’s event demonstrated stakeholders’ genuine desire to have a positive impact. We hope yesterday’s workshop will not be a “check-the-box” or one-time event. For progress to be made on recall effectiveness and other critical product safety issues, there will need to be ongoing and continuing engagement.

Over the past several years, RILA has put forth a suggestion that the CPSC establish a formal advisory committee under the Federal Advisory Committee Act (FACA). Such a committee has several advantages. The format of the FACA provides structure and a forum for timely, ongoing discussions between the agency and stakeholders. Also, as a permanent structure, a federal advisory committee ensures agency engagement with stakeholders on an ongoing basis without being subject to changing agency leadership and preferences and personal philosophy on stakeholder engagement of individual agency leaders. We continue to urge the CPSC to explore ways to bring about a change in agency culture and
institutionalize stakeholder engagement, including the possibility of establishing a formal advisory committee under FACA. Only in this way can the agency bring about transformational change.

2. **Enhancing CPSC’s Data Collection and Analytics Capabilities and Establishment of Electronic 15b Reporting**

   Let me turn now to my second topic – enhancement of CPSC’s data collection and analytics capabilities. The CPSC, as the primary federal agency with authority over the safety of consumer products, has a long-held position that it is a data-driven agency – in that its decisions and rulemakings are based upon sound data and science. In today’s rapidly changing marketplace, the volume of data that is relevant to important product safety issues is increasing at an exponential rate. The collection and analysis of data are now an important part of government and industry strategic planning processes and are used in daily operations. For the CPSC to meet its core mission, it is critical that the CPSC invest in internal or external staff, IT systems, and software resources to enhance the agency’s data collection and predictive data analytics capabilities. Without such resources, the agency will fall woefully behind and will not be able to protect U.S. consumers.

   One area where the Commission should dedicate increased agency data collection and analytics resources is the expansion and formalization of the so-called “Retail Reporting Program” (RRP). When the RRP was created, it was intended to capitalize upon the wealth of information that retailers and manufacturers gather about customers’ interactions with products. The original concept was that the CPSC could analyze information from disparate sources to identify emerging product safety risks and defect trends. After doing so, the CPSC could work with manufacturers and retailers to recall defective products much earlier than under the current timeline, thereby preventing untold injuries and property damage. This idea was truly unique and ahead of its time. The challenge for the CPSC in achieving the full benefits of the RRP, has been that until recently IT and data analytic tools had not yet been developed that could handle multiple reporting companies and the volume and complexity of information provided. Thus, the RRP has stagnated. Participation has been closed and the CPSC has never fully utilized the data provided for purposes of predictive analytics.

   What was impossible at the time of the creation of the RRP program, is commonplace in 2017. Today, there are IT and data analysis solutions that can handle millions of data points and predictive analytic tools that enable government and businesses to identify patterns and trends and even predict consumer behavior. We urge the CPSC to invest in staff and resources to expand its data collection and predictive data analytic capabilities. We further urge the CPSC to expand the RRP pilot and to use technology to create a tool that allows any reporting entity to file an electronic Section 15b report.

   Of course, for any new electronic reporting tool to embraced by industry, it must to be easy to use and cost effective for reporting entities. If the CPSC moves forward in this direction, it is critical that it engage with and get input from stakeholders during the development process. To test the usefulness and ease of use of any electronic reporting tool, the CPSC should conduct a pilot program with interested partners to provide feedback. In addition, a pilot would also allow the CPSC to gain experience and expertise using new data analytics software.

3. **Investing in New Resources to Address Potential Safety Risks Associated with Emerging Technologies Including Internet of Things (IoT)**

   My third topic continues the technology theme – in this instance specifically emerging technologies like IoT that are being incorporated into consumer products. It is amazing to think that the first iPhone was only introduced 10 years ago, in 2007. Today, smart phones are viewed by many consumers to be a necessary part of their daily life.
IoT technology is being incorporated into a wide array of consumer and industrial products. From smart door locks and security cameras, to home appliances, electronics, smart cars, personal care products, and wearables – the potential list of IoT products is endless. While these IoT products are meeting customers’ demand for increased convenience, they also create cybersecurity, privacy and safety challenges. Currently, there are multiple federal agencies including the Federal Trade Commission, National Highway Transportation Safety Administration, Commerce, and the Department of Homeland Security, that are grappling with IoT-related issues. Industry, trade, consumer advocates and nongovernmental organizations are also working on these issues.

To make sure that the CPSC is prepared to proactively tackle the complex IoT-related issues, it is critically important that the CPSC dedicate the resources and staffing to gain an understanding of new innovative technologies and engage with partner government agencies and stakeholders. The goal of these efforts should be to develop a comprehensive risk-based approach to regulation of IoT products to address, privacy, cybersecurity and consumer safety concerns while promoting innovation and new product development. As part of this approach, we urge that the CPSC adopt a risk-based reasonableness standard for product safety for IoT products similar to the FTC’s “reasonableness” standard for data privacy. The FTC understands that creating an impenetrable barrier that will completely prevent any cyber hacking is impossible, so instead, it requires companies to have a “reasonable” data security program that takes into consideration the sensitivity of the data collected, scale and scope of operations and level of risk if a breach occurs.

The development of innovative technologies and products is moving at lightning speed and it is moving forward with or without CPSC input. For the CPSC to continue to be relevant and protect consumers, the CPSC must invest in internal or external staff and resources to proactively address this issue now. Failure to do so will undermine the agency’s core safety mission.

4. Enhancing Import Surveillance – Developing a Robust Trusted Trader Program

The last issue that I want to address today is how the CPSC can save money and reallocate resources while enhancing the CPSC’s import surveillance program. The CPSC is a small agency that has limited resources to conduct its critically import mission. For import surveillance, RILA members believe that the best use of these resources is to target high-risk importers and high-risk shipments. One way for the CPSC to conserve its limited resources is to leverage low-risk importers that are willing to partner with CPSC in a Trusted Trader program.

In theory, the CPSC already has a trusted trader program in the joint Customs and Border Protection (CBP)/CPSC Importer Self-Assessment- Product Safety (ISA-PS) pilot. The truth is that the ISA-PS program has not lived up to its promise, in large part, because it lacks real and significant benefits to justify participants opening their product safety compliance program to CPSC’s scrutiny and annual review. Nor, despite repeated requests from industry, has the CPSC provided data demonstrating benefits of ISA-PS program participation in terms of lower levels of inspections or holds of import shipments when compared to Importer Self-Assessment- and C-TPAT- only importers. Without concrete and demonstrable benefits, the ISA-PS program has stalled and failed to attract new participants.

We urge the CPSC as part of its efforts to enhance import surveillance to create a new trusted trade program with clearly defined benefits such as: 1) exemption from any future import certificate e-filing requirement; 2) participation in the CPSC’s Trusted Trader program should be a mitigating factor in enforcement cases; and 3) demonstrably lower percentage of CPSC inspections and holds for CPSC Trusted Trader participants. By developing a robust Trusted Trader program that will encourage low-risk importers to participate, the CPSC will be able to focus its limited import surveillance resources on high-risk importers.
and high-risk shipments where the potential for detecting and preventing non-compliance and unsafe consumer product is much more likely.

RILA members have recently noted with concern comments by CPSC agency leadership that indicates the agency intends to wait until CBP completes its revisions of its customs compliance trusted trader program before developing a CPSC product safety compliance Trusted Trader program. The CBP’s revision of its trusted trader program is not anticipated anytime soon. Rather than wait on the uncertain timetable of the CBP, the CPSC should dedicate resources now to the create a Trusted Trader program using the risk-based approach that has already been agreed upon in the interagency process. As the CPSC begins this process, it should engage with interested stakeholders to develop a program that provides the agency the assurances that it needs while according real benefits to the participating importers.

Conclusion

Let me close by restating the support of RILA members for the mission of the CPSC. RILA members share the CPSC’s commitment to product safety and ensuring that all products sold to U.S. consumers meet or exceed all applicable safety requirements and standards. We look forward to continued collaboration with the Commission.

Sincerely,

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Rachel Weintraub, Legislative Director and General Counsel

Consumer Federation of America
I appreciate the opportunity to provide comments to you on the Consumer Product Safety Commission’s (CPSC) FY 2018 and 2019 priorities.¹ I am Rachel Weintraub, Legislative Director and General Counsel at Consumer Federation of America (CFA). CFA is a non-profit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education.

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

I. CPSIA Implementation

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

Because of the rules promulgated by the CPSC, 16 infant durable products including full-size cribs, non-full-size cribs, infant walkers, play yards, and strollers must now meet new robust mandatory standards. The crib standard which went into effect in June of 2011 is of particular significance as it is the strongest crib standard in the world and offers our nation’s infants a safe sleep environment,

which their parents have a right to expect. For all of these products, third party testing and certification requirements are required.

The CPSC has an additional 10 infant durable product rules to promulgate under section 104, the Danny Keysar Child Product Safety Notification Act. The CPSC is currently working on mandatory standards for booster seats, changing products, folding chairs, gates, high chairs, bath tubs, bouncer seats, inclined sleep products, bumper pads, and stationary activity centers. We urge the CPSC to continue to commit the staff time and resources necessary to prioritize the promulgation of these rules. We are very concerned about CPSC’s recent delay of the standards for high chairs and stationary activity centers. 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.

Another high priority for the CPSC should continue to be the consumer incident database-SaferProducts.gov- required by the CPSIA. Last November, 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, which 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% of the reports are for products from ten manufacturers, with the rest spread out among 3,802 other manufacturers.

- 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% 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%, of the top ten product types reported.

- 31% of reports document some level of injury.

- More than half of the 90 fatalities reported involved children aged 12 or under.

- 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 33,5952 reports have been posted to SaferProducts.gov and that while already a useful tool, more can be done to make it even more effective.

II. Product Safety Hazards

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

1. Emerging Hazards

A. Hoverboards

Incidents on hoverboards continue. In March of 2017 there was a tragic fire caused by a hoverboard that resulted in the deaths of two children, a ten-year-old and a three-year-old, as well as a firefighter who was on his way to fight the blaze in Harrisburg, Pennsylvania.3 Fires due to battery failures and faulty wiring, as well as fall-related injuries have been documented by the media across the country. In January 2016, the CPSC sent out a useful and important statement on hoverboards, warning consumers of potential risks, announcing that the agency is conducting investigations about the growing incidents and providing recommendations for consumers. The CPSC announcement has been relied upon by the many entities who have sought to protect their students or citizens from these hazards, including over 30 colleges and universities.4 The CPSC issued a statement indicating that an online retailer will allow full refunds for the return of hoverboards and provided a list of manufacturers of hoverboards being actively investigated. The CPSC also urged companies that are continuing to import, manufacture and distribute hoverboards that do not comply with the new voluntary standard, UL 2272, to stop doing so and has indicated that recalls of unsafe products are expected.5 In July of 2016, just over a year ago, CPSC recalled over 500,000 hoverboards from

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2 Data from the Consumer Product Safety Commission as of July 6, 2017.
4 As of January 9, 2016, more than 30 colleges banned hoverboards. http://college.usatoday.com/2016/01/09/more-than-30-colleges-ban-hoverboards-amid-safety-concerns/
companies. In December of 2016, CPSC conducted an additional recall, and conducted another in March of 2017. Some of these recalls did not include consumer refunds and some consumers were frustrated by this. We urge the CPSC to do all it can to encourage these recalling firms to do all that they can to get these potentially unsafe products out of homes by reaching out to consumers as effectively as possible.

B. 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 about 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 the CPSC to take strong action to ensure that doctors and consumers are educated about these hazards as well as work to reissue the rule.

C. Crumb Rubber

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

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

2. Long Standing Hazards

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

The CPSC has long recognized window covering cords as a hidden strangulation and asphyxiation hazard to children and continues to identify them 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 specifically asked the CPSC to prohibit accessible window covering cords when feasible, and require that all cords be made inaccessible through passive guarding devices when prohibiting them is not possible.

At least 285 children have been killed or seriously injured by accessible window covering cords between 1996 and 2012, despite six industry attempts at developing adequate voluntary standards. The voluntary standard process, starting from the first standard in 1996 and including the most recent standard in 2012, has failed to eliminate or even significantly reduce the risk of strangulation and asphyxiation by window covering cords to children.

In a tragic twenty-two day period in 2014, four children were strangled to death by cords on a window covering: a 6-year-old girl in Maryland on February 8th; a 3-year-old girl in Texas on February 15th; a 4-year-old boy in Georgia on February 17th; and a 2-year-old boy in Maryland on March 1st. Each of these children died after the cord of a window covering strangled them. In 2014, we know of 9 deaths and in 2015, we are aware of 6 deaths, though that number is likely to increase as additional data is released.11

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

A strong mandatory standard by the CPSC is necessary to protect children. For almost 20 years, the voluntary standard has failed to address the strangulation threat posed to children. We appreciate that the CPSC has granted the petition we filed with other groups and has moved forward with an Advanced Notice of Proposed Rulemaking. We further urge the CPSC, in light of the history of the voluntary standard and the documented and persistent hazard that cords on window coverings pose to children, to continue to move forward with the mandatory rulemaking process that will effectively address the hazards posed by window covering cords. We urge the CPSC to consider Health Canada’s proposed regulation12 which would restrict the length of accessible window blind cords and the size of loops that can be created by those cords. We also urge 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 as these products pose risks to children every single day.

B. Flame Retardants in Consumer Products

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

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

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

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

The CPSC has clear authority under the Federal Hazardous Substances Act to regulate potentially toxic chemicals and there is clear legal precedent for the CPSC to regulate a class of chemicals. There is strong scientific evidence documenting the hazards posed to consumers by these chemicals and we urge the CPSC to take action on this issue soon. We also urge the CPSC to prioritize this issue and to take effective steps to protect consumers from the health hazards posed by flame retardants, while not diminishing fire safety protections.

C. OHV Safety: ATVs and ROVs

(1) All-Terrain Vehicles (ATVs)

According to the most recent data released by the CPSC, at least 97,200 people were injured seriously enough while riding all-terrain vehicles (ATVs) to require emergency room treatment in 2015. The estimated number of ATV-related fatalities was 674 in 2014, though the 2014 data is not considered complete and the number of fatalities will almost certainly grow as more data is received.

In 2014, ATVs killed at least 58 children younger than 16, accounting for 17 percent of ATV fatalities. Fifty-five percent of children killed were younger than 12 years old. Children under 16 suffered an estimated 26,700 serious injuries in 2015. This represents 28 percent of all injuries.

13 2015 Annual Report of ATV-Related Deaths and Injuries Statistics https://www.cpsc.gov/s3fs-public/atr_annualReport2015.pdf in 2016. The estimated number of ATV-related fatalities was 638 in 2013, though the 2013 data is not considered complete and the number of fatalities will almost certainly grow as more data is received.
The CPSC must prioritize the issue of ATV safety. The CPSC’s ATV rulemaking was required to be finalized in August of 2012, and we applauded the CPSC for holding an ATV Safety Summit in October of 2012, but that was almost 5 years ago. We urge the CPSC to complete the rulemaking which should include a serious analysis of the safety hazards posed to children by ATVs, the adequacy of existing ATV safety training and training materials, and efforts to ensure that children are not riding ATVs that are too large and powerful for them.

In March 2014, CFA released a report, “ATVs on Roadways: A Safety Crisis.” CFA evaluated laws from all fifty states and the District of Columbia and found that, in spite of warnings from manufacturers, federal agencies, and consumer and safety advocates that ATVs are unsafe on roadways, for several years an increasing number of states have passed laws allowing ATVs on public roads. In April of 2015, we updated the report to include recreational off-highway vehicles (ROVs) and found that all states that allow ATVs on roads also allow ROVs on roads. We lead a coalition that seeks to engage municipalities, counties, states, and other entities that are considering increasing ATVs and ROHVs (collectively OHVs) on road access. This past March, we were aware of 13 proposals to increase OHV on road access. This compares to our usual average of three proposals under consideration.

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

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

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

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

- 36 states, or 71%, allow ATVs on certain roads under certain conditions.
- Of these 36 states, 23 states, or 64%, have passed laws allowing or expanding ATV access on roads since 2004. Four states passed such laws in 2013 alone and New Mexico became the 36th state to do so in 2016. 32 of the 36 states, or 89%, that allow ATVs on roads delegate some or all of the decisions about ATV access to local jurisdictions with authority over those roads.
While not a complete list, CFA is aware of at least 87 state and local proposals to increase ATV access to roads since 2013.

In July of 2017, we released data compiled by CFA and our coalition partners documenting that between January 1, 2013 and June 27, 2017, there were 2,583 OHV fatalities in the United States. Of those deaths, 442 (17%) are children who are less than 16 years old.\(^\text{14}\)

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

(2) Recreational Off-Highway Vehicles

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

CFA and its partners documented at least 95 fatalities associated with ROVs from January 2015 through December 2015. This compares with 87 fatalities associated with ROVs from January 2015 through December 2015. Both of these numbers may grow as more data becomes available about additional deaths.\(^\text{15}\)

The current voluntary standard goes further than it has in the past by addressing vehicle handling requirements and the mandatory driver side seat belt reminder and speed limiter. While we did not oppose the voluntary standard, we believe additional issues should be addressed as well, including an increase of the stability tilt table test angle to 37 degrees (if a trip rail is required, 35 degrees if no trip rail is required), a maximum speed based on requirements for designed use and rider ability, full doors, a focus group tested hang tag design so that consumers will be aware of and understand the tilt table test results, and standard placement and easy access to VIN and PIN numbers and information.

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

D. Furniture Tip-Overs

According to the CPSC’s most recent data, every two weeks, a child dies as a result of a piece of furniture, appliance or television falling on him or her. Further, each year, more than 38,000 children are injured as a result of a piece of furniture, appliance or television tipping over. Between 2000 and


2011, there were 363 tip-over related deaths. Eighty-two percent of those deaths involved children younger than 8 years old.\textsuperscript{16} 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 of the 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 7 deaths, we are deeply concerned about the inadequacy and ineffectiveness of the recall and urge the CPSC as well as IKEA to do much more to reach out to consumers to encourage them to return the dressers and obtain a refund.

E. Button Cell Batteries

Button cell batteries pose serious and potentially fatal ingestion hazards to children. In January of 2016, a 2-year-old in Oklahoma died after swallowing a button cell battery.\textsuperscript{17} According to the National Capital Poison Center, every year more than 3,500 people ingest button batteries.\textsuperscript{18}

According to a study released in June of 2012 in the American Academy of Pediatrics Journal,\textsuperscript{19} Pediatrics, an estimated 65,788 children less than 18 years of age were injured by button cell batteries – serious enough to require emergency room treatment – from 1990 to 2009, averaging 3,289 battery-related emergency room visits each year.

We urge the CPSC and others to continue their work to strengthen the relevant voluntary standards to include a provision to enclose securely all button cell batteries.\textsuperscript{20} We understand that progress has been made but that there is more work to do. We also urge the CPSC to work in support of design changes that would eliminate the serious health hazard posed by ingestion. While the CPSC has indicated that they are encouraged by efforts that have resulted in new safety warnings and packaging changes in the United States, we hope that those changes do successfully reduce button cell battery ingestions.

F. Laundry Packets

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

"Some children who have put the product in their mouths have had excessive vomiting, wheezing and gasping. Some get very sleepy.

\textsuperscript{17} http://www.nydailynews.com/news/national/oklahoma-2-year-old-dies-ingesting-battery-article-1.2482468
\textsuperscript{18} National Poison Center, Swallowed a Button Battery? Battery in the Nose or Ear? http://www.poison.org/battery/
\textsuperscript{19} Samantha J. Sharpe, BS, Lynne M. Rochette, PhD, and Gary A. Smith, MD, DrPH, Pediatric Battery-Related Emergency Department Visits in the United States, 1990–2009, Pediatrics, Volume 129, Number 6, June 2012 http://pediatrics.aappublications.org/content/early/2012/05/09/peds.2011-0012
\textsuperscript{20} Id.
Some have had breathing problems serious enough to need a ventilator to help them breathe. There have also been reports of corneal abrasions (scratches to the eyes) when the detergent gets into a child’s eyes.”

In 2017, thus far, according to the American Association of Poison Control Centers, 5,464 children 5 and younger were exposed to laundry packets. In 2016, 11,528 children 5 and younger were exposed to laundry packets. In 2015, there were 12,594 exposures and in 2014 there were 11,714. In 2013, poison centers received reports of 10,395 exposures to highly concentrated packets of laundry detergent by children 5 and younger.

According to a Consumer Reports article from 2017, 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.”

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

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

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22 See http://www.aapcc.org/alerts/laundry-detergent-packets/
23 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/
26 American Association of Poison Control Centers http://www.aapcc.org/alerts/laundry-detergent-packets/
28 Ibid.
30 Pediatric Exposure to Laundry Detergent Pods, Amanda L. Valdez, Marcel J. Casavant, Henry A. Spiller, Thiphalak Chounthirath, Huiyun Xiang and Gary A. Smith, Pediatrics; originally published online November 10, 2014; http://pediatrics.aappublications.org/content/early/2014/11/05/peds.2014-0057
900 NPDS cases, 42% involved packets that were stored within sight or left out, 11% of cases involved temporarily open outer packages, and another 9% of cases involved improperly stored packets.

In a policy statement issued by the AAPCC on laundry packets they stated: “The American Association of Poison Control Centers (AAPCC) supports rigorous safety efforts pertaining to single-load liquid laundry packets (Laundry Packets), e.g., through packaging, labeling, product design, information dissemination, storing, handling and usage education, or otherwise.”31

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

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

While the voluntary standard was finalized September of 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 indicates that the voluntary standard is not successfully addressing the hazard posed by laundry packets, we urge the CPSC to move forward with an effective mandatory standard.

G. Adult Bed Rails

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

The CPSC has been aware of deaths and injuries involving bed rails since 1985. In an October 11, 2012 report from the CPSC, “Adult Portable Bed Rail-Related Deaths, Injuries, and Potential Injuries: January 2003 to September 2012,” the CPSC documented that in that nine year period there were an estimated 36,900 visits to hospital emergency wards due to incidents related to both portable and non-

31 AAPCC Position Statement on Single-Load Liquid Laundry Packets
portable bed rails. The CPSC also reported 155 portable bed rail deaths for that same time period. These statistics represent only a fraction of the actual number of alleged bed rail related deaths. According to the CPSC's 2012 report, these deaths and injuries most commonly occur when the victim is "caught, stuck, wedged, or trapped between the mattress/bed and the bed rail, between bed rail bars, between a commode and rail, between the floor and rail, or between the headboard and rail."

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

H. Baby Bumpers

We urge the CPSC to take strong action to ban baby bumpers. In 2013, the state of Maryland took strong action to ban baby bumpers. The city of Chicago banned baby bumpers in 2009 and the state of New York is considering the issue. In 2013, the CPSC voted unanimously to grant the petition of the Juvenile Products Manufacturers Association (JPMA) to begin rulemaking to address hazards that may be posed by bumpers. While JPMA had requested codification of an ineffective voluntary standard that simply supports the safety of one type of bumper, the CPSC indicated that it will not merely codify the existing voluntary standard but will go much further. Last November, the CPSC issued a joint statement recommending that parents and caregivers not use crib bumpers. We support this strong statement to consumers and urge the CPSC to take action, consistent with the action taken by Maryland and Chicago to protect infants from hazards posed by bumper pads.

I. Infant Suffocation - Sleep Environment

The Center for Disease Control and Prevention (CDC) analyzed 2000–2009 mortality data from the National Vital Statistics System. CDC found that from 2000 to 2009, the overall annual unintentional injury death rate decreased among all age groups except for newborns and infants younger than 1 year; in this age group, rates increased from 23.1 to 27.7 per 100,000 primarily as a result of an increase in reported suffocations.\(^32\) Suffocations were the second highest cause of death (motor vehicle deaths ranked first). As part of the CPSC's work on safe sleep environments, the CPSC must continue to prioritize this issue, educate consumers about the importance of safe sleep environments and understand why data indicates that suffocations have been increasing for infants.

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

The petition included an analysis of CPSC fatality data from 2000 through 2013, which documented that at least 15 children died while sleeping on supplemental mattresses. These deaths involved a child being wedged between gaps created when the supplemental mattress was added to the play yard or portable crib. Thus, supplemental mattresses pose an unreasonable risk of injury to children.

The current standard for Non-Full-Size Baby Cribs/Play Yards (ASTM F406-13) acknowledges the

\(^{32}\) CDC, Vital Signs: Unintentional Injury Deaths Among Persons Aged 0–19 Years — United States, 2000–2009 http://www.cdc.gov/mmwr/preview/mmwrhtml/mm61e0416a1.htm?s_cid=mm61e0416a1_w
known suffocation hazard posed by additional mattresses in a non-full-size crib or play yard through including a warning label that warns consumers never to use a supplemental mattress. However, the fact that stores sell supplemental mattresses for play yards even though the voluntary standard warns that consumers shouldn’t use them confuses parents and contradicts the intent and meaning of the warning label. Significantly, the sale of supplemental mattresses undermines the strength of the warning labels on play yards.

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

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

J. Upholstered Furniture

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

“We strongly support a smoldering ignition performance standard for fabrics and other upholstery cover materials and urge you to move forward with implementation of this standard. The adoption of this standard will not only result in superior fire safety for consumers, but will also discourage the use of fire retardant chemicals (FRs) in furniture filling materials, which have been associated with serious health impacts to humans, wildlife, and the environment.”

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

K. Low Income Child Safety

In 2013, CFA released a report demonstrating that children from low-income families are at greater risk for unintentional injuries and foodborne illnesses than children from higher-income families. Over two-fifths of children (44%) in the United States, according to the National Center for Children in Poverty, live in low-income families.

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

The report identified the following about unintentional injuries suffered by children:
Unintentional injuries represent the leading cause of death and injury for children between the ages of one and fourteen. Each year, such injuries are responsible for about 5,000 child deaths, about 5 million child emergency room visits, and millions more unreported injuries.

These injuries are suffered disproportionately by children from low-income families. In fact, several studies show that income is a better predictor of risk than either race or ethnicity.

The death rates of several important types of unintentional injuries may be considerably higher for low-income children — at least double for deaths from motor-vehicle accidents, fires, and drownings — than for higher-income children, according to a study that reviewed child deaths reported in Maine.

Non-fatal injury rates were also much higher for low-income children. One study found the highest rate among low-income children and the lowest rate among high-income children. Another study found that children receiving Medicaid had injury rates double those of the national average.

Higher injury rates are related both to environmental factors — e.g., more hazardous streets, unsafe playgrounds, older and less safe houses and appliances — and to human factors — e.g., higher incidence of smoking, less income to afford safety precautions, less parental supervision in single-parent families, and less knowledge about product safety and prevention.

We urge the CPSC to consider including information indicating socio-economic status collected through the National Electronic Injury Surveillance System (NEISS). We look forward to working with the CPSC to explore how to better identify the correlation between unintentional injury and socioeconomic status as well as how to reduce deaths and injuries associated with consumer products that impact low-income children.

III. Enforcement

1. Recall Effectiveness

The vast majority of consumers who own a recalled product never find out about the recall. Most recall return rates, if publicized at all, hover around the 30% mark. While there are now requirements for recall registration cards and online mechanisms for a subset of infant durable products, much more must be done to ensure that consumers find out about recalls of products that they own and to ensure that consumers effectively repair or remove the hazardous product from their home. We urge the CPSC to continue to prioritize this issue. We urge the CPSC to work with manufacturers of infant and toddler durable products to maximize awareness about product registration. We applaud the CPSC for providing an opportunity for stakeholders to engage in a dialogue about the factors that are essential to the most well publicized, most effective recalls so that this can be replicated with all recalls. We appreciate the opportunity to discuss more robust approaches to recall communication, the use of incentives and how to use innovative technologies to improve recall effectiveness.

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

2. Import Surveillance

We applaud the CPSC’s current commitment to enforcing its safety mission at the ports of entry to the United States. The CPSC had requested user fees to establish a self-sustaining full-scale Import
Surveillance program. This funding mechanism is similar to that of CBP and FDA. With the profound increase in imported products coming into the United States, the CPSC's efforts at the ports, in cooperation with U.S. Customs and Border Protection, are critical to preventing unsafe products from entering the United States marketplace. We further support the CPSC's efforts to prioritize enforcement at both the ports of entry as well as the United Sates' domestic marketplace to ensure compliance with the CPSIA as well as other mandatory standards and regulations under the purview of the CPSC.

3. Civil and Criminal Penalties

Based on numerous past recalls, we understand that there are numerous civil penalties that are currently pending but have not yet been assessed. In FY 2017, thus far, the CPSC has collected 5 civil penalties, ranging from $3,800,000 to $5,800,000, and no criminal penalties. In 2016, the CPSC has collected 5 civil penalties, ranging from a record $2,000,000 to $15,450,000; and no criminal penalties. In FY 2015, the CPSC collected 10 civil penalties, ranging from $700,000 to $4,300,000 and no criminal penalties. In FY 2014, the CPSC collected 4 civil penalties, ranging from $600,000 to $3,100,000; and no criminal penalties. In FY 2013, the CPSC collected 7 civil penalties, ranging from $400,000 to $3,900,000; and one criminal penalty of $10,000. In FY 2012, the CPSC collected 10 civil penalties, ranging from a consent decree, to monetary penalties ranging from $214,000 to $1,500,000 dollars; and no criminal penalties. In FY 2011, the CPSC collected 14 civil penalties, ranging from a consent decree for a permanent injunction, to monetary penalties ranging from $40,000 to $960,000; and one criminal penalty for $16,000. In FY 2010, the CPSC collected 7 civil penalties, ranging from $25,000 to $2,050,000; and no criminal penalties. In FY 2009, the CPSC collected 37 civil penalties, ranging from $25,000 to $2,300,000; and no criminal penalties.

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

IV. Conclusion

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

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

(Oral Presentation and Written Comments)
I. Introduction

Good morning. My name is Remington A. Gregg, and I am Counsel for Civil Justice and Consumer Rights at Public Citizen. Public Citizen 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. On behalf of our 400,000 members and supporters, thank you for giving us an opportunity to provide recommendations to the Commission as you determine the agency’s priorities for FY 2018 and 2019.

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. Moreover, we are committed to working with the CPSC and our coalition partners on addressing a wide range of issues, including aggressively addressing well-documented product hazards by adopting mandatory standards on table saws and window covering cords, hazards related to furniture and TV tip-overs, and closely monitoring the implementation of the voluntary standards to shield children from dangerous liquid laundry packets. This comment, however, 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

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strategic objectives, goals, and mission.” We strongly support the CPSC’s goal of using data to become a more efficient and effective agency for consumers and urge the Commission to continue collecting timely and comprehensive data that will help the agency more effectively advance its mission.

We also strongly support the consumer product safety database SaferProducts.gov. We appreciate the CPSC’s commitment to this critically important consumer tool and encourage the Commission to enhance its utility. If administered correctly, it can serve as a central national repository for critical product safety information, thereby serving as a impactful CPSC tool to avert death or injury to the public.

For example, we urge the Commission to further strengthen the SaferProducts.gov by increasing its visibility and use by the public. We recommend that the CPSC make the website’s visibility a top priority and dedicate resources to advertising it on social media and in any media statements or responses issued by the Commission, and further encourage the CPSC small business ombudsman to promote the database to small entities interfacing with the CPSC. 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 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, which in turn would help the Commission better understand if it is effectively disseminating important information.

III. Increased Transparency in the Decisionmaking Process

Second, 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

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2 Id.
3 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 11-2938 slip op. (D. Md. 2014).
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. We urge the Commission to continue with the proposed rulemaking without further delay.

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

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

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

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

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6 16 C.F.R. 1101.
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 one of the CPSC's core regulatory functions, its ability to warn the public about potentially defective products. It also compels the CPSC to waste already scarce budgetary resources on procedures that do no serve any consumer protection or product safety goal.

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

IV. 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 its mandate to prioritize consumer safety above all else, including the interests of business and industry, that 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 speak this morning.
July 12, 2017

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

RE: Comments of Public Citizen on the Consumer Product Safety Commission’s Agenda and Priorities for FY 2018 & 2019

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 2018 and 2019.1 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.2 We are committed to working with the CPSC and our coalition partners on addressing a wide range of issues, including aggressively addressing well-documented product hazards by adopting mandatory standards on table saws and window covering cords, hazards related to furniture and TV tip-overs, and closely monitoring the implementation of the voluntary standards to shield children from dangerous liquid laundry packets. This comment, however, 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 strategic objectives, goals, and mission.” We strongly support the CPSC’s goal of using data to become a more efficient and effective agency for consumers and urge the Commission 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, it can serve as a central national repository for critical product safety information, thereby serving as a impactful CPSC tool to avert death or injury to the public.

For example, we urge the Commission to further strengthen the SaferProducts.gov by increasing its visibility and use by the public. We recommend that the CPSC make the website’s visibility a top priority and dedicate resources to advertising it on social media and in any media statements or responses issued by the Commission, and further encourage the CPSC small business ombudsman to promote the database to small entities interfacing with the CPSC. 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 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

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3 Id.
4 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).
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, which in turn would help the Commission better understand if it is effectively disseminating important information.

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. We urge the Commission to continue with the proposed rulemaking without further delay.

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

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

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

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7 16 C.F.R. 1101.
Some provisions of the 30-year old CPSA rule are emblematic of the avoidable obstacles that thwart the Commission’s ability to modernize and advance consumer safety. Advances in technology and communication since the rule’s adoption in have gone unaddressed. Unnecessary delays swallow up efficient dissemination of public safety information. One obvious example is the Commission’s inability to publicly disseminate information that has already been publicly disclosed which simply gives business and manufacturers another built-in opportunity to influence the process before releasing critical product safety information.

Section 6(b) puts American lives and health at risk with burdensome procedures and delays that block public disclosure of crucial information on dangerous products. Section 6(b) is a relic that handcuffs one of the CPSC’s core regulatory functions, its ability to warn the public about potentially defective products. It also 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 update the regulation that interprets 6(b), which would greatly serve consumers and maximize transparency and openness by: (i) ensuring the information subject to the 6(b) Information Disclosure Regulation conforms with, and does not go further than, the statutory language of Section 6(b), thereby ensuring the regulation is not more restrictive of public disclosure of product information than required by current law; (ii) exempting publicly available information from the 6(b) Information Disclosure Regulation, including information posted on the consumer product safety information website; (iii) eliminating redundant notice requirements to manufacturers regarding information that is substantially similar to a previous disclosure; and (iv) eliminating the restriction on public disclosure of manufacturer comments.

IV. 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 its mandate to prioritize consumer safety above all else, including the interests of business and industry, that 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’s Congress Watch Division
Kristen Kern, Government Relations Representative
American Apparel & Footwear Association
July 12, 2017

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

RE: Commission Agenda and Priorities

Dear Secretary Stevenson:

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 2018 and 2019. Please also consider this a request for Kristen Kern to testify at the July 26th 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. Product safety is a top priority for AAFA. As such, AAFA supports the Commission’s priorities of (1) focusing on risk, (2) import surveillance, (3) outreach and education, and (4) data-driven analysis. 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.

It is because of these efforts, the priority we place on product safety, and the relationship we maintain with the Commission, that we are grateful for the opportunity to share our suggestions for the Commission’s agenda and priorities for Fiscal Year 2018 and 2019. The priorities that we hope that the Commission will adopt are as follows:
Reducing Testing and Regulatory Burdens Associated with Spandex

We are currently 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. Currently, the addition of spandex to a garment – even if it only made up one percent of the blend – mandates a test of a garment that would otherwise not have to be tested. Yet test after test shows that spandex is not flammable, either by itself or in combination with these other fibers. 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 to work together on reviewing the addition of spandex to the exempt fibers list.

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 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 Year 2018 and 2019 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 harmonize the product safety approach between states 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,

Rick Helfenbein
President and CEO
Autumn Moore, Manager, Standards and Regulatory Affairs
The Toy Association
July 12, 2017

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

RE: Comments from U.S. toy Industry and The Toy Association, Inc. on CPSC Budget Priorities for FY 2018 and 2019

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 2018 and 2019.

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

Develop Final Rules Exempting Materials from Third Party Testing Requirements

The Toy Association and our members were pleased to see the agency issue a request for information seeking ways to reduce regulatory burdens. This is an effort that we have been encouraging the agency to pursue over the past five years and we will be submitting further items for the agency to consider in response to that request. 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.

The agency issued a Notice of Proposed Rulemaking (NPR) last year, exempting several plastics from phthalate testing. This was a notable relief for the industry, as it was an effort we had championed for many years. We are hopeful that CPSC will issue the final rule exempting these plastics from expensive phthalate testing very soon.
These exemptions would dramatically decrease the costs of testing. We also eagerly anticipate another NPR proposing exemptions for additional plastics in line with data received from a CPSC consultant report some months ago.

Thanks to additional funding from Congress, the agency commissioned several studies recently on the presence of phthalates in additional plastic materials, manufactured wood and textiles, as well as the presence of heavy metals in manufactured wood and textiles. Based on the positive results of these studies, along with the data The Toy Association has previously submitted to the agency, we strongly urge CPSC to move quickly to develop rules exempting testing of materials demonstrated to be highly likely to comply with CPSIA mandated limits.

**Import Surveillance Efforts**

CPSC has done a tremendous 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. The Toy Association remains supportive of targeted import surveillance that does not unduly burden the compliant 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 also urge major improvement in the time it takes to reach a conclusion regarding compliance after a product is detained for examination, and in communication from CPSC port personnel regarding the status of detained shipments. 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.

The Toy Association’s members still struggle 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 with agency staff is to allow importers to sample detained shipments for testing at a CPSC-approved private laboratory, similar to the process currently allowed by other regulators. For example, the Food and Drug Administration (FDA), despite having multiple agency-operated regional laboratories, allows importers of some goods such as ceramic tableware to have detained products tested at a private laboratory, to obtain a quicker result.

We would also like to thank CPSC for increasing communication between the CPSC inspectors and the importers. When products are detained by CPSC officials, maintaining open communication is paramount as companies first want to know “why” their product was stopped and “is there a problem that needs to be addressed.” For Toy Association members, safety considerations happen well before the product is imported. They would like to be able to provide whatever information is necessary to facilitate the examination process and show the CPSC inspectors that they have safe products. We hope to see this communication maintained and even improved upon going forward.

As CPSC continues to increase communications with importers, we hope that the ongoing dialog lowers the importer’s risk profile and builds the basis for a “trusted trader”-like program (a “trusted trader light,” if you will) which would reduce the number of inspections an importer faces. However, any such program should be accessible to large and small companies. As the agency is well aware, joining the Customs and Border Protection (CBP) 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 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.

The Toy Association supports the agency’s import surveillance program and encourages continued efforts to increase the efficiency and effectiveness of this program, offering our assistance in this regard. We were pleased to learn the e-filing alpha pilot was a success. As CPSC considers moving to a beta pilot program, we would ask that the agency focus on collecting 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 staff to submit the necessary information for one product. According to the April 2017 report issued 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. Certifications for toys and other regulated products are required by the CPSIA; however, to the best of our knowledge the current system of providing the certificate within 24 hours of a request has worked well, and with much less burden on the regulated community.

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 ecommerce prevalence. IP infringing toys are extremely concerning on a number of levels, including their potential ramifications for children’s safety. Not only is a brand compromised and intellectual property stolen, but it is also 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 diligence, working even more closely with other government agencies to help combat these fake goods. Further scrutiny of ecommerce 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.

Increase Stakeholder Engagement

The supply chain has become increasingly complex and thus the impact of regulations has become more difficult to predict. For example, in recent years, CPSC has issued certain draft rulemakings prior to soliciting industry input and industry has universally pushed back, concerned about the significant costs these proposed draft rulemakings could have on their business operations. We therefore recommend CPSC review their meeting policies to enable the regulated stakeholders to meet with regulators prior to the issuance of draft rulemakings, so that regulators could be more fully informed of how these regulations may impact their business processes. Such meetings would have been helpful prior to the issuance of the 1110 rule, the third-party testing regulations and the proposed voluntary recall rule. This is a process frequently used by other government agencies such as the Federal Aviation Administration (FAA) and the Environmental Protection Agency (EPA). Being able to share business sector-specific information in an environment that protects this information is a crucial step in the process of developing regulations.

Information and Education Programs and Partnerships

CPSC has made many strides recently to increase consumer awareness of safety programs and initiatives, often partnering with stakeholders to increase the effectiveness of such education campaigns. Specifically, the Pool Safety and Anchor It! campaigns have garnered the attention of consumers across the country. 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. In recent years there may have been some reluctance to engage with industry and some stakeholders on such programs, but 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.

In recent years, The Toy Association has also worked to increase our social media presence including the launch our consumer facing safety website www.playsafe.org with advice on safe and fun play, and our Genius of Play campaign, highlighting the developmental benefits of play, in a variety of forms, in every child's life. While we each have a certain audience that follows our activities, if we join forces, our messages of mutual interest could be amplified even further.

For example, we see a need for increased consumer education on the importance of following the age grading on toys. As the agency well knows, age appropriateness is a key factor in ensuring safe play, especially when it comes young children and with new parents and grandparents joining the marketplace every day. This is an educational campaign that began with our collaboration on early age grading guidance for consumers ("Fun Play Safe Play" and its predecessor publication), and should be ongoing. 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.

Projects that Should Not be Agency Priorities or Funded

The Toy Association was pleased to see the agency has declined to proceed with final rules for voluntary recalls and Section 6(b) information sharing, as we feel agency resources would be far better utilized in other safety efforts. We also feel that the agency should not be spending scarce resources working to develop rules around very complex chemical issues. Last summer, President Obama signed into law an updated Toxic Substances Control Act (TSCA) that gives EPA new authorities to regulate chemicals in commerce, including chemicals in products. This updated statute gives EPA new enforcement authorities so that consumers can have renewed confidence in the U.S. system to regulate chemicals. Because of this it is our opinion that CPSC should work in concert with EPA to support efforts as needed to regulate groups of chemicals, like organohalogen flame retardants, rather than duplicate efforts. The EPA has more resources to take on such long-term research endeavors.

Conclusion

Toy safety is the top priority for the toy industry and 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.
If you have any questions, comments or concerns, please contact Autumn Moore at amoore@toyassociation.org in our Washington, DC office.

Sincerely,

[Signature]

Stephen Pasierb
President & CEO
Commission Agenda and Priorities FY 2018 and/or FY 2019

Written Comments
Susan Orenga, Executive Director

Portable Generator Manufacturers' Association (PGMA)
June 30, 2017

Via Electronic Mail

Todd A. Stevenson
Office of the Secretary
U.S. Consumer Product Safety Commission (CPSC)
4330 East-West Highway
Bethesda, MD 20181-4

RE: “Agenda and Priorities FY 2018 and/or 2019”

A. Introduction

The Portable Generator Manufacturers’ Association (“PGMA”) appreciates the opportunity to submit comments to the Consumer Product Safety Commission (“CPSC”) regarding the Commission’s “Agenda and Priorities FY 2018 and/or 2019.” PGMA is a voluntary trade organization which represents major manufacturers of portable generators. PGMA members include the major manufacturers of portable generators sold in North America and a significant majority of the industry, which employs thousands of individuals in the United States.

PGMA and its members are dedicated to the safe use of power portable generators. As such, PGMA has developed the first and only ANSI standard for portable generators, ANSI/PGMA G300. Although the standard is rigorous and the first of its kind, PGMA decided to go a step further by reopening the standard to include requirements to address potential carbon monoxide (“CO”) hazards when generators are used improperly. In addition to our standards activities, PGMA members contribute extensive resources to educating consumers on the safe use of portable generators.

In response to the Federal Register notice soliciting public comments, PGMA offers the following observations to CPSC. As always, PGMA looks forward to working with and being a resource to CPSC as it works to advance its agenda and priorities for 2018, 2019, and beyond.

B. CPSC Priorities

PGMA believes that, in order to maximize the benefits associated with voluntary standards, that CPSC should halt or otherwise delay the currently proposed mandatory standard in favor of a voluntary standard. Specifically, CPSC would benefit from greater
furtherance of and adherence to voluntary rulemaking standards in the pursuit of CPSC's mission pursuant to the Consumer Product Safety Act ("CPSA"). PGMA supports the views espoused by the Commission's FY2018 budget request to Congress, which acknowledged that "CPSC's statutory authority requires the agency to rely on voluntary standards rather than promulgate mandatory standards, if compliance with a voluntary standard would eliminate or adequately reduce the risk of injury identified and it is likely that there will be substantial compliance with the voluntary standard (emphasis added)."

In the case of portable generators, voluntary rulemakings are unambiguously important because they are more likely to be attune to the operational and pragmatic realities of regulated parties. Furthermore, voluntary standards are most likely to: (1) minimize the risk of injury since they are more responsive to the nuances of the portable generator industry; (2) take into account all relevant costs and benefits outlined by relevant stakeholders; and (3) consider the potential for onerous compliance costs that could jeopardize product availability, consumer choice, and member companies' ability to expand and create new jobs. As has been shown with other standards, empirically voluntary standards tend to facilitate greater compliance and safety outcomes due to their respect for the inner-working of regulated parties' businesses and core institutional competencies. Voluntary standards are also most suited to the needs of ever-evolving and complex markets.

CPSC has historically been actively involved as a stakeholder in the development of voluntary standards. PGMA is appreciative of CPSC's historic willingness to engage in voluntary processes, but the current pursuit of a mandatory standard imperils the collaboration, dialogue, and coordination currently at play in facilitating a safety-first, cost-effective compliance mechanism. Accordingly, we respectfully request that CPSC reconsider the prudence of allowing and/or adopting a mandatory standard as it relates to portable generators.

The core area of PGMA's concern in relation to the promulgation of voluntary standards is in regards to the Notice of Proposed Rulemaking ("NPR") for portable generators. PGMA has made a good faith effort to take all opinions into account, and to work on a revision of our standard such that it adequately addresses the risk of CO poisoning. Therefore, PGMA believes it appropriate that the Commission work to halt or otherwise delay the NPR so that relevant industry participants can continue their collaboration in the pursuit of a robust standard that prioritizes safety, consumer choice, product availability, and cost, among other critical factors.

Furthermore, it is unclear whether the regulation of portable generators falls under the absolute purview and jurisdiction of CPSC. On May 10, 2017, EPA Administrator Pruitt penned a letter to CPSC stipulating that EPA is likely to have authority to regulate portable generator emissions pursuant to section 213 of the Clean Air Act. This jurisdictional overlap further suggestions the need for CPSC to halt or delay the rulemaking since confusion and duplicative regulatory schemes are otherwise likely to emerge with consequences for all involved participants.

PGMA is committed to expediting work to minimize the risks associated emissions from portable generators. The most concrete example of this is that PGMA established a Standards Steering Committee and a Technical Committee Structure which has assisted in moving the creation of an updated and effective voluntary standard forward.
Specifically, the PGMA Technical Committee has met nearly 20 times to incorporate a performance strategy focused on CO concentrations. We are well along the way in developing a performance based standard which will effectively address potential hazards.

In order to allow this process to come to fruition, with benefits for consumers and industry, we respectfully urge CPSC to not pursue a mandatory rule until the effectiveness of PGMA’s ANSI standard can be appropriately judged following its finalization and implementation. PGMA is confident that this standard, which is based on robust cross-cutting stakeholder input, is a better rubric for action on portable generators going forward.

C. Conclusion

Thank you for the ability to submit these written comments to CPSC as it decides upon and advances its agenda and priorities going forward. PGMA hopes to be a resource to CPSC as it proceeds with activities relating to portable generators. Please do not hesitate to contact me or Greg Wischstadt, PGMA Board President (gwischstadt@generac.com), if you have any questions or would like to discuss these matters further.

Respectfully submitted,

Susan Orenga
Executive Director
Christopher Hudgins, Vice President, Government Relations & Policy
International Sleep Products Association (ISPA)
July 10, 2017

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

The International Sleep Products Association (ISPA) is the trade association for the mattress industry. We submit the following comments on the Consumer Product Safety Commission’s (CPSC) agenda and priorities for fiscal year 2018 and 2019.

For several years, the CPSC has faced calls from various groups, including Congress, to reduce regulatory burdens without compromising safety. The Commission has considered several limited steps in this regard, but further action is needed. ISPA urges the CPSC to make reducing regulatory burdens a priority in its fiscal year 2018 and future budgets. This process should not be limited to just the agency’s more recent rules, but should include all regulations that the Commission currently administers. By making this goal a priority and funding the effort appropriately, the Commission can consider not only small immediate steps to reduce unnecessary compliance costs, but can potentially achieve more meaningful improvements by also considering how to streamline existing regulations that are redundant and do not provide added safety benefits.

For example, in April 2015, the CPSC began a Regulatory Flexibility Act Section 610 review of the 16 CFR Part 1633 Open Flame Standard for mattresses. In comments on the review, ISPA and the mattress industry expressed full support for the standard, but asked that the Commission review Part 1633 in conjunction with the 16 CFR Part 1632 mattress standard to determine whether potential overlap between the two standards should be eliminated. Such an assessment is exactly the type of outcome envisioned by the Regulatory Flexibly Act’s review process.

Although the Commission declined to further review Part 1632 and 1633 we have been encouraged by the Commission’s recent request for information on reducing regulatory burdens. We urge the agency to explore how regulatory burdens can be reduced without compromising safety in fiscal year 2018, including a review of these standards.

Please contact the undersigned should you have any questions regarding these comments.

Sincerely,

Christopher Hudgins
Vice President, Government Relations & Policy

The Voice of the Mattress Industry™
Dirk Van Hyning, Chief Executive Officer
Alexium Specialty Chemicals and Solutions
Date: July 12, 2017

To: Ann Marie Buerkle
Chairman
United States Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Chairman Buerkle:

I would first like to thank you and the members of the Commission for the opportunity to submit these remarks for the record regarding the Commission’s priorities for the upcoming year. By providing such an open and transparent process for hearing from the public, not only have you advanced a critical feature of government, but you have also given yourselves the best opportunity to hear from all stakeholders on the imminent threats and concerns the Commission may face.

My name is Dirk Van Hyning and I am the Chief Executive Officer for Alexium International, a specialty chemicals manufacturer, headquartered in South Carolina. Alexium is a world leader in creating innovative, safe and environmentally friendly chemistries for both consumer and government markets. As someone responsible for a team of scientists who have studied fire-resistant chemistry for decades, I am deeply concerned that these chemicals pose a serious health risk to the public at large, and that they are becoming even more pervasive in the consumer market. I would like to request that the Commission prioritizes the review of halogenated fire-resistant chemistries such as decabromodiphenyl ether (BDE-209) and tris(2-chloroethyl) phosphate (TCEP) to determine suitableness for consumer products.

As you may know, according to research results, which was presented by the Duke Cancer Institute and the Nicholas School of the Environment (at Duke University) on April, 2017 at the Endocrine Society Annual Meeting, “higher exposure to chemicals used to reduce the flammability of furniture, carpets, electronics and other household items appears to be associated with papillary thyroid cancer.” Another study found high levels of a wide range of flame retardants in college dormitories; and yet another found high levels of flame retardants in house cats and possible links to thyroid problems. The abundance of research being conducted and presented on this issue is overdue and should be welcomed. It is imperative that the Commission review these findings for validity and subsequent potential actions if they are found credible.

The United States is one of the only industrialized nations not to outlaw chemicals made from decabromodiphenyl or tris, and already 15 of our states have banned the use of these chemicals in consumer products. A federal review of these chemicals is needed to determine the level and depth of threat to the general public but specifically to children. As you know, fire-resistant chemistry is used in most consumer products, from upholstery to baby clothes to carpeting, pillows, and mattresses.


2 http://dx.doi.org/10.1021/acs.est.7b00429
While the need for such fire-resistant capabilities is clear for public safety, we must be sure not to sacrifice public health to achieve it.

Companies like Alexium have been investing resources into next-generation fire-resistant capabilities that eliminate the threat from these toxic chemicals by removing them from the final solution. The result has been a safe, effective and a cost-neutral alternative that is currently being used across the globe in a variety of markets, both public, and government. These innovative and safe chemistries achieve the level of fire resistance sought without the threat of exposure to toxic chemicals. The Commission need not fear the lack of available options for fire-resistant chemistry if PBDE's and tris are found to be dangerous to the public.

I appreciate the opportunity to have these concerns, considered by the Commission. I wish you the best as you embark on solidifying your priorities for next year and am always available to discuss any of the issues presented herein.

Sincerely,

Dirk Van Huyning
Chief Executive Officer
Off-Highway Vehicle Deaths Should Continue to be a Priority

Data collected by the Consumer Federation of America (CFA) from January 1, 2013 through June 30, 2017 show a significant number of deaths in Off-Highway Vehicles (OHVs), such as All-Terrain Vehicles (ATVs) and Recreational Off-Highway Vehicles (ROVs). In collecting its data on OHV-related deaths, the sources used by CFA include:

1. Google News
2. Consumer Product Safety Commission (CPSC) summaries of Incident Investigations
3. CPSC summaries of Reported Incidences
5. Occupational Health and Safety Administration fatality data
6. State, county, and local law enforcement crash investigations
7. State Department of Natural Resources crash investigations

Data collection is complete for the periods 2012-2015 and data collection is in progress for 2016-17. CFA recently reported that from January 1, 2013 through June 27, 2017, there were more than 2,500 deaths in OHVs. CFA also reported that the death toll is especially high for children -- children less than 16 years of age represent 17 percent of the total deaths. (footnote 1)

Need for ROV annual report

CPSC performs a valuable service for consumers and public health and consumer safety advocacy organizations by producing an annual report on ATV-related deaths and injuries. Although, the OHV industry does not publish sales data by make and model, comments by the industry filed with federal regulatory agencies show that ROVs are becoming an increasingly important part of the market. For example, in its Form 10-K, Annual Report, for the 2016, filed with the U.S. Securities and Exchange Commission (footnote 2), Polaris stated:

We estimate that during 2016 world-wide industry sales decreased low single-digits percent from 2015 levels with approximately 400,000 ATVs sold worldwide. We estimate that worldwide
side-by-side vehicle market sales increased high single-digits percent during 2016 over 2015 levels with an estimated 480,000 side-by-side vehicles sold. The side-by-side market has increased consistently over the past several years primarily due to continued innovation by manufacturers.

With the decrease in the ATV market and the growth in the ROV market, CPSC should begin publishing an annual report on death and injuries in ROVs. This would be a continuation of the data collection process that CPSC started during the ROV rulemaking and will assist the agency and others to assess the trends in ROV-related deaths and determine what additional actions need to be taken to reduce them.

**Evaluation of the Effectiveness of Voluntary Industry Standards on OHVs**

In 1975, the NHTSA began evaluating the effectiveness of its Federal Motor Vehicle Safety Standards in reducing deaths and injuries. Those evaluations have assisted the agency in determining whether its standards are reducing injuries. In a January 2015 report, NHTSA looked at the life-saving benefits of vehicle safety technology and estimated that more than 613,000 lives have been saved through implementation of those technologies. (footnote 3)

At its January 25, 2017 meeting, the CPSC adopted a motion to conduct a retrospective analysis of two OHV voluntary standards at a time no later than two years after the effective dates of the standards. (footnote 4) By taking this action, CPSC will educate consumers and industry by determining whether the voluntary standards are reducing deaths and injuries. The results of these effectiveness evaluations will assist the agency and industry in identifying whether further improvement should be made to the OHV voluntary standards.

Thank you for considering these comments.

Sincerely,

Stephen L. Oesch
SLO, LLC

**Footnotes**


Linnea Catalan, Executive Director
Baby Carrier Industry Alliance
July 12, 2016

TRANSMITTED VIA EMAIL

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

Dear Mr. Stevenson,

The Baby Carrier Industry Alliance (BCIA) is a US-based, registered non-profit trade association which exists to represent manufacturers, retailers and educators in the baby carrier industry. As an alliance of industry leaders, our mission is to promulgate standards across the industry, promote educational outreach, and help small businesses comply with regulations and best practice business guidelines.

Section 104 Rulemaking for Infant Slings & Soft Infant and Toddler Carriers

On behalf of the baby carrier industry, the BCIA would like to acknowledge the Commission’s action this past fiscal year in which it promulgated a final rule for slings, based on the voluntary industry consensus standard ASTM F2907, codified in 16 CFR Part 1228. This new standard complements the existing standard for soft infant and toddler carriers, 16 CFR Part 1226, which incorporated by reference ASTM F2236-14. The BCIA believes that both standards strengthen the performance, durability, and safety characteristic of both types of baby carriers.

Information and Education

The BCIA listened carefully to the Commission’s comments during the rulemaking for 16 CFR Part 1228. One concern raised by more than one Commissioner was that the standard did not address the primary serious risk associated with the product, positional asphyxia.

The BCIA agrees with the Commissioners’ concerns regarding this risk; in fact, the ASTM subcommittee, including members of CPSC staff, worked diligently for years to address this risk. Since the risk is principally one associated with consumer behavior – not product design – the subcommittee, including CPSC staff, agreed that warning labels, while certainly viewed as the least desirable option of the safety pyramid, were appropriate in this circumstance until further advancements are made. The BCIA has
been a consistent and strong voice pushing to go beyond warning labels and to positively influence and change the way that parents and caregivers behave and use their baby carrier.

**Putting Money & Resources Behind the Commission’s Concern**

On page 1 of its current Strategic Plan, the Commission states that:

The CPSC has a mission to keep consumers safe, and works to reduce consumer product-related injury and death rates by using analysis, policy, compliance and enforcement, and education to identify and address product safety hazards. This includes: [in relevant part]

**Public Outreach - educating consumers, families, industry, and foreign governments about safety programs and alerts, recalls, emerging hazards, mandatory regulations, voluntary standards, and product safety requirements in the United States;** (Emphasis added).

If the Commissioners truly believe that the Commission should work to address the hazard of positional asphyxia, then the Commission should adopt in its FY 2018 Operating Budget a nationwide information and education (I&E) campaign to urge parents to always keep their baby “Visible & Kissable”™ at all times. This low-cost, high-impact I&E campaign can begin to change caregiver’s behavior nationwide in caring for their baby and increase overall safety for infants and toddlers.

During the rulemaking proceeding, many Commissioners expressed public and private support for this proposed I&E campaign. Another effective I&E campaign with a massive impact that is credited with saving thousands of children’s lives was the “Back to Sleep” campaign of the 1990s. Through a massive public I&E campaign, tragic SIDS deaths were cut exponentially – all without a government regulation. As the “Back to Sleep” campaign demonstrates, there are certain caregiving behaviors that need to be taught and reinforced through public health efforts. While the data demonstrates that the positional asphyxia deaths are much less prevalent that deaths from SIDS, the BCIA and its members agree that any avoidable death is one too many.

**Outline of the Visible & Kissable Proposed Campaign:**

An effective information & education safe babywearing campaign does not have to be complicated or high cost.

The objectives of the Visible & Kissable campaign are to:

- Increase public awareness of safe babywearing practices through educational materials distributed through the CPSC to caregivers, public health officials, doctors, nurses, midwives, key influencers, and multiplier group, such as new parent groups and birthing classes;
- Provide tools and resources to caregivers on babywearing safety; and
- Educate caregivers to be able to identify and use safe carrying positions.

CPSC staff time and efforts would be relatively limited as industry templates for many of these items are currently available to be modified as required. The following avenues have been identified as useful tools:

- Poster campaign identifying proper positioning and tagline information
- Safety brochures with expanded safe carrying information
- Video depicting safe babywearing positions
• Social media campaign/outreach using the above produced materials and messaging

The BCIA is open to suggestions regarding how a campaign like this might look in partnership with the CPSC.

**CPSC as a Global Leader in Product Safety**

To live up to its leadership mantle in the world of product safety, CPSC should take the lead in using the bully pulpit of the federal government to amplify this important safety campaign. Even a modest investment on the part of the CPSC would have a massive impact as the BCIA and its members are small entities without great resources to influence the nationwide conversation.

In 2013, Health Canada and the BCIA launched a joint safe babywearing education ‘Visible & Kissable’ I&E campaign, found online at this link. This campaign, funded largely by Health Canada, is targeted to parents, caregivers and healthcare providers and promoted the safe use of baby slings and carriers. This joint agreement was recently renewed in Jan 2017 after identifying an on-going need to continue educate consumers and healthcare providers with updated educational materials. Health Canada funds this campaign in cooperation with the BCIA.

The BCIA is asking the Commission to consider a similar, joint collaboration in FY2018 and to consider making this a bilateral I&E campaign with Health Canada.

**Small Business Education**

The BCIA is the rare industry association that can say that almost every one of its members is a small or micro enterprise, many of which are sole-proprietorships. The BCIA believes that a governmental body promulgating a new regulation with a large impact on small and micro enterprises has an affirmative obligation to reach out to affected business and offer education, training, and support.

To date, we have found a willing and able partner in the Commission’s Small Business Ombudsman and the Office of Compliance, and we hope to continue our work with those offices to broaden our efforts at reaching all manufacturers of infant slings, whether or not they are members of the BCIA. We wish to especially commend the Small Business Ombudsman for their upcoming July 20, 2017 webinar on Sling Carriers and Soft Infant and Toddler Carriers.

**Conclusion**

With the effective date for the new sling standard coming into effect in FY2018, the Commission has a unique and critical opportunity to put its money and expertise behind its statements of support for the Visible & Kissable I&E campaign.
Thank you very much for your consideration. Please contact me or BCIA's representative, Neal Cohen of Neal Cohen Law LLC at neal@nealcohenlaw.com, at any time should you have any questions about this request and/or require additional information to further its implementation.

Respectfully,

Linnea Catalan
Executive Director, Baby Carrier Industry Alliance

Cc:
The Honorable Elliot F. Kaye
The Honorable Robert S. Adler
The Honorable Ann Marie Buerkle
The Honorable Marietta S. Robinson
The Honorable Joseph P. Mohorovic
Ms. Patricia Adkins, Executive Director
Mr. Robert Kaye, Director, Office of Compliance
Ms. Patricia Davis, Acting Director of Communications
Mr. Richard O'Brien, Director, Office of International Programs
Ms. Shelby Matthis, Small Business Ombudsman
Daniel J. Mustico, Vice President, Government & Market Affairs
Outdoor Power Equipment Institute (OPEI)
July 12, 2017

Filed electronically via 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 2018 and/or 2019”

The Outdoor Power Equipment Institute (“OPEI”) appreciates this opportunity to provide comments to the CPSC’s Agenda and Priorities for FY 2018 and/or 2019.

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 lawnmowers, 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.

Important with respect to our comments, OPEI is an ANSI-accredited Standards Developing Organization ("SDO"), responsible for the drafting and maintenance of voluntary safety standards for member manufacturer products. OPEI utilizes the ANSI "canvass method" to provide for the public review and ballot of standard proposals. OPEI appreciates and recognizes CPSC’s participation in the OPEI standards development process as a "canvass member". Importantly, such participation assures that industry is fully apprised of the Commission’s viewpoints and concerns and the Commission is engaged in the development of voluntary standards.

As an ANSI SDO, OPEI staff and our members value the positive working relationship which currently exists with both CPSC Commissioners and staff in the common pursuit of consumer safety. Specifically, we value the CPSC’s reliance on voluntary standards required by the Consumer Product Safety Act and reinforced in the agency’s FY 2018 budget request1, where it states “The CPSC’s statutory authority requires the agency to rely on voluntary standards rather than promulgate mandatory standards, if compliance with a voluntary standard would eliminate or adequately reduce the risk of injury identified and it is likely that there will be substantial compliance with the voluntary standard”.

Equally important is OPEI’s role in providing industry input to agency “procedural” rulemakings and proposals which impact the agency’s mission and its working relationship with consumer product manufacturers.

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With the above priorities as introduction, we would like to provide the following comments and specific examples to the four questions posed in the Federal Register notice soliciting comments.2

1. What are the priorities the Commission should consider emphasizing and dedicating resources toward in the fiscal year 2018 Operating Plan and/or the fiscal year 2019 Congressional Budget Request?

OPEI recommends that Commission priorities for emphasis should include those which empower manufacturers of consumer products to directly communicate with their customers about their products including information about their safe use. Priorities include:

a. Reliance on / and participation in voluntary standards

The continued use of voluntary safety standards in place of mandatory standards, with the active engagement by CPSC as a stakeholder in voluntary standards development, is of primary importance. As stated in the introduction, 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.

These arguments were detailed in OPEI’s 2013 formal comments to the now implemented rule changes governing CPSC staff involvement in voluntary standards development3. In those comments, OPEI objected to both of the now-adopted changes, allowing CPSC staff to cast formal votes on voluntary standards proposals and to assume leadership positions in voluntary standard development efforts. In both cases, OPEI felt that such changes were unnecessary since voluntary standards processes in the U.S. are already sufficiently “open” to CPSC and all other public stakeholders.

Notably, “Voluntary Standards Participation (1031)” is included in the FY 2018 budget request4 as a BP (Briefing Package) priority. OPEI anticipates that this activity will include a report of staff activity to-date under the changed rules, as was agreed when the proposal was adopted in early 2016. OPEI supported this amendment to the rule change and requests that the Commission complete such a report in a timely fashion and also provide this information to the public when finalized. Furthermore, we also strongly believe that the Commission should regularly be briefed on staff involvement in voluntary standards development to assure that resources are focused on those which data demonstrates pose the biggest risk(s) to consumer safety.

b. Withdrawal of the Recreational Off-Highway Vehicles (ROVs) rulemaking

The FY 2018 budget request5 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 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

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3 CPSC Docket No. CPSC-2013-0034 (Commission Participation and Commission Employee Involvement in Voluntary Standards Activities)
4 Ibid p. 22
5 Ibid
the subject rulemaking. To this end, CPSC staff provided this very recommendation to the Commission in late 2016, and yet the issue remains as an active rulemaking.

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.

c. Improvement of the “Fast Track” Recall Program

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.

Lastly, OPEI recommends that CPSC work with interested industries in developing a “trusted company” designation under the 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.

2. What activities should the Commission consider deemphasizing in the fiscal year 2018 Operating Plan and/or the fiscal year 2019 Congressional Budget Request?

a. 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.

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6 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."

7 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."
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.\(^8\) 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.

For these reasons, OPEI opposes the proposed changes, and again recommends that this rulemaking be withdrawn.

b. 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"),\(^9\) 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").\(^10\) In the name of efficiency, the CPSC is ignoring its

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\(^8\) 78 Fed. Reg. 69797
\(^9\) 15 U.S.C. 2055(b)
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 2018 Operating Plan and/or the fiscal year 2019 Congressional Budget Request, consistent with the Plan for Retrospective Review of Existing Rules adopted by the Commission on April 1, 2016?

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. The CPSC’s programs will align with the strategic goals outlined in the CPSC’s 2016-2020 Strategic Plan. The CPSC’s fiscal year 2018 Budget Request, submitted to Congress on May 23, 2017, is based on four agency priorities:

(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;

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.

(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. OPEI in particular looks forward to CPSC’s upcoming July 25th workshop on “recall effectiveness”, as this is a critical aspect of consumer safety for all product manufacturers.

(4) expanding the sources and types of data analysis used to identify and assess product safety risks and inform compliance decisions.

OPEI relies on the National Electronic Inj ury Surveillance System (“NEISS”) database, and Freedom of Information Act (“FOIA”) requested In-Depth Investigation (“INDP”) and Injury/Potential Injury Incident File (“IPII”) reports as the basis for our incident review in our ANSI standard development process. These tools and their continuance are an imperative public service. OPEI specifically commends the CPSC’s move in recent years to provide direct public access to the NEISS database via the CPSC website. This innovation has cut down on the previous delays involved in requesting all such
data by way of FOIA request. Specifically, on FOIA, we further commend the recent launch of the online portal to assist with the more timely and efficient request of CPSC data and records.

With all that said, OPEI has a few specific thoughts on CPSC data and the FOIA process.

a) 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 data may be a good indicator of trends but cannot be relied upon for detailed information;

b) 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;

c) FOIA requests generally can always be processed in a more timely fashion, and CPSC should strive to make continuous improvements;

d) 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.

Conclusion

In summary, as an active ANSI SDO and an engaged advocate with CPSC Commissioners and staff, OPEI is committed to playing its part in assisting our members and CPSC to achieve our shared goal of consumer safety. We hope the specifics we have provided in this letter help better inform the CPSC’s priorities and budget during FY 2018 and 2019, and serve to further strengthen our working relationship. Please consider the following summary of our priorities for the Commission’s attention:

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.

Thank you for the opportunity to comment on these important matters, and we are always available to discuss these issues further or answer any questions you might have.

Best regards,

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Danielle Iverson, Director, Legislative and Regulatory Affairs
Juvenile Products Manufacturers Association, Inc.
July 12, 2017

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

RE: JPMA Recommendations for the Consumer Product Safety Commission's (CPSC)  
Budget Priorities for Fiscal Years 2018 and 2019

Dear Mr. Stevenson,

On behalf of the Juvenile Products Manufacturers Association (JPMA), thank you for the opportunity to comment on the Commission's budget priorities for fiscal years 2018 and 2019.

The Juvenile Products Manufacturers Association (JPMA) is a national not-for-profit trade organization representing 95% of the prenatal to preschool industry including the producers, importers, and distributors of a broad range of childcare articles that provide protection to infants and assistance to their caregivers. JPMA exists to advance the interests, growth, and well-being of North American prenatal to preschool product manufacturers, importers, and distributors marketing under their own brands to consumers. It does so through advocacy, public relations, information sharing, product performance certification, and business development assistance conducted with appreciation for the needs of parents, children, and retailers. JPMA continues to work with government officials, consumer groups, and industry leaders on programs to educate consumers on the safe selection and use of juvenile products.

JPMA offers the following recommendations on the priorities the Commission should consider emphasizing and dedicating resources toward in the fiscal year 2018 Operating Plan and the fiscal year 2019 Congressional Budget Request:

I. Recall Effectiveness

JPMA believes strongly in the importance of an effective recall combined with government cooperation. Our manufacturers pride themselves on their ability to reach consumers and educate care-givers when a recall occurs. We are encouraged by the Commission’s outreach to stakeholders to explore ideas for improving the effectiveness of recalls and look forward to participating in the furtherance of this goal.

Additionally, JPMA would encourage the Commission to clarify its expectations of what is considered an “effective recall.” By properly measuring results with quantifiable metrics such as consumer understanding of a recall and what it means to their product, customer choice in reacting to that recall, and price point recalls; rather than measuring results based solely on return rates, we can more effectively understand consumer behavior and better target messaging to ensure that all parties are notified of a recall and feel empowered to take the appropriate steps based upon their personal choice.
II. Reducing Regulatory Burdens Without Harming Consumers

Testing is a critical component to product safety assurance. However, small companies are still struggling with crippling costs associated with unnecessary and redundant third party tests, an unintended consequence of the requirements under the Consumer Product Safety Improvement Act (CPSIA) of 2008. As mandated by P.L. 112-28, the amendment to the CPSIA, the agency has spent significant time identifying opportunities to reduce unnecessary testing burdens. To date, with limited exceptions these funds have gone to efforts that have resulted in very little relief for the manufacturing community. However, we are encouraged by the Commission’s recent request for information on potentially reducing regulatory burdens without harming consumers. JPMA looks forward to working with the Commission to find meaningful ways to reduce costs while still ensuring compliance.

III. Section 104 Rulemaking

JPMA and its members support the changes to the Commission’s midyear operating plan relating to Section 104 product categories which were in the notice of proposed rulemaking stage (NPR) or final rule (FR) stage. The decision to move these categories to data analysis and/or technical review allows more time for CPSC staff to work with ASTM to ensure completion of voluntary standards processes. We appreciate the Commission’s engagement with key stakeholders on this issue, and hope that as these NPRs /FRs move into fiscal year 2018 and beyond, the Commission will continue to be supportive of allowing the ASTM process the time it needs to complete or revise voluntary standards.

Conclusion

Thank you for the opportunity to provide comments and suggestions. JPMA and its members share the CPSC’s goal of improving product safety. We look forward to working collaboratively with the Commission on recall effectiveness, reducing regulatory burdens, and other issues that impact the juvenile products industry.

Sincerely,

Danielle Iverson
Director, Legislative and Regulatory Affairs
JPMA
Carol Pollack-Nelson, Ph.D.
Independent Safety Consulting, LLC
Dear Todd:

I appreciate having an opportunity to provide written comments regarding CPSC’s Priorities for the Agency.

Based on my experience as a Human Factors Psychologist and my involvement in various standards and other organizations, I believe there is confusion and misunderstanding by consumers regarding what constitutes a safe sleep environment. For example, well-intending consumers who wish to make the sleep environment cozier introduce pillows and blankets into a baby’s sleep space. This can be a fatal action, however, as babies have suffocated in plush bedding.

There is also a difference of opinion among safety professionals about what presents a hazard in a sleep environment versus what does not. For example, CPSC staff recently completed an analysis of data relating to supplemental mattresses and determined that there were six entrapment deaths in 17 years. Further, these six incidents involved ill-fitting mattresses with a gap of 2 to 7 inches. (One other incident involved a mattress with a 1-inch gap, however, there is no evidence of entrapment). Despite the lack of incidents involving well-fitting supplemental mattresses, some safety advocates request a ban on all supplemental mattresses.
Due to confusion among consumers and conflict among safety professional on this very important topic, I urge the CPSC to make safe sleep environments a priority. To move forward on this issue, I believe it is necessary for CPSC to:

(1) Review and analyze incident data relating to sleep-related products for infants and children to identify and distinguish product characteristics and consumer behaviors that affect the safety of the sleep environment versus those that do not;

(2) Bring together all stakeholders for a discussion of product and behavioral factors identified in the data that should be changed or addressed;

(3) Based on product-related hazards identified in the incident data, work with voluntary standards organizations and stakeholders to draft and/or modify standards for products used for or in the sleep environment;

(4) Based on behavior-related hazards identified in the incident data, work with communications experts and stakeholders to craft messaging that informs consumers about sleep-related hazards and guides their behavior. To this end, messaging should not only be easily remembered but should also be instructive. Examples of information and education campaigns that are both memorable and instructive are: Stop, Drop & Roll and Back to Sleep.

(5) Work with retailers to develop point of purchase information that supports safety messaging relating to safe sleep environments as the Commission did when it worked with retailers to eliminate soft bedding placed inside cribs being sold.

As my comments indicate, changes to products and messaging to consumers should be driven by data, when available. Where data are not available, technical experts in Human Factors, Epidemiology, and Health Sciences can identify potential hazards based on their knowledge of child development, consumer behavior, and threats to safety with related products. The data and career technical staff are key resources that can and should be relied upon to guide this process.

I appreciate your consideration of these comments and I am available to answer any questions.

Respectfully submitted,
Carol Pollack-Nelson

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