



U.S. CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, Maryland

Oral Presentations

Agenda and Priorities FY 2014
Public Hearing

June 20, 2012

and

Written Submissions
Agenda and Priorities FY 2014



U.S. CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, Maryland

Public Hearing
Commission Agenda and Priorities for
Fiscal Year 2014
Wednesday, June 20, 2012
9:00 a.m.

- Hearing will be held from 9:00 a.m. – 12:00 p.m.
- Each group will have 10 minutes for their presentation, for a total of 40 minutes of presentations within each panel.
- 20 minutes of Commission Q and A will follow each of the panels' presentations.

Panel 1; 9:00 – 10:00

1. Ioana Rusu
Regulatory Counsel
Consumers Union – Washington Office
2. Sally Greenberg
Executive Director
National Consumers League
3. Janet Wells (speaking for Gloria Black)
4. Robyn Grant
Director of Public Policy & Advocacy of the
National Consumer Voice for Quality Long-Term Care

Panel 2; 10:00 – 11:00

5. Michael Gray
Director, Business Development
Portable Analytical Instruments
Thermo Fisher Scientific
6. Michael McDonald
Government Relations Representative
American Apparel & Footwear Association

Panel 2; 10:00 – 11:00 cont'd.

7. Rachel Weintraub
Director of Product Safety and Senior Counsel
Consumer Federation of America
8. Erika Jones (Mayer Brown LLP)
Robert Burns (Trek Bicycle)
Speaking on behalf of the Bicycle Product Suppliers Association

Panel 3; 11:00 – 12:00

9. Jim Neill
The Retail Industry Leaders Association
10. Russell Long
Friends of the Earth and colleague organizations
11. Kate Carr
President and CEO of Safe Kids Worldwide

**Written Comments
Commission Agenda and Priorities FY 2014**

The following has submitted written comments **which are attached**.

1. Nick Basinski
Promotional Manager
Thomas Direct
 2. Marshia Armstrong
An ebay reseller
 3. Mailin Nasman
Product Requirements & Compliance Specialist
IKEA North America Services, LLC
 4. David Dickstein
Jacobson Hat Co.
 5. Albert F. Limberg
Senior Compliance Officer
West Region, USCPSC, Retired
 6. William A. Hyman
Professor Emeritus
Department of Biomedical Engineering
Texas A&M University
 7. Jim Crawford
Project Manager
Vision 20/20
 8. Erik Glavich
Director, Legal & Regulatory Policy
National Association of Manufacturers
 9. Nancy Cowles, Executive Director
Kids in Danger
 10. Chief Al H Gillespie, EFO, CFO, MIFireE
President and Chairman of the Board,
International Association of Fire Chiefs (IAFC)
- Jerry Rosendahl , President
National Association of State Fire Marshals (NASFM)

Written comments cont'd.

11. Stephen D. Coan
State Fire Marshal for the Commonwealth of Massachusetts
12. Brent Cleaveland, Executive Director
The Fashion Jewelry & Accessories Trade Association
13. Randy Hertzler
The Handmade Toy Alliance

Ioana Rusu
Consumers Union



POLICY & ACTION FROM CONSUMER REPORTS

**Comments of Consumers Union to the U.S. Consumer Product Safety Commission
on**

“Agenda and Priorities FY 2014”

Presented by Ioana Rusu

June 20, 2012

Introduction

Thank you for the opportunity to comment on CPSC’s agenda and priorities. My name is Ioana Rusu, Regulatory Counsel for Consumers Union, the public policy and advocacy arm of *Consumer Reports*.

I would like to make the following comments regarding CPSC’s agenda and priorities:

CPSIA Implementation

Durable Infant and Toddler Products (Section 104)

The implementation of the CPSIA remains a top priority for our organization, and we appreciate the Commission’s ongoing efforts to complete this process. Over the past year, we have seen a proposed rule on infant swings, as well as final rules on portable bed rails and play yards. In addition, the crib standard, which went into effect last year, is currently the strongest standard in the world and will result in a new generation of safer cribs. We appreciate the fact that CPSIA implementation is a lengthy and complex process that takes up a significant portion of the CPSC’s time. We believe that agency’s activities so far have significantly increased protections for consumers, and we support and applaud the CPSC’s efforts on this front.

Going forward, we hope to see final rules on infant swings, strollers, bassinets, and high chairs, among others. In our testing, we have continued to see problems with some stroller models, where the presence of an adjustable, multi-use bar could create a risk of strangulation if a child slips and gets stuck under the bar (also known as submarining).¹ We have also tested high chairs without passive crotch restraints, which could also allow the child to slip under the tray and strangle.² We urge CPSC to continue to working closely with the ASTM Juvenile Product Subcommittees to develop strong standards for durable infant and toddler products in order to address hazards like ones enumerated above.

Public Database

The product safety database, www.saferproducts.gov, has been a successful result of the CPSIA as it has operated over this past year. With the help of this important public information tool, consumers can now be better informed about the safety hazards associated with products available on the marketplace. Industry can also receive valuable feedback regarding hazards associated with their products. At the same time, consumer representatives and government officials can better track and address developing hazard trends. We applaud all of the hard work the Commission staff has put into this new information tool, and we encourage the agency to continue focusing on making this tool as up-to-date and consumer-friendly as possible. The Commission should keep up to date with consumer postings and should continue to use this valuable resource to track trends and identify emerging hazards. We encourage the agency to conduct follow-up investigations of recurring consumer complaints.

Surveillance and Enforcement

In addition, as CPSC's activities begin shifting from rulemaking towards enforcement of

¹ "Manufacturer recalls Bumbleride Indie and Indie Twin strollers," *ConsumerReports.org*, Feb. 3, 2012. Available at: <http://news.consumerreports.org/baby/2012/02/manufacture-recalls-bumbleride-indie-and-indie-twin-strollers.html>

² "Consumer Reports calls Dream on Me Bistro high chair a "Don't Buy: Safety Risk," *ConsumerReports.org*, Feb. 7, 2012. Available at: <http://news.consumerreports.org/baby/2012/02/consumer-reports-calls-dream-on-me-bistro-high-chair-a-dont-buy-safety-risk.html>

CPSIA-mandated standards, we urge the agency to continue closely monitoring imports of children's products. Many countries currently producing toys and other such products sold in the United States do not follow the same rigorous standards mandated by the CPSIA. The Commission must take a proactive role in limiting the entry of such dangerous products into the U.S. marketplace. We know that this issue is a stated priority for the Commission, and we support the agency's activities to further the safety of imported children's products.

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

Recall Effectiveness

Recall effectiveness remains an important area of focus for the agency. The Commission has made a good start in promoting the new product registration card program for infant and toddler durable products. Most manufacturers are complying with this requirement, and many consumers are registering their products online. However, better messaging is still needed to ensure that consumers understand the importance of registering products and actually participate in the registration process.

We also urge CPSC to develop better ways for consumers to receive recall information. The Commission must take a multi-faceted approach to this important issue. For example, the agency could encourage retailers and manufacturers to send information through text messages, not just mail and email. Many U.S. households currently do not have Internet access and rely wholly on mobile devices. In addition, retailers who offer consumers loyalty programs could use purchase records to determine which consumers should receive recall information. Some retailers already notify members and loyalty-card holders, and we urge CPSC to encourage other retailers to do the same.

On this particular front, we continue to appreciate CPSC's support of the School Safety Alert Program and its participation in the National School Safety Coalition. The

coalition, comprised of government agencies, school-based organizations, parent-teacher organizations, and Consumers Union, pushes out a steady stream of product recall notices to parents of school-age children on the ClickCheckandProtect.org web site, which is updated almost on a daily basis.

CPSC Increased Participation in Voluntary Standard-Setting Activities

A recent GAO report, issued in May 2012, recommended that CPSC play a more active role in voluntary standard-setting activities. CPSC currently attends standard development meetings, supplies hazard and injury data and analysis, and provides input on draft standards. However, the agency regulation prohibits staff from voting on the final standards or from chairing committees. CPSC's rationale for limiting involvement in standards development activity is to maintain its independence.³

We strongly urge the CPSC to review and adopt the recommendations of the GAO report, which encourages the agency to direct staff to review its policy for participating in voluntary standards development activities and determine the feasibility of assuming a more active, engaged role in developing voluntary standards. We agree with the GAO that the CPSC needs to be more involved in these processes in order to ensure that voluntary standards issued by these bodies are strong and protective of consumers. CPSC staff should be permitted to chair committees and to vote on final standards. We commend the agency for responding in a positive manner to the GAO report, and hope that the recommendations of the report will be implemented in a timely manner.

Other Areas of Concern

Appliance Fires

Appliance fires continue to be source of concern, and CPSC data estimates that between 2006 and 2008, there have been over 150,000 residential fires per year caused by major appliances, resulting in 3,670 injuries and 150 deaths. Moreover, an analysis of consumer reports submitted to SaferProducts.gov shows that appliances account for 36% of all

³ U.S. Government Accountability Office, "CPSC: A More Active Role In voluntary Standards Development Should Be Considered," May 2012. Available at: <http://www.gao.gov/products/GAO-12-582>.

reports, with electric ranges and ovens representing 9.7% of all complaints.⁴

Consumer Reports recently conducted an in-depth analysis of federal fire data, and published its findings in a feature article in the March 2012 issue of the magazine.⁵ The finding showed that only half of the appliance fires could be blamed on human mistakes or natural causes. Much of the rest appeared to have been caused by problems with the appliances themselves, such as electrical, mechanical, or design defects. We also found some cases of devices that caused fires because they turned on by themselves. For example, certain cooktops and ranges were recalled by the manufacturer after it was discovered that the devices could unexpectedly auto-start if liquids pool under their control knobs. In addition, electromagnetic interference from mobile devices may also cause certain appliances to turn on. Consumers Union urges the CPSC to address appliance fire hazards, and to pay particular attention to self-starting appliances.

Glass Cookware

We continue to receive complaints from consumers regarding exploding glass cookware. In October 2011, *Consumer Reports* revealed that between January and October 2011, the magazine received 121 new reports of exploding glass bakeware from consumers, which resulted in 18 consumers being injured. So far, we have analyzed over 300 such incidents.⁶ In addition, the CPSC product safety database, SaferProducts.gov, has logged 111 incidents involving Pyrex, four of which have required emergency room treatment. We urge the Commission to investigate this issue closely and address any safety concerns.

Bike Helmets

According to the National Highway Traffic Safety Administration, 630 cyclists were

⁴ "Unsafe Kitchen Appliances Account For 1 In 3 Consumer Complaints," *The Consumerist*, March 9, 2012. Available at: <http://consumerist.com/2012/03/unsafe-kitchen-appliances-account-for-1-in-3-consumer-complaints.html>.

⁵ "Appliance Fires: Is Your Home Safe?" *Consumer Reports*, Vol. 77, No. 3 (March 2012).

⁶ "Shattered Glass," *ConsumerReports.org*, October 2011. Available at: <http://www.consumerreports.org/cro/magazine-archive/2011/october/home-garden/bakeware/overview/index.htm>.

killed and 51,000 were injured in motor vehicle crashes in 2009.⁷ Although fewer people have been dying from bicycle accidents in recent years, plenty of crashes are still fatal, and helmets can save lives. *Consumer Reports* recently tested a number of bike helmets and found that some transferred slightly more force to the head than the limit set by the CPSC bike-helmet standard.⁸ We urge CPSC to review its bike helmet standard and to update it to, for example, lower the allowable peak acceleration, based on the performance of many tested models and European standards.

Laundry Detergent Pods

Poison centers around the country are reporting an increase in calls about children ingesting or otherwise being exposed to highly concentrated laundry detergent packaged in small, single-dose packets. Some toddlers and young children who swallowed these detergent pods have become extremely ill and have required hospitalization. The laundry detergent pods are very colorful and can often look like toys or candy to small children.⁹ In light of the injuries associated with this emerging hazard, we urge CPSC to investigate this product and adopt stricter standards that will ensure this product does not harm children.

Window Coverings and Other Cord-Related Hazards

The injuries from corded window coverings are sometimes fatal and often severe. Some children suffer permanent and debilitating brain damage after getting entangled in blind cords. CPSC's most recent data on window covering incidents indicates that since 1999, there have been 135 fatalities and 140 non fatal incidents as a result of a child's interaction with the cord of the window covering. The voluntary standard currently in place is inadequate and does not properly address this hazard. We urge the CPSC to continue pushing industry to develop a new window coverings standard that actually eliminates – and not simply reduces – the risk of strangulation associated with all window

⁷ U.S. Department of Transportation, National Highway Traffic Safety Administration, "Traffic Safety Facts: 2009 Data." Available at: <http://www-nrd.nhtsa.dot.gov/pubs/811387.pdf>.

⁸ "Best Bike Helmets," *Consumer Reports*, Vol. 77, No. 7 (July 2012).

⁹ "Tide Pod laundry detergent packaging gets makeover due to safety concerns," *ConsumerReports.org*, May 25, 2012. Available at: <http://news.consumerreports.org/home/2012/05/tide-pod-laundry-detergent-packaging-gets-makcover-due-to-safety-concerns.html>.

coverings.

Table Saws

Approximately 40,000 Americans visit hospital emergency rooms every year with injuries sustained while operating table saws. About 4,000 of those injuries – or more than 10 every day – are amputations. Table saw injuries cost the United States approximately \$2 billion every year.¹⁰ In light of these sobering statistics, we applaud the CPSC for seeking to develop a standard that would reduce or eliminate table saw injuries. We look forward to seeing the agency's proposed rule on this issue.

Furniture Safety

We continue to be extremely concerned about deaths and injuries suffered by young children as a result of furniture tip-overs. CPSC statistics show that over 22,000 children 8 years and younger are injured every year as a result of furniture, appliances, or televisions tipping over. The current ASTM standard for furniture is being strengthened. However, more needs to be done to ensure that this safety risk is addressed, and we strongly urge the agency to continue monitoring and working on this important issue.

Bumbo Seats

Serious injuries associated with the Bumbo seat have already prompted a recall in 2007 and a warning from CPSC in 2011. Because these injuries continue to occur when the product is used as intended, and since these injuries involve an alarming number of skull fractures, we have grave concerns about the safety of Bumbo International's Baby Seat. There are no safety standards or testing requirements currently covering this type of product. In addition, manufacturers of similar products have made design changes to address the safety concerns associated with these types of products– a step Bumbo International has refused to take to date.

¹⁰ National Consumers League, "NCL Factsheet on Saw Safety." Available at: <http://www.nclnet.org/health/99-safety/567-facts-at-a-glance-the-inherent-danger-of-table-saws>.

On February 6, 2012, CFA, Kids In Danger, Consumers Union, U.S. PIRG and Public Citizen wrote to CPSC urging the Commission to issue a recall of Bumbo International's Baby Seat to remove these potentially hazardous products from the market and to allow the manufacturer to address the serious safety concerns in the future. We are not aware of any CPSC action on this matter and repeat our request to CPSC to recall the baby seat and to prioritize this issue.

Heavy Metals

We urge the agency to continue to address the harms associated with heavy metals that may be in consumer products. In particular, we urge CPSC to also investigate and address lead and other heavy metals in consumer products other than just toys and paint. For example, the European Consumer's Organisation (BEUC) recently revealed that soccer jerseys of teams competing at Euro 2012 contained toxins and harmful substances.¹¹ We urge the Commission to work diligently with ASTM International in the development of heavy metals standards for children's products, but also for other consumer products.

Nanomaterials

We continue to express concern with the rapid proliferation of products containing nanomaterials, due to a lack of sufficient understanding regarding their possible health effects. We support CPSC's study of nanomaterials in collaboration with other government agencies, and hope this information will lead to a better understanding of potential risks associated with nanotechnology.

Generator Safety

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

¹¹ "Toxic Poland shirt should be banned-consumer group," Reuters, June 8, 2012. Available at: <http://in.reuters.com/article/2012/06/08/soccer-euro-shirts-idINL5E8H88Z420120608>.

ATVs and ROVs

We are particularly concerned about the hazards associated with use of all-terrain (ATVs) and recreational off-highway vehicles (ROVs). CPSC's most recent data on ATV injuries shows that at least 55 children 16 and under lost their lives and 28,300 were injured seriously enough to require treatment in a hospital emergency department in 2010 as a result of using an ATV.¹² We urge the CPSC to prioritize ATV and ROV safety, and to issue mandatory standards that protect consumers, and especially children, from these risks.

Button-Cell Batteries

We appreciate CPSC's efforts to push industry towards creating a safer product design for button-cell batteries. Button-cell ingestion can result in devastating injuries to consumers and can even cause death. The batteries are ubiquitous in consumer products and manufacturers must ensure they are safely secured within the battery compartment so that they are not accidentally ingested. We encourage the agency to continue focusing on this significant health hazard.

Inflatable Amusements

Recent incidents have demonstrated that inflatable amusements can pose serious hazards to consumers. Some can deflate without notice, entrapping children or causing them to fall. Others can blow away and injure children. Inflatable swimming pools can pose a drowning hazard. These incidents cause great concern. We urge the Commission to investigate this emerging hazard and to work with ASTM International in the development of voluntary standards for inflatable amusements that are intended for personal use by consumers.

¹² U.S. Consumer Product Safety Commission, "2010 Annual Report of ATV-Related Deaths and Injuries," December 2011. Available at: <http://www.cpsc.gov/library/foia/foia12/os/atv2010.pdf>.

In conclusion, we applaud the Commission's efforts to address hazards associated with consumer products, and look forward to our continued work with the agency to help it fulfill its mission.

Stevenson, Todd

From: Ioana Rusu [irusu@consumer.org]
Sent: Monday, June 04, 2012 3:42 PM
To: CPSC-OS,
Cc: Ellen Bloom
Subject: Agenda and Priorities FY 2014

To Whom It May Concern:

I would like to present oral comments on behalf of Consumers Union at the Agenda and Priorities FY 2014 hearing on June 20th.

Regards,

Ioana Rusu

--

Ioana Rusu
Regulatory Counsel
Consumers Union - Washington Office
1101 17th Street, NW Suite 500
Washington, DC 20036
Tel: (202) 462-6262
irusu@consumer.org



This e-mail message is intended only for the designated recipient(s) named above. The information contained in this e-mail and any attachments may be confidential or legally privileged. If you are not the intended recipient, you may not review, retain, copy, redistribute or use this e-mail or any attachment for any purpose, or disclose all or any part of its contents. If you have received this e-mail in error, please immediately notify the sender by reply e-mail and permanently delete this e-mail and any attachments from your computer system.

Sally Greenberg
National Consumers League



June 20, 2012

Chairman Inez Tenenbaum
Commissioners Robert Adler, Nancy Nord and Anne Northup
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, Maryland 20814

SUBJECT: Agenda and Priorities FY 2014

Dear Chairman Tenenbaum and Commissioners Adler, Nord and Northup:

On behalf of the National Consumers League, I urge the U.S. Consumer Product Safety Commission to place the following issues among its top priorities in fiscal year 2014:

I. Table Saw Safety

On October 11, 2011, CPSC published an Advanced Notice of Proposed Rulemaking to consider whether to promulgate a mandatory performance standard to address the unreasonable risk of injury associated with table saws. The National Consumers League, joined by Consumer Federation of America, Consumers Union, Public Citizen, and U.S. PIRG, submitted comments urging the Commission to move forward with the rulemaking.

Our comments noted that tens of thousands of serious injuries occur every year as a result of contact with a table saw blade while in operation. These injuries cost society well over \$2 billion every year.¹ The benefits of reducing these injuries outweigh the costs to manufacturers of re-designing their saws. The voluntary standard that has existed, with modifications, since 1971, now requires table saws to be equipped with a modular blade guard and riving knife. While the latest version of the standard is a modest improvement over previous versions, blade guards, riving knives and other anti-kickback devices alone are not effectively addressing the tens of thousands of serious blade contact injuries that continue to occur.

We urged CPSC to enact a technology-neutral performance standard that would require manufacturers to equip table saws with safety devices that would mitigate injury when the operator comes in contact with, or in close proximity to, the spinning blade.

¹ Caroleene Paul, *Briefing Package, Recommended Advance Notice of Proposed Rulemaking for Performance Requirements to Address Table Saw Blade Contact Injuries*, U.S. Consumer Product Safety Commission (September 2011) [hereinafter – “CPSC ANPR Staff Briefing Package”] pages 2-3.

The comment period for the ANPR has passed, and we understand the CPSC staff is currently reviewing the comments to determine whether to recommend that the agency published a Notice of Proposed Rulemaking. We hope that the Commission will publish an NPR soon, so that a standard can be enacted as quickly as possible. With every day that goes by, approximately ten more people lose fingers in preventable table saw accidents.

We urge the Commission to budget staff time and resources in fiscal year 2014 for what we hope will be the final stages of the rulemaking process for a table saw safety standard. It is long overdue.

II. All Terrain Vehicle Safety

We also urge the Commission to budget staff time and resources in fiscal year 2014 for All Terrain Vehicles. We recognize in 2012 that the Commission is expected to complete its 2006 rulemaking. However, we urge the Commission specifically to commit resources to continuing research related to ATV safety in fiscal year 2014 and beyond.

III. Fire and Carbon Monoxide Hazards

We urge the Commission's continued commitment to technical research in the areas of fire and carbon monoxide hazards. CPSC's own data indicate that there are annually 386,000 fires, 2,390 deaths, 12,530 injuries and \$6.92 billion property losses related to fires. Cooking equipment and heating equipment account for the largest shares of these fires. We need federal safety agencies with CPSC's jurisdiction to continue research into ways to make cooktops and space heaters safer and less likely to start fires.

Regarding carbon monoxide, CPSC's own data indicate that there are close to 200 unintentional, non-fire CO deaths a year from consumer products such as generators and gas fueled furnaces. This does not count the more than 200 deaths a year CDC attributes to CO exposure from automobiles. We urge CPSC to remain focused on technological solutions that will prevent these useful products from silently killing consumers. Finally, both hazards can be mitigated by effective, and relatively inexpensive, alarms. We urge the Commission to make upgrades and updates to the smoke alarm and carbon monoxide alarm standards a priority in 2014 and beyond.

Stevenson, Todd

From: Terry Kush [terryk@nclnet.org]
Sent: Wednesday, June 13, 2012 1:24 PM
To: CPSC-OS,
Cc: Sally Greenberg; Terry Kush
Subject: NCL's Comments on Agenda & Priorities FY2014
Attachments: CPSC 2014 Budget_NCL Comments Ltrhd.doc

Importance: High

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

Dear Mr. Stevenson:

Per Sally Greenberg's request, please find attached NCL's comments regarding the Agenda and Priorities for FY2014.

Thank you.

Terry Kush
Managing Director | National Consumers League
(202) 835-3323 ext. 827 | terryk@nclnet.org | <http://www.nclnet.org>
Twitter: http://twitter.com/ncl_tweets | Facebook: <http://facebook.com/nationalconsumersleague>

Stevenson, Todd

From: Sally Greenberg [SallyG@nclnet.org]
Sent: Wednesday, June 13, 2012 5:27 PM
To: CPSC-OS,
Cc: Terry Kush
Subject: presentation at CPSC

Hi, Todd. Yes, I will be presenting in person. I have a lunch engagement that day so if there are two panels, would you mind putting on the first panel? Thank you Todd and look forward to seeing you next week.



Sally Greenberg
Executive Director | National Consumers League
 [\(202\) 835-3323 ext. 830](tel:(202)835-3323) | sallyg@nclnet.org | <http://www.nclnet.org>
Twitter: http://twitter.com/ncl_tweets | Facebook: <http://facebook.com/nationalconsumersleague>
Take the pledge. Take your meds. Learn more at ScriptYourFuture.org.

Janet Wells

Stevenson, Todd

From: Gloria Black [gloria.black@gmail.com]
Sent: Thursday, June 07, 2012 10:46 PM
To: CPSC-OS,
Subject: Re: Submission to CPSC for: Agenda and Priorities FY 2014

RE: Agenda and Priorities FY 2014

Dear Mr. Stevenson, thank you for the information. Janet Wells has agreed to present my response on my behalf at the CPSC meeting. Please note that, while Janet, until quite recently, was Director of Public Policy at the National Consumer Voice for Quality Long-Term Care, she is presently "retired." Therefore, it will be in her capacity as a private citizen that she is standing in for me.

I do not know the precise procedure for presentations. Her email is janetwells.dc@gmail.com. I will forward to her your contact information so that any necessary arrangements can be made directly between CPSC and her. Thank you for your assistance. Best wishes, Gloria Black

On Wed, Jun 6, 2012 at 9:59 AM, CPSC-OS, <CPSC-OS@cpsc.gov> wrote:

yes

Todd Stevenson

Director, The Secretariat

(Office of the Secretary)

Office of the General Counsel

US Consumer Product Safety Commission

(301) 504-6836, Fax (301) 504-0127

From: Gloria Black [mailto:gloria.black@gmail.com]
Sent: Wednesday, June 06, 2012 12:30 PM
To: CPSC-OS,
Subject: Re: Submission to CPSC for: Agenda and Priorities FY 2014

I myself will not be there. Would it be permissible for someone else to read my comments in my place, or an excerpt from them? Thanks. Regards, Gloria

On Wed, Jun 6, 2012 at 5:40 AM, CPSC-OS, <CPSC-OS@cpsc.gov> wrote:

Your comments are received. Are you asking to make a presentation or just submitting written comments?

Todd Stevenson

Director, The Secretariat

(Office of the Secretary)

Office of the General Counsel

US Consumer Product Safety Commission

(301) 504-6836, Fax (301) 504-0127

From: Gloria Black [mailto:gloria.black@gmail.com]
Sent: Tuesday, June 05, 2012 9:36 PM
To: CPSC-OS,
Subject: Submission to CPSC for: Agenda and Priorities FY 2014

I have attached my submission for the CPSC Agenda and Priorities FY 2014 call for action. Could you kindly confirm via email that it has been received and that all is in order for the June 13th deadline? Thank you. Best wishes, Gloria Black

*****!!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page: <https://www.cpsc.gov/cpsclist.aspx> *****!!!

Gloria Black
17788 NW Gilbert Lane
Portland, Oregon 97229
Email: Gloria.Black@gmail.com

TO: cpsc-os@cpsc.gov
Chairman Inez Tenenbaum
Commissioners Robert Adler, Nancy Nord and Anne Northup
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

Subject: Agenda and Priorities FY 2014 June 6, 2012

Dear Chairman Tenenbaum and Commissioners Adler, Nord and Northup:

I would like to request that in 2014, CPSC begin or continue a rulemaking to enact a safety standard to address the extremely high number of deaths and injuries associated with the use of adult bed rails¹.

While the general public may be less than aware of the dangers of bed rail use, The New York Times in its 2010 article, "Safe in Bed?" by Paula Span,² sought to make the public aware of this potentially fatal problem. In my opinion the problem worsens as more of our population grows elderly and declines in health (the two not necessarily being cause and effect), and unsubstantiated claims continue to be made by bed rail advertisers and false advertisement. The result is continuation of numerous lawsuits as loved ones allegedly die or get injured allegedly through bed rail use. It is not unusual for these bed rails to be purchased at the encouragement of an unsuspecting doctor, or to be purchased by the loving spouse of a person who ultimately may be killed in a bed rail. ***At the very moment of this writing, at least one person who has been called upon to serve as an expert witness in lawsuits resulting from alleged death due to usage of a bed rail has 8 cases!*** And there are other medical or technical experts who presently also have cases involving alleged bed rail deaths. So the number 8 is but a fraction of the total number of lawsuits taking place right now in the United States alone that have happened allegedly because someone was using a bed rail.

¹ Manufacturers can become very creative when naming what basically are bed rails. When I speak of bed rails in my report, I am including, and not limiting myself to, side rails, split rails, half rails, full length rails, bed canes, bed handles, etc. Adverse event reports of death are recorded for all of the above categories.

² newoldage.blogs.nytimes.com/2010/03/10/safe-in-bed/

The FDA has reports of adverse events involving deaths of adults numbering well over 500, and the CPSC has reports on file of at least 155 deaths, the vast majority of those also being adults. The adults killed are typically frail, elderly, and often suffer from dementia. Yet these numbers represent only a fraction of all bed rail-related deaths. Not all bed rail deaths are reported, and less than scrupulous care facilities may attempt cover-ups of such deaths – not difficult to do when it appears that the passing of an elderly loved one was close at hand anyway. But deaths by asphyxiation are painful, and it is not at all the way any human being should end their life – particularly where we already know how dangerous these bed rails can be. The CPSC has the power to put an end to the continuation of these horrible deaths.

Bed rails are sold directly to consumers on the Internet, through numerous major department stores, by the manufacturers directly, and in medical supply stores. There are over 55 different companies I could find in my research for whom reports are known to the FDA and/or the CPSC for alleged death by entrapment or asphyxiation in a bed rail.

The bed rails are used in homes, hospital settings or in care facilities because of the misinformed belief and unsubstantiated advertising claiming that use of a bed rail will prevent a person (be they elderly or young) from falling out of bed. In fact, bed rail use can increase the likelihood of a worse fall from a bed, as patients try to climb over the rails. The fall a person has can be worse than if no bed rail were used at all: either rolling over in the bed or attempting to climb out, the user can become entrapped in the rail. In fact, research indicates that bed rail use actually poses a higher risk of injury to a patient than risk of a fall, by approximately 5 percent.³ In their paper, “Do split-side rails present an increased risk to patient safety?”⁴ S. Hignett and P. Griffiths state in their Abstract: “...our findings suggest that bed rails are associated with some level of risk of entrapment that potentially could result in death.” In his case report in which 29 deaths are examined, (“Autopsy Findings in Asphyxia in Medical Bed Rails”), Dr Steven Miles reports in the Abstract that “Lethal asphyxial entrapment between bedrails and mattresses is a well-recognized clinical event although there are few descriptions of autopsy findings.”⁵

Hence bed rails for adults are not effective in accomplishing their primary purpose: to *prevent* injuries that can result when a person climbs or falls out of bed. What is more, the bed rails pose a risk of death or serious injury due to asphyxiation and/or entrapment that can occur. Nonetheless, bed rails continue to be advertised as being safe and even

³ See Myths and Facts about Side Rails, Talerico and Capezuti, AJN, July 2001, vol. 101, issue 7, 43-48. Also, 'Bed-rail entrapments still a serious problem,' William A. Hyman, July 24, 2008, McKnights.

⁴ Qual Saf Health Care, 2005 Apr. 14(2):113-6

⁵ Am J Forensic Med Pathol, Vol. 30, No. 3, Sept. 2009, 256-261.

increasing a person's safety! One manufacturer under oath claimed that he was not able to produce the research he claims to have done for the design of his bed rail/handle. For just this one relatively small company reports were filed for 4 different bed rail related deaths, plus one more for a life threatening event. In 2007 CPSC conducted an Investigative Report on alleged death number 4. What was the result? Consumers are still able to buy the bed rail that was on victim number 4's bed at time of asphyxiation, and consumers are still told that use of the product "makes any bed safer." The four families whose lives were adversely and forever affected by their bed rail purchase would strongly disagree with the advertisement "makes any bed safer." **The overall high numbers of bed rail related deaths is clear evidence in my opinion that this issue of quality of research extends to numerous other bed rail manufacturers who have products on the market and remain there even after being associated with causing death.**

More and more respectable care facilities are taking the action of banning use of bed rails altogether. They solve the problem of a person falling out of bed either by lowering the bed or placing cushioning or a mattress by the side of the bed to minimize hurt from a potential fall. Still, sales of all sorts of bed rails, a number of which are extremely dangerous, are on the market. Some of these bed rails have no identification of manufacturer on them either, making it more difficult for authorities to track down who has produced such a poorly designed rail that it kills, rather than makes the person "safer."

Yet, somehow if one reads these adverse event reports, over and over again one sees claims to the effect that there is no defect with the bed rail. The bed rail goes back into use, and it stays on the market. It's time to end this. There have been other products that got recalled when there was just one death and the CPSC recognized the hazard. Why not follow through on this now?

But it is not enough to do recalls. We need to revisit the standards.

IN CONCLUSION

The CPSC no doubt deserves recognition and well earned praised for the step it has taken to presently study further in 2012 the deaths of adults in bed rails. The prime goal here, however, is to take action so that with each passing month, I am not reading about a new death affecting yet another family – all because the family and those who purchased or allowed the bed rail to be on the bedside of their loved one, did not know that they might be helping to kill that person instead.

I respectfully thank the CPSC for the opportunity to submit this response to their Call for Action for 2014. Having been an advocate for the last four years for public

awareness on the potential dangers of bed rail use and for government accountability for proper oversight, I can, for the first time, sincerely express my view that I have every confidence that the CPSC is on track to take the right action and ensure that bed rails sold in the U.S. are safe for consumers.

Gloria Black

Robyn Grant
National Consumer Voice for Quality
Long-Term Care

Stevenson, Todd

From: Sarah Wells [swells@theconsumervoice.org]
Sent: Wednesday, June 13, 2012 10:49 AM
To: CPSC-OS,
Cc: Sarah Wells
Subject: Agenda and Priorities FY 2014
Attachments: Consumer Voice Statement on Bed Rails to the CPSC.pdf

Consumer Product Safety Commission
Office of the Secretary

I am writing to request time for an oral presentation by Robyn Grant, Director of Public Policy & Advocacy of the National Consumer Voice for Quality Long-Term Care, at the public CPSC hearing on June 20th. Robyn's presentation will focus on the dangers of bed rails for vulnerable older adults. Attached is the written text of the presentation.

Thank you,
Sarah Wells

SARAH F. WELLS, MA
Executive Director



1001 Connecticut Avenue, NW | Suite 425 | Washington, DC 20036 | t: 202-332-2275, ext. 209 | f: 202-332-2949

***With your support, the Consumer Voice can continue to advocate for quality long-term care.
Donate through our website at: <http://www.theconsumervoice.org/donate>***





Statement of Robyn Grant, Director of Public Policy and Advocacy
The National Consumer Voice for Quality Long-Term Care
for the
Consumer Product Safety Commission
Public Hearing on Agenda and Priorities for FY 2014

June 20, 2012

The National Consumer Voice for Quality Long-Term Care (Consumer Voice) is a national non-profit organization that advocates on behalf of recipients of long-term care in all settings. Our membership consists primarily of consumers of long-term care services, their families, ombudsmen, individual advocates, and citizen advocacy groups. For more than 35 years, the Consumer Voice has promoted quality care and consumer protection through legislative reforms, policy advocacy, and consumer and public education. Preventing serious injuries and deaths from asphyxiation, suffocation and falls on bed rails has been an objective of the Consumer Voice and its members for decades, and we appreciate this opportunity to request that you address this recurring tragedy by promulgating standards for adult bed rails in FY 2014.

Bed rails are routinely used in nursing facilities, assisted living facilities, and private homes based on a pervasive myth that they are a safe, benign, effective means of fall prevention in the elderly. Many well-meaning family members of frail elders believe that the “security” of a bed rail will keep their loved one safe, although research shows that fall rates are actually higher with rails and more likely to cause injury--in addition to the significant risk of asphyxiation. Between 1985 and 2009, the Food and Drug Administration received reports of 803 incidents of patients caught, trapped, entangled, or strangled in hospital beds. These included 480 deaths, 138 non-fatal injuries, and 185 near misses due to staff intervention. However, these figures do not reflect the number of elderly who may be at risk but whose injuries are never recorded by the FDA or CPSC. For example, an Administrative Law Judge last year upheld New Mexico’s citation against a nursing home that allowed a resident to become entrapped twice. On October 1, 2008, a nurse found the resident sitting on the bed with his right arm caught in the rail and with a “very red impression of the bed rail on that arm,” as well as redness on his other arm. Less than a week later, nursing notes said the resident “was found lying on his right side between the side rail and the mattress with his right arm caught” and “red marks on his leg above the knee, on his upper arm, and on his shoulder.”¹

Most adult bed rail victims are frail, elderly, and confused. Often they have Alzheimer’s disease or another form of dementia associated with aging. Federal regulations prohibit bed rails’ use in nursing homes as physical restraints; and there is strong agreement among professionals in multiple fields—including researchers, practitioners, government administrators, and consumer advocates—that the use of bed rails should be curtailed and alternatives to prevent falls provided. Some health care professionals and researchers advocate banning them because the risks they pose outweigh any medical benefits for many users.

¹ Department of Health and Human Services Departmental Appeals Board Civil Remedies Division: Sunshine Haven Lordsburg (CCN: 32-5109), Petitioner v. Centers for Medicare and Medicaid Services. Docket Nos. C-09-442, C-09-445, C-09-446, C-09-447, C-09-498, and C-09-499 Decision No. CR2408 Date: August 5, 2011; p. 18.

William A. Hyman, professor emeritus of biomedical engineering at Texas A&M University, warned nursing home providers in 2008, "Bed-rail entrapments and deaths continue to occur in nursing homes, other facilities, and in the home because rail and bed designs that are clearly dangerous continue to be used. Such rails may be in your inventory, or in the inventory of your rental supplier."²

The research and advocacy of the daughter of one victim, Gloria Black of Portland, Oregon, has refocused attention on the tragic consequences of the government's failure to take the same forceful action on adult bed rails that it has taken on children's cribs and children's bed rails. Ms. Black's family, following the recommendation of the assisted living facility in which she lived, purchased the device that ultimately killed her mother. The device was one of many available to consumers that carry no warning information about dangers that may be obvious only after a tragic accident has occurred. These tragedies are likely to multiply as the population ages and more and more elderly receive care in their homes rather than in institutional settings.

One year ago, the Consumer Voice urged you to regulate the manufacturing and marketing of adult bed rails, which are sold to the public over the internet and in walk-in medical supply stores with no warning about the serious risk they pose to either frail adults or children.³ We pointed out in our comments on proposed changes to ASTM F2085-10a regulating portable children's bed rails that the CPSC had recalled drop-rail baby cribs after a handful of deaths, while there had been no regulatory remedy after more than 800 reported deaths, injuries, and near escapes on adult bed rails. We urged the CPSC to recall unsafe non-children's bed rails and bed rail-type products; to inform the public, health care providers and workers about dangers related to their use and patients' right to refuse them; and to prohibit their use with vulnerable, at-risk individuals.

Although the commission's final regulations did not include the Consumer Voice's recommendations, we would like to thank you for noting public comments you received about the danger of bed rails to older adults and for your 2012 Performance Budget (Operating Plan) to review CPSC epidemiological data of deaths and injuries associated with bedrails for consumers 13 and older. This study is a step in the right direction to finally provide vulnerable elders the same protection that has been afforded to infants and children through CPSC recalls and regulation of cribs, children's bed rails, and other hazards.

Recommendation

Anticipating that the study will be completed in 2012, the Consumer Voice recommends that in FY 2014, you conduct rulemaking to enact a safety standard to address deaths and injuries associated with the use of adult bed rails. The CPSC has been considering the need for rules to prevent adult bed rail deaths since 1998; and the commissioners unanimously voted in 2001 to support a Notice of Proposed Rulemaking, only to allow progress to be sidetracked by industry approval of voluntary standards that have not prevented continued, needless deaths and injuries.

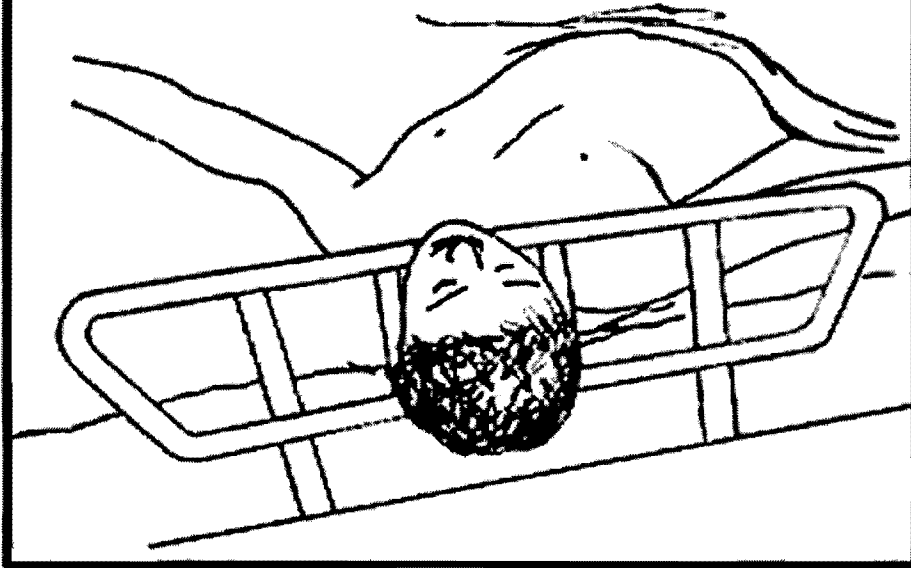
Thank you again for the opportunity to comment. Attached to my statement are drawings illustrating the ways in which individuals become entrapped and asphyxiated, strangled or suffocated by bed rails.

Contact: Robyn Grant, Director of Public Policy & Advocacy, Consumer Voice; 202-332-2275 or rgrant@theconsumervoic.org.

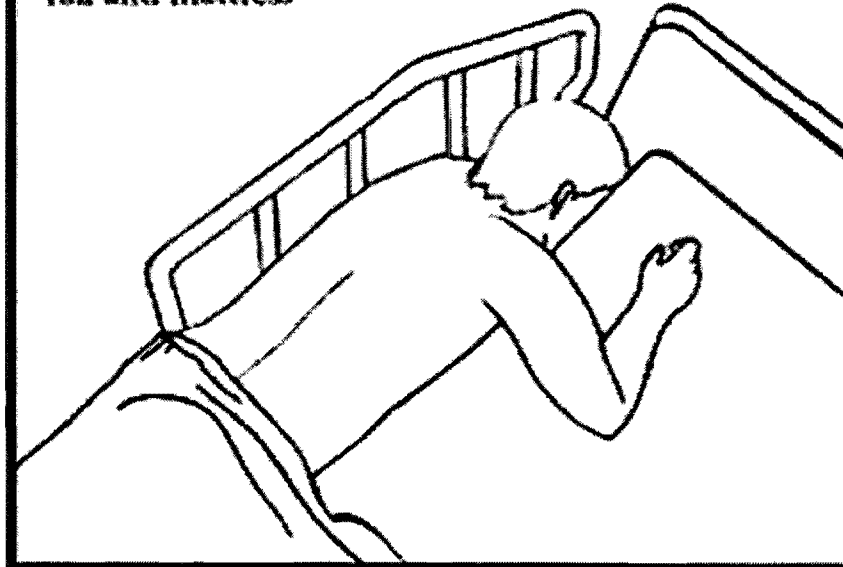
² William A. Hyman, "Bed-rail entrapments still a serious problem," McKnight's Long Term Care News," July 24, 2008.

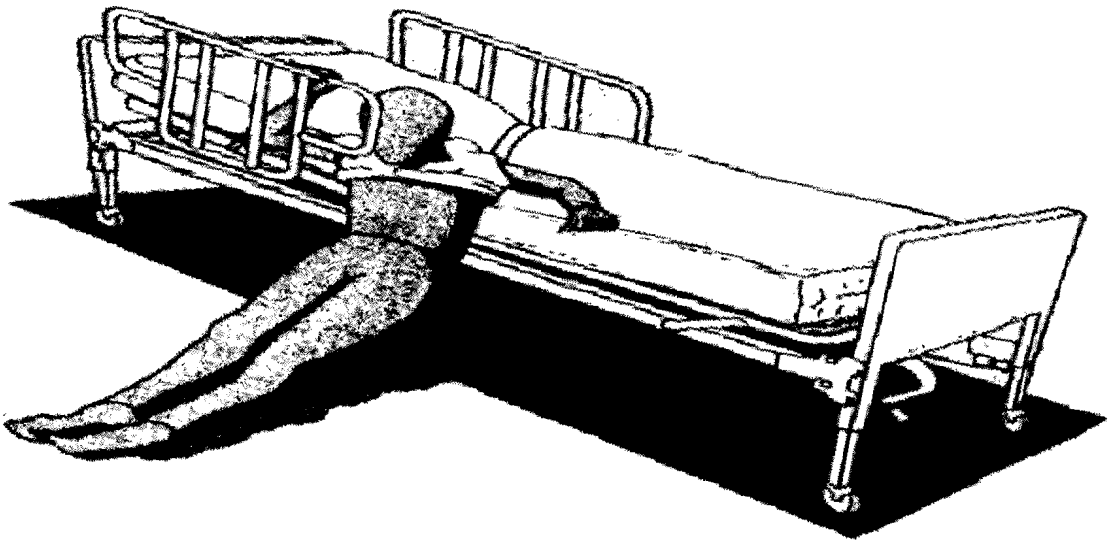
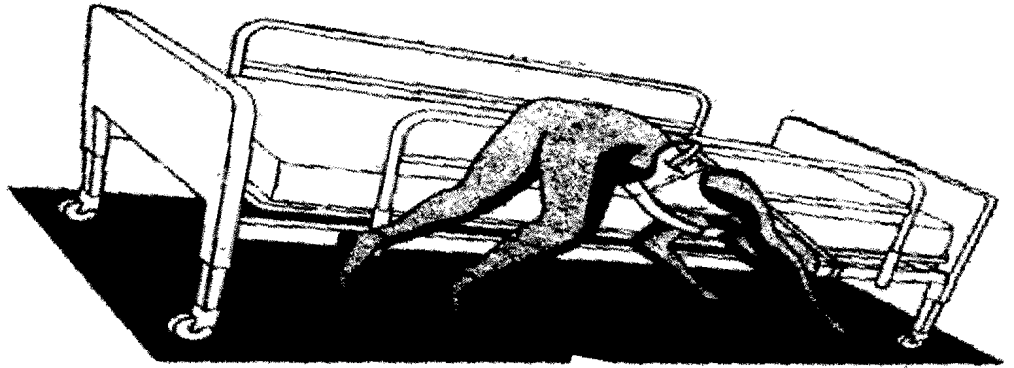
³ The National Consumer Voice for Quality Long-Term Care, Letter from Sarah F. Wells to the Honorable Inez Moore Tenenbaum, RE: Proposed Rulemaking - Safety Standard for Portable Bed Rails CPSC Docket No. CPSC-2011-0019; 16 CFR Part 1224, June 27, 2011.

Zone 1 - Entrapment within rail



Zone 3 - Entrapment in horizontal space between rail and mattress





Michael Gray
Thermo Fisher Scientific

Stevenson, Todd

From: Fenton, Tim [tim.fenton@thermofisher.com]
Sent: Tuesday, June 12, 2012 11:19 AM
To: CPSC-OS,
Cc: Gray, Michael J.
Subject: Public Meeting - Request to present

Good morning Todd – My colleague Michael Gray requests the opportunity to present at next week’s public hearing on 2014 priorities. As you know, Michael has presented in the past. His details are:

Michael Gray
Director, Business Development
Portable Analytical Instruments
Thermo Fisher Scientific
(516) 869-0216

Please let me know any necessary logistics.

Best wishes,
Tim

Tim Fenton
Director, Federal Government Relations
Thermo Fisher Scientific
(202) 741-9345
(202) 257-4277 cell

The world leader in serving science.

Wednesday, June 20 (Public Hearing)

The U.S. Consumer Product Safety Commission will conduct a public hearing to receive views from all interested parties about its agenda and priorities for fiscal year 2014, which begins on October 1, 2013. Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 2014 will become part of the public record.

The hearing will begin at 10:00 a.m. and will be held at CPSC, Hearing Room 420, Bethesda Towers.

Requests to make oral presentations and the written text of any oral presentations must be received by the Office of the Secretary not later than 5 p.m., Eastern Daylight Time on June 13, 2012. For information about the hearing or to request an opportunity to make an oral presentation, please send an e-mail, call or write Todd A. Stevenson, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail cpsc-os@cpsc.gov; telephone (301) 504-7923; facsimile (301)

504- 0127 or see more information in Federal Register notice dated June 4, 2012, page 32951.

Stevenson, Todd

From: Gray, Michael J. [michael.gray@thermofisher.com]
Sent: Wednesday, June 13, 2012 4:26 PM
To: Stevenson, Todd; CPSC-OS,
Cc: Fenton, Tim
Subject: RE: Public Meeting - Request to present
Attachments: cpsc comments 06 20 12.pdf

Todd,

Here are my remarks for next week.

-mjb

Pro mea parte ago

Michael J. Gray
Director of Business Development
Thermo Scientific Niton Analyzers
Thermo Fisher Scientific
+1 (516) 869-0216 (Direct)
+1 (516) 908-3920 (Fax)
www.thermo.com/niton
<http://www.niton.com/xrf-analyzer/blog.aspx>

From: Gray, Michael J.
Sent: Wednesday, June 13, 2012 9:35 AM
To: 'Stevenson, Todd'; Fenton, Tim; CPSC-OS,
Subject: RE: Public Meeting - Request to present

Todd,

I will send it out early this afternoon.

-mjb

Pro mea parte ago

Michael J. Gray
Director of Business Development
Thermo Scientific Niton Analyzers
Thermo Fisher Scientific
+1 (516) 869-0216 (Direct)
+1 (516) 908-3920 (Fax)
www.thermo.com/niton
<http://www.niton.com/xrf-analyzer/blog.aspx>

From: Stevenson, Todd [mailto:TStevenson@cpsc.gov]
Sent: Wednesday, June 13, 2012 8:49 AM

I thank the chairman and commissioners for welcoming Thermo Fisher Scientific again to speak before The Commission and to continue our support of the great work of CPSIA in making our nation a healthier, cleaner and safer place for our children. In the 3 years since enactment of CPSIA, Thermo Fisher has been successful in providing three generations of product in support of this legislation, and our development continued this year as we expanded our technology offering into molecular spectroscopy, and thus began supporting testing of regulated phthalate plasticizers. We look forward to a continued working relationship with The Commission in the years to come.

Today, we wish to suggest a specific proposal for The Commission's consideration in the coming fiscal year. We propose setting up testing centers throughout the US for the purpose of supporting Small Batch Manufacturers in their efforts to comply with testing as per their special considerations under Public Law 112-28, the revisions to the CPSIA. This is a proposal which we have informally suggested several times over the years, but in light of reforms that were made law last year and the forthcoming lifting of the testing stay, the time has come to address this suggestion clearly, and to articulate some of the detail. At this point, this proposal has not been vetted with the appropriate stakeholders including the Small Business Ombudsman, but it is our hope that, by getting the idea into the record of The Commission's strategic planning for next fiscal year, we can move toward articulation of the detail, and work with the commission to develop an executable proposal.

Registered Small Batch Manufacturers are given, under CPSIA as modified by last year's HR 2715, special consideration for third party testing requirements due to certain "economic, administrative, or other limits on the ability of small batch manufacturers to comply" with testing requirements of CPSIA. If such limits are, after hearing and due consideration, found compelling, small batch manufactures are to be exempted from such testing requirements. As a key supplier of a highly reliable alternative test method, we at Thermo Fisher envision a solution, developed around our technology, as a compelling compromise for these manufacturers. Throughout the development of CPSIA, and most recently at the hearing specifically relating to small batch manufacturers in October, 2011, we have heard much of the importance of these manufacturers to this industry, and the overwhelming burden that CPSIA test requirements would represent to their business operation – in fact, it would be crippling or even fatal.

Even the cost-effective, simple-to-use handheld XRF alternative test is not a viable solution due to the limited revenue of these companies and the excessive return on investment period of an instrument costing tens of thousands of dollars. So, if they cannot afford lab testing, or even handheld XRF guns for first-party testing, how can we support these manufacturers and enable them to comply? Indeed, in recognition of their importance in the industry and to our economy, the law provides for an exemption from certain testing should there be no available methods for compliance. We all know that this is not the ideal situation; neither for the public, nor for the small batch manufacturers themselves who are still legally and morally obligated to provide lead-free children's products. It seems that an exemption, if unavoidable, should be considered

only a truly last resort. As an indication of just how vexing this problem has been, we are presently 10 months from passage of the reform and there is still no official position on alternative testing/exemption relating to small batch manufacturers. So, what is the solution?

We believe that the commission could, with a very limited appropriation, support testing centers, where handheld XRF guns, used by trained personnel, could accomplish the testing requirements of these manufacturers.

This idea began several years ago in discussion with a large network of non-profits who were frequent users of our products in the early days of CPSIA. This non-profit network, which is now under its own exemption for other logistical reasons, seemed open to the suggestion that we might leverage their vast network of retail outlets to set up a network of testing centers which could be available to small batch manufactures for a small fee, or no fee, depending upon the level to which such a proposal might be funded.

Let me list some of the facts which make this program workable:

- Small batch manufactures would require very limited testing. Testing requirements are once/year assuming there is no in-house reasonable testing program. This means that a company manufacturing only 7,500 items with <\$1M in revenue will not have many products to test. Most could do their entire annual testing plan in just several visits to a center.

- Handheld XRF is non-destructive. The need to give away samples of their products for destructive lab testing is a great source of concern for these manufacturers, many of whom make very limited numbers of high value product.
- Handheld XRF is presently being expanded as a certified method when done third-party. While it is not suggested that the test-centers would ever meet the criteria of a third party for regulatory purposes (certainly this could not be done within the cost constraints of our proposal), a literal third-party, using a technique which is a certified method when deployed by approved labs, would be a reasonable alternative.
- Handheld XRF is designed for use by trained yet non-technical personnel. The original proposal included a non-profit whose very mission is to employ people with challenges, or who require special accommodation. While using a partner with such a mission would provide a compelling add-on benefit to the program, any partner with a vast network of outlets could be a potential provider. Moreover, if scheduling became challenging, any end-user could be in a position to perform the test themselves with training.

Overall, the program would require:

- The modest appropriation of the cost of handheld XRF units
- The partnering with some government, non-profit or even for-profit entity with a large network of outlets, which could provide the small space and personnel required to house the handheld XRF units and run the tests.
 - Some suggestions are:
 - US Postal Service

- EPA field offices
 - HUD Locations
 - A large non-profit with a significant number of outlets
 - Large retailers
 - Various State, Municipal and Local agencies
- Training. Initial training and ongoing support would be provided by Thermo Fisher. In the interest of our commitment to a healthier, cleaner and safer world, we are willing to make special considerations to enable this proposal.

It is our belief that this proposal offers an excellent bridge between the need to monitor that the products handled, and even mouthed, by our children are free of toxic materials, and the support of entrepreneurs who are making some of the best products in the market.

We remain willing to work with The Commission, the Small Business Ombudsman and the representatives of the small batch community to develop a detailed plan to make this testing available without undue burden.

Thank you for your time and consideration. Again, we look forward to working with The Commission on this proposal or in any other way to improve product safety in our country.

Michael McDonald
American Apparel & Footwear
Association

Stevenson, Todd

From: Michael McDonald [mmcdonald@wewear.org]
Sent: Wednesday, June 06, 2012 2:01 PM
To: CPSC-OS,
Subject: Agenda and Priorities FY 2014

Mr. Stevenson,

I would like to testify at the hearing on behalf of AAFA. I will be submitting testimony before June 13th but I wanted to make sure and let you know of my interest as soon as possible.

Thank you,
Michael

Michael A. McDonald
Government Relations Representative
American Apparel & Footwear Association
1601 North Kent Street, Suite 1200
Arlington, VA 22209
Office: (703) 797-9052
Cell: (571) 426-9080
www.wewear.org
[facebook.com/apparelandfootwear](https://www.facebook.com/apparelandfootwear)
twitter.com/apparefootwear

From: CPSC Small Business Ombudsman [<mailto:sbo@list.cpsc.gov>]
Sent: Thursday, May 31, 2012 10:52 AM
To: Michael McDonald
Subject: CPSC Public Hearing Regarding 2014 Priorities

Dear CPSC Stakeholder,

May 31, 2012

While it may seem to be a long time in the future, planning for fiscal year 2014 is well underway! The Consumer Product Safety Commission will conduct a public hearing on June 20, 2012 starting at 10:00 a.m. to hear your views. Your requests to make oral presentations and the written text of that presentation must be transmitted to the Office of the Secretary not later than 5 p.m. EST on June 13, 2012. If you would like to submit a written statement only, you may also email it by that date to the address noted below.

Please email these to cpsc-os@cpsc.gov and place "Agenda and Priorities FY 2014" in the subject line. The hearing will be held at our offices on the 4th floor of the Bethesda Towers Building, 4330 East West Highway, Bethesda, MD 20814.

In order to guide the discussion, three questions were posed for you on which to comment:

1. What are the priorities the Commission should consider emphasizing and dedicating resources toward in the fiscal year 2014 Congressional Budget Request?
2. What activities should the Commission consider deemphasizing in the fiscal year 2014 Congressional Budget Request?
3. How should the Commission consider measuring its progress toward achieving its priorities in the fiscal year 2014 Congressional Budget Request?

I know that many of you have definite ideas on what priorities the Commission should emphasize. This is your opportunity to voice those concerns as well as note areas that may require less emphasis in the future. Fiscal 2014 begins on October 1, 2013—which really isn't that far away. I look forward to seeing you at the hearing or reading your statements.

Best regards,

Dean W. Woodard
Director
Office of Education, Global Outreach, &
Small Business Ombudsman
U.S. Consumer Product Safety Commission
Bethesda, Maryland 20814
dwoodard@cpsc.gov
[@CPSCSmallBiz](https://twitter.com/CPSCSmallBiz)

You are currently subscribed to the email list "sbo" as: mmcdonald@wewear.org

The CPSC Small Business Ombudsman develops and provides information and guidance on federal consumer product safety laws specifically tailored to small businesses and small batch manufacturers as well as actively sharing information gained from manufacturers, retailers, and distributors within the agency. Please see www.cpsc.gov/sbo for more information. Please submit all inquiries concerning regulatory or technical guidance to www.cpsc.gov/cgi-bin/sbo.aspx

To unsubscribe, please do one of the following:

- (1) go to <http://www.cpsc.gov/about/cpsia/smbus/sbolist.aspx> and use the on-line form
- (2) send a blank email to leave-2681537-808235.a328307632932f2a714b84092bfa63b2@list.cpsc.gov

If you are not already subscribed, you may also wish to subscribe to our CPSIA listserv which provides the official notices of many Commission actions. You may subscribe to that list here:

<https://www.cpsc.gov/about/cpsia/cpsialist.aspx>

This message is from the U.S. Consumer Product Safety Commission, an independent federal regulatory agency, located at 4330 East West Highway, Bethesda, MD 20814 Toll-free hotline: (800) 638-2772.

'CPSC 2.0' Launches Product Safety Agency into Social Media -- Learn more at <http://www.cpsc.gov/cpscpub/prerel/prhtml09/09346.html>

- * Visit our new blog, OnSafety at www.cpsc.gov/onsafety
- * See our videos on YouTube at <http://www.youtube.com/uscpsc>
- * Follow us on Twitter at <http://twitter.com/OnSafety>
- * See our photos on Flickr at <http://www.flickr.com/photos/uscpsc>

Thank you.



we wear™ compliance

**Agenda and Priorities for Fiscal Year 2014 Budget
Written Testimony By
Michael McDonald
Government Relations Representative
American Apparel & Footwear Association
Submitted to the Consumer Product Safety Commission
Hearing Date: June 20, 2012**

Chairman Tenenbaum, Commissioners, thank you for holding today's hearing and providing this forum for constructive dialogue.

On behalf of the American Apparel & Footwear Association (AAFA), I appreciate the opportunity to testify today regarding the Consumer Product Safety Commission's Priorities and Strategies for Fiscal Year 2014.

AAFA is the national trade association representing the apparel and footwear industry including its suppliers, manufacturers, retailers, and service providers. Our members produce and sell products that touch every American – clothing and shoes. Our industry accounts for more than four million U.S. employees and more than \$340 billion in sales at retail each year.

We are proud of the open and collaborative relationship that we share with the Commission. This past year, in fact, we've had a number of opportunities to work closely with you.

Last November, our members were among the very first groups to tour the Commission's new testing facility in Rockville. This past March, we met with all the Commissioners to discuss ways to reduce the cost of third-party testing. Chairman Tenenbaum spoke to our Product Safety Council in Bethesda in November, and later at a Product Safety Seminar in New York in February. Commissioner Nord spoke to factory managers at our conference in Bangladesh and India last November and to brand owners and suppliers last month in Long Beach, California. Commissioner Northup and Commissioner Adler have also been open and active in AAFA events in previous years. Thanks again to all of you for your active support and participation.

As you know, we are an industry that thrives on product innovation where product safety is a top priority. For both personal and professional reasons, product safety is in the DNA of our industry. Apparel and footwear executives are not only responsible for the reputations of their brands, but they are also parents and grandparents themselves.

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 2014.

Reducing the Cost of Compliance

1601 North Kent Street
Suite 1200
Arlington, VA 22209

(703) 524-1864
(800) 520-2262
(703) 522-6741 fax
www.wewear.org

First, with the Consumer Product Safety Improvement Act (CPSIA) still a large part of the Commission's agenda, we encourage continued attention to ways to reduce costs associated with this law. This focus should be a natural part of the Commission's agenda because of H.R. 2715 and is also consistent with the President's Executive Orders relating to the reduction of unnecessary regulatory costs.

With the periodic testing plan taking effect this coming February, our members are focusing on what they need to comply with the standard. As those finishing touches go into effect, our members are still eager to find ways to reduce testing and related regulatory costs. There are many logical and straight forward steps that can be taken with existing authority to improve many aspects of the CPSIA and other regulations. Appended to this testimony is a copy of the comments and other information we submitted in connection with the Commission's exploration of ways to reduce testing burdens pursuant to H.R. 2715. Last week alone several commissioners had meetings on two of these issues: the requirements for a General Certificate of Conformity (GCC) under the Flammable Fabrics Act (FFA) and the need to address inter-lab variability.

We are also pleased to note that the Commission has already taken further steps on one of these suggestions with its proposed rule on 16 CFR 1112 allowing the use of XRF testing for third party certification. We believe this could be a huge benefit for the industry in terms of reducing the cost of third party testing, and a stepping stone for many more improvements in the future. This is a perfect example of looking at an existing regulation and asking, "How can we make this better, more efficient, and more effective **and** still accomplish exactly the same goal that the original standard set out to meet?" We encourage the Commission to continue this mindset moving forward. As technology and methodology improve, so should the regulatory regime.

Increasing the Clarity of Current Regulations

Second, there are many existing regulations outside of the CPSIA that deserve attention and clarification. For example, just last month, within a matter of 24 hours, and separated by a few thousand miles, our industry was given two contradictory points of view to a single question related to the requirements for a GCC under the FFA. This is obviously a point of concern that confuses a lot of companies.

AAFA enjoys working with the Commission to make certain that standards are as comprehensive and understandable as possible even before they are issued. However there are always unforeseen hurdles and last minute confusion that occur and must be addressed.

Take, for example, drawstrings. AAFA actively encourages our membership to understand and comply with their drawstring obligations. Certainly, no one expected any confusion when the Commission approved the federal safety standard for drawstrings last summer under the 15(j) process. But soon after the Commission acted, troubling questions emerged over whether the standard had expanded to include features that did not fit any commonly accepted definition of drawstrings – such as belts on overcoats. We continue to resolve the questions with Commission staff and we appreciate their openness to work with us to make sure a standard is in place that everyone can understand, and therefore implement. We are especially appreciative of the FAQs that were published last week. But we believe this sort of confusion can and should be avoided in the future.

On this note, we would point to a recent recommendation made by the Government Accountability Office (GAO) suggesting that the Commission be more involved in the development of voluntary standards. We agree with this recommendation. The more interaction that the Commission and industry have in the development of standards the better. Where there is open and collaborative dialog there is more of an opportunity for questions to be answered and future confusion to be avoided. We encourage the Commission to continue its efforts to be involved in the creation of voluntary standards and industry discussions.

Increasing the Transparency of Enforcement on Current Regulations

Third, as you may recall from AAFA testimony at this hearing last year, non-compliant, unsafe sleepwear was a large concern for our industry. It remains so. We are very grateful for the open and sincere support we received from the Commission on getting flammable and dangerous sleepwear off the market. The Commission has reissued a letter re-stating its stance on sleepwear, specifically loungewear, declaring that companies cannot avoid the sleepwear safety standards by calling their pajamas loungewear or something else. We have also seen three sleepwear recalls but believe more can be done to make certain there is a predictable and level regulatory regime that all industry stakeholders can understand and follow.

Perhaps what we need is a different approach. The sleepwear rules are quite clear as to what is allowed and what is not. But season after season the industry – which is trying to comply – continue to see apparently non-compliant products remain on the shelves. If the sleepwear rules have been relaxed through enforcement, perhaps we need to codify those relaxed rules in updated regulations. Or maybe Commission staff can advise in detail why an apparently non-compliant product is compliant after all. With this information, the Commission and the industry can develop a better partnership to ensure fair and predictable compliance with this long-standing regulation.

Working with States to Harmonize all Regulations

Fourth, is an issue that becomes more pressing with each passing month - the need for national and international collaboration in product safety standards. The Commission has discussed harmonization opportunities with Canada and Mexico, and is in the process of working with the EU and China to expand these efforts. Just as important, and as we have previously discussed, the harmonization efforts need to begin in the United States. We need to make sure the individual states have a common and consistent approach to product safety. That's currently not the case. The proliferation of conflicting and contradictory product safety standards among the states is quite likely the biggest product safety challenge of our time. We believe the Commission has a lot of tools in its toolbox – such as pre-emption or moral suasion – through which it can foster a more unified national approach to product safety. We would hope the Commission can focus some of its limited resources to this priority issue.

Building Industry-Commission Collaboration

Finally, while we have mentioned it several times already in this testimony and in all of our interactions with the Commission, we want to stress the importance of the Commission using AAFA, as well as all associations at this table, and around the country as a resource when developing not only standards, but guidance documents and educational events as well. As you know, we have an active program and are planning a

series of events and providing tools for the coming year. We believe 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 2014 and beyond.

* * * * *

In conclusion, let me stress again how delighted we are to have such a positive relationship with the Commission. We know that there are still a number of challenges ahead and we believe there are many opportunities for further collaboration. We look forward to continuing to strengthen our partnership for the benefit of consumer product safety and public health.

I look forward to taking your questions.

Thank you.

January 23, 2012
Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland, 20814

REF: Seeking public comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation.

Docket No. CPSC-2011-0081

On behalf of American Apparel & Footwear Association (AAFA) I am writing in response to the request for comments by the Consumer Product Safety Commission (CPSC) on the above-captioned issue.

AAFA is the national trade association representing the apparel and footwear industry including its suppliers, manufacturers, retailers and service providers. Our members produce and sell products that touch every American – clothing and shoes. Our industry accounts for more than one million U.S. employees and more than \$340 billion in retail sales each year.

To achieve the goal of providing consumers with the safest products available, AAFA has established longstanding and active relationships with the CPSC and other product safety stakeholders. Through these alliances, we have educated the industry on the development and implementation of new product safety standards, while at the same time informing the CPSC of the many concerns of the industry regarding product safety initiatives and activities. It is with our continued cooperation and the advancement of product safety at heart that we submit these comments on ways to reduce the cost and burden of the third party testing requirements.

BACKGROUND

When the *Consumer Product Safety Improvement Act* (CPSIA)¹ was signed into law by President George W. Bush on August 14, 2008, it required the implementation of a Testing and Certification program for all children's products subject to a children's product safety rule under the Consumer Product Safety Commission (CPSC). This included initial third party testing and a periodic testing program. The implementation of the third party testing was stayed several times, rightfully so, in order to ensure a successful implementation that protected the nation's children while imposing the least possible burden on industry. Congress realized that the original legislation had left the CPSC with its hands tied and unable to grant much needed relief to American industries with no reduction in safety. In the interest of addressing this unintended consequence, Congress passed H.R. 2715² in order to provide the CPSC with the authority to provide the necessary reprieve. On August 1, 2011 H.R. 2715 passed the House with a vote of 421-2 and passed the Senate unanimously, and was enacted into law on August 12 after being signed by President Barack Obama.

H.R. 2715, among many other things, required the CPSC to issue a request for comments on ways that it could use its newly granted authority to reduce the burden of third party testing, and cited several of its own suggestions in the process. In accordance with H.R. 2715, the CPSC issued this request for comments in the *Federal Register*, seeking suggested ways to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rules, bans, standards, or regulations.

AAFA RECOMMENDATIONS

¹ CPSIA (<http://www.cpsc.gov/cpsia.pdf>)

² H.R. 2715 (<http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.2715>)

H.R. 2715 created seven categories for ways that third party testing burdens can be reduced. In an effort to organize our comments we will be listing those seven categories and placing each suggestion into its related area. Listed below are the categories laid out by H.R. 2715 on which AAFA offers comments:

The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of two or more importers of a product that is substantially similar or identical in all material respects.

AAFA Recommendation: Make clear that an item that is exempt from testing does not require a GCC.

The CPSC should make clear, with a guidance document, that no certification is required when an item is exempt from testing, including but not limited to items exempt under the *Flammable Fabrics Act* (FFA). Based on past CPSC guidance and language, AAFA believes that, in the case of the FFA, if a garment is exempt from testing then there should be no requirement to submit a GCC. The burden of paperwork has been one that has always coincided with the burden of testing, and making a clear and concise statement that will eliminate a large paperwork burden as well as relieve a lot of confusion for manufacturers and retailers alike and will go a long way in bringing clarity to the testing regime.

Such an approach is consistent with several documents that the CPSC has released over the past several years. First, the CPSC's *Statement of Policy: Testing and Certification of Lead Content in Children's Products*, which was issued by the CPSC to provide guidance on the testing and certification of children's products for compliance with the lead content limits established in the CPSIA. In this statement, the CPSC declared that it, "found that certain products, by their nature, will never exceed the lead content limit so those products do not need to be tested and *do not need certifications* to show that they comply with the law." (emphasis added) After listing the products, of which many natural and synthetic fibers are included, it goes on to state, "The products on this list are all things the Commission has determined do not contain lead over 100 ppm, which is within the allowable 300 ppm limit. Thus, they will comply with the law (and must always comply) and, therefore, *do not need testing and certification.*"³ (emphasis added)

The second document is the *Statement of Policy: Testing of Component Parts With Respect To Section 108 of the Consumer Product Safety Improvement Act*. This statement was created in order to provide guidance on complying with the Phthalate standard required by the CPSIA. This statement contains a list, which again includes many natural and synthetic fibers, that are, "Examples of materials that do not normally contain phthalates and, therefore *might not require testing or certification.*"⁴ (emphasis added)

Lastly, the CPSC Small Business Ombudsman published a set of Frequently Asked Questions (FAQ) that includes the question, "If all of the component parts of my product are inaccessible or else satisfy the lead determinations, am I still required to issue a children's product certificate?" In the response, the Ombudsman describes that, "If, however, your children's product is wholly composed of components that satisfy the determinations and/or satisfy the determinations on inaccessibility, and there are no other applicable children's product safety rules, then *you do not have to issue a children's product certificate*"⁵ (emphasis added)

Based on these three documents, we believe there is significant evidence that the CPSC has supported the position that no certification is required when testing is not required, and we request that the CPSC make approve this position specifically with respect to the FFA.

The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations applicable under this Act.

AAFA Recommendation: Interpret the definition of a child care article to exclude sleepwear.

³ <http://www.cpsc.gov/about/cpsia/leadpolicy.pdf>

⁴ <http://www.cpsc.gov/about/cpsia/componenttestingpolicy.pdf>

⁵ <http://www.cpsc.gov/info/ovsafety/leadfaq.html#assurances>

CPSC staff has issued several documents since enactment of the CPSIA that include sleepwear in the definition of child care articles - guidance by the CPSC General Counsel in 2008⁶ and a letter on loungewear enforcement at the end of 2011.⁷ The practical result of these decisions is that sleepwear (and presumably related garments including loungewear) is subject to testing and certification requirements for certain phthalates. AAFA believes inclusion of sleepwear in this definition is incorrect and that such a decision leads to unnecessary testing costs for phthalates in this category of garments.

The *Merriam-Webster* definition of “facilitate” is “to make easier: to help bring about”⁸. Children’s sleepwear, under this definition, is not intended to facilitate sleep and therefore should not be included in the definition of a child care article under the requirements for phthalate testing. Although one may be tempted to reach the conclusion that sleepwear facilitates sleep because the word “sleepwear” contains the word “sleep,” sleepwear in itself does not facilitate sleep in any manner. It is axiomatic that other articles of clothing, such as playwear, do not facilitate being awake. Likewise, it is difficult, if not impossible, to reach a conclusion that sleepwear facilitates being asleep. Indeed, most individuals can probably find multiple examples where they had difficulty falling asleep wearing sleepwear or difficulty staying awake while wearing other garments.

We note that the CPSC itself, with respect to flammability of children’s sleepwear, the CPSC has developed policies that reflect a risk analysis that go beyond the simple name of the garment. For more than 15 years, the CPSC has considered loungewear to be sleepwear even the children can do more than sleeping in loungewear. Likewise, the CPSC exempts underwear from the sleepwear standard even though children can sleep in their underwear. The point here is that an examination of the risk profile of the garment itself, not a narrow fixation on the name, should determine whether the article is included in the standard and subject to testing.

The context of the child care phthalate ban is also critical to understanding why it is inappropriate to include sleepwear in the definition of child care articles. In that ban, Congress defined child care articles as those that are intended by the manufacturer to “facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.”⁹ The concept of facilitating sleep in this context involves articles that children suck in order to fall asleep, such as a pacifier. The common denominator of these actions is mouthing article that might contain one of the banned phthalates. Clearly, sleepwear, by any examination, is not an article intended to be associated with mouthing. Moreover, the feature in sleepwear that was cited by the General Counsel in her letter in 2008, and which is likewise the only feature ever noted by CPSC staff, is the non-slip pad that is sometimes found on the bottom of kids’ footed pajamas. Such non-slip pads are specifically intended to facilitate walking, further distancing such garments from the sleep facilitation context.

Further, the phthalate ban in the CPSIA is ultimately based on a nearly identical ban that was enacted in the European Union (EU). Using virtually identical terms, the EU has issued guidance on child care articles, explaining that it does not consider sleepwear to facilitate sleep. The EU guidance states, “The main purpose of pyjamas is to dress children when sleeping and not to facilitate sleep. Pyjamas should therefore be regarded as textiles and, like other textiles, do not fall under the scope of the Directive.”¹⁰ We understand that Canada, working with the industry and stakeholders, is working on a similar approach.

AAFA Recommendation: More aggressive use of CPSC preemption to ensure better alignment among different regulatory regimes.

A large and ever expanding issue that is affecting all US industries is the drastic increase in state implementation of individual product safety regulations. Whether it is reporting or labeling there has been an emergence of many separate regulations which differ drastically, and in many cases contradict one another. It is becoming increasingly difficult and nearly impossible for a company who has all the necessary resources, much less smaller businesses, to comply with each and every regulation. We are only in the beginning stages of what appears to be a wave of state regulations that ignore and circumvent what

⁶ <http://www.cpsc.gov/library/foia/advisory/321.pdf>

⁷ <http://www.cpsc.gov/cpsc/pub/pr/erell/prhtml12/12072.html?tab=news>

⁸ <http://www.merriam-webster.com/dictionary/facilitate>

⁹ See section 108 of the CPSIA. <http://www.cpsc.gov/cpsia.pdf>

¹⁰ http://ec.europa.eu/enterprise/sectors/toys/files/gdoo8_en.pdf

Congress did when it enacted the CPSIA and what the CPSC has done in interpreting and implementing the CPSIA.

The Commission has spoken at great length on the goals of harmonizing international regulations, especially with Canada and Mexico, and we strongly encourage the CPSC to continue these efforts, but as it stands we are losing the harmonization fight within our own country. Current and planned regulations are numerous and growing including: Washington State's Children's Safe Product Act; Illinois Lead Labeling Law; California's Proposition 65 and Green Chemistry Acts; the individual, and substantially different cadmium bans in California, Connecticut, Illinois, Maryland, Minnesota, and Washington; Wisconsin and New York's drawstring regulations; and much more. It is becoming a minefield of compliance issues and companies are having trouble avoiding violating one regulation in an attempt to comply with another. In the process, testing costs are increasing. As we continue to grow and integrate into a global marketplace the US regulatory marketplace is becoming more and more fragmented and disconnected. The CPSC needs to be more aggressive in using its authority to work with local and state legislators and regulators to ensure that all new regulations created are in sync with national regulations and that testing requirements flow from federal requirements to minimize testing costs.

AAFA Recommendation: Third party testing requirements specified in the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act (CPSIA), do not extend to children's products subject to general product safety requirements like 16 CFR 1610.

When Congress wrote the CPSIA, it made a clear effort to differentiate between general product safety standards and children's product safety standards. For example, Section 14(a)(3) of the CPSIA includes a timeline to accredit third party conformity assessment bodies to test children's products for compliance with lead paint, cribs and pacifiers standards, small parts, children's metal jewelry standard, baby bouncers standard, walkers and jumpers standard, and all other children's product safety rules. Logically, "other" children's product safety rules include standards specifically targeting children's products like those for toys or bicycle helmets, or the ban on phthalates in child care articles. These *children's* product safety standards can be differentiated from product safety standards applicable to all consumer products such as the *Flammable Fabrics Act* (FFA).

The CPSC took a step in the right direction by reserving Subpart B in *16 CFR 1107 Testing and Labeling Pertaining to Product Certification*¹¹, but there are still many areas where the CPSC has created overly burdensome testing and paperwork requirements in regards to general product safety rules. By applying third party testing under the CPSIA to a general product safety rule (such as 16 CFR 1610) it is requiring redundant testing that does not increase the safety of the product. The CPSC is also creating contradictory requirements in several areas such as the periodic testing plan, which is already incorporated in the FFA and requires periodic testing every 5 years, and the remedial action plan.

Application of third party testing to the portion of children's products covered by the FFA also bifurcates the FFA into a double standard, creating confusion and adding costs. Before this decision, companies could follow one set of testing rules for this standard. Now, companies have to understand two separate set of testing rules for the same standard (notwithstanding the fact that the underlying testing procedures in the FFA are still intact).

Furthermore, requiring manufacturers to go beyond the testing requirements laid out in 16 CFR 1610 to demonstrate compliance in effect amends the FFA regulation violating the requirements laid out in Section 4(b) of the FFA regarding the proper way in which the FFA is to be amended. Any amendment to an FFA standard, "shall be *based on findings*" that the amendment, "*is needed* to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, *is reasonable*, technologically practicable, and *appropriate*"¹²(emphasis added). The CPSC has *not* demonstrated that third party testing is needed, and the burden companies subsequently take on is *not* reasonable; therefore, the CPSC has not made any findings that amending 16 CFR 1610's testing requirements is appropriate.

¹¹ <http://www.cpsc.gov/businfo/frnotices/fr12/certfinal.pdf>

¹² SEC. 4. [15 U.S.C. § 1193] (b) (<http://www.cpsc.gov/businfo/ffa/ffatext.html#sec4>)

Nothing in the FFA suggests there needs to be such a differentiation between adult and children's clothing. Moreover, the CPSIA offers little to suggest that such a differentiation was intended for the FFA. There is no evidence that Congress wanted to apply the third party testing requirements to children's products subject to general product safety standards. In addition, when Congress created the age distinction in the CPSIA, it was addressing a concept known as the so-called "family toy chest" where toys are simultaneously shared among different age groups. In contrast, clothes are not shared among different children's age groups, but are instead handed down as younger children age.

The extent to which technology, other than the technology already approved by the Commission, exists for third party conformity assessment bodies to test or to screen for testing consumer products subject to a third party testing requirement.

AAFA Recommendation: Build into the 100ppm limit a tolerance factor to accommodate inter-lab variability, based upon a correlation exercise among all CPSIA-certified labs.

The CPSC should incorporate a *tolerance factor* into the 100ppm lead limit to accommodate inter-laboratory variability. The variability of inter-laboratory testing for lead in substrate and paint at the 100ppm level is not a new issue, and is one that the CPSC has received hundreds of thousands of data points from AAFA, our members, and several other sources including their own findings released in their briefing package on the *Technological Feasibility of 100 ppm for Lead Content*.¹³ In the briefing package, the staff recognized and discussed the existence of material and testing variability. There have also been several studies of over 100 different laboratories performed by the Institute for Interlaboratory Studies on the *Results of Proficiency Test Total lead in Paint*.¹⁴ In one report published in 2010, the Institute found that when testing a component at 360ppm there was an acceptable level of error of 78ppm with outliers ranging from 110ppm below to 212ppm above. In a 2011 report the Institute made the determination that, "Total lead determination on this sample, at a concentration level of 106mg/kg, may be somewhat problematic." AAFA members are also involved with the work that the CPSC has received from the Global Apparel, Footwear and Textile Initiative (GAFTI), which is working to pinpoint the causes of the testing variability.

With all this data it is hard to ignore the existence and influence of inter-lab variability and while industry is striving to minimize its effects, it is impossible to eliminate all variability at the 100 ppm level. It is with this reasoning that we suggest the CPSC implementing a *tolerance factor* for the 100ppm lead limit. Such a factor would not change the lead limit – which would stay at 100ppm – but would accommodate for the inevitable variability that will always occur in testing, contributing to a net reduction in testing costs.

We also recommend that the CPSC should have, as an ongoing component of certifying laboratories, a regular correlation exercise by laboratory location to ensure that the *tolerance factor* level of a substance is reasonable and practicable based on the testing capabilities and accuracies of the CPSIA-certified laboratories.

Companies should have a very high degree of certainty that the *tolerance* level will never be violated by test results that a particular lab might achieve because of poor laboratory correlation. This practice will provide both the CPSC and all industries with the assurance that their tests are being performed correctly and the results are as accurate as possible.

AAFA Recommendation: Allow Third Party XRF testing to be used to screen products before requiring far more expensive chemical testing.

The advantages and disadvantages of XRF testing are well known by the CPSC who has hosted many hearing and discussions over the possible uses of XRF to benefit small batch manufacturers. The hindering factor of XRF testing continues to be that it has not always been reliable enough to give accurate readings under 100ppm lead level. While XRF technology is quickly improving and becoming

¹³ <http://www.cpsc.gov/library/foia/foia1/brief/lead10otech.pdf>

¹⁴ http://www.ijsnl.com/home_en.html

more accurate it is still not capable of being 100 percent reliable for an accurate result. It has, however, shown to be very capable for determining if a product requires further testing.

We believe that the CPSC has received enough scientific evidence to allow for XRF testing to be used as a screening process for further testing. By allowing a third party lab to accept XRF results for lead under 40ppm the CPSC could drastically reduce the cost of third party testing by reducing the need for further wet chemistry testing while still maintaining the high degree of assurance of compliance.

Other techniques for lowering the cost of third party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.

AAFA Recommendation: Fix the determination of fabric as a barrier for inaccessible parts.

The CPSC must fix the determination on inaccessibility and fabric barriers that renders it useless for footwear and clothing. In their guidance to industry on “Inaccessible Component Parts for Children’s Products Containing Lead” the CPSC correctly stated that, “unlike other children’s products that have lead-containing components that are accessible, children will not touch the lead containing component with the hands or fingers if the component is enclosed or encased in fabric.” The CPSC also mentioned that “The Commission believes that, in general, fabric coverings may be considered barriers to physical contact with underlying materials...”¹⁵ Unfortunately, the CPSC then used the definition of “a toy that can be placed in a child’s mouth” for the phthalate ban under the CPSIA¹⁶ to formulate their guidance for inaccessibility of a fabric barrier. The problem with this, as with many other regulations the apparel and footwear industries are subject to, is that apparel and footwear are not toys. While being worn as intended it is impossible for a child to swallow an article of clothing or a shoe and therefore the one-size-fits-all definition of an inaccessible toy does not apply to these categories.

Due to this incorrect assumption, the CPSC declared that, “For fabric-covered children’s products, an additional test to determine whether any part **in one dimension** is smaller than 5 centimeters should be performed to see if it can be placed in the mouth. If mouthing or swallowing of a component part could occur, the material beneath the fabric covering is considered to be accessible to a child.” This requirement renders this determination useless for our industry. It is impossible for any apparel or footwear article to be greater than five centimeters **in all dimensions**, which in turn makes this exemption, which was created amid commission support with the apparel industry in mind, invalid for any product created by an apparel or footwear manufacturer.

Determining that fabric is a proper inaccessibility barrier – as practical experience suggests – would lower testing costs in the apparel and footwear industry by eliminating testing requirements for certain components that will be covered by fabric once the article is made.

AAFA Recommendation: Fix the boundaries of lead in fabric determination (prints, screen prints, etc.).

On August 26, 2009, the CPSC published in the *Federal Register* their finding that textiles (dyed or undyed) cannot possibly contain lead. In its explanation of the ruling the CPSC stated that,

“We also examined the dyes used on textiles. [Refs. 1 and 3]. Dyes are organic chemicals that can be dissolved and made soluble in water or another carrier so they can penetrate into the fiber. Dyes can be used in solutions or as a paste for printing. Commercial dyes are classified by chemical composition or method of application. Many dyes are fiber specific. For example, disperse dyes are used for dyeing polyester, and direct dyes are used for cellulosic fibers. Dyes can be applied to textiles at the fiber, yarn, fabric, or finished product stage. Dye colorants are not lead based. Although not typical, some dye baths may contain

¹⁵ <http://www.cpsc.gov/about/cpsia/inaccessiblefr.pdf>
¹⁶ CPSIA §108(e)(2)(B)

lead. However, even if the dye bath contains lead, the colorant that is retained by the finished textile after the rinsing process would not contain lead above a non-detectable lead level. In contrast to dyes, pigments are either organic or inorganic. Pigments are insoluble in water, are applied to the surface of textile materials, and are held there by a resinous binder. Binders used with pigments for textiles are non-lead based. Processes that are lead-based are used for some industrial textiles that require a greater level of colorfastness or durability, but are not typically intended for apparel textiles. Although most pigments do not contain lead, there may be some lead based paints and pigments on non-textile materials that may be directly incorporated into textile products or added to the surface of textiles, such as decals, transfers, and screen printing.”¹⁷

The CPSC determination goes further in including the term “prints” with the term “screen prints” as operations that are not inherently lead free. While we believe the CPSC was focusing more on the term “screen prints,” the inclusion of the term “prints” has captured many inherently lead free operations. The resulting confusion has been costly and caused much unnecessary testing.

While we still believe that even when using any form of pigment dye, apparel items will not contain lead over the 100ppm limit, and that basing a determination on apparel off of an industrial application is an unfair and unreasonable conclusion, we do understand the Commission’s concern with some forms of screen printed items. This being said, the CPSC caused much unnecessary confusion when it excluded from “Textiles”, under new paragraph § 1500.91(d)(7), any textiles that are, “after-treatment applications, including screen prints, transfers, decals, or other prints.”¹⁸ There is a distinct difference between screen prints and “other prints”, which includes several forms of dyeing that fall distinctly under the category of exempted items. We ask that the CPSC relieve this confusion by revising the determination to make clear that “other prints” are determined to be lead free unless specifically identified otherwise.

AAFA Recommendation: Provide a small batch exemption for all manufactures producing a small batch.

We believe that the CPSC has the authority to provide a small batch exemption from third party testing for large manufacturers producing a small batch. In their guidance to industry on the small batch exemption, the CPSC explains that while all manufacturers are required to third party test for certain children’s products, such as pacifiers, toddler beds, and cribs, small batch manufacturers are not required to do so for other types of children’s products, which include electronically operated toys, mattresses, and namely, children’s apparel.¹⁹

“Small batch manufacturers”, in this context, are defined by H.R. 2715 and by the CPSC as, “a manufacturer that had no more than \$1,000,000 in total gross revenue from sales of all consumer products in the previous calendar year”, and manufactures less than 7,500 units of the product qualifying for the small batch exemption. The spirit of the exemption would appear to be to reduce the burden of third party testing when a small batch of products is being manufactured. However, as it currently stands, the exemption only applies to manufacturers whose total gross revenue is less than \$1 million for all their products. Many manufacturers, while they may have a total gross revenue exceeding \$1 million, have certain product lines that consist of very small batches. To require third party testing on these small batches of products can incur prohibitive costs and reduce the ability of the manufacturer to create those product batches that is identical to those experienced by small batch manufacturers. Regardless of whether a manufacturer is large or small, requiring an expensive third party testing process on, for example, a 100-item specific product batch, takes away a large chunk of the small revenue received from this small product batch, and goes against the spirit of the exemption not to mention the spirit of American ingenuity. Requiring third party testing on such small production batches will severely hinder a large company’s ability to test new markets and create new and innovative products that could advance America’s technology and global competitiveness.

We believe that the CPSC can fashion a small batch exemption for larger companies – akin to the small batch exemption from H.R. 2715. We understand the exemption in H.R. 2715 only applies to small batch

¹⁷ <http://www.cpsc.gov/businfo/frnotices/frog/leadcontent.pdf>

¹⁸ <http://www.cpsc.gov/businfo/frnotices/frog/leadcontent.pdf>

¹⁹ <http://www.cpsc.gov/info/toysafety/smallbatch.html>

manufacturers but the authority also given to them by H.R. 2715 to create a testing exemption for a batch of products for which the cost of testing would otherwise be prohibitive and ineffective.

AAFA Recommendation: Apply the inaccessibility exemption that pertains to lead in substrate to also apply to lead in paint.

Section 101(b) (2) (A) of the CPSIA states that, “[a] component part is not accessible under this subparagraph if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product.”²⁰ The CPSC has made several determinations and provided extensive guidance in terms of inaccessibility for lead in substrate, which continue to dictate whether third party testing is required. However, the CPSC has still never applied this exemption to lead in paint. In terms of inaccessibility and the absorption of lead, there is no difference between lead in paint and lead in substrate when a CPSC accepted barrier is involved.

The perfect example of this situation is a component inside of a children’s shoe. One of the most popular forms of children’s shoes is one that contains painted figures of a child’s favorite TV show or movie characters on the side of the shoe, which is then covered over by a clear plastic coating to maintain a smooth feel of the shoe. These shoes are just as protected and just as safe as any product that falls under the inaccessibility exemption for lead in substrate, but they are still required to perform expensive third party testing due to the omission of an inaccessibility exemption for lead in paint.

Because the determination that children’s products bearing lead-containing paint are hazardous was made by CPSC in a regulation, not by Congress in a statute, CPSC has the authority to change the determination. The CPSIA did revise the regulation’s numeric threshold (changing 0.06% to 0.009%); but CPSC could still revise its regulation to state that children’s products bearing paint with the specified amount of lead “in accessible components” are banned hazardous substances. These items are just as deserving of relief from the burden of third party testing as those that enjoy relief from phthalates and lead in substrate, and the CPSC has the authority and understanding to provide this relief without any reduction in product safety.

AAFA Recommendation: The CPSIA should not require that all periodic continuing testing of children’s products needs be done by a third-party lab.

Section 102(a)(2) of the CPSIA states that,

“Effective on the dates provided in paragraph (3), before importing for consumption or warehousing or distributing in commerce any children’s product that is subject to a children’s product safety rule, every manufacturer of such children’s product” which must be based on, “sufficient samples of the children’s product, or samples that are identical in all material respects to the product, to a third party conformity assessment body accredited under paragraph (3) to be tested for compliance with such children’s product safety rule.”

This is the section of the CPSIA on which all third party testing requirements are based.

Section 102(b)(d)(2) states that the CPSC should:

“(A) initiate a program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of subsection (a); and

“(B) establish protocols and standards—

“(i) for ensuring that a children’s product tested for compliance with an applicable children’s product safety rule is subject to testing periodically and when there has been a material change in the product’s design or manufacturing process, including the sourcing of component parts;

²⁰ <http://www.cpsc.gov/about/cpsia/inaccessibleifr.pdf>

'(ii) for the testing of random samples to ensure continued compliance;

'(iii) for verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and

'(iv) for safeguarding against the exercise of undue influence on a third party conformity assessment body by a manufacturer or private labeler."²¹

This is the one and only section of the CPSIA that dictates on what a periodic testing plan should be based. There is no language in 102(b)(d)(2) that states all of this must be done by a third party testing lab. Each and every one of these requirements can be met by an individual company that is able to perform its own periodic in-house testing. By following the language of the law and removing the requirements for periodic testing to be performed by a third party testing lab the CPSC can drastically reduce the cost of testing without in anyway compromising the safety and integrity of a children's product. To clarify, this does not remove the requirement that third party testing is not done. It only removes the requirement – which is not found in statute – that *periodic* testing be performed by a third party.

AAFA Recommendation: The decision to eliminate the three temporary phthalates from being banned needs to be expedited or the test requirement need to be stayed until a final determination is made.

AAFA members have been on the front lines of removing the harmful phthalates from any and all accessories and items that may include them, but as the CPSC knows, phthalate testing is extraordinarily expensive. While the Chronic Hazard Advisory Panel (CHAP) is working very diligently and attentively to ensure that the correct studies, facts and sciences are used while determining the risks involved with the three phthalates being studied, companies are left wondering when a decision will be made and how long it will be before any alternatives for those phthalates are temporarily banned for study as well. By working with industry to come to a final decision on the three phthalates the CPSC could cause millions of dollars in savings in testing while at the same time giving industry the assurance that there is a safe alternative to the banned phthalates.

AAFA Recommendation: Risk potential and level of risk should be taken into consideration. Evaluations should be reasonable.

All product safety regulations should be designed to mitigate and protect against specific risks and be clearly supported by the data and facts. Understanding new safety regulations involves understanding how they will address the specific hazard. Without that, the standards seem arbitrary and that perception will undermine the standards' effectiveness and acceptance. The footwear and apparel industry is still chafing under many of the CPSIA rules that appear designed to address product safety concerns with toys. The same risks that apply to toys do not apply to apparel and therefore it is unjust to apply the same regulations.

It is important to also use risk potential when doing a retrospective review. If an unintended consequence is the result of a broad regulation that shows no evidence of mitigating risk it should be examined, and if determined to have shown no history of risk it should be removed or exempted from the rule. Many of the suggestions listed here today were never considered to be a feasible outcome of the requirements created by Congress in the passing of the CPSIA. While some unexpected risks can be prevented by the CPSIA, many more nonexistent risks were created by it. These nonexistent risks, many of which are listed in these comments, have cost millions of dollars to American companies without providing any increase in safety or protection for our nation's youth.

CONCLUSION

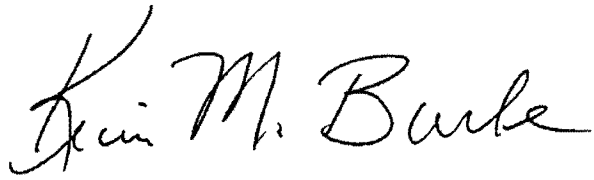
AAFA and its members share the CPSC's goal of improving product safety and public health, particularly for our most vulnerable citizens. We are pleased to have the opportunity to work closely with the CPSC

²¹ CPSIA 102(b)(d)(2)

moving forward on the reduction of third party testing burdens along with several other key issues that face the CPSC. We are mindful of the many challenges related to the CPSIA and to the on-going work of the CPSC. We believe there are many opportunities for further collaboration between AAFA and the CPSC, and we look forward to working with you to create a stable, predictable, risk-based regulatory environment that can be clearly understood, followed and complied with.

Thank you for your time and consideration in this matter. Please contact Michael McDonald at 703-797-9052 or by e-mail at mmcdonald@wewear.org if you have any questions or would like additional information.

Please accept my best regards,

A handwritten signature in black ink that reads "Kevin M. Burke". The signature is written in a cursive, flowing style.

Kevin M. Burke
President and CEO

- An Item that is Exempt from Testing Should not Require a General Certificate of Conformity
- The Definition of a Child Care Article Should Exclude Sleepwear
- Use a More Aggressive CPSC Preemption to Ensure Better Alignment Among Different Regulatory Regimes
- Third Party Testing Requirements by CPSIA, Should not Extend to Children's Products
- A Tolerance Factor is Needed to Accommodate Inter-Lab Variability
- Allow Third Party XRF Testing to Screen Products for Compliance
- Fix the Determination of Fabric as a Barrier for Inaccessible Parts
- Fix the Boundaries of Lead in Fabric Determination
- Provide a Small Batch Exemption for Larger Manufactures Producing a Small Batch
- Apply an Inaccessibility Exemption That Pertains to Lead in Paint
- The CPSIA Does not Require That all Periodic Testing Of Children's Products Needs to be Done by a Third-Party Lab
- Expedite the Elimination of the Three Temporary Phthalates from Being Banned
- Risk Potential and Level of Risk Should Always be Taken into Consideration and Evaluations Should be Reasonable

An Item that is Exempt From Testing Should not Require a General Certificate of Conformity

<p>BACKGROUND</p>	<p>There have been several documents released by the CPSC on the issue of exempt product testing.</p> <p>1.) CPSC's <i>Statement of Policy: Testing and Certification of Lead Content in Children's Products</i>, which states that "certain products, by their nature, will never exceed the lead content limit so those products do not need to be tested and do not need certifications to show that they comply."</p> <p>2.) <i>Statement of Policy: Testing of Component Parts With Respect to Section 108 of the Consumer Product Safety Improvement Act</i>, which provides guidance on complying with the Phthalate standard required by the CPSIA, and a list which includes many natural and synthetic fibers that do not contain phthalates, and therefore "might not require testing or certification."</p> <p>3.)FAQ provided by the Small Business Ombudsman that includes the question, "If all of the component parts of my product are inaccessible or else satisfy the lead determinations, am I still required to issue a children's product certificate?" In the response, the Ombudsman describes that, "If, however, your children's product is wholly composed of components that satisfy the determinations and/or satisfy the determinations on inaccessibility, and there are no other applicable children's product safety rules, then you do not have to issue a children's product certificate"</p>
<p>PROBLEM</p>	<p>Each time a manufacturer or private labeler has to create a GCC it is a cost and a burden on their time. Also, the mixed guidance that industry has received from the CPSC has companies confused regarding the requirements for filing a GCC. This problem has not only occurred as a result of CPSIA, but also as a result of recent CPSC guidance on the FFA. The problem is a simple one that can be fixed without any effect on product safety or compliance.</p>
<p>SOLUTION</p>	<p>The CPSC should issue a clear and concise statement that an item that is exempt from testing does not require a GCC. Clarify the certification requirements to reflect that product that is exempt from testing does not require a GCC will decrease the amount of confusion among manufacturers and retailers as well as significantly reducing the paperwork burden. By issuing such a statement, the CPSC will go a long way in bringing clarity to the testing regime.</p>

The Definition of a Child Care Article Should Exclude Sleepwear

<p>BACKGROUND</p>	<p>CPSC staff has issued several documents since the enactment of the CPSIA that include sleepwear in the definition of child care articles - guidance by the CPSC General Counsel in 2008 and a letter on loungewear enforcement at the end of 2011. The practical result of these decisions is that sleepwear (and presumably related garments including loungewear) is subject to testing and certification requirements for certain phthalates. The feature in sleepwear that was cited by the General Counsel in her letter in 2008, and which is likewise the only feature ever noted by CPSC staff, is the non-slip pad that is sometimes found on the bottom of kids' footed pajamas. Such non-slip pads are specifically intended to facilitate walking, further distancing such garments from the sleep facilitation context.</p> <p>The <i>Merriam-Webster</i> definition of "facilitate" is "to make easier: to help bring about." Children's sleepwear, under this definition, is not intended to facilitate sleep and therefore should not be included in the definition of a child care article under the requirements for phthalate testing.</p> <p>The phthalate ban in the CPSIA is ultimately based on a nearly identical ban that was enacted in the European Union (EU). Using virtually identical terms, the EU has issued guidance on child care articles, explaining that it does not consider sleepwear to facilitate sleep. The EU guidance states, "The main purpose of pyjamas is to dress children when sleeping and not to facilitate sleep. Pyjamas should therefore be regarded as textiles and, like other textiles, do not fall under the scope of the Directive."</p>
<p>PROBLEM</p>	<p>The CPSC incorrectly includes sleepwear under the definition of child care articles, which leads to unnecessary testing costs for phthalates in this category of garments.</p> <p>Although one may be tempted to reach the conclusion that sleepwear facilitates sleep because the word "sleepwear" contains the word "sleep," sleepwear in itself does not facilitate sleep in any manner. It is axiomatic that other articles of clothing, such as playwear, do not facilitate being awake. Likewise, it is difficult, if not impossible, to reach a conclusion that sleepwear facilitates being asleep. Indeed, most individuals can probably find multiple examples where they had difficulty falling asleep wearing sleepwear or difficulty staying awake while wearing other garments.</p>
<p>SOLUTION</p>	<p>An examination of the risk profile of the garment, not a narrow fixation on the name, should determine whether the article is included in the standard and subject to testing. The definition of a child care article should exclude sleepwear.</p>

Use a More Aggressive CPSC Preemption to Ensure Better Alignment Among Different Regulatory Regimes

BACKGROUND	<p>The Commission has spoken on the goals of harmonizing international regulations, especially with Canada and Mexico. However, the proliferation of current and planned regulations at the state and local level within the United States, including Washington State's Children's Safe Product Act; Illinois Lead Labeling Law; California's Proposition 65; several different cadmium bans in California, Connecticut, Illinois, Maryland, Minnesota; and state Drawstring regulations, has made it next to impossible for companies to comply with one regulation while at the same time not violating another.</p>
PROBLEM	<p>Due to the vast amount and variety of separate state regulations (with 28 states introducing individual toxic legislation in 2012) the United States is becoming more disconnected from the global marketplace. This implementation of state-level product safety regulations, whether they involve reporting or labeling, has created a cacophony of contradictory issues.</p>
SOLUTION	<p>The CPSC needs to implement a more aggressive harmonization initiative to work with local and state legislators to ensure all new regulations are in sync with national regulations and that standardized testing requirements flow from federal requirements to minimize testing costs.</p>

Third Party Testing Requirements by CPSIA, Should not Extend to General Product Safety Requirements

<p>BACKGROUND</p>	<p>When Congress wrote the CPSIA, it made a clear effort to differentiate between general product safety standards and children's product safety standards. The CPSIA determined children's product safety standards to include lead paint, cribs and pacifiers standards, small parts, children's metal jewelry standards, baby bouncer standards, walkers and jumpers standards, and all other children's product safety rules. These children's product safety standards can be differentiated from product safety standards applicable to all consumer products such as the <i>Flammable Fabrics Act</i> (FFA).</p>
<p>PROBLEM</p>	<p>Application of third party testing to the portion of children's products covered by the FFA also bifurcates the FFA into a double standard, creating confusion and adding costs. Before this decision, companies could follow one set of testing rules for this standard. Now, companies have to understand two separate sets of testing rules for the same standard (notwithstanding the fact that the underlying testing procedures in the FFA are still intact).</p> <p>Furthermore, requiring manufacturers to go beyond the testing requirements laid out in 16 CFR 1610 to demonstrate compliance in effect amends the FFA regulation, which violates the requirements laid out in Section 4(b) of the FFA regarding the proper way in which the FFA is to be amended. Any amendment to an FFA standard, "shall be based on findings" that the amendment, "is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, is reasonable, technologically practicable, and appropriate." The CPSC has not demonstrated that third party testing is needed, and the burden companies subsequently take on is not reasonable; therefore, the CPSC has not made any findings that amending 16 CFR 1610's testing requirements is appropriate or necessary.</p>
<p>SOLUTION</p>	<p>Nothing in the FFA suggests there needs to be such a differentiation between adult and children's clothing. Moreover, the CPSIA offers little to suggest that such a differentiation was intended for the FFA. There is no evidence that Congress wanted to apply the third party testing requirements to children's products subject to general product safety standards.</p> <p>Therefore, the CPSC should remove the third-party testing requirement for children's products under FFA. By doing so, the CPSC can drastically reduce the cost of testing without compromising the safety and integrity of a children's product.</p>

A Tolerance Factor is Needed to Accommodate Inter-Lab Variability

BACKGROUND	<p>The variability of inter-laboratory testing for lead in substrate and paint at the 100ppm level is not a new issue, and it is an issue for which the CPSC has received hundreds of thousands of data points from AAFA, our members, and several other sources, including a briefing package from the CPSC's own staff, and studies done by the Institute for Interlaboratory Studies (IIS).</p> <p>In the CPSC briefing package, the staff recognized and discussed the existence of material and testing variability. The IIS study also emphasizes this fact in their study <i>Results of Proficiency Test Total lead in Paint</i>. In one report published in 2010, the Institute found that when testing a component at 360ppm there was an acceptable level of error of 78ppm with outliers ranging from 110ppm below to 212ppm above. In a 2011 report, the Institute made the determination that, "Total lead determination on this sample, at a concentration level of 106mg/kg, may be somewhat problematic."</p>
PROBLEM	<p>With all of the data that has been provided, it is hard to ignore the existence and prevalence of inter-lab variability. While industry is striving to minimize its effects, it is impossible to eliminate all variability at the 100 ppm level.</p>
SOLUTION	<p>The CPSC must look into implementing a de minimis exemption for the 100ppm lead limit. The purpose would not be to increase the lead limit, but to accommodate for the inevitable variability that will always occur in testing. CPSC should conduct an ongoing component of certifying laboratories, an annual correlation exercise by laboratory location to ensure that the de minimis level of substance is reasonable and practicable based on the testing capabilities and accuracies of the CPSIA- certified laboratories. The Global Apparel, Footwear and Textile Initiative (GAFTI), is working hard to pinpoint the causes of the test variability and we encourage the CPSC to continue their collaboration with GAFTI.</p>

Allow Third Party XRF Testing to Screen Products for Compliance

BACKGROUND	<p>X-Ray Fluorescence (XRF) is a non-destructive method of testing for lead content. An XRF is a portable x-ray machine that is frequently used by all members of the product safety world, including by CPSC and CBP officials, for screening materials at the port.</p> <p>The advantages and disadvantages of XRF testing are well known by the CPSC, which has hosted many hearings and discussions regarding the possible uses of XRF to benefit small batch manufacturers. The hindering factor of XRF testing continues to be that it has not always been reliable enough to give accurate readings under the 100ppm lead level. While XRF technology is quickly improving and becoming more accurate it is still not capable of being 100 percent reliable for an accurate result. It has, however, proven to be very capable for determining if a product requires further testing.</p>
PROBLEM	<p>The cost of Wet Chemical testing continues to be high. Meanwhile, as the CPSC has mentioned on several occasions, XRF technology can be used as an effective screening device.</p>
SOLUTION	<p>We believe that the CPSC has received enough scientific evidence to allow for XRF testing to be used as a screening process for further testing. By allowing a third party lab to accept XRF results for lead that are either non-detect or preferably, under a certain variance, the CPSC could drastically reduce the cost of third party testing by reducing the need for wet chemistry testing while still maintaining the high degree of assurance for compliance.</p>

Fix the Determination of Fabric as a Barrier for Inaccessible Parts

<p>BACKGROUND</p>	<p>In their guidance to industry on “Inaccessible Component Parts for Children’s Products Containing Lead” the CPSC stated that “the Commission has revised the final interpretative rule by adding a new Sec. 1500.87(i) to explain that a children’s product that is or contains a lead-containing part which is enclosed, encased, or covered by fabric and passes the appropriate use and abuse tests on such covers, is inaccessible to a child unless the product or part of the product in one dimension is smaller than 5 centimeters. The Commission also has renumbered proposed Sec. 1500.87(g), which pertained to the intentional disassembly or destruction of products by children, as Sec. 1500.87(j).”</p> <p>The CPSC also stated that “unlike other children’s products that have lead-containing components that are accessible, children will not touch the lead containing component with the hands or fingers if the component is enclosed or encased in fabric.” The CPSC also mentioned that “The Commission believes that, in general, fabric coverings may be considered barriers to physical contact with underlying materials...” Unfortunately, the CPSC then used the definition of “a toy that can be placed in a child’s mouth” for the phthalate ban under the CPSIA to formulate their guidance for inaccessibility of a fabric barrier.</p> <p>Due to this incorrect assumption, the CPSC declared that, “For fabric-covered children’s products, an additional test to determine whether any part in one dimension is smaller than 5 centimeters should be performed to see if it can be placed in the mouth. If mouthing or swallowing of a component part could occur, the material beneath the fabric covering is considered to be accessible to a child.”</p>
<p>PROBLEM</p>	<p>It is impossible for any apparel or footwear article to be greater than five centimeters in all dimensions, which in turn makes this exemption invalid for any product created by an apparel or footwear manufacturer.</p> <p>Apparel and footwear are not toys. While being worn as intended it is impossible for a child to swallow an article of clothing or a shoe and therefore the one-size-fits-all definition of an inaccessible toy does not apply to these categories.</p>
<p>SOLUTION</p>	<p>A component on an article of clothing or shoe which has been made inaccessible by a layer of fabric poses no risk to a child’s health. The CPSC does not need to create a new exemption to alleviate this unnecessary burden. The CPSC just needs to modify the inaccessibility exemption that has already been created and make it viable for the industry the exemption was originally intended to help.</p>

Fix the Boundaries of Lead in Fabric Determination

BACKGROUND	<p>On August 26, 2009, the CPSC published in the federal register their finding that textiles (dyed or undyed) cannot possibly contain lead.</p> <p>“We also examined the dyes used on textiles. [Refs. 1 and 3]. Dyes are organic chemicals that can be dissolved and made soluble in water or another carrier so they can penetrate into the fiber. Dyes can be used in solutions or as a paste for printing. Commercial dyes are classified by chemical composition or method of application. Many dyes are fiber specific. For example, disperse dyes are used for dyeing polyester, and direct dyes are used for cellulosic fibers. Dyes can be applied to textiles at the fiber, yarn, fabric, or finished product stage. Dye colorants are not lead based. Although not typical, some dye baths may contain lead. However, even if the dye bath contains lead, the colorant that is retained by the finished textile after the rinsing process would not contain lead above a non-detectable lead level. In contrast to dyes, pigments are either organic or inorganic. Pigments are insoluble in water, are applied to the surface of textile materials, and are held there by a resinous binder. Binders used with pigments for textiles are non-lead based. Processes that are lead-based are used for some industrial textiles that require a greater level of colorfastness or durability, but are not typically intended for apparel textiles. Although most pigments do not contain lead, there may be some lead based paints and pigments on non-textile materials that may be directly incorporated into textile products or added to the surface of textiles, such as decals, transfers, and screen printing.”</p>
PROBLEM	<p>The CPSC caused an unnecessary confusion when they excluded from “textiles”, any textiles that contain, “after treatment applications, including screen prints, transfers, decals, or other prints. There is a distinct difference between screen prints and “other prints.” Other prints include several forms of dyeing that fall distinctly under the category of exempted items. The resulting confusion has been costly and has required a significant amount of unnecessary testing.</p>
SOLUTION	<p>The CPSC should remove this confusion by indicating which “other prints” are not covered by the exemption so the industry may continue to rely on the global knowledge that there is not lead in dyed or undyed fabric.</p>

Provide a Small Batch Exemption for Larger Manufactures Producing a Small Batch

<p>BACKGROUND</p>	<p>“Small batch manufacturers” , are defined by H.R. 2715 and by the CPSC as, “a manufacturer that had no more than \$1,000,000 in total gross revenue from sales of all consumer products in the previous calendar year”, and manufactures less than 7,500 units of the product that qualifies for the small batch exemption. The spirit of the exemption would appear to be to reduce the burden of third party testing when a small batch of products is being manufactured. However, as it currently stands, the exemption only applies to manufacturers whose total gross revenue is less than \$1 million for all their products. Many manufacturers, while they may have a total gross revenue exceeding \$1 million, have certain product lines that consist of very small batches.</p>
<p>PROBLEM</p>	<p>Third party testing for these small batches of products forces a manufacturer to incur prohibitive costs. Furthermore, the cost of the third-party testing reduces the ability of the manufacturer to create those product batches that could compete with those produced by small batch manufacturers. Regardless of whether a manufacturer is large or small, requiring an expensive third party testing process on, for example, a 100-item specific product batch, takes away a large chunk of the small revenue received from this small product batch, and goes against the spirit of the exemption. Requiring third party testing on such small production batches will severely hinder a larger company’s ability to test new markets and create new and innovative products that could advance America’s technology and global competitiveness.</p>
<p>SOLUTION</p>	<p>We believe that the CPSC should fashion a small batch exemption for larger companies – akin to the small batch exemption from H.R. 2715. We understand the exemption in H.R. 2715 only applies to the defined small batch manufacturers, but H.R. 2715 also gave the CPSC the authority to create a testing exemption for a batch of products for which the cost of testing would otherwise be prohibitive and ineffective.</p>

Apply an Inaccessibility Exemption that Pertains to Lead in Paint

BACKGROUND	<p>Section 101(b) (2) (A) of the CPSIA states that, “[a] component part is not accessible under this subparagraph if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product.” The CPSC has made several determinations and provided extensive guidance in terms of inaccessibility for lead in substrate, which continue to dictate whether third party testing is required. However, the CPSC has still never applied this exemption to lead in paint. In terms of inaccessibility and the absorption of lead, there is no difference between lead in paint and lead in substrate when a CPSC accepted barrier is involved.</p>
PROBLEM	<p>The perfect example of this situation is a component inside of a children’s shoe. One of the most popular forms of children’s shoes is one that contains painted figures of a child’s favorite TV show or movie characters on the side of the shoe, which is then covered over by a clear plastic coating to maintain a smooth feel of the shoe. These shoes are just as protected and just as safe as any product that falls under the inaccessibility exemption for lead in substrate, but they are still required to perform expensive third party testing due to the omission of an inaccessibility exemption for lead in paint.</p>
SOLUTION	<p>Because the CPSC made the determination that children’s products bearing lead-containing paint are hazardous in a regulation, and not by Congress in a statute, CPSC has the authority to change the determination. The CPSIA did revise the regulation’s numeric threshold (changing 0.06% to 0.009%); but CPSC could still revise its regulation to apply its inaccessibility standard to lead in paint by stating that children’s products bearing paint with the specified amount of lead “in accessible components” are banned hazardous substances. Items with inaccessible components are just as deserving of relief from the burden of third party testing for lead in paint as items with inaccessible components that enjoy relief from phthalates and lead in substrate. The CPSC has the authority and understanding to provide this relief without any reduction in product safety.</p>

The CPSIA Does not Require that all Periodic Testing of Children’s Products Needs to Be done by A Third-Party Lab

<p>BACKGROUND</p>	<p>In Section 102(a)(2) of the CPSIA, it states that before importing for consumption, warehousing, or distributing, any children’s product subject to a product safety rule must have samples sent to a “third party conformity assessment body...to be tested for compliance with such children’s product safety rule.”</p> <p>Section 102(b)(d)(2), which is the only section of the CPSIA that dictates what a periodic testing plan should be based on, states that the CPSC should (A) initiate a program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of subsection (a); and B) establish protocols and standards—</p> <ul style="list-style-type: none"> (i) for ensuring that a children’s product tested for compliance with an applicable children’s product safety rule is subject to testing periodically and when there has been a material change in the product’s design or manufacturing process, including the sourcing of component parts; (ii) for the testing of random samples to ensure continued compliance; (iii) for verifying that a children’s product tested by a conformity assessment body complies with applicable children’s product safety rules; and (iv) for safeguarding against the exercise of undue influence on a third party conformity assessment body by a manufacturer or private labeler.”
<p>PROBLEM</p>	<p>Costs of testing are high, and the requirement to have children’s products periodically tested by third-party establishments complicates the already expensive process. Furthermore, there is no language in 102(b)(d)(2) that states all periodic testing must be done by a third party testing lab. Each and every one of these requirements can be met by an individual company that is able to perform its own periodic in-house testing as established by a reasonable testing protocol.</p>
<p>SOLUTION</p>	<p>By following the language of the law and removing the requirement that periodic testing be performed by a third party testing lab, the CPSC can drastically reduce the cost of testing without in any way compromising the safety and integrity of a children’s product. To clarify, this does not remove the requirement that third party testing is not done. It only removes the requirement – which is not found in statute – that subsequent <i>periodic</i> testing on a product be performed by a third party.</p>

Expedite the Elimination of the Three Temporary Phthalates from Being Banned

BACKGROUND	<p>As the CPSC FAQ on phthalates states:</p> <p>“Three phthalates, DEHP, DBP, and BBP, have been permanently prohibited by Congress in concentration of more than 0.1% in “children’s toys” or “child care articles.” A “children’s toy” means a product intended for a child 12 years of age or younger for use when playing, and a “child care article” means a product that a child 3 and younger would use for sleeping, feeding, sucking or teething.</p> <p>Three additional phthalates, DINP, DIDP, and DnOP, have been prohibited pending further study and review by a group of outside experts and the Commission. This interim prohibition applies to child care articles or toys that can be placed in a child’s mouth or brought to the mouth and kept in the mouth so that it can be sucked or chewed that contains a concentration of more than 0.1% of the above phthalates”</p> <p>AAFA members have been removing the harmful phthalates from their accessories and items that may include them. The Chronic Hazard Advisory Panel (CHAP) is working very diligently to ensure that the correct studies, facts and sciences are use while determining the risks involved with the three phthalates being studied but progress has been slow.</p>
PROBLEM	<p>Phthalate testing and phthalate alternatives are extremely expensive. Companies are left wondering when a decision will be made and how long it will be before any alternatives for those phthalates are temporarily banned for study as well.</p>
SOLUTION	<p>By working with the industry to come to a final decision on the three phthalates, the CPSC could save the industry millions of dollars in testing while at the same time giving industry the assurance that there is a safe alternative to the banned phthalates.</p>

Risk Potential and Level of Risk Should Always be Taken into Consideration and Evaluations Should be Reasonable

BACKGROUND	All product safety regulations should be designed to mitigate and protect against specific risks and be clearly supported by the data and facts. Understanding new safety regulations involves understanding how they will address a specific hazard. Using risk potential when doing a retrospective review is also important. If an unintended consequence is the result of a broad regulation, it should be examined, and if no history or risk is determined, it should be removed or exempted.
PROBLEM	The footwear and apparel industry are struggling with the CPSIA rules that are designed to address product safety concerns with toys, whose risks do not apply to apparel or footwear.
SOLUTION	It is important to also use risk potential when doing a retrospective review. If an unintended consequence is the result of a broad regulation that shows no evidence of mitigating risk it should be examined, and if determined to have shown no history of risk it should be removed or exempted from the rule. Many of the suggestions listed here today were never considered to be a feasible outcome of the requirements created by Congress in the passing of the CPSIA. While some unexpected risks can be prevented by the CPSIA, many more nonexistent risks were created by it. These nonexistent risks, many of which are listed in these comments, have cost millions of dollars to American companies without providing any increase in safety or protection for our nation's youth.

Rachel Weintraub
Consumer Federation of America



Consumer Federation of America

June 13, 2012

Statement of Rachel Weintraub,

Director of Product Safety and Senior Counsel, Consumer Federation

Before the

U.S. Consumer Product Safety Commission

Addressing

Agenda and Priorities FY 2014

I appreciate the opportunity to provide comments to you on CPSC's FY 2014 priorities. I am Rachel Weintraub, Director of Product Safety for Consumer Federation of America and Senior Counsel. Consumer Federation of America is a non-profit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education.

I. CPSIA Implementation

The implementation of the Consumer Product Safety Improvement Act should continue to be of the highest priority for the Consumer Product Safety Commission. The CPSC has been effectively prioritizing CPSC implementation and we congratulate the Agency for its work thus far. Never in CPSC's history have more rules been promulgated and in such a short time period. Not only have many rules been promulgated but the rules themselves will have an important and positive impact on consumers.

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

CPSC has additional infant durable product rules to promulgate under section 104; the Danny Keysar Child Product Safety Notification Act, which includes play yards, infant swings, bassinets, strollers, and highchairs. We urge CPSC to continue to commit the staff time and resources necessary to prioritize the promulgation of these rules. This is a critical component of

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

Another high priority for CPSC should continue to be the consumer incident database required by the CPSIA. We recognize CPSC's current commitment to this important consumer tool and urge the CPSC to maintain that commitment and to research reports that appear to indicate trends. CFA and KID conducted a study of the database that was released in April of 2012.¹ We found that the database is being used as intended. Of the 6,080 reports we analyzed, almost all were submitted by consumers, which was the hoped for and expected outcome. But while consumers make up 97% of the reporters to the database, medical professionals made up only .46%; medical examiners and coroners made up only .2%; and other public safety entities made up 1%. We urge CPSC to reach out to medical experts and others to ensure that they are aware of the database.

Our report also documented that eighty-four percent of all reports included a serial number or model name or number. While previous concerns had been raised about the lack of information in reports on the database, our findings, which are consistent with those of CPSC, show that most reports have specific information to accurately identify the product involved. We also found that manufacturers exercised their right to post additional comments on 53% of reports and that most reports (70%) involved products purchased in the last five years, not older products.

II. Emerging hazards

There are numerous emerging hazards that CPSC should prioritize.

1. Furniture Tip Overs

According to the U.S. Consumer Product Safety Commission (CPSC), each year, more than 22,000 children 8 years and younger are injured as a result of a piece of furniture, appliance or television tipping over. Between 2000 and 2010, there were 245 tip-over related deaths involving children 8 years old and younger. While the ASTM standard for furniture is in the process of being strengthened, much more must be done to bring all of the stakeholders together to collectively address this increasingly problematic, multifaceted and dangerous injury pattern.

2. Bumbo seat

In 2007, Bumbo International working with the U.S. Consumer Product Safety Commission (CPSC), recalled the baby seat, after 28 reported injuries from the product. Three of these injuries were skull fractures in babies between the ages of 3 to 10 months, resulting from the chair being used on elevated surfaces, such as a table. Bumbo International cooperated with the voluntary recall and agreed to add a special warning instruction on the chair, "WARNING - Never use on a raised surface. Never use as a car seat or bath seat. Designed for floor level use only. Never leave your baby unattended as the seat is not designed to be totally restrictive and may not prevent release of your baby in the event of vigorous movement."

¹ <http://www.consumerfed.org/pdfs/CPSCDatabase1YearAnniversary3-29-12.pdf>

However, subsequent injury reports caused CPSC to issue another warning for the product this past November. CPSC is now aware of at least 33 skull fractures. According to CPSC data there have been 95 additional injuries since the 2007 recall. Fifty of these injuries occurred while the product was used on the floor as recommended or its use position was unclear. There are fourteen postings to SaferProducts.gov documenting risks of injuries from the product as well.² Warning labels have generally been shown to be ineffective in reducing injuries and that is specifically evident with this product as well.

Because serious injuries are occurring when this product is used as intended, and since these injuries involve an alarming number of skull fractures we have grave concerns about the safety of Bumbo International's Baby Seat. Unlike other products intended for the same age range such as bouncers and stationary activity centers, there are no safety standards or testing requirements covering this type of product. In addition, manufacturers of similar products have made design changes to address the safety concerns associated with these types of products— a step Bumbo International has refused to take to date.

On February 6, 2012, CFA, Kids In Danger, Consumers Union, U.S. PIRG and Public Citizen wrote to CPSC urging the Commission to issue a recall of Bumbo International's Baby Seat to remove these potentially hazardous products from the market and to allow the manufacturer to address the serious safety concerns in the future. We are not aware of any CPSC action on this matter and continue to strongly urge CPSC to issue a recall of the baby seat and.

3. BB Shaped Magnetic Balls

BB shaped products containing powerful rare earth magnets have increasingly been linked to serious injuries to children and teens. These products contain rare earth magnets and are sold as rare earth super magnets, executive desk toys, Buckyballs, Nanospheres, Zen Magnets and Magnet Balls.³ These products, while sold for children over age 13, have been linked to many serious hazards to young children as a result of ingestion or inhalation of this product.⁴ Reports of injuries have been reported by doctors and in saferproducts.gov. Children enjoy playing with this product as a toy and use it as faux a nose or lip earring which precipitates ingestion. CPSC must closely study this product, the play value of this product and the injury patterns caused by this product. CPSC must take action to protect to protect children. Further, there are numerous brands of similar or identical products which pose the same hazards. Though not labeled for use by younger children, they can be found in toy stores and are found online characterized as toys.⁵

4. Button Cell Batteries

Button cell batteries pose serious and potentially fatal ingestion hazards to children. According to the most recent data reported to U.S. Poison Control Centers, in 2011 there were 3,471 button

² <http://www.saferproducts.gov/Search/Result.aspx?dm=0&p=1&q=bumbo&srt=#0>

³ <http://aapnews.aapublications.org/content/33/6/4.full>

⁴ <http://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Pages/AAP-Alerts-Pediatricians-to-Dangers-of-Magnet-Ingestions.aspx>

⁵ http://www.amazon.com/s/ref=nb_sb_ss_c_1_5?url=search-alias%3Dtoys-and-games&field-keywords=buckyballs&prefix=bucky%2Caps%2C147

battery ingestion cases. This data indicates that the incidents of button cell battery ingestions that result in fatalities and sever injuries have increased by a factor of more than six since 1985. According to a new study released last month in the American Academy of Pediatrics Journal,⁶ *Pediatrics*, an estimated 65,788 children less than 18 years of age were injured by button cell batteries serious enough to require emergency room treatment from 1990 to 2009, averaging 3,289 battery-related emergency room visits each year.

The number and rate of visits increased significantly during the study period, with substantial increases during the last 8 study years. Of the emergency room visits caused by button cell batteries, battery ingestion accounted for 76.6% of emergency room visits, followed by nasal cavity insertion (10.2%), mouth exposure (7.5%), and ear canal insertion (5.7%). Button batteries were implicated in 83.8% of patient visits caused by a known battery type. Most children (91.8%) were treated and released from the emergency room. We urge CPSC to continue its work to strengthen the voluntary standard to include a provision to securely enclose all button cell batteries.⁷

5. Inflatable Amusements

We urge CPSC to address hazards posed by inflatable amusement products such as bounce houses. According to CPSC's most recent data,⁸ which we urge CPSC to update; from 2003 to through 2007 there were an estimated 31,069 inflatable amusement injuries serious enough to require emergency room treatment. Ninety one percent of those injuries were caused by moon bounces. Most of the injuries (62%) were in the 5 to 14 age group, and almost all the estimated injuries (85%) involved children under the age of 15.⁹ CPSC documented, in its report released in 2009, that it was aware of four deaths involving inflatable amusements from 2003 through 2007.

News reports¹⁰ have indicated that bounce houses and other types of similar products can pose various hazards to consumers. For example, reports have indicated sudden deflation, entrapment of children as well as falling by children. Reports have also shown that such products have blown away and injured children. These incidents cause great concern. There is no voluntary standard for these products. We urge the CPSC to investigate this emerging hazard and to work with ASTM International in the development of voluntary standards for inflatable amusements that are intended for recreational use by consumers.

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

⁶ <http://pediatrics.aappublications.org/content/early/2012/05/09/peds.2011-0012>

⁷ <http://pediatrics.aappublications.org/content/early/2012/05/09/peds.2011-0012>

⁸ <http://www.cpsc.gov/library/inflate2007.pdf>

⁹ <http://www.cpsc.gov/library/inflate2007.pdf>

¹⁰ http://journalstar.com/news/local/article_6d1e2610-ca92-11df-8850-001cc4c03286.html,
<http://news.lalate.com/2011/06/06/bounce-house-terror-as-bouncy-house-blows-away/>,

requirements for recall registration cards and online mechanisms for a subset of infant durable products, much more must be done to ensure that consumers find out about recalls of products which they own and to ensure that consumers effectively remove the potentially hazardous product from their home. We urge CPSC to continue to prioritize this issue. Specifically we urge the CPSC to work with manufacturers of infant durable products to maximize awareness about product registration. Further, we urge CPSC to engage in a dialogue with all stakeholders about the factors that are essential to the most well publicized recalls to replicate that success with all recalls.

2. Civil 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 2011, the CPSC assessed fourteen civil penalties.¹¹ In 2010, CPSC assessed just six civil penalties,¹² while in 2009, there were 38 civil penalties assessed.¹³ Civil penalties serve an important deterrent effect to non compliance with CPSC laws and we urge CPSC to prioritize this important element of its enforcement responsibilities.

3. Import Surveillance

We applaud CPSC's current commitment to enforcing its safety mission at the ports of entry to the United States. With the profound increase of imported products into the United States, CPSC's efforts at the ports in cooperation with U.S. Customs and Border Protection is critical to preventing unsafe products from entering the United States marketplace. We further support the CPSC's efforts to prioritize enforcement at both the ports of entry as well as the United States' domestic marketplace to ensure compliance with the Consumer Product Safety Improvement Act as well as other CPSC mandatory standards and regulations.

IV. Critical Ongoing Safety Issues

1. 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.¹⁴ Suffocations were the second highest cause of death (motor vehicles ranked first). As part of CPSC's work on safe sleep environments, CPSC must continue to prioritize this issue, educate consumers about the importance of safe sleep environments and understand why data indicates that suffocations have been increasing for infants.

2. ATV and ROHV Safety

¹¹ <http://www.cpsc.gov/cgi-bin/civfy.aspx>

¹² <http://www.cpsc.gov/cgi-bin/civfy.aspx>

¹³ <http://www.cpsc.gov/cgi-bin/civfy.aspx>

¹⁴ http://www.cdc.gov/mmwr/preview/mmwrhtml/mm61e0416a1.htm?s_cid=mm61e0416a1_w

According to the most recent data released by CPSC,¹⁵ at least 115,000 people were injured seriously enough to require emergency room treatment in 2010, and the estimated number of all-terrain vehicle (ATV)-related fatalities was 781 in 2009, though the 2009 data is not considered complete. Trend analysis by CPSC indicates that for all ATVs, there is a statistically significant upward trend in emergency room visits for people of all ages during the years 2001 through 2010.

Fifty-five children lost their lives and 28,300 were injured seriously enough to require treatment in a hospital emergency department in 2010. Forty seven percent of children killed during that time period were younger than 12 years old. Children under 16 suffered an estimated 28,300 serious injuries in 2010 – or 25 percent of all injuries. In 2009, serious injuries to children also made up 25 percent of all injuries. CPSC must prioritize the issue of ATV safety. While CPSC's rulemaking is required to be finalized on ATVs this August, the completion of that rulemaking should not complete CPSC's 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.

Recreational off highway vehicles (ROHVs) pose hazards to consumers and have been associated with more than 165 deaths from 2003–2010. The current voluntary standard fails to address hazards in five significant areas: 1) the stability standard is inadequate; 2) the occupant protection measures are insufficient; 3) the draft standard does not sufficiently address handling of recreational off-highway vehicles; 4) there is no maximum speed established for these vehicles; and 5) the measures to ensure seat belt use by occupants of the vehicles are inadequate. We urge the CPSC to move forward with the promulgation of a mandatory standard to address these critical safety issues.

3. Window Covering Safety

CPSC's most recent data on window covering incidents indicates that since 1999 there have been 135 fatalities and 140 non fatal incidents as a result of a child's interaction with the cord of the window covering. Most of the non fatal incidents resulted in serious injuries to children. Approximately one child, between the ages of 8 months and 8 years old, dies each month from window cord strangulation and another child is seriously injured in a near strangulation incident. CPSC has recalled tens of millions of window coverings of numerous types, including Roman shades, roller and roll-up blinds, vertical and horizontal blinds because of hazards they pose to consumers. While a voluntary standard exists for window coverings, it has failed to eliminate or significantly reduce the strangulation risk posed by corded window coverings. We urge CPSC to prioritize this issue and to meaningfully address the hazards posed by corded window coverings.

4. Upholstered Furniture

We urge CPSC 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,

¹⁵ <http://www.cpsc.gov/library/foia/foia12/os/atv2010.pdf>

“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 halogenated fire retardant chemicals (FRs) in furniture filling materials, which have been associated with serious health impacts to humans, wildlife, and the environment.”¹⁶

In this letter, we also raised concerns about the continued use of halogenated fire retardants even after this rule is promulgated and urged CPSC to require labels indicating such use. We reaffirm the statements made in our 2008 letter and urge CPSC to promulgate the final rule, especially after recent news articles highlighted new and important aspects of this issue,¹⁷ which will improve fire safety standards and will not lead to the use of potentially toxic fire retardant chemicals.

V. Conclusion

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

¹⁶ <http://www.cpsc.gov/LIBRARY/FOIA/FOIA08/pubcom/flamm4.pdf> at pages 144-148.

¹⁷ <http://media.apps.chicagotribune.com/flames/index.html>

Erika Jones/Robert Burns
Bicycle Product Suppliers Association

**BEFORE THE
UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION
JUNE 20, 2012**

**TESTIMONY OF THE BICYCLE PRODUCTS SUPPLIERS ASSOCIATION
REGARDING THE FY 2014 PRIORITIES
FOR CPSC RULEMAKING AND RESEARCH**

Madame Chairman, Honorable Commissioners, I am pleased to have the opportunity to appear before you today on behalf of the Bicycle Products Suppliers Association (BPSA) to testify in favor of establishing a priority within the U.S. CPSC's budget for Fiscal Year 2014 to modernize the regulations governing adult bicycles.

My name is Robert Burns. I am Vice President and General Counsel of Trek Bicycle Corporation. I am accompanied today by Stefan Berggren of Trek, and Erika Jones of Mayer Brown, counsel to the BPSA. I am appearing today on behalf of BPSA.

The Bicycle Product Suppliers Association, ("BPSA") is an association of suppliers of bicycles, parts, accessories and services who serve the specialty bicycle retailer. BPSA shares U.S. CPSC's commitment to product safety, and is proud to have been an active participant in numerous proceedings before the U.S. CPSC throughout the last few years as the CPSC has been implementing the CPSIA. BPSA is mindful of, and sensitive to, the constraints on the resources available to the CPSC, and appreciates this opportunity to recommend a collaborative process for the much-needed revision and modernization of Part 1512 in which the industry would work with the CPSC to achieve this goal in a cost-effective manner.

As background, Part 1512 was first adopted on July 16, 1974 (39 FR 26100). The Commission amended the standard on November 13, 1975 (40 FR 52815) and again on December 22, 1978 (43 FR 60034). Most provisions of the standard have been in effect since

May 11, 1976. At that time, bicycles were relatively simple and homogenous products. The regulations adopted at that time reflect the simplicity of bicycle designs of that generation, and were appropriate for the era. Now, however, adult bicycles have evolved substantially and the regulations no longer reflect the diverse contemporary adult bicycle designs.

BPSA has requested CPSC to modernize Part 1512 on numerous occasions in recent years. The need for modernization became acute upon enactment of the CPSIA, because for the first time, bicycle manufacturers were required to certify actual and full compliance with Part 1512. Certification was complicated by the inconsistencies between certain provisions of the standard and modern adult bicycle designs – inconsistencies which were well known to CPSC staff. Shortly after enactment of CPSIA, BPSA sought and held a meeting with CPSC staff to discuss the certification dilemma caused by the evolution of the adult bicycle since promulgation of Part 1512 in the 1970's. BPSA appreciates that the CPSC first stayed enforcement of the certification obligation, and then engaged in rulemaking to respond to the most egregious of the conflicts between Part 1512 and modern adult bicycle designs. These decisions aided substantially in allowing bicycle manufacturers to meet their certification obligations; however, several issues remain unaddressed, and continue to present challenges to bicycle manufacturers, suppliers and distributors offering bicycles for sale in the United States. We pause to emphasize here that the needs for revision relate to bicycles intended for use by teenagers and adults, and not to bicycles intended primarily for use by children aged 12 and under. When Part 1512 was enacted in 1976, the CPSC invoked the Federal Hazardous Substances Act (FHSA) as authority for the regulation. For this purpose, FHSA authorizes CPSC to regulate the safety of “children’s products.” CPSC noted that its FHSA authority was limited to “children’s products,” but decided to extend the reach of Part 1512 to all bicycles, regardless of size or age

recommendations, because at that time, CPSC interpreted “children’s products” as including products for use by “children” up to the age of 16. Noting that teenagers can use bicycles of any size, CPSC decided that there was no reasonable basis to distinguish between children’s bicycles and adult bicycles, and instead applied part 1512 to all bicycles.

At that time, the Commission observed:

“The Commission is aware that a large percentage of bicycles produced, particularly in recent years, are light-weight, relatively expensive and sophisticated bicycles which are bought by adults for commuting, touring, and other recreational purpose. However, these same bicycles can be, and are used by children and adolescents. It is clear that there is no precise way of distinguishing between those bicycles intended exclusively for adults and those intended for children as well as adults. Neither the manufacturer nor the retailer can accurately predict who the subsequent user will be, nor can the seller predict whether the adult purchaser will be the exclusive user or whether the purchaser will give the bike to a child or share it with a child. Indeed, the bicycle may be purchased exclusively for adult use and when a child in the family becomes physically able to ride it the use may change. Moreover, an adult purchaser may subsequently sell the bicycle to a parent for a child’s use.” *Emphasis added.* 39 FR. 26100 (July 16, 1974).

The Commission thus decided to apply the new regulations to nearly all bicycles, regardless of whether they were intended for use by adults or by children. This judgment was challenged and, while the court remanded a small number of provisions to the Commission for further consideration, the 1974 decision was largely upheld by the D.C. Circuit. *Forester v. CPSC*, 559 F.2d 774 (D.C. Cir. 1977). The regulations have been largely unchanged since then.

In 2008, Congress defined “children’s product” as a product intended primarily for use by children aged 12 and younger, which changed the regulatory landscape. In light of this change in the law, it is unlikely that CPSC could today invoke the FHSA to regulate adult bicycles on the grounds that these bicycles might also be used by teenagers. Nevertheless, BPSA does not seek to disturb Part 1512 as it applies to children’s bicycles. The regulation works well enough for those bicycles and does not need to be changed at this time.

However, Part 1512 does not work well as applied to adult bicycles, because it does not reflect contemporary bicycle designs.

Since the promulgation of Part 1512 in the 1970’s, a great deal of work has been accomplished here in the US through the efforts of the American Society of Testing Materials Bicycle Working Group, known as the F.08 Group. This group, which has comprised the cooperative and voluntary efforts of skilled US bicycle industry experts, engineers and quality assurance personnel with representatives of the CPSC, has already published several more modern voluntary bicycle standards. Further, the industry is aware of efforts by others, such as ISO and CEN, to develop standards for adult bicycles.

The BPSA believes that, unlike in the 1970’s, a rule making procedure to revise and modernize Part 1512 as it relates to adult bicycles today will be able to benefit substantially from these intervening efforts, and the CPSC will not have to develop the new standard in a vacuum. Adoption of and/or harmonization with appropriate provisions of the ASTM, European or other international standards, should be able to substantially reduce the time, effort and expense necessary to bring Part 1512 of the US regulations up to date for adult bicycles. Harmonization of appropriate provisions would also be consistent with the initiatives of the Obama Administration’s recent initiative to encourage international regulatory cooperation. On May 1,

2012, President Obama issued Executive Order 13609, “Promoting International Regulatory Cooperation,” to encourage regulatory agencies to consider (among other things) opportunities for reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners” when selecting regulations for retrospective analysis under Executive Order 13563 (and, as it relates to independent agencies such as CPSC, Executive Order 13579).

For those aspects of modern adult bicycles for which harmonization with another standard is not appropriate or practicable, or where a suitable existing standard is not available, BPSA stands ready to work with CPSC staff to develop appropriate requirements.

BPSA is willing to commit resources to assisting CPSC in achieving this goal, including preparing turn-key regulatory text, if such a contribution would be helpful. We urge U.S. CPSC to make Part 1512 reform a priority for both FY 2013 and FY 2014.

Thank you for the opportunity to appear today, and I welcome the chance to try to answer any questions you may have.

Jim Neill

The Retail Industry Leaders Association

Stevenson, Todd

From: Kelly Cybulski [Kelly.Cybulski@RILA.ORG]
Sent: Wednesday, June 13, 2012 2:53 PM
To: CPSC-OS,
Subject: RILA's Oral Presentation Topics for June 20 Public Hearing

Todd,

The Retail Industry Leaders Association would like to present on the following themes at the June 20th hearing on CPSC priorities for 2014. Jim Neill will expand on them when he speaks at the hearing. We wanted to give you a preview of what we will likely cover.

- Agency outreach to industries when developing voluntary standards and rulemaking
- Clarity on compliance enforcement
- Retail and saferproducts.gov
- Testing and certification rules
- Regulatory harmonization in North America
- Strategic initiatives and partnerships

Thank you for the opportunity.

Kelly Cybulski
Coordinator, Product Safety & Retail Operations
Retail Industry Leaders Association (RILA)
Direct: 703-600-2075
kelly.cybulski@retail-leaders.org
www.rila.org

Russell Long
Friends of the Earth
and colleague organizations

June 20, 2012, Consumer Product Safety Commission, Hearing on FY 2013-14 Priorities

I'm Russell Long, Board member of Friends of the Earth. I'm here to speak on behalf of our millions of members worldwide. I will be addressing the question of CPSC's top priorities.

We believe that the most important action that CPSC can take is to adopt their draft fabric smolder rule for furniture 16 CFR 1634 as rapidly as possible. Products would meet this federal flammability standard through the use of smolder resistant fabrics, which better prevent ignition than the use of potentially toxic flame retardant chemicals in foam. This rule will increase fire safety and protect the health of our population, as well as our environment.

Ironically, fires started by a small open flame and linked to furniture account for merely a few hundred annual deaths, but according to CPSC's own 2006 risk assessment, the lifetime cancer risk for each citizen from their exposure to one of the most prevalent flame retardants used in furniture to try to prevent small open flame fires, TDCP, or chlorinated tris, is up to **300 per million, a level far higher than the threshold for hazardous chemicals** under the FHSA.

Extrapolated fully, assuming that tris or a similar cancer-causing retardant is in virtually every U.S. home, a distinct possibility, **90,000 people** will have an increased risk of contracting cancer from chemical exposure in furniture, a number that completely dwarfs the population that the rule is intended to protect.

There are about 300 million people in the US so that means up to 90,000 cases of cancer

The problem is not just confined to tris.

PentaBDE, which was banned in California and the E.U. and was taken off the market in 2005, is also cancer-causing in animals. It was replaced by TDCPP or Chlorinated tris, FireMaster 550 and other unknown proprietary mixtures containing chemicals which may be no safer. An EPA study of chemicals that could replace pentaBDE shows areas of concern, as well as large data gaps for human health, and environmental safety information for all the potential replacements.

In addition, many hundreds of peer-reviewed studies show links between flame retardant exposure and infertility, low birth weights, birth defects, reproductive and neurological problems, including lower IQs, learning disabilities such as attention deficit disorder, hyperactivity, and possibly autism. Toxic-related mental impairments have a huge associated health cost. For example, autism has increased from 1 in 1100 in 1997, to 1 in 88 today, and it costs over \$1,000,000 to educate a child with autism.

The result is that the chemical manufacturers have created a veritable shell game of flame retardants, for which there is insufficient toxicity data. If this sounds like Russian roulette, you wouldn't be far wrong.

How did this happen? Some background:

As a result of furniture flammability rules adopted in California in the mid-70s, PBDEs were introduced into furniture products. Furniture makers, attempting to avoid making two sets of inventory for California, and another for the other 49 States, began using flame retardants in their products nationwide.

New studies confirm the California furniture link. The journal Environmental Science and Technology found the flame retardant PBDEs in the dust of California homes at four to 10 times the concentrations found elsewhere in the U.S., and 200 times higher than in Europe. Californians have twice the concentration of the chemical in their blood as people who live elsewhere in the United States due to the continued, and long-lasting presence of these chemicals.

The result is that flame retardant chemicals can be found in the blood of virtually every human in this country. Killer Whales off California have the highest levels of flame retardants per pound of any mammal in the world. Globally, levels in fish are also high and growing, and when we eat fish, we are often ingesting flame retardants. It has become a vicious cycle.

In addition, there is an environmental justice concern. A new study published in Chemical and Engineering News shows that low-income children have higher levels of fire retardants possibly because they have no safe place to play outdoors, so they remain in their homes, getting higher exposures than others. CPSC must insure that EJ concerns such as this one are taken fully into account.

Ironically, flame retardants do not appear to provide measurable fire protection. From 1980 to 2005, states that did not regulate furniture flammability experienced declines in fire death rates similar to that seen in California. Other causes of fire death reductions nationwide include a 50% decrease in per capita cigarette consumption since 1980; enforcement of improved building, fire, and electrical code; and increased use of smoke detectors and sprinklers. Recent legislation mandating fire-safe cigarettes in 22 states, including California, should bring further reductions in deaths due to fire, without adding questionable chemicals to home furnishings.

The use of the halogenated chemicals to meet TB 117 has been shown to be ineffective, and when the chemicals burn, they create much more carbon monoxide, soot and smoke, the primary causes of death and injury in fires. So the chemicals actually make fires more dangerous. There is data suggestive that first responders, such as firefighters, have unusual cancers and high rates of cancer due to exposure to dioxins and furans which are produced from the combustion of flame retardant chemicals.

In December 2007, The Commissioners made statements discouraging fire retardant use in home furnishings and noted that their own scientists "counsel caution". And yet, over the past five years, little progress has been made to implement a flammability rule that would allow furniture makers to abandon the use of hazardous chemicals, in favor of improved smolder resistant fabrics.

As you may have heard on Monday, Governor Jerry Brown has ordered the Bureau of Home Furnishings to modernize TB 117 in a way that flame retardants are no longer required. Finalizing the CPSC rule would allow for coordination and harmonization with California.

I'll conclude by saying that re-retardant chemicals in our homes should *not* pose a magnitudes-greater hazard to our health and environment than the risk of the fires they are supposed to prevent. Equivalent or greater fire safety can be achieved with the fabrics alone, as the CPSC has already recognized.

We urge you to make adopting the furniture rule 16 CFR 1634 your top priority for the new budget cycle.

I am also submitting a petition signed by 402 citizens today in support of our position.

Thank you.

Kate Carr
Safe Kids Worldwide

**Testimony of Kate Carr, President and CEO, of Safe Kids Worldwide,
Consumer Product Safety Commission
Agenda and Priorities FY 2014**

Thank you for giving me the opportunity and time to testify before this hearing to comment on the view of Safe Kids Worldwide about the budget priorities for the Consumer Product Safety Commission. First, while Safe Kids and CPSC are well acquainted, let me state for the record the role of the organization with which I work.

Safe Kids is a global network of organizations dedicated to providing parents and caregivers with practical and proven resources to protect kids from unintentional injuries, the number one cause of death to children in the United States. Throughout the world, almost a million children die of an injury each year, and every one of these tragedies is preventable. Through research, education and advocacy, Safe Kids works with an extensive network of more than 600 coalitions and chapters in the U.S. to reduce traffic injuries, falls, burns, poisonings, drownings, defective products and more. Since 1988, Safe Kids has helped reduce the U.S. childhood death rate from unintentional injury by 53 percent.

We have Safe Kids partner organizations operating in 23 countries on six continents around the world. With them, we share information and best practices on ways to prevent injuries in children. And, I want to emphasize the word “share,” because while the United States is the richest nation on the globe, it is not best in class when it comes to preventable injuries in children. We learn best practices from other nations just as we export them to other nations.

So, again, together, we have much to do.

There is a debate in this nation about the role of government. Is government too expansive or is it backing away from critical priorities beyond the reach of people acting alone. Just as an individual cannot put out a fire or prevent crime without first responders, just as we, alone, cannot protect our nation from terrorist threats or make the air cleaner, there are other functions we cannot perform alone. At the very least, there should be a consensus that the most vulnerable people in our society should be able to count on government—and organizations like Safe Kids—to make their lives safer. They include senior citizens, wounded warriors and children.

I am so pleased to join you today because I believe the Consumer Product Safety Commission plays this role, a role that cannot be fulfilled by ourselves acting alone. And it does so very effectively.

- How can a parent or caregiver inspect a toy to determine if it is made with poisonous lead?
- When a defective product hits the marketplace, how can a parent know about the danger without a central clearinghouse?
- What other body is better positioned to educate us about the dangers of carbon monoxide, and the best ways to prevent death or brain damage from this “silent killer” that attacks children and the elderly faster than other people?

Thus, even in a tough economy and challenges involving the federal deficit, I believe that the President and the Congress provide budget levels for the CPSC so it can truly meet its mandate and mission. I will provide you with Safe Kids' thoughts on the specific areas within CPSC's mission that are important in preventing injury in children.

Information Gathering; Trend Detection

I wanted to use this opportunity to talk about the future, more specifically, anticipating the future. Chairman Tenenbaum, you may recall that we recently joined together in a statement about the dangers of small magnets made for adult anti-stress toys. Children eat them, either out of curiosity or, when kids are older, to mimic tongue piercings. When a child swallows more than one, the magnets can become very dangerous. The agency responded about one case in March in which a 3-year-old swallowed 37 magnets. In an x-ray it looked like a bracelet, but it wasn't. The magnets tore three holes in her lower intestine. The agency had warned about the magnets before.

In April, we heard from our coalition in New Orleans, based at the Children's Hospital in New Orleans about a two-year-old named Braylon Jordan who endured eight surgeries because eight magnets he swallowed were clamping shut the trail of his intestines. One of Braylon's doctors conducted an informal survey and found that 33 pediatric gastroenterologists have seen 80 cases in which children swallowed magnets.

What is important about this story is the need to share information about dangerous trends impacting all of us, but especially children. I am advocating for an intelligence gathering capacity about emerging health hazards and dangerous products; if you will, this would be a CIA for consumers. In fact, the CPSC has such a capacity. A key component is its National Electronic Injury Surveillance System ("NEISS"), a national probability sample of hospitals in the U.S. and its territories. Using NEISS, injury data from hospital emergency rooms is collected and analyzed to identify patterns of occurrence and risk groups for specific injuries. This valuable information forms the basis for preventive measures and educational programs.

The Agency must continue this important function, and Congress must provide the necessary funding for it. Safe Kids applauds the evolution of NEISS throughout the years, such as increasing the number of hospitals used in the sample and the expansion of the system to capture data on all injuries, including those not associated with consumer products. We hope that the CPSC works in the future to improve this useful data collection tool. In addition, the CPSC's safety hotline is also a vital part of this information gathering process.

Finally, the news media cannot be undervalued as a partner in exposing consumer dangers and trends. Safe Kids has been engaged in a program with the goal of maintain sports as a vital and enjoyable part of school and childhood, but also safe. The danger posed by serious hits in football has received a great deal of attention recently. We have been emphasizing the importance of paying attention to the range of serious injury sustained in sports, sports beyond football, and injuries and sports involving girls as well as boys. NBC's "Rock Center" recently ran a well-documented story about concussions experienced by girls in soccer; and it followed up with another story about a headband being sold which purports to reduce concussions, but the efficacy of this product is

questionable. Safe Kids alerted the agency about the product, and we were glad to say that CPSC was on the job. As it has for years, Safe Kids commits to being a part of this information gathering network, including our 600 coalitions and chapters around the nation.

Recalls

One of the most important functions the agency plays in protecting children is in detecting products which are dangerous. Products parents use to care and clothe their children are among the top of many of your recalls. Today, most of your recalls carry the phrase “in cooperation with the firm. . .” and it is admirable that corporations are performing as good corporate citizens. But without the oversight role of the government—including the other agencies engaged in recalls—there is a danger that more defective products will enter the stream of commerce. This must remain an agency priority.

As a parent and consumer, I feel much more confident about the agency’s testing capacity with the opening of the new lab in Rockville. It must be a budget priority that the lab be able to keep up with the next, new thing in testing technology to stay ahead of the curve. In addition, the agency must be able to attract the best and brightest engineers so there is a parity of expertise with the manufacturers of the products you are testing.

Water Safety

Since we meet in the middle of summer, it is appropriate to emphasize the importance of the educational role the agency plays in keeping kids safe in swimming pools. This is critical because, according to the U.S. Centers for Disease Control and Prevention, drowning is the leading cause of death for children 1 to 4, and the second leading cause for children 5-9. Safe Kids has been fortunate to work with you on this program.

This year is special, because the CPSC has focused its campaign on minority communities. This is wise, and long in coming. African American and Hispanic children under 5 drown at higher rates than white children. Further, 70 percent of African American children and 62% of Hispanic children cannot swim.

This speaks to a larger question, which is the importance of the federal government’s role as a public educator. Your voice is loud, articulate and often passionate about public safety. We hope that your budget request for FY 2014 recognizes the importance of your educational role. The public educator role is a ready target for budget cutters, but that is wrong.

We believe that passage of the Virginia Graeme Baker Pool & Spa Safety Act will have a significant impact in preventing injuries and deaths from circulation entrapments. The agency must continue to play its oversight role in ensuring that the law meets its mandate. In addition, we understand that the agency was very helpful to Congresswoman Debby Wasserman Schultz (D-FL) in recommending ways to change the law so that the state grant program can be effective. That is appreciated.

Carbon Monoxide

This substance, known as "The Silent Killer," remains a threat to children and other vulnerable populations. It is called "silent" because it is odorless and tasteless. It is seasonal, hitting the north hard during the winter because of snow and the Gulf Coast during hurricane season. This is when people use gas powered instruments for heat and power. In addition, there is another area where a new product innovation has exposed people to an emerging threat. Drivers are using automobile keyless ignition controls to turn on their cars in garages, distracted and forgetting that they did so. This is causing CO injury and death. The educational role the agency plays in encouraging people to install CO detectors and ensure that their batteries are charged. Here's why: A 2008 survey found that fewer than 30 percent of households had a CO alarm. However, a study in the *Journal of the American Medical Association* reported that audible electronic CO alarms could have prevented over 50 percent of CO-related deaths.

Sports Safety

Safe Kids recently released the results of a survey it conducted of 2000 parents, children and coaches on their attitudes and knowledge about sports injury prevention. It is part of a multi-year initiative we have to meet the challenge of youth sports injuries. The news has been filled with stories of concussion injuries in kids' contact sports as well as professional sports. Several federal agencies have been engaged in this effort, notably the CDC and the CPSC. The agency is to be commended for its vigilance in examining helmets for their effectiveness but also your recent partnership with the NFL and manufacturers to replace football helmets in underserved communities. This is an example of the creativity which is so important in government in a time of austerity.

Sequestration

Before we get to making the FY 2014 budget, we must emerge from the danger of a mindless, indiscriminate sequestration which could render an agency like CPSC ineffectual. Perhaps I am speaking to the choir, but it is vital, first, that Congress and the White House come to a solution which avoids sequestration. Second, if there is an across-the-board, I hope the agency will keep in mind the foregoing priorities, and I intend to send a copy of this testimony to the Office of Management and Budget as it makes provisions for sequestration.

Conclusion

I thank the agency for the opportunity to hear our ideas on the agency's budget priorities. I speak for a special class of consumers. They are people who sleep in cribs, who play with toy trucks and who should be wearing safe bicycle helmets. They play sports with abandon and jump for joy at the sight of a swimming pool on a hot day. Kids are depending on the CPSC for its due diligence as a watchdog, educator and tester. While I have confidence that the job is

being performed effectively today, the CPSC must be supported with adequate budget resources to continue its indispensable role.

Staff Contact:

Anthony Green
Director of Public Policy
202.662.0606
agreen@safekids.org

Press Contact:

Gary Karton
202.662.0630
gkarton@safekids.org

Stevenson, Todd

From: Anthony Green [agreen@safekids.org]
Sent: Wednesday, June 13, 2012 5:17 PM
To: CPSC-OS,
Subject: Agenda and Priorities FY 2014 Testimony
Attachments: CPSC Budget Priorities testimony.doc

Attached you will find the testimony of Kate Carr, President and CEO of Safe Kids Worldwide, for the hearing on the above captioned matter.

Anthony Green

Safe Kids Worldwide
Director, Public Policy
Office: 202.662.0606 | Cell: 202.615.4300
agreen@safekids.org | Personal: agreen163@gmail.com
www.safekids.org

Written Comments

Stevenson, Todd

From: Nick Basinski [nbasinski@thomasdirect.com]
Sent: Thursday, May 31, 2012 10:56 AM
To: CPSC-OS,
Subject: "Agenda and Priorities FY 2014"

What are the priorities the Commission should consider emphasizing and dedicating resources toward in the fiscal year 2014 Congressional Budget Request?

Defining the rules and regulations within CPSIA more clearly.

i.e. "Reasonable testing program" – A simple foam ball with no moving parts might be once a year or when materials change. A more complex item, such as a toy robot, might be every production run. Permanent label is a murky subject, as is definition of a children's product still after so much time.

Nick Basinski | Promotional Manager

Thomas Direct | Suite LL3 | 33 Plymouth Street | Montclair, NJ 07042

Phone 973.614.2384 | **Fax** 973.771.5108

Email nbasinski@thomasdirect.com | **Web** <http://www.thomasdirect.com>

The information contained in this electronic transmission and any attachments hereto is considered proprietary and confidential. Distribution of this material to anyone other than the addressee is prohibited. Any disclosure, copying, distribution or use of the contents of this transmission or any attachments hereto for any reason other than their intended purpose is prohibited. If you have received this transmission in error, please contact the sender and delete the material from any media and dispose of any printouts.

Please consider the environment before printing this email.

Stevenson, Todd

From: Ma Armstrong [mastoyo@hotmail.com]
Sent: Thursday, May 31, 2012 3:31 PM
To: CPSC-OS,
Subject: Agenda and Priorities FY 2014

To Whom it may Concern.

I have read ALL of your Email blasts except maybe one and until recently when I have been very busy. I have read all the documents posted that were linked to your emails.

Basically at this point all I see is some people (namely the board, committee or ??) that have guaranteed Job security for themselves.. working on something that basically will only be enforced in the USA while China and other countries continue to crank out cheap carp filled poisonous substances and belch out fumes into the air from these toxic chemicals.. and all you guys can do is collect a pay check and make the rest of us miserable with fear of what you will come up with next that will be detrimental to our businesses.

Sincerely

Marshia Armstrong
an ebay reseller.

A man's reach should always exceed his grasp. Or what is a Heaven for?

Stevenson, Todd

From: Malin Nasman [malin.nasman@ikea.com]
Sent: Friday, June 01, 2012 9:31 AM
To: CPSC-OS,; Woodard, Dean
Subject: Agenda and Priorities FY 2014

Hello again Mr. Woodard and CPSC Staff,

I know that you are aware of this, but in order to highlight mine and many others concerns, I am enclosing the following article that I received via the Product Safety Daily news e-mail. I would like the CPSC to allocate recourses for this matter even before fiscal year 2014, if possible.

<http://www.eastbayexpress.com/gyrobase/money-to-burn/Content?oid=3042155&showFullText=true>

Best Regards,
Malin

Malin Näsman
Product Requirements & Compliance Specialist
IKEA North America Services, LLC
420 Alan Wood Road, Conshohocken, PA 19428, USA
Phone: +1 610 834 0180 x5443
Fax: +1 610 834 0872
E-mail: malin.nasman@IKEA.com
Web: www.IKEA.com

This message contains confidential information. Unless you are the addressee (or authorized to receive for the addressee), you may not copy, use, or distribute this information. If you have received this message in error, please return it promptly by mail.

 **please consider the environment before printing this email**

From: Malin Nasman
Sent: Thursday, May 31, 2012 11:03 AM
To: 'cpsc-os@cpsc.gov'
Subject: Agenda and Priorities FY 2014
Importance: High

Dear CPSC Staff,

Referring to question number 1 below, I am asking the CPSC to urgently proceed with the 16 CFR Part 1634 Standard for the Flammability of Residential Upholstered Furniture rulemaking. I am very concerned with the present TB117 that requires industry to use hazardous flame retardant (FR) chemicals in order to comply with this California law. 16 CFR 1634 does not rely on the use of flame retardants and would limit the threat of hazardous chemicals to public health.

Best Regards,
Malin Nasman

Malin Näsman
Product Requirements & Compliance Specialist
IKEA North America Services, LLC
420 Alan Wood Road, Conshohocken, PA 19428, USA
Phone: +1 610 834 0180 x5443
Fax: +1 610 834 0872
E-mail: malin.nasman@IKEA.com
Web: www.IKEA.com

This message contains confidential information. Unless you are the addressee (or authorized to receive for the addressee), you may not copy, use, or distribute this information. If you have received this message in error, please return it promptly by mail.

-----Original Message-----

From: listserv@cpsc.gov [<mailto:listserv@cpsc.gov>]
Sent: Thursday, May 31, 2012 10:42 AM
To: Malin Nasman
Subject: CPSC Public Hearing Regarding 2014 Priorities

Dear CPSC Stakeholder,

May 31, 2012

While it may seem to be a long time in the future, planning for fiscal year 2014 is well underway! The Consumer Product Safety Commission will conduct a public hearing on June 20, 2012 starting at 10:00 a.m. to hear your views. Your requests to make oral presentations and the written text of that presentation must be transmitted to the Office of the Secretary not later than 5 p.m. EST on June 13, 2012. If you would like to submit a written statement only, you may also email it by that date to the address noted below.

Please email these to cpSC-os@cpsc.gov and place "Agenda and Priorities FY 2014" in the subject line. The hearing will be held at our offices on the 4th floor of the Bethesda Towers Building, 4330 East West Highway, Bethesda, MD 20814.

In order to guide the discussion, three questions were posed for you on which to comment:

1. What are the priorities the Commission should consider emphasizing and dedicating resources toward in the fiscal year 2014 Congressional Budget Request?
2. What activities should the Commission consider deemphasizing in the fiscal year 2014 Congressional Budget Request?
3. How should the Commission consider measuring its progress toward achieving its priorities in the fiscal year 2014 Congressional Budget Request?

I know that many of you have definite ideas on what priorities the Commission should emphasize. This is your opportunity to voice those concerns as well as note areas that may require less emphasis in the future. Fiscal 2014 begins on October 1, 2013-which really isn't that far away. I look forward to seeing you at the hearing or reading your statements.

Best regards,

Dean W. Woodard
Director
Office of Education, Global Outreach, &
Small Business Ombudsman
U.S. Consumer Product Safety Commission
Bethesda, Maryland 20814
dwoodard@cpsc.gov
@CPSCSmallBiz

Visit our blog, OnSafety at www.cpsc.gov/onsafety
See our videos on YouTube at <http://www.youtube.com/uscpsc>
Follow us on Twitter at <http://twitter.com/OnSafety>

See our photos on Flickr at <http://www.flickr.com/photos/uscpsc>

You are currently subscribed to the e-mail list "cpsia" as: malin.nasman@ikea.com

To unsubscribe, please do one of the following:

(1) go to <https://www.cpsc.gov/cpsclist.aspx> and use the on-line form or

(2) send a blank email to leave-2681511-758502.8f06c339c9aa8e4e71e43df497cd227c@list.cpsc.gov

You can also go to <https://www.cpsc.gov/cpsclist.aspx> to change your subscription, or unsubscribe an old address and subscribe a new one.

This message is from the U.S. Consumer Product Safety Commission (www.cpsc.gov), an independent federal regulatory agency, located at 4330 East West Highway, Bethesda, MD 20814 Toll-free hotline: (800) 638-2772.

Report an Unsafe Product: www.SaferProducts.gov

Thank you.

East Bay Express

[Log in / Create Account](#)

NEWS - FEATURE

November 16, 2011

Money to Burn

Although flame retardants may pose health risks, the chemical industry has spent millions blocking attempts to ban them in California.

By Liza Gross of Environmental Health News



O Facing growing concerns over the health risks of flame retardants in household products, the chemical industry spent at least \$23.2 million over the past five years to lobby California officials and donate to campaigns in a successful effort to defeat legislation. During that time, five bills that would have regulated the ubiquitous chemicals failed to pass the California Legislature. The four top recipients of industry's donations, three Democrats and one Republican, never voted in favor of any of the bills. Two of them were members of a committee that rejected the bills.

A five-month investigation by Environmental Health News revealed an infusion of chemical industry cash into California that has global implications. During the five years of lobbying, the flame retardants have been building up in people's bodies, including breast milk, around the world.

Designed to slow the spread of flames, brominated and chlorinated chemicals are added to upholstered household furniture and babies' products sold throughout North America because California enforces a unique flammability standard. The chemical industry has been fighting to retain that state standard and ward off California proposals to ban the chemicals or mandate alternatives.

At least \$22.5 million was spent to lobby legislators as well as officials from at least six state agencies and then-Governor Arnold Schwarzenegger's office. In addition, at least \$593,000 in campaign money was donated over three election cycles to 85 legislators, including 44 Democrats and 41 Republicans, according to public documents.

State Senator Mark Leno (D-San Francisco), who authored four of the five failed bills, said he has no doubts about why it's been so hard to pass legislation to regulate flame retardants. He called California's flammability standard "a multibillion-dollar windfall" for the chemical industry. "This is an industry-dominated issue using government to stuff their pockets," he said. "To spend a few million to defend it is not all that surprising, but it's very unfortunate."

Chemical industry officials say the flame retardants are safe and effective, and that they are necessary to protect people from fires in their homes. The science,

they say, is unclear about human health effects. "We want to make sure that people are protected and that any [legislative] changes are well studied first," said Kathryn St. John, a spokeswoman for the American Chemistry Council. "The reason people feel safe in their homes today is because fire retardants have worked for many years and improved safety."

Flame retardants are incorporated into foam furniture cushions, as well as children's car seats, changing pads, nursing pillows, portable cribs, and other upholstered products. They also are found in some electronics and electrical equipment. And the \$4.6 billion industry is growing. Global flame retardant revenues will reach \$5.8 billion by 2018, led by a record increase of 7 percent a year in China, according to a study released in July by the industrial market analysis firm Ceresana Research.

Evidence of the chemicals' ubiquity, persistence, and potential health hazards is growing. Somehow escaping the polyurethane foam, they contaminate dust and food, and are accumulating in the bodies of people and wildlife worldwide, even as far away as the Arctic, scientists say. Health experts also worry that high concentrations of the chemicals found in many people might pose a risk, especially to children. In a pilot study released in August, researchers found the highest levels detected so far, and they were in pregnant women in California.

In experiments with animals, flame retardants have caused cancer, liver, and thyroid damage, altered hormones, damaged DNA, and impaired reproductive and brain development. Several studies have reported sharp increases in the levels of the compounds in the breast milk of American women. Whether there are human health effects is largely unknown, although some studies have reported links between exposure to the chemicals and lower IQs in children, reduced fertility in women, early onset of puberty in girls, and altered thyroid hormones in men.

Manufacturers of flame retardants are not based in California, yet they have spent millions of dollars lobbying in the state because it has the only flammability standard for household furniture in the United States. California also was the first state to regulate flame retardants, banning two widely used brominated compounds, called penta and octa, in 2003.

Lobbying activity increased dramatically after the California ban, which led to a nationwide phase-out by the only US manufacturer of the chemicals. Now manufacturers have switched to other compounds that scientists haven't yet evaluated. No new laws restricting flame retardants have been enacted in California since 2003.

Buying Access

It's impossible to determine exactly how the chemical industry spent its lobbying and campaign money because California's political reform law does not require itemized reports. It's also impossible to tell from disclosure statements how lobbyists spent money to influence Schwarzenegger's office or the regulatory agencies they listed: the California Environmental Protection Agency, Department of Consumer Affairs, Department of Toxic Substances Control, Office of Environmental Health Hazard Assessment, State Fire Marshal, and Bureau of Home Furnishings.

But an examination of payments to lobbyists and legislators filed with the California Secretary of State's office since 2007 revealed that spending increased during critical periods when legislators considered — and killed — legislation to regulate flame retardants.

Only payments from top flame retardant manufacturers, their trade groups and lobbyists were included in the \$23.2 million, and only if lobbying groups listed flame retardant issues on their disclosure forms. The amount does not include \$742,000 in campaign donations from Chevron, Dow, Exxon, and

Occidental — which all produce flame retardants — because the companies lobbied California legislators on many other issues related to oil and chemicals.

Burson-Marsteller, one of the world's largest public relations firms, spent at least \$6.6 million in California on behalf of a bromine industry trade group. In its lobbying disclosure report, the firm listed two flame retardant bills, AB513 and AB706, and lobbying activities "re: flame retardants" directed at Schwarzenegger's office and regulatory agencies, including the State Fire Marshal, the Bureau of Home Furnishings, and three environmental agencies.

The top flame retardant producers in the United States, Albemarle Corp., headquartered in Louisiana, and Chemtura Corp., in Pennsylvania, spent at least \$412,000 on political donations and lobbying in California, according to the documents.

"Companies usually give money for two reasons," said Gary Jacobson, a campaign finance expert and professor of political science at UCLA. "They want a legislator to win or they want to buy access. Giving money opens doors."

Over the past few years, five bills, including one introduced by then state Assemblywoman Sally Lieber (D-Mountain View), tried different approaches in an attempt to win the Legislature's approval:

AB513 would have outlawed a brominated flame retardant called deca (short for decabrominated diphenyl ether, or decaBDE). The bill, introduced in 2007, failed on the assembly floor.

AB706 would have prohibited all forms of brominated and chlorinated flame retardants. AB706 made it through the assembly, but died on the senate floor in 2008.

SB772 in 2009 sought to exempt bassinets, nursing pillows, and other children's products from flame retardant treatments. The bill passed a senate floor vote but failed to win the majority needed to pass the seventeen-member Assembly Appropriations Committee.

SB1291 would have placed flame retardants under the regulatory control of the state's Green Chemistry Initiative. It also mandated review of new flame retardants before they could be added to consumer products. The bill failed on the senate floor by one vote in 2010.

SB147, introduced last year, tried a different strategy to reduce flame retardant exposure. Rather than restricting chemicals, it changes the standard. It calls for a smolder flammability test instead of the current open flame test so that manufacturers would not have to use flame retardants. The bill stalled in the Senate Business, Professions and Economic Development Committee in May.

Of the \$23.2 million total, more than \$22.5 million supported lobbying efforts by industry trade groups and public relations firms aimed at legislators and regulators. At least \$18.3 million was filed under a nebulous category on lobbying disclosure forms called "other payments to influence." This loosely defined category includes office overhead and expenses, compensation to employees who engage in lobbying activities and fees to expert witnesses.

In addition, 85 state senators and assembly members received a total of at least \$593,000 in campaign donations from the industry over the three election cycles in which the state considered the bills. Of that, at least \$404,000 went to 53 senators and assembly members who voted against at least one of the bills, according to campaign disclosure reports filed with the California Secretary of State.

The top four recipients of industry money — all senators — each received more than \$24,000. Sam Blakeslee (R-San Luis Obispo) received nearly \$28,000, Gloria Negrete McLeod (D-Chino), received at least \$26,000, and Ed Hernandez (D-West Covina) received close to \$25,000. Nearly \$26,000 went

to Roderick Wright (D-Inglewood), who was indicted in 2010 on eight felony counts, including perjury and voter fraud related to filing a false declaration of candidacy.

In addition, at least \$41,000 went to eight lawmakers who never voted on the bills, effectively killing four by denying the majority vote. Nineteen legislators who voted to regulate the chemicals received at least \$100,000. Five who voted in favor of one bill and either abstained or voted against a second received more than \$46,500.

Forty-eight legislators who voted to regulate the chemicals received at least \$100,000. Seven voted in favor of one bill and either abstained or voted against a second. Of 47 legislators who took no industry money, 36 were Democrats and 11 were Republicans.

Although Leno's SB147 failed to pass a senate committee last spring, it remains under consideration. Hernandez and Negrete McLeod serve on the committee, along with Lou Correa (D-Santa Ana), Ellen Corbett (D-San Leandro), Bill Emmerson (R-Riverside), Committee Chair Curren Price (D-Los Angeles), Juan Vargas (D-San Diego), Mimi Walters (R-Laguna Hills) and Mark Wyland (R-Escondido). All but Corbett voted against SB147. Together, the eight committee members who blocked the bill took more than \$100,500 from the chemical industry and its supporters since 2007.

Blakeslee was not available to comment and Walters' office said the senator "is not available to talk about this issue." Calls to Wright, Negrete McLeod, Emmerson, Price, Vargas, and Wyland were not returned.

Hernandez's legislative director, Annabel Snider, said focusing on campaign contributions detracts from the "real issue, which is making sure that chemicals used for certain products are safe and reviewed through a comprehensive process." She said the campaign contributions did not influence his votes. "Senator Hernandez feels a need to stick by a system that would do comprehensive review rather than just doing it piece by piece, and in some cases maybe putting an even more dangerous alternative in place of the chemical that is banned," Snider said.

Correa, who received at least \$14,000 from flame retardant interests and voted against three bills, acknowledged that the public has a right to be concerned about contributions. "But I don't even look at the contributions I get," he said. "I send them directly to my treasurer." Correa said he voted against the bills partly because the science is inconclusive – "you've got papers on all sides" – and partly because he worries about young burn victims. "You take the totality of the testimony and the danger of ever-growing concerns of environmental risk versus the real existing danger of children being burned. Seeing some of the horrible, horrible cases of children being burned in their cribs, that stuff is very powerful," Correa said.

Leno declined to comment on the donations received by his colleagues, but said on a bill like SB147 he takes the time to present his case to each member with a committee vote. "And almost without exception, as I'm leaving my colleague's office, there's a lobbyist for the chemical industry in the waiting room to go in to get the last word. And, of course, there's a dozen of them and one of me."

Saving Lives?

Do flame retardants save lives? There is no clear answer. Flame retardants have been used widely since California adopted its flammability standard in 1975. Known as Technical Bulletin 117, the standard requires polyurethane foam in upholstered furniture and children's products to resist a small open flame for twelve seconds. To meet the standard, furniture manufacturers commonly add flame retardants to the foam, which is notorious for its combustibility.

Yet according to a study presented at the International Association for Fire Safety in June, the standard doesn't prevent ignition from small flames or reduce the severity of a fire. That's because the small flame standard doesn't reflect what happens when furniture catches fire, said Vytenis Babrauskas, former head of the National Institute of Standards and Technology's combustion toxicology program and lead author of the study, which was federally funded.

The test exposes foam to a small, Bunsen-burner-like flame, Babrauskas explained, but it should have used foam covered with fabric, since that's what people have in their homes. "In real life you don't see this naked foam," he said. "What you see is fabric, and what's going to ignite first is the fabric."

Naked foam treated with flame retardants to meet TB117 can resist a small open flame. But when fabric starts to burn, the foam will be exposed to a much larger flame than used in the TB117 test, and there's no evidence that treated foam can resist that larger flame.

Also, in a 2001 draft proposal for the first national furniture flammability standard, the Consumer Product Safety Commission reported that TB117-compliant chairs performed no better against cigarettes or small open flames than chairs that met voluntary guidelines issued by the Upholstered Furniture Action Council. To meet those voluntary guidelines, manufacturers use fabrics with inherent flame resistance and build furniture following criteria that pass the council's flammability tests — none of which require flame retardants.

Death rates from residential fires involving upholstered furniture fell in California during the 1980s. But the Consumer Product Safety Commission attributed the decline to demographic factors — particularly a rapid drop in smoking prevalence — rather than the state's flammability standard.

Bryan Goodman of the American Chemistry Council disagreed that demographics explain the decline. He cited a March, 2003 study funded by the New Zealand Fire Service Commission, which noted: "In California, where mandatory standards for home furnishings have been in place since 1975, the incidence of fire death, injury and property loss have fallen faster than in the USA as a whole. Between 1978 and 1995, there was a significant decline in the number of deaths in the USA where upholstered furniture was the first item ignited."

The study cited a report by the California Bureau of Home Furnishings, which credited TB117, its own standard, as the main factor in reducing the rate of fires involving home furnishings. But Babrauskas argued that this interpretation ignores the fact that most people keep the same couch for many years. "It's not credible that there would have been any significant effect between 1975 and 1980, since the life of a sofa is fifteen to thirty years and we see no drop in rate at the five-year mark of implementation," he said. "If TB117 was responsible for the decline, you would have continued to see a big drop from year five to fifteen, but there is none."

No one factor can explain the state's reduction in fire deaths, said Tonya Hoover, California's acting state fire marshal. She attributed the decline to a combination of factors, including fire-safe building construction, smoke alarms, material flammability standards, and reduced smoking.

The Consumer Product Safety Commission's proposed federal regulation has not moved beyond a draft form. As a result, because manufacturers make most of their products to comply with TB117, California's flammability rule serves as a de facto national standard.

Selling Safety

Among the witnesses that chemical industry lobbyists engaged to testify in the state legislature against the flame retardant bills were burn victims. Leno

recalled a committee hearing where lobbyists presented fire-scarred women on crutches, who related the trauma of being caught in a fire. At another committee hearing, on Leno's SB772, two African-American boys, ages 10 and 13, pleaded with legislators to keep them safe from fire by defeating his bill. "It's all about fear and nothing about facts," Leno said.

The evidence shows that California's fire safety standard may give someone an extra three or four seconds to flee an inflamed room, he added, "but it's not the flames that kill. It's the carbon monoxide and the increased smoke that these chemicals cause."

Leading the testimony in opposition to SB772, Sacramento lobbyist Joseph Lang said at that hearing that Leno's bill asked legislators to choose between the "fire safety of children and an alleged health risk which has yet to be scientifically documented."

Beyond securing witnesses for committee hearings, lobbyists also pay to entertain politicians. The California Manufacturers and Technology Association spent at least \$6.1 million over four years, including at least \$25,000 to entertain California politicians voting on the proposed regulations. Records show the association targeted four of the flame retardant bills.

In January 2007, the association spent at least \$3,500 on food and drinks for a legislative reception six months before AB513, the proposed decabann, failed its first vote on the Assembly floor. Just two of the thirteen assembly members who attended voted for the bill.

By law, legislators must report who donated funds and how much. Lobbyists and companies must disclose only which bills, issues, and administrative agencies were targeted and how much they spent. Records do not indicate how much is spent on each bill because the state doesn't require lobbyists to itemize payments and they do not volunteer the information.

Citizens for Fire Safety, a chemical-industry funded group "formed in response to threatening legislation across the country," according to its website, spent at least \$2.2 million on "other payments to influence." In keeping with the minimum disclosure requirements, the group revealed only that it lobbied several state agencies that regulate flame retardants and flammability standards, including the California EPA and the Bureau of Home Furnishings, as well as the governor's office.

The American Chemistry Council, the chemical industry's leading advocacy group, spent at least \$4.6 million in three months during the same time that AB706, Leno's attempt to ban halogenated flame retardants, failed on the senate floor.

In addition, the chemistry council spent at least \$1 million on lobbying activities related to three other flame retardant bills, and donated \$100,000 to legislators' campaigns.

Bryan Goodman, a spokesman for the American Chemistry Council, declined to say how the lobbying money was spent, noting only, "We abide by all lobbying requirements and complete all required government reports."

Goodman pointed out that the council, which represents more than 150 companies, engages in a wide range of California issues relevant to the chemical industry, not just flame retardants. AB706 was one of 13 bills targeted by the council that quarter, lobbying records show.

The latest bill, SB147, has one more chance to make it through the committee come January. Leno said the bill "lets the free market prevail" because it allows manufacturers of products such as furniture and nursing pillows to find alternatives to chemicals.

Whatever happens to SB147, environmentalists will continue to make flame retardants a priority next year, said Bill Allayaud, California director of governmental affairs for the Environmental Working Group. It's the same story whenever the safety of a chemical comes into question, he said.

"Every other week a more damning study comes out and industry keeps saying there's no evidence, or that for every study that says there's harm, there's one that says it's safe. That's completely untrue," he said.

Stevenson, Todd

From: Ddad312@aol.com
Sent: Saturday, June 02, 2012 7:39 AM
To: CPSC-OS,
Subject: Agenda and Priorities FY 2014

As ASTM is incorporated into CPSIA guidelines, the disparity in age limits defining the age of children should be addressed.

Since ASTM has declared that children are up to age 14, and CPSIA uses 12 or under, there is confusion on how to comply and how to label products intended for use by adults.

If there are current directives on how to deal with this issue, please advise!

Thank you,

David Dickstein
Jacobson Hat Co.
570-342-7887
fax 570-342-7454

Stevenson, Todd

From: Albert F. Limberg [post303@pacbell.net]
Sent: Monday, June 04, 2012 1:17 AM
To: CPSC-OS,
Subject: Agenda and Priorities FY 2014

1. What are the priorities the Commission should consider emphasizing and dedicating resources toward in the fiscal year 2014 Congressional Budget Request?

The agency should be attacking the problem of the increasing number of product recalls . . . especially those involving children's products. There are entirely too many and they really threaten the health, welfare and safety of our children.

On another topic . . . the agency should pursue forbidding the "Safe and Sane" disclaimer allowed on fireworks sold in several state jurisdictions. The phrase "Safe and Sane" is a deceptive disclaimer under the FHSA and antithetical to the objectives of agency mission, not to mention the legislative intent of the law. Fireworks, of any design, are neither "Safe" nor "Sane" by any stretch of the imagination. This may be an accomodation to the several State Fire Marshals involved but certainly does not serve the best interest of the American Consumer.

3. How should the Commission consider measuring its progress toward achieving its priorities in the fiscal year 2014 Congressional Budget Request?

One measure might be the number of criminal prosecutions pursued in support of recall reduction. For far too long, CPSC has relied on "voluntary compliance" with existing regulations and that doesn't seem to have worked very well for the American consumer. The process is simple . . . file criminal charges against importers of volative products. Under the HSA the agency need only to prove fact of violation. Proof of intent is not required. The first offense is a misdemeanor. The second offense conviction is a felony and the importer will lose his/her import license. Once the word is out importers will take exceptional care in assuring that their imports are in compliance.

Just some food for thought.

Be free to call and discuss these issues.

Sincerely,

Albert F. Limberg
Senior Complaine Officer
Western Region, USCPSC, Retired

Stevenson, Todd

From: William Hyman [w-hyman@tamu.edu]
Sent: Monday, June 04, 2012 10:46 AM
To: CPSC-OS,
Subject: Agenda and Priorities FY 2014

I request that the CPSC undertake rule making with respect to the safety of bed rails as used by adults.

Poorly designed bed rails continue to present entrapment hazards to bed users, and these entrapments continue to lead to death. This is the case for both rails from bed manufacturers and after-market add-on rails. The FDA's response to this problem has been inadequate since it has managed to produce only an optional "guidance", and rails can be marketed with minimal direct FDA oversight such that they are not even brought to the FDA's attention before being placed on the market.

With respect to home use such rails appear and are sold as direct to consumer products, and therefore this should be a proper CPSC subject. While jurisdiction may overlap with FDA, it should not be the case that two interested government agencies is less effective than one.

With respect to priorities, bed rails have an ongoing history of documented deaths (in part through FDA reporting). Moreover, there is something particularly perverse about being killed by a product that was being used in the expectation that it was providing safety.

Safer designs can be readily identified so that rulemaking should be effective in reducing the numbers of dangerous rails being sold and used.

Thank you for your interest in this subject.

.....
William A. Hyman

Professor Emeritus

Department of Biomedical Engineering

Texas A&M University

Mailing address:

185 West End Avenue, 19F

New York NY 10023

212-877-0720

(F) 979-216-1588

.....
.....
William A. Hyman

Professor Emeritus

Department of Biomedical Engineering

Texas A&M University

Mailing address:

185 West End Avenue, 19F

New York NY 10023

212-877-0720

(F) 979-216-1588

FOUNDING SPONSOR

Institution of Fire Engineers, US Branch

EXECUTIVE COMMITTEE

IFE Treasurer
Bill Kehoe

Project Manager
Jim Crawford

Operations Manager
Peg Carson

Communications Manager
Ed Comeau

Strategic Partnership Manager
Meri-K Appy

LIAISONS
Sandy Facinoli – USFA
Margaret Wilson – DHS

STEERING COMMITTEE

Organizations

Centers for Disease Control – Shane Diekman
International Association of Professional Black Fire Fighters – Johnny Brewington
International Association of Fire Chiefs – Alan Perdue
International Association of Fire Fighters – Sean DeCrane
International Association of Wildland Fire – Dan Bailey
International Association of Women in Fire & Emergency Services – Laura Baker
International Code Council – Sara Yerkes
Institution of Fire Engineers – James Broman
International Fire Marshals Association – Steven Sawyer
International Fire Service Training Association – Paul Valentine
National Association of Hispanic Firefighters – Paul Maldonado
National Association of State Fire Marshals – Robert Duke
National Fallen Firefighters Foundation – Ron J. Siamicki
National Fire Protection Association – Gary Keith
NFPA Education Section – Pat Mieszala
National Institute of Standards and Technology – Dan Madrzykowski
National Volunteer Fire Council – Sarah Lee
Society of Fire Protection Engineers – Michael Crowley

Individuals
Mike Love – Montgomery Co. Fire (retired)
Ben May – Consultant
Ozzie Mirkhah – Consultant
Wayne Powell – Marnolt International, Inc.
Phil Schaanman – Systems Planning Corp
Jim Tidwell – Tidwell Consulting



Vision 20/20

National Strategies for Fire Loss Prevention

June 13, 2012

Todd A. Stevenson,
Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
email: cpssc-os@cpssc.gov

Dear Mr. Stevenson:

On behalf of the Executive Board of Vision 20/20, a grassroots effort to define and help implement a national strategy for fire prevention across the United States, I submit this letter as part of the June 20, 2012, public hearing to review CPSC's agenda and priorities for fiscal year 2014. With major funding from several Fire Prevention and Safety Grants from the U. S. Department of Homeland Security/FEMA, Vision 20/20 has become a flagship program of the nonprofit Institution of Fire Engineers - USA Branch. The Vision 20/20 project is led by a Steering Committee of more than 30 fire and life safety experts representing a broad spectrum of national organizations, all focused on reducing the impact that fire has on our nation.

Despite significant improvements in recent decades, the United States still has one of the most severe fire loss records of the industrialized world. Fire loss includes social, environmental and economic impacts, not just fire deaths and injuries. According to NFPA, in 2010 there were:

- 1.3 million fires reported across the United States
- 3,120 civilian fire deaths
- 17,720 injuries
- \$11.6 billion in property damage
- 72 fire fighters were killed

More than four out of five fire deaths happen in the home. The leading cause of fatal fires was the careless disposal of smoking materials and the leading cause of all fires were caused by unattended cooking, both very preventable. For these reasons, Vision 20/20 commends the emphasis the Consumer Product Safety Commission places on residential fire safety.

Vision 20/20's work is organized in 5 strategic areas:

- 1) Prevention Advocacy
- 2) Prevention Marketing
- 3) Prevention Culture
- 4) Prevention Technology
- 5) Prevention Codes and Standards

We support use of model evaluation measures for all fire prevention methods, and are working hard to encourage local fire departments to embrace Community Risk Reduction principles which Vision 20/20 has been aggressively working on promoting through pilot programs across the country. These include making home fire safety visits to high-risk households to install smoke alarms and educate residents about actions to take to prevent and respond to a home fire.

Areas of particular interest to Vision 20/20 include CPSC's proposed activities to reduce fires caused by cooking equipment. Through Strategy 4 Prevention Technology, Vision 20/20 has been exploring and supporting the development of the next level of technology that can prevent fires from occurring, mitigate the damage caused once they do occur, or improve the capability of local fire prevention efforts. The task group has been focusing on technology that would prevent stove top fires from occurring in the first place.

CPSC's research into technologies to reduce the risk of food ignition on cook tops aligns with work we are doing and we look forward to your continued contribution to our knowledge base.

Through Strategy 2 Prevention Marketing, Vision 20/20 is helping to develop a national public education and social marketing campaign, along with the United States Fire Administration, to deal with the nation's fire problem in a sustained and collaborative fashion. The task group working on this strategy has conducted market research to produce a national fire safety theme which can be repeated in conjunction with existing or new safety messages to reinforce a common concept about fire safety. The theme selected is "Fire is Everyone's Fight" and the U.S. Fire Administration is taking the lead role in developing a national campaign to support the use of this theme. Subsequent messages will be developed for smoke alarms, and kitchen safety – two of the highest priorities mentioned via the Vision 20/20 project. This makes the work CPSC is doing in these areas – both in research and in risk communications -- of particular relevance to our mission-related activities.

The Executive Committee of Vision 20/20 looks forward to sharing with our active network of individual and organizational partners CPSC's results and best-practice recommendations on these and other strategies to improve fire safety in the U.S. We applaud your leadership in addressing the role consumer products and behavior plays in enhancing the safety and well-being of communities throughout America and welcome your contributions and insights to achieve our shared mission.

Sincerely,



Jim Crawford
Project Manager



Erik Glavich

Director, Legal & Regulatory Policy
Infrastructure, Legal & Regulatory Policy

June 13, 2012

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

Re: CPSC Docket No. CPSC_FRDOC_0001; Public Hearings: Commission Agenda and Priorities

Dear Mr. Stevenson:

The National Association of Manufacturers (NAM), the largest industrial trade association and the voice for 12 million men and women who make things in America, provides these comments in response to the notice of public hearing on the Consumer Product Safety Commission's agenda and priorities for fiscal year 2014.

Reducing regulatory burdens

The NAM encourages the Commission to make efforts to reduce third-party testing burdens a priority as the Commission implements the Consumer Product Safety Improvement Act of 2008 (CPSIA) and H.R. 2715 (Public Law No. 112-28). With the passage of H.R. 2715, Congress directed the Commission to identify ways to reduce "third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations." Congressional intent is clear: safety in consumer products should be maintained without imposing an undue burden on manufacturers, retailers and consumers. President Obama also supports this ideal. In July 2011, the President issued Executive Order 13579 asking independent regulatory agencies, to the extent permitted by law, to comply with the provisions of Executive Order 13563. The latter order states that our regulatory system "must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends."

The business community has offered a number of suggestions to the Commission in response to the notice issued last year regarding ways to reduce the cost of third-party testing pursuant to the mandates of H.R. 2715. Below are examples of how the Commission could assure safety while reducing the costs of testing:

- The Commission should adopt a clear statement of statistical uncertainty. Manufacturers face problems with inconsistent test results where products may pass one test but fail another. Guidance from the Commission would help avoid costs of product destruction and retesting associated with small variations in test results.
- The Commission should promote the use of alternative technologies, such as X-ray fluorescence (XRF) spectrometry, to destructive wet chemistry testing. The Commission has recognized broader use of certain XRF technologies and stated its commitment "to evaluate improvements to technology and methods on an ongoing basis" (77 FR 31086, May 24, 2012). We encourage the Commission to further expand ways to promote non-destructive testing and to assess how manufacturers who have invested in this technology can rely on it directly.

Leading Innovation. Creating Opportunity. Pursuing Progress.

733 10th Street, NW, Suite 700, Washington, DC 20001 • P 202-637-3179 • F 202-637-3182 • www.nam.org

- The Commission should exclude paint and surface coatings present in a product at extremely low total weight from testing requirements when no risk of harm exists. Manufacturers currently must supply products for destructive testing purposes, which may involve scraping surface coatings from many products to generate an adequate sample and is unnecessarily burdensome.
- The Commission should consider mechanisms to rely on other agency requirements to establish compliance with CPSIA requirements. Many consumer products are effectively regulated by agencies such as the Food and Drug Administration (FDA), the Federal Trade Commission (FTC) and others. Executive Order 13563 stresses improved coordination across agencies to reduce costs and simplify and harmonize rules.

Cooperating with the business community

Product safety goals and objectives are shared by the business community, consumer organizations and the Commission alike. Fostering a cooperative, rather than an adversarial, relationship will likely best achieve these shared goals. Cooperation includes offering useful and timely guidance and fostering education and compliance initiatives. The Commission has highlighted in its 2011-2016 Strategic Plan that partnering "with stakeholders to work cooperatively to reduce product safety hazards" is a key activity. The NAM encourages the Commission to make this activity a priority moving forward.

Communicating via social media

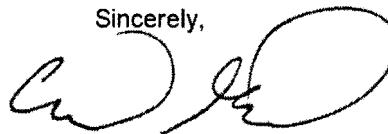
Manufacturers, particularly small manufacturers, of consumer products are sensitive to the type of information publicly available through the internet. Small businesses do not have the resources to monitor and respond to digital information that can spread quickly among consumers. When information is inaccurate or harmful to a business, the results can pose a significant burden on that business and, in the case of small businesses, inflict irreversible damage. In recognizing the importance of publishing accurate information, Congress passed H.R. 2715 and placed additional requirements on the Commission to ensure that information published on the saferproducts.gov database is accurate.

The NAM urges the Commission to modify initiatives to expand the use of social media that would enable information to be published on a public website without having been fully vetted by the Commission and in accordance with applicable laws and regulations. A rise in popularity of social media is not an appropriate reason for the Commission to engage in activities that are outside the scope of its governing statute and existing policies on information dissemination. Providing vehicles to publish unverified information on a website endorsed by the Commission would circumvent well-defined protections for manufacturers and trivialize efforts by the Commission, particularly through the development of saferproducts.gov, to ensure information accuracy.

Conclusion

The decisions and actions of the Commission greatly impact manufacturers, who support effective regulation and share the Commission's mission to protect consumers. The business community looks forward to working with you to achieve our shared goals. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erik Glavich', written in a cursive style.

Erik Glavich



116 W. Illinois
Suite 5E
Chicago IL 60654
Phone: 312.595.0649
Fax: 312.595.0939
www.KidsInDanger.org

**Written Comments of
Nancy Cowles, Executive Director
Kids In Danger
To the U.S. Consumer Product Safety Commission on**

“Agenda and Priorities FY 2014”

June 13, 2012

Thank you for the opportunity to submit written comments on CPSC’s agenda and priorities. We hope CPSC shares our concerns about these issues and that much of this work can begin prior to FY 2014.

CPSIA Implementation

The implementation of the CPSIA remains a top priority for KID, and we applaud the Commission for its commitment to this process. The process of setting mandatory standards as required in Section 104 or “Danny’s Law” is paramount to children’s safety. By FY 2014, many of the standards should be in place and third party testing underway for a wide variety of children’s products. CPSC should make it a priority to continue to strengthen their participation in the ASTM International standard setting process so emerging hazards can be incorporated into the mandatory standards as needed.

Sleep Environments Safety

Through the implementation of the CPSIA and Danny’s Law, CPSC has put much time and energy into making sure cribs, play yards, and bassinets are as safe as possible. Work is also planned for incline sleep products and bedside sleepers. KID appreciates the measured approach CPSC is taking to assure each of these products is as safe as possible. Even non-sleep products such as swings and strollers are held to standards that attempt to address possible hazards if a child does fall asleep in one.

And yet all this attention to safety does nothing to stop the sale and use of sleep products that don’t meet any standard and present hazards to infants and toddlers. Currently on the market are tent-like devices, ‘nest’ type products that might attach to a play yard or other products, co-sleeping areas for use in adult beds and many more products that aren’t subject to any ASTM standard or testing for safety. Parents who buy these products assume that if they are for sale, someone must have made sure they are safe. While that is true for regulated products, it is completely false for many of these sleep products. KID believes CPSC should make it a priority to ensure that products intended for sleeping infants and toddlers must meet a voluntary or mandatory standard relevant to the product. Parents are being duped into thinking products have been proven safe, when in fact they are

Co-Founders

Linda Ginzel, PhD
Boaz Keysar, PhD

Board of Directors

Leslie M. Batterson, CSP, CPEA
Shawn Kasserman, Esq
Kristina Paschall
Geoffrey Phillips
Julius E. Rhodes, SPHR
Judy Sage
Karen Sheehan, MD
Steven W. Swibel, Esq
Robert R. Tanz, MD
Lisa Turano Solano, Esq

Advisory Board

Kristine Anderson
Sonny Garg
Howard Haas

Program Director

Sarah Chusid

Executive Director

Nancy A. Cowles

someone's 'great idea' that hasn't been adequately tested for known hazards, let alone any product-specific hazards that could cause injury or death.

BB-Style magnetic toys

While the manufacturers may say these new style toys are "desk toys" and meant only for adults, two things are clear: parents are buying them often for younger children and even teens for whom the products are labeled, are suffering injuries. Our research, based on data supplied to KID by CPSC, shows that compared to the magnet building sets that the ASTM Toy Standard F963) initially addressed, bb-style magnet incidents lead to more surgeries. In addition, the age range is different. While the average age of the child injured by magnet toys is 4.8, the average for bb-style magnet incidents is 7.2. This shows the danger is not simply to very young children for whom the small parts warning is intended, but to an older child – it appears mostly from attempting to mimic piercings. We urge CPSC to consider if these products are properly age graded for adults and teens and if the hazard they pose to all ages of children should be considered.

Recall Effectiveness

Recall effectiveness remains an extremely important area of focus for the agency. The Commission has made a good start in promoting the product registration card program for infant and toddler durable products. Most manufacturers are complying with this requirement, and many consumers are registering their products online. However, better messaging is still needed to ensure that consumers understand the importance of registering products and actually register their infant and toddler durable products.

CPSC has also made good use of social media and other newer methods of communications. KID suggests again that a publically available annual report of recall effectiveness rates of each recall would go far to encourage manufacturers, retailers and other stakeholders to work together to boost those numbers. As we all are aware, sometimes shining a little light on a problem helps to illuminate solutions that were overlooked in the dark.

Conclusion

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



June 11, 2012

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

Dear Mr. Stevenson:

On behalf of the nearly 12,000 chief fire and emergency officers of the International Association of Fire Chiefs (IAFC) and the members of the National Association of State Fire Marshals (NASFM) who comprise the most senior fire official in every state, we would like to draw the attention of the Consumer Product Safety Commission (CPSC) to the recommendations put forth by Stephen Coan, the Massachusetts State Fire Marshal, concerning the issue of un/under-odorized propane liquid gas.

Odorants, such as mercaptan, are normally added to the naturally odorless liquid propane gas and are designed to work as warning systems to alert consumers to the presence of a propane gas leak. The odors can signal a gas leak and -- if detected in time -- can prevent life-threatening explosions. However, due to the absence of sufficient odorization of the liquid propane gas, leaks can go unnoticed and result in explosions, such as the fatal detonation of the odor-free propane in Norfolk, Massachusetts on July 30, 2010.

In response to the incident and the subsequent discovery of un/under-odorized propane liquid gas being shipped into the state, Massachusetts has proposed increased liquid propane gas standards and testing procedures to detect un/under-odorized propane gas. Marshal Coan recommended the federal government consider adopting similar regulations in order to detect insufficiently odorized liquid propane gas transported between states. In addition, he recommended that the CPSC produce follow-up research to its 1980's studies about the issue of odor fade.

The IAFC and the NASFM strongly urge the CPSC to consider the severity of the problem that under-odorization and odor-fade in liquid propane gas presents and include the issue among the priorities of the Commission's 2014 fiscal year agenda. Please contact Jim Goldstein with the IAFC, at 703.537.4828, or Bill Spencer with the NASFM, at 202.587.0735, to further discuss these issues.

Sincerely,

Chief Al H Gillespie, EFO, CFO, MIFireE
President and Chairman of the Board, IAFC

Jerry Rosendahl
President, NASFM

**Statement of Stephen D. Coan
State Fire Marshal for the Commonwealth of Massachusetts**

Good morning, Chairman Tenenbaum and members of the Consumer Product Safety Commission (CPSC). My name is Stephen D. Coan and I am the State Fire Marshal and Chief Fire Officer for the Commonwealth of Massachusetts. I am the executive head of the Department of Fire Services, an agency within the Executive Office of Public Safety with the responsibility for all fire service related matters within the Commonwealth. The Office of the State Fire Marshal is responsible for the investigation, and law enforcement of all fire safety laws and regulations of the Commonwealth. In addition, my office provides technical assistance to fire departments, the public and regulated trades and industries. I also work with the Board of Fire Prevention Regulations on promulgating regulations which comprise the State Fire Code. After my appointment to State Fire Marshal, I was named as the first head of the Department of Fire Services. In my present capacity I serve on several boards including the Governor/Secretary's Executive Committee on Homeland Security, and have worked with the fire service and the administration to pass several important pieces of legislation including fire standard compliant cigarettes, residential carbon monoxide alarms, sprinklers and crowd manager requirements in nightclubs, and strengthening the penalties for violating fire and building codes. Recently, I have worked closely with the Board of Fire Prevention Regulations on regulations on chemical process safety in the wake of several serious incidents and am currently working on modifying the regulations on propane to address issues of odorant fade and lack of odorant.

This morning, I would like to raise an issue of great concern to America's fire and emergency services, and request that the Commission consider adding it to your agenda. On July 30, 2010, a fatal liquid propane gas (LPG) explosion occurred in the Town of Norfolk, Massachusetts. During the course of the cause and origin investigation, concerns were raised regarding the possibility of un/under-odorized propane liquid propane gas. As a result of this accident, my office undertook a separate investigation in conjunction with the Massachusetts Attorney General's Office into this matter.

Because LPG is a colorless and odorless gas, odorants (e.g. mercaptan) are normally added to the liquid (with the exception of LPG being shipped to industrial end-users) in order to enable human detection when the gas is released into the atmosphere. The majority of LPG for non-industrial use is produced by bulk providers of the material. The presence of LPG in the consumer supply chain, with either diminished levels of odorant or no odorant present, represents a significant safety risk. Absent sufficient odorization of the commodity, LPG leaks can go undetected and possibly ignite. My office's investigation into the Norfolk incident revealed that the LPG in the storage tanks at the construction site had virtually no odorant present, which explained why no one at the construction site reported smelling the LPG leak. While the LPG involved in the Norfolk accident did not originate from a rail shipment, the investigation of the accident revealed that a large quantity of LPG—shipped via railroad tank car as odorized—had been delivered to commercial and retail end users with either a diminished level of odorization or no odorization at all. The proper odorization of LPG is addressed by a combination of federal and state laws and regulations, as well as by accepted industry standards and practices. In accordance with the laws and regulations, use by non-industrial entities (e.g.,

commercial and retail entities, and the general public) is generally required to be odorized (or “stenched”) to enable the detection of any unintended release or leak of the gas.

Subsequent to our investigation, my office made a series of specific recommendations to address any weakness or oversight concerning possible un/under-odorized propane gas entering the chain of commerce in Massachusetts and across the country. Diminished or absent levels of liquid propane odorant has been determined to have been a contributing factor in incidents that have resulted in numerous injuries and fatalities across this country. The findings confirm that the potential presence of un/under-odorized liquid propane gas is of great concern to firefighter safety and the public in general. There have been several studies on the phenomenon of odor fade (some of which the CPSC commissioned back in the late 1980s), but there was little follow-up research or regulation based on these studies.

I would like to request that the CPSC consider a follow-up study to its earlier reports from the 1980s about odorant fade and especially examine the issue of odorant fade during the transportation of LPG. The study also should review the effect of transporting other products in railroad tanks for the delivery of LPG and how these previous uses of the tanks contribute to the odorant fade problem. Further, the study should resolve any possible issues surrounding the effectiveness of domestic versus imported mercaptan, which is used to provide the smell of propane.

In order to better ascertain the levels of mercaptan in propane, Massachusetts has proposed enhanced LPG standards to the State Board of Fire Prevention Regulations, which will require every railcar to be stain tube tested as well as every new tank to be filled and tested as necessary to ensure adequate odorant at newly adopted odorant test levels as recommended by the Independent Examiner, who reviewed the issue for the Massachusetts investigation. I also request that you review these increased standards and determine initially if they could be implemented under your authority utilizing expedited rulemaking. I believe that process would be an effective first step in preventing un/under-odorized propane gas from entering the chain of commerce in states and becoming a potentially dangerous and avoidable hazard.

In conclusion, I recommend the federal government consider similar regulations relative to testing of LPG product in interstate transportation to ensure the adequacy of odorant in the product. In addition, a comprehensive study should be commissioned regarding the phenomenon of odor fade, to include the effect of other products being used in tanks for delivery of LPG. Finally, the Commission should investigate the possibility of differences in domestic versus imported mercaptan or other odorants used in LPG. The CPSC has taken the lead in the issue of odorant fade in the past, and done groundbreaking research on this issue. Unfortunately, the problem of odorant fade remains and continues to endanger the lives of the American public and America’s first responders. Thank you for your consideration in this matter and we look forward to working with you to address this important issue.



The Fashion Jewelry & Accessories Trade Association
25 Sea Grass Way, Wickford, RI 02852
Phone (401) 667-0520 Fax (401) 267-9096
www.fjata.org

June 13, 2012

Submitted to: cpsc-os@cpsc.gov

Mr. Todd A. Stevenson
Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland 20814

Re: Agenda and Priorities FY 2014

Dear Mr. Stevenson:

The Fashion Jewelry and Accessories Trade Association ("FJATA") is pleased to have this opportunity to submit comments in response to the Consumer Product Safety Commission's ("CPSC" or "Commission") request for input into agency priorities in Fiscal Year ("FY") 2014. 77 Fed. Reg. 32951 (June 4, 2012). FJATA's membership includes in excess of 200 companies, ranging from small businesses to multinational corporations that manufacture and distribute fashion jewelry in the United States. FJATA and its members are committed to consumer safety, leading the effort to develop a comprehensive children's jewelry safety standard, ASTM F 2923-11, published last fall by ASTM International.

FJATA urges the Commission to make the following activities priorities for action:

- *National uniformity in product safety requirements.* One of CPSC's FY 2013 priorities was to create and strengthen partnerships with domestic and international stakeholders. FJATA believes this remains an important priority for FY 2014. FJATA is pleased that with the adoption of ASTM F 2923-11, a comprehensive national children's jewelry standard is now in place and welcomes the public statements of the Chairman regarding the effectiveness of the standard. FJATA urges the Commission to promote reliance on the standard nationally. Compliance with this standard should serve as a basis for national enforcement on children's jewelry safety issues and the Commission should actively promote the effectiveness of the standard.
- *Cooperation and education.* The Commission should expand resources devoted to education and cooperation with the business community, especially to educate small businesses on compliance. FJATA also encourages the Commission staff to remain engaged in standards activities. The participation by CPSC staff in the development

of the children's jewelry safety standard was helpful in establishing a sound scientific basis for the standard. Making cooperation and education one of the Commission's priorities will also be in keeping with the goal of national uniformity.

- *Minimizing third party test costs.* Third-party testing costs under the Consumer Product Safety Improvement Act (CPSIA) remain a significant issue for children's product companies. The Commission solicited comments last fall on options to reduce the costs of third-party testing in response to Congressional mandates of H.R. 2715, and the business community is anxiously awaiting the CPSC's recommendations. FJATA urges the Commission to act promptly to advise about measures that will reduce third party test costs.
- *Interlaboratory variability factors.* FJATA has previously recommended that the Commission address statistical uncertainty of test results. In particular, discrepancies in test results due to material and inter-laboratory variability pose a major issue. It is not unusual for there to be a significant variance between laboratories testing the same item.
- *Small quantity exemption.* Similarly, FJATA encourages the Commission to adopt a small quantity exemption for minute amounts of paint and surface coatings given the extraordinary burden associated with scraping tiny amounts of paint from dozens, or even hundreds, of finished articles. Where the product lacks enough paint to test, an exclusion from testing will significantly reduce test costs, while also being health protective.
- *Approving alternative technologies to verify compliance with CPSIA requirements.* FJATA is pleased to see that the recent notice regarding requirements for third-party conformity assessment bodies will allow broader use of XRF technologies for testing of heavy metals like lead. 77 Fed. Reg. 31086 (May 24, 2012). We encourage the Commission to consider other non-destructive techniques for testing purposes, and to recognize a role for first-party use of XRF in lieu of third-party testing.

Thank you for the opportunity to submit these views.

Sincerely,

Brent Cleaveland

Brent Cleaveland
Executive Director

cc: Sheila A. Millar

FJATA
25 Sea Grass Way, Wickford, RI 02852
401-667-0520
Bcleaveland@fjata.org
www.fjata.org

Stevenson, Todd

From: Millar, Sheila A. [Millar@khlaw.com]
Sent: Wednesday, June 13, 2012 4:23 PM
To: CPSC-OS,
Cc: Stevenson, Todd; Brent Cleaveland
Subject: Agenda and Priorities 2014
Attachments: CPSC Agenda Priorities 2014 2.pdf

Attached please find comments of the Fashion Jewelry and Accessories Trade Association in connection with the above-referenced matter. (Todd - I am copying you also as Brent Cleaveland has gotten several bounce-backs in attempting to submit to the cpsc-os address.) Please let us know if you have questions. Regards, Sheila

Sheila A. Millar, Partner
tel: 202.434.4143 | fax: 202.434.4646 |
millar@khlaw.com
1001 G Street, N.W., Suite 500 West |
Washington, D.C. 20001



KELLER AND HECKMAN LLP
SERVING BUSINESS THROUGH LAW AND SCIENCE®

Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information on Keller and Heckman.

Please consider the environment before printing this email.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.



June 13th, 2012

Office of the Secretary
United States Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

CPSC Agenda and Priorities FY 2014

Thank you for the opportunity to comment on the agenda and priorities for the CPSC in fiscal year 2014. As you know, the members of the Handmade Toy Alliance have been considerably affected by recent regulations from Congress and the CPSC. We appreciate the efforts the CPSC has made to educate our members during this transition. There is still much to be done to restore businesses and reestablish the prominence of handmade toys in the United States. We hope these comments can move us all closer to that position.

Product Specific Guidance

The CPSC should publish basic guidance for common types of handmade toys and children's products on how the myriad of safety laws applies to each specific product type. This helps a small business get started and to understand the minimum amount of effort required to meet safety standards. The CPSC can work with the Handmade Toy Alliance (HTA) and other small business groups to identify common products.

Specific guidance can be presented as web pages, PDFs, or handbooks as these are all searchable media. Webcasts can be created to aide the user and answer common questions.

Some product types are:

- Infant and children's clothes
- Doll clothing
- Wood toys with no moving parts that are painted or finished
- Wood toys with moving parts like wheels and axles with or without coatings
- Children's jewelry
- Stuffed or plush toys
- Cloth dolls
- Vinyl dolls

Component Parts Certification and Registry

For handmade toymakers and small batch manufacturers, the most direct and cost-effective way to make sure their products are compliant is to use only raw materials and supplies that have been appropriately tested and certified to be free of toxics. We suggest that the CPSC work with toymakers and their suppliers to help create easy access to and market demand for raw materials that meet the requirements of the lead, toxics and flammability standards of the CPSIA.



Ultimately this should lead to a Component Part Registry for raw materials that have been tested and certified not to contain lead or other toxics. The small businesses and hand-crafters that make toys can then easily find supplies and raw materials that are safe to use in their products.

Some type of materials that would be helpful to have on this registry:

- Paints and finishes
- Fabric and fabric accessories (snaps, fasteners, zippers)
- Fasteners and glues
- Beads and other embellishments

Harmonization of Standards

The differences in toy safety standards in the US and Europe continues to suppress the supply of small batch toys from Europe to specialty retailers in the US. In many cases the differences in regulations are small and in some cases even insignificant. But the small differences create a large economic hurdle that must be cleared by completing multiple tests that are nearly redundant.

We suggest the CPSC work to identify and resolve discrepancies in the safety standards in a manner that helps to reduce the current extended testing costs. Reducing these costs lowers the economic hurdle and allows safe small batch toys from Europe to again be sold in the US.

Conclusion

The CPSC has shown an inclination for working with small business through creation of the Small Business Ombudsman office and through invites to hearings and requests for comments like this one. The HTA greatly appreciates this relationship that has developed over the last few years and the suggestions presented here are an effort to continue and strengthen the CPSC's connection to small business. Thank you for your time and consideration in planning your budget requests for your fiscal year 2014.

Respectfully,

The Handmade Toy Alliance

Dan Marshall – President, Board of Directors
Randy Hertzler – Vice President, Board of Directors
Jolie Fay – Secretary, Board of Directors
Mary Newell – Treasurer, Board of Directors
Adam Frost – Board of Directors
Lynn Persson, Board of Directors
Erika Hickey, Board of Directors
Stephanie Stewart, Board of Directors
Tony Fuentes, Board of Directors

Stevenson, Todd

From: Randall Hertzler [rhertzler@eurotoyshop.com]
Sent: Wednesday, June 13, 2012 9:53 PM
To: CPSC-OS,
Subject: Agenda and Priorities FY 2014
Attachments: HTA comments to CPSC Agenda and Priorities FY 2014.pdf

Hi Dean,

The HTA has prepared comments for the request "Agenda and Priorities FY 2014." Please see the PDF file attached. We would really like to be there for the hearing but the date of the hearing just doesn't work for us so the letter will have to do. But, please feel free to reach out to us if you have questions or need clarification on these comments.

Regards,
Randy Hertzler for the HTA

Stevenson, Todd

From: Randall Hertzler [rhertzler@eurotoyshop.com]
Sent: Wednesday, June 13, 2012 9:53 PM
To: CPSC-OS,
Subject: Agenda and Priorities FY 2014
Attachments: HTA comments to CPSC Agenda and Priorities FY 2014.pdf

Hi Dean,

The HTA has prepared comments for the request "Agenda and Priorities FY 2014." Please see the PDF file attached. We would really like to be there for the hearing but the date of the hearing just doesn't work for us so the letter will have to do. But, please feel free to reach out to us if you have questions or need clarification on these comments.

Regards,
Randy Hertzler for the HTA

CAMPUS Firewatch

June 15, 2012

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

Dear Mr. Stevenson:

I would like to submit this letter for consideration during the upcoming hearings on CPSC's agenda and priorities for fiscal year 2014.

I am the publisher of Campus Firewatch, a newsletter and social enterprise that has focused on the issues of campus fire safety since 2000. Prior to starting Campus Firewatch, I was the chief fire investigator for the National Fire Protection Association where I was involved in the investigation of a number of campus-related fires as well as other significant incidents across the globe. I was a fire protection engineer with the Phoenix Fire Department's Special Operations and Training Division and a fire fighter with the Amherst, Massachusetts, Fire Department while receiving my degree in Civil Engineering.

As the publisher of Campus Firewatch, I coordinate the annual Campus Fire Safety Month program where the nation's governors and the U.S. Congress issue proclamations to bring awareness to campus fire safety. I also coordinate the annual Campus Fire Safety Capitol Hill Day which brings college students and advocates from across the nation to Washington to meet with Congress. I have worked on a number of DHS Fire Prevention and Safety Grants relating to fire safety, including the Institution of Fire Engineers Vision 20/20 project, the Igot2kno online fire safety education program and the Minger Foundation's series of educational program focusing on fire safety for college students with disabilities.

Campus fire safety is important for a number of reasons. Since 2000, 153 people have been killed in campus-related fires, according to information compiled by Campus Firewatch. Approximately 85% of these have occurred in off-campus housing, where a vast majority of the students live. Common factors in a number of these fires include:

- Lack of automatic fire sprinklers
- Missing or disabled smoke alarms
- Careless disposal of smoking materials
- Impaired judgment from alcohol consumption

An area of growing concern is that of fires starting from careless disposal of smoking materials on front porches, often involving upholstered furniture which is not designed to be used in this setting. There have been a number of fatal fires where the fire has started on the porch, involving a sofa, and is well established by the time it is either detected by a passerby or has extended into the house, trapping and killing occupants.

Much of the fire safety education in this country focuses on two demographics – the very young and the elderly, leaving a huge gap of approximately 2/3 of the nation that does not routinely receive fire safety information. For today's students, fire safety education often stopped when they were in elementary school and they are not aware of their role in fire safety as adults. They are not aware that they are now responsible for their own fire safety, that it extends beyond "stop, drop and roll" and to crawl low in smoke. In other words, the message did not mature with the audience.

Today's students are often not aware of what type of smoke alarm to choose and where to install them because they have not received the education that will teach them how to make these decisions. So often, the smoke alarms in fatal fires are disabled because the occupants did not understand the ramifications of what, to them, seems like a simple and innocuous action – removing a battery. They are not aware of the risk presented by using upholstered furniture in an improper setting, such as a front porch, which we have tragically seen time and again. Cooking, the leading cause of all home fires across the nation, is a skill they may not have learned before moving into their own home.

Teaching students how to live fire-safe lives is an opportunity to change the future of fire safety. When the smoke alarm was first introduced in the late 1970's, there was a dramatic decrease in fatal fires. However, the fire death rate has leveled off and we need to work on making the next step to cause a further decrease. Unquestionably, residential sprinkler systems would make this happen, and that is a long-term solution that we are all working towards. A more immediate answer, however, is teaching college students how to be fire safe, how to select the proper type of smoke alarm and install them properly, skills such as proper cooking, electrical fire safety, smoking fire safety and many others. These are life skills that we have the opportunity to teach them while they are in school so they can carry these with them throughout their lives and change the future of fire safety across our country.

I would like to encourage CPSC to continue its focus on fire safety through proper product design and educational outreach. Together, we can work to make today's generation, and future ones, more aware and knowledgeable which will lead to our common goal of a fire-safe America.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Comeau". The signature is fluid and cursive, with the first name "Ed" and last name "Comeau" clearly distinguishable.

Edward R. Comeau
Publisher
Campus Firewatch

CAMPUS FIRE SAFETY INFORMATION SHEET

Updated April 23, 2012



The following information has been compiled by Campus Firewatch. Please note that much of this information is gathered by monitoring the wire services so the actual number of fatal fires, especially in off-campus occupancies, may be higher. Information regarding the fatal fires is confirmed by Campus Firewatch with local fire department officials prior to inclusion. Please credit Campus Firewatch as to the source of this information if used in publication.

Fatal Fires 2011-2012 academic year

Indiana University	Bloomington, IN	1 killed in an off-campus fire
Emporia State University	Emporia, KS	2 killed in off-campus fire
Marist College	Poughkeepsie, NY	3 killed in off-campus fire
Southern Illinois University Edwardsville	Edwardsville, IL	2 killed in off-campus fire
2011-2012 Academic year total		8

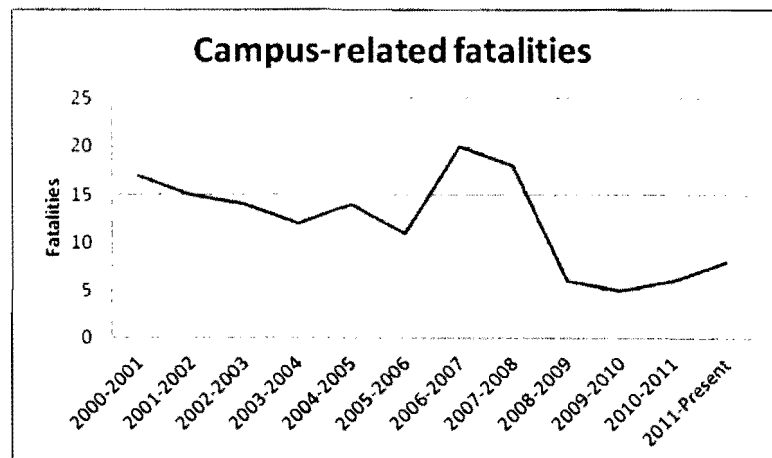
Campus-related fire fatalities from January 2000 to present

Occupancy	Deaths	% of total
Off-campus	132	86%
Residence Hall	10	7%
Greek housing	10	7%
Other	2	1%
Total	154	

According to the U.S. Department of Education, there are approximately 18,000,000 students enrolled in 4,100 colleges and universities across the country. Approximately 2/3 of the students live in off-campus housing.

Annual number of fatalities by academic year

2000 (partial)	8
2000-2001	17
2001-2002	15
2002-2003	14
2003-2004	12
2004-2005	14
2005-2006	11
2006-2007	20
2007-2008	18
2008-2009	6
2009-2010	5
2010-2011	6
2011-2012	8 YTD



Common Factors

According to information compiled by Campus Firewatch, 86 percent of the campus-related fire fatalities across the nation since January 2000 have occurred in off-campus housing. Five common factors in a number of these fires include:

- Lack of automatic fire sprinklers
- Missing or disabled smoke alarms
- Careless disposal of smoking materials
- Impaired judgment from alcohol consumption
- Fires originating on upholstered furniture on decks or porches

CAMPUS FIRE SAFETY INFORMATION SHEET

Updated April 23, 2012



Significant, multiple-fatality fires

Since January 2000, 17 fires have killed 60 people. In other words, a small percentage of the fires, which are classified by Campus Firewatch as significant, multiple-fatality fires, are killing a large number of the victims. Most of these fires were off-campus.

1/19/00	Seton Hall University	3	4/10/05	Miami University	3
3/19/00	Bloomsburg University	3	6/7/05	Cons. of Recording and Arts	3
8/20/00	Berkeley, California	3	1/13/07	Marshall University	5
11/2/01	Virginia Commonwealth Univ.	3	2/3/07	MS State Univ.-Meridian	3
2/15/02	Univ. of NC-Greensboro	4	10/28/07	U of S. Carolina and Clemson	7
4/13/03	Ohio State University	5	4/5/08	U of Wisconsin-Stout	3
9/20/03	Univ. of Minnesota-Twin Cities	3	1/23/09	International Business College	3
5/22/04	Indiana University	3	1/21/12	Marist College	3
8/27/04	University of Mississippi	3			

National Campus Fire Safety Month

September is nationally recognized as National Campus Fire Safety Month. Since the program started in 2005, 204 proclamations have been signed by the nation's governors as well as resolutions in the U.S. Congress. A list of the states along with an interactive map where you can download the proclamations is available at www.campus-firewatch.com/stateproc.html.

Education Programs

Educating students about fire safety is a priority to help protect students, no matter where they live. Campus Firewatch has been closely involved in the development of a free, online education program for college students at www.igot2kno.org. In addition, a program has been launched for students with disabilities at the Minger Foundation www.mingerfoundation.org.

How are incidents chosen for inclusion?

Campus Firewatch has been monitoring the media since 2000 to identify fire incidents involving students resulting in the largest compilation of student-related fire incidents. Using this methodology, CFW has been able to identify a significant number of fatal fires that have occurred in off-campus occupancies that normally are not identified as involving students in official reports.

The criterion for including incidents is those that involve students or student housing and that the student(s) were present because of school. In some cases this might be clear-cut; in others it may involve some discretion in making a decision. Basically, if a fire death occurs in an occupancy where the outcome could have been changed if the students had fire safety knowledge, then it is considered for inclusion. Also, if there are other victims that were in the occupancy (such as family members) that were present because of the student, they are also included in the total. The rationale is that a fire can occur, no matter where they are, and that the student may have had an opportunity to change the outcome based on knowledge that he or she may have been able to obtain from the school.

What is Campus Firewatch? Campus Firewatch, in publication since 2000, is a social enterprise focusing solely on campus fire safety issues. It has been a leader in raising awareness of the importance of fire safety at our nation's campuses and a catalyst for numerous projects and efforts over the years.

More information can be found online at www.campus-firewatch.com.