



# Consumer Federation of America

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Energy and Commerce Committee

Commerce, Manufacturing and Trade Subcommittee

Hearing

## Industry Perspectives on the Consumer Product Safety Commission

Chairman Burgess, Ranking Member Schakowsky and other members of the Commerce, Manufacturing and Trade Subcommittee. I appreciate the opportunity to provide testimony on Consumer Federation of America's (CFA) perspectives on the Consumer Product Safety Commission. I am Rachel Weintraub, Legislative Director and General Counsel at CFA. CFA is a non-profit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education.

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

### I. CPSC Outreach to Business

I wanted to share what the CPSC has been doing to communicate with businesses about CPSC rules. CPSC has recently released a regulatory robot, which will help small businesses determine which product safety rules apply to their product. While general information has been available, this is the first time that information is available in one place and can be applied to a potential product in real time. The Small Business Ombudsman has sought out opportunities to speak to business stakeholder groups about how to comply with CPSC rules, and has fielded thousands of calls from businesses providing direct guidance and has revamped its web site to provide clear information about many aspects of CPSC compliance including third party testing.

## II. CPSIA Implementation

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

Because of the rules promulgated by the CPSC, 16 infant durable products including full-size cribs, non-full-size cribs, infant walkers, play yards, and strollers must now meet new robust mandatory standards. The crib standard which went into effect in June of 2011 is of particular significance as it is the strongest crib standard in the world and offers our nation's infants a safe sleep environment, which their parents have a right to expect. For all of these products, third party testing and certification requirements are required.

The CPSC has an additional 10 infant durable product rules to promulgate under section 104, the Danny Keysar Child Product Safety Notification Act. The CPSC is currently working on mandatory standards for high chairs, folding chairs and stools, bouncer seats and infant bathtubs. We urge the 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 safety when using children's products.

Another high priority for the CPSC should continue to be the consumer incident database-[saferproducts.gov](http://saferproducts.gov)- required by the CPSIA. We recognize the CPSC's current commitment to this important consumer tool and urge the CPSC to maintain that commitment and to research reports that appear to indicate trends. We know that 27,273 reports<sup>1</sup> have been posted to [saferproducts.gov](http://saferproducts.gov) and that the database continues to be an important and useful tool for consumers, researchers, doctors, coroners and the CPSC.

We recommend that the CPSC explore how to increase filings and use of [saferproducts.gov](http://saferproducts.gov) by making it more accessible to consumers with tools such as mobile device applications, website widgets and other means for reporting risks of harm and researching other reports. Social media and cross marketing could help to raise the profile of [saferproducts.gov](http://saferproducts.gov). As more consumers report more information to CPSC about product hazards, CPSC will be better equipped to respond more quickly to emerging hazards and trends.

## III. Product Safety Hazards

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

### 1. Emerging Hazards

#### A. Hoverboards

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<sup>1</sup> Accurate as of January 21, 2016.

Incidents on hoverboards are increasing daily. The CPSC is actively investigating at least 48 fires in 19 states. Fires due to faulty wiring as well as fall related injuries have appeared in the media across the country. Universities across the country have been banning these products on their campuses. Last month the CPSC sent out a useful and important statement on hoverboards, warning consumers of potential risks, announcing that the Agency is conducting investigations about the growing incidents and providing recommendations for consumers. The CPSC announcement has been relied upon by the many entities who have sought to protect their students or citizens from these hazards. Just a few weeks ago, the CPSC issued another statement indicating that an online retailer will allow full returns for the return of hoverboards and provided a list of manufacturers of hoverboards being actively investigated.

Unfortunately, we know that there is still consumer confusion about whether the hoverboard they own poses risks to their families. We urge consumers to return their hoverboards bought on Amazon and urge CPSC to issue recalls as soon as possible. We recognize that CPSC is working on this and express our strong support for their work. We also want to ensure that the CPSC has the resources and authority it needs to do all it can to protect consumers from this hazard.

## B. Crumb Rubber

Potential safety concerns have been raised about crumb rubber from tire scraps that is used in the mats and padding for playground surfacing and synthetic field surfacing. Health risks posed by these materials could include lead exposure and cancer risks. In 2008, CPSC issued a statement indicating that artificial turf made from crumb rubber was “ok to install and ok to play on.”<sup>2</sup> CPSC has distanced itself from that release indicating potential uncertainty about the safety of these materials. Consumers are uncertain and concerned.

The state of California’s Office of Environmental Health Hazard Assessment is conducting a comprehensive review of crumb rubber and the CPSC is monitoring this work and providing technical assistance. The CPSC is also working with other agencies which have jurisdiction over this product. However, CPSC has made clear that in order to work effectively on this issue, they need an increase in their budget appropriations. CFA agrees that the uncertainty over the safety of crumb rubber is problematic and urges Congress to increase funds to CPSC to ensure that this and other emerging safety issues can be effectively addressed.

## 2. Long Standing Hazards

### A. Window Coverings

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

The CPSC has long recognized window covering cords as a hidden strangulation and asphyxiation hazard to children and continues to identify it on its website as one of the “top five hidden hazards in the home.” Due to the documented and persistent hazard that cords on window coverings pose to children, the petition filed specifically asked the CPSC to prohibit accessible

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<sup>2</sup> Available on CPSC’s website at: <http://www.cpsc.gov/en/newsroom/news-releases/2008/cpsc-staff-finds-synthetic-turf-fields-ok-to-install-ok-to-play-on/>.

window covering cords when feasible, and require that all cords be made inaccessible through passive guarding devices when prohibiting them is not possible.

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

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

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

A strong mandatory standard by the CPSC is necessary to protect children. For almost 20 years, the voluntary standard has failed to address the strangulation threat posed to children. We appreciate that the CPSC has granted the petition we filed with other groups and has moved forward with an Advanced Notice of Proposed Rulemaking. We further urge the CPSC, in light of the history of the voluntary standard and the documented and persistent hazard that cords on window coverings pose to children, to continue to move forward with the mandatory rulemaking process that will effectively address the hazards posed by window covering cords. Time is of the essence as these products pose risks to children every single day.

#### B. Flame Retardants in Consumer Products

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

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

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<sup>3</sup> These 2015 deaths occurred in Montana in January, Oregon in February, California in March, Georgia in March, Florida in August and Virginia in August.

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

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

### C. OHV Safety: ROVs and ATVs

#### (1) Recreational Off-Highway Vehicles

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

CFA and its partners documented at least 75 fatalities associated with ROVs from January 2015 through December 2015. This number may grow as more data becomes available about additional deaths.<sup>4</sup>

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

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

#### (2) All-Terrain Vehicles

According to the most recent data released by the CPSC,<sup>5</sup> at least 93,700 people were injured while riding all-terrain vehicles (ATVs) seriously enough to require emergency room treatment

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<sup>4</sup> CFA Press Release, January 7, 2016, available on the web at [http://consumerfed.org/press\\_release/more-than-500-off-highway-vehicle-deaths-in-2015/](http://consumerfed.org/press_release/more-than-500-off-highway-vehicle-deaths-in-2015/).

<sup>5</sup>2014 Annual Report of ATV-Related Deaths and Injuries Statistics <http://www.cpsc.gov/Global/Research-and-Statistics/Injury-Statistics/Sports-and-Recreation/ATVs/2014atvannualreport.pdf>

in 2014. The estimated number of ATV related fatalities was 638 in 2013, though the 2013 data is not considered complete and the number of fatalities will almost certainly grow as more data is received.

In 2014, ATVs killed at least 61 children younger than 16, accounting for 16 percent of ATV fatalities. Fifty-four percent of children killed were younger than 12 years old. Children under 16 suffered an estimated 24,800 serious injuries in 2014. This represents 26 percent of all injuries.

The CPSC must prioritize the issue of ATV safety. The CPSC's ATV rulemaking was required to be finalized in August of 2012, and we applauded the CPSC for holding an ATV Safety Summit in October of 2012, but that was almost 4 years ago. We urge the CPSC to complete the rulemaking which should include a serious analysis of the safety hazards posed to children by ATVs, the adequacy of existing ATV safety training and training materials, and efforts to ensure that children are not riding ATVs that are too large and powerful for them.

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

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

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

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

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

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

- 31 of the 35 states, or 89%, that allow ATVs on roads delegate some or all of the decisions about ATV access to local jurisdictions with authority over those roads.
- While not a complete list, CFA is aware of at least 64 state and local proposals to increase ATV access to roads since 2013.

In 2015, we documented 504 OHV fatalities and 473 could be identified as on or off road. Of those 473 fatalities, 272, or 58%, took place on roads. In 2014, 282 or 57% of those fatalities identified as on or off road, took place on roads. We urge the CPSC and Congress to prioritize this issue, to be a strong voice in opposing the operation of OHVs on roads, and to be a leader in educating consumers about the dangers of on-road OHV use. Additionally, the CPSC could improve ATV death data by including how many deaths occur on private versus public roads.

#### D. Furniture Tip-Overs

According to the CPSC's most recent data, every two weeks, a child dies as a result of a piece of furniture, appliance or television falling on him or her. Further, each year, more than 38,000 children are injured as a result of a piece of furniture, appliance or television tipping over. Between 2000 and 2011, there were 363 tip-over related deaths. Eighty-two percent of those deaths involved children younger than 8 years old.<sup>6</sup> While the ASTM standard for furniture has recently been strengthened, much more needs to be done to improve the standard. Further, increased efforts are necessary to bring all of the stakeholders together to collectively address this increasingly problematic, multifaceted and dangerous injury pattern. We applaud the fact that the CPSC has demonstrated an increased financial commitment to this issue, applaud the recent launch of the #anchorit campaign, and urge the CPSC to continue to work to decrease these tragic deaths and injuries.

#### E. Button Cell Batteries

Button cell batteries pose serious and potentially fatal ingestion hazards to children. Late last month, a 2 year-old in Oklahoma died after swallowing a button cell battery.<sup>7</sup> According to the National Capital Poison Center, every year more than 3,500 people ingest button batteries.<sup>8</sup> According to a study released in June of 2012 in the American Academy of Pediatrics Journal,<sup>9</sup> *Pediatrics*, an estimated 65,788 children less than 18 years of age were injured by button cell batteries – serious enough to require emergency room treatment – from 1990 to 2009, averaging 3,289 battery-related emergency room visits each year.

We urge the CPSC and others to continue their work to strengthen the relevant voluntary standards to include a provision to enclose securely all button cell batteries.<sup>10</sup> We understand that progress has been made but that there is more work to do. We also urge the CPSC to work in

<sup>6</sup> CPSC Report, Preliminary Evaluation of Anchoring Furniture and Televisions Without Tools, May 2015. Available on the web at: <http://www.cpsc.gov/PageFiles/182505/Tipover-Prevention-Project-Anchors-without-Tools.pdf>

<sup>7</sup> <http://www.nydailynews.com/news/national/oklahoma-2-year-old-dies-ingesting-battery-article-1.2482468>

<sup>8</sup> National Poison Center, Swallowed a Button Battery? Battery in the Nose or Ear? <http://www.poison.org/battery/>

<sup>9</sup> Samantha J. Sharpe, BS, Lynne M. Rochette, PhD, and Gary A. Smith, MD, DrPH, Pediatric Battery-Related Emergency Department Visits in the United States, 1990–2009, *Pediatrics*, Volume 129, Number 6, June 2012 <http://pediatrics.aappublications.org/content/early/2012/05/09/peds.2011-0012>

<sup>10</sup> Id.

support of design changes that would eliminate the serious health hazard posed by ingestion. While the CPSC has indicated that they are encouraged by efforts that have resulted in new safety warnings and packaging changes in the United States, we hope that those changes do successfully reduce button cell battery ingestions.

We applaud the CPSC and its counterparts from 15 other countries, jurisdictions and authorities for joining together to make button battery safety a global priority through an international information and awareness effort.

#### IV. Enforcement

##### 1. Recall Effectiveness

The vast majority of consumers who own a recalled product never find out about the recall. Most recall return rates, if publicized at all, hover around the 30% mark. While there are now requirements for recall registration cards and online mechanisms for a subset of infant durable products, much more must be done to ensure that consumers find out about recalls of products that they own and to ensure that consumers effectively repair or remove the hazardous product from their home. We urge the CPSC to continue to prioritize this issue. Specifically we urge the CPSC to work with manufacturers of infant and toddler durable products to maximize awareness about product registration. Further, we urge the CPSC to engage in a dialogue with all stakeholders about the factors that are essential to the most well publicized recalls to replicate that success with all recalls. We support the CPSC's proposed Voluntary Recall Rule and urge the CPSC to finalize this rule which will increase recall effectiveness.

##### 2. Import Surveillance

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

#### V. Conclusion

In conclusion, the CPSC plays a critical role ensuring that consumers are safe from product hazards. They have made significant strides in consumer protection and could do even more with increased resources.