Consumer Federation of America

July 10, 2013

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Before the

U.S. Consumer Product Safety Commission

Addressing

Agenda and Priorities FY 2014 and 2015

I appreciate the opportunity to provide comments to you on CPSC's FY 2014 and 2015 priorities. I am Rachel Weintraub, Legislative Director and Senior Counsel at Consumer Federation of America. 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, toddler beds, play yards, and infant swings 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 bassinets and cradles, 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. Numerous studies and reports on saferproducts.gov have indicated that the database is being used by numerous consumers, is useful to consumers, and it is not being abused in any way. For example, 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. While consumers made up 97% of the reporters to the database, medical professionals made up .46%; medical examiners and coroners made up only .2%; and other public safety entities made up 1%. Our report also documented that eighty-four percent of all reports included a serial number or model name or number. 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.

In addition, Deloitte conducted an analysis of the data from saferproducts.gov[2] in early 2013 and found that saferproducts.gov provides "a learning opportunity for manufacturers in their attempt to bring safe products to the market place and allow[s] them to gain a better understanding of consumer behavior in regard to their interaction with products."[3] The Deloitte analysis, like other studies, identified that kitchen products and appliances in particular, make up the largest percent of reports on saferproducts.gov.[4]

Further, the Government Accountability Office (GAO) found, in a report, *Awareness, Use and Usefulness of Saferproducts.gov*, released in March 2013 that "[m]any consumers in GAO's usability tests thought the sight generally was easy to use and had helpful information, but identified areas for improvement"[5] as well. We urge CPSC to address these issues.

We recommend that CPSC continue to explore how to make saferproducts.gov more useful and accessible to consumers including increasing consumer access to saferproducts.gov through the use of "apps" as a means for reporting risks of harm to the database.

II. Emerging hazards

There are numerous emerging hazards that CPSC should prioritize.

1. Furniture Tip Overs

According to the CPSC's most recent data, each year, more than 43,200 children are injured as a result of a piece of furniture, appliance or television tipping over. Fifty nine percent of those

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[1] http://www.consumerfed.org/pdfs/CPSCDatabase1YearAnniversary3-29-12.pdf
[2] http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/AERS/us_aers_foct_FPS_saferproductsgov_03082013.pdf
[3] http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/AERS/us_aers_foct_FPS_saferproductsgov_03082013.pdf, page 1.
[4] Deloitte found that reports of kitchen products accounted for 39% of total reports on saferproducts.gov.
[5] http://www.gao.gov/assets/660/652916.pdf at 22.

injuries occurred to children 18 years old and younger. Between 2000 and 2011, there were 349 tip-over related deaths. Eighty-four percent of those deaths involved children eight years old and younger. While the ASTM standard for furniture is in the process of being strengthened, it is currently being delayed. Further, much more must be done to bring all of the stakeholders together to collectively address this increasingly problematic, multifaceted and dangerous injury pattern.

2. Button Cell Batteries

Button cell batteries pose serious and potentially fatal ingestion hazards to children. According to the most recent data reported to the national Poison Data System, in 2012 there were 3,435 button battery ingestion cases. According to a study released last year 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 relevant voluntary standards to include a provision to securely enclose all button cell batteries[7] and also to work in support of design changes that would eliminate the serious health hazard, if ingested.

3. Window Coverings

This past May, Consumer Federation of America, 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 window covering cords when feasible, and require that all cords be made inaccessible through passive guarding devices when prohibiting them is not possible.

A strong mandatory standard to address the hazards posed by corded window coverings is necessary because, according to data from the CPSC, 293 children have been killed or seriously injured by accessible window covering cords between 1996 and 2012, and the rate of injuries and deaths has not been significantly reduced since 1983[8], despite six industry attempts at developing adequate voluntary standards. The voluntary standards process, starting from the first standard in

[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] CFA 2011 Press Release. http://www.consumerfed.org/pdfs/WindowCoveringsStandardPressRelease.pdf

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 addition, window covering manufacturers' have failed to comply with existing voluntary standard.

Deaths and injuries can be eliminated by designs *that already exist:*

- **Cordless Technology:** Window coverings which eliminate pull cords, thereby addressing both outer and inner cord hazards, are available, add minimum costs to the manufacture, and can be used on the vast majority of blinds and shades.
- **Cord Cover Designs:** Designs that render the pull cords of window coverings inaccessible have been available since the 1990's but were never sold in the marketplace because the CPSC allowed separated cord tassels to serve as a compliant design.

We urge CPSC to grant the petition and move forward with a mandatory rulemaking process that effectively addresses the hazards posed by window covering cords.

4. Adult Bed Rails

Last May, Consumer Federation of America (CFA), the National Consumer Voice for Quality Long-Term Care (Consumer Voice), bed rail activist Gloria Black, and 60 other organizations[i] filed a petition with the U.S Consumer Product Safety Commission (CPSC) requesting a ban or an effective mandatory standard of adult portable bed rails. The petition also requested CPSC to recall dangerous bed rails and refund consumers.

CPSC has been aware of deaths and injuries involving bed rails since 1985. In an October 11, 2012 report from CPSC, "Adult Portable Bed Rail-Related Deaths, Injuries, and Potential Injuries: January 2003 to September 2012," CPSC documented that in that nine year period there were an estimated 36,900 visits to hospital emergency wards due to incidents related to both portable and non-portable bed rails. CPSC also reported 155 portable bed rail deaths for that same time period. These statistics represent only a fraction of the actual number of alleged bed rail related deaths. According to CPSC's 2012 report, these deaths and injuries most commonly occur when the victim is "caught, stuck, wedged, or trapped between the mattress/bed and the bed rail, between bed rail bars, between a commode and rail, between the floor and rail, or between the headboard and rail."

We urge CPSC to move forward with a ban, effective mandatory standard, recall and refund dangerous bed rails as well as a meaningful and effective voluntary standard.

5. Baby Bumpers

We urge CPSC to take strong action to ban baby bumpers. The state of Maryland has recently taken strong action to ban baby bumpers as has the city of Chicago. Last month, CPSC voted unanimously to grant the petition of the Juvenile Products Manufacturers Association (JPMA) to begin rulemaking to address hazards that may be posed by bumpers. While JPMA had requested codification of an ineffective voluntary standard simply supports the safety of one type of bumper, the CPSC indicated that it will not merely codify the existing voluntary standard but

will go much further and review the science, and evaluate testing procedures and performance standards that might lead to safe bumpers and then make a decision about what a mandatory standard or ban should include. We are encouraged that CPSC will evaluate the role that bumper pads have played in 48 bumper related infant deaths.

We urge CPSC to take quick action, consistent with the action taken by Maryland and Chicago to protect infants from hazards posed by bumper pads.

6. Inflatable Amusements

We urge CPSC to address hazards posed by inflatable amusement products such as bounce houses. According to CPSC's most recent data,[9] 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.[10] CPSC documented, in its report released in 2009, that it was aware of four deaths involving inflatable amusements from 2003 through 2007.

News reports[11] 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. Recent Important Enforcement Efforts

We applaud CPSC for enforcement efforts this past year to recall the bumbo seat, ultimately recall the Nap Nanny, and take strong action to protect children from hazards posed by rare earth magnets. These strong actions protected children, effectively informed the public about hazards posed by these products, and gave all entities regulated by CPSC a clear indication of how seriously CPSC takes its mission to protect consumers and how effectively CPSC uses its enforcement authority.

2. Recall Effectiveness

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[9] http://www.cpsc.gov/library/inflate2007.pdf
[10] http://www.cpsc.gov/library/inflate2007.pdf
[11] 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/,

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 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 and toddler 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.

3. 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 2013, thus far, CPSC has assessed 6 civil penalties, ranging from $450,000 to $987,000; and zero criminal penalties. In 2012, CPSC assessed 9 civil penalties, ranging from a consent decree, $214,000 to $1.5 million dollars; and zero criminal penalties. In 2011, CPSC assessed 15 civil penalties, ranging from a consent decree for permanent injunctions, $40,000 to $960,000; and one criminal penalty for $16,000. In 2010, CPSC assessed 7 civil penalties, ranging from $25,000 to $2.05 million; and no criminal penalties. In 2009, CPSC assessed 37 civil penalties, ranging from $25,000 to $2.3 million; and no criminal penalties. 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.

4. 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 Sates' 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.[12] Suffocations were the second highest cause of

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

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

According to the most recent data released by CPSC,[13] at least 107,500 people were injured seriously enough to require emergency room treatment in 2011, and the estimated number of all-terrain vehicle (ATV)-related fatalities was 726 in 2010, though the 2010 data is not considered complete.

In 2011, ATVs killed at least 57 children younger than 16, accounting for 17 percent of ATV fatalities. Forty seven percent of children killed were younger than 12 years old. Children under 16 suffered an estimated 29,000 serious injuries in 2011, an increase from 28,300 serious injuries in 2010. This represents 27 percent of all injuries. In 2010, serious injuries to children made up 25 percent of all injuries. The 2011 emergency department treated injury estimate for children younger than 16 years of age represents a 2.5% increase over the 2010 estimate, although this is not a statistically significant increase.

CPSC must prioritize the issue of ATV safety. While CPSC's rulemaking was required to be finalized on ATVs last August, we applaud CPSC for holding an ATV Safety Summit last fall and urge 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.

Recreational off highway vehicles (ROHVs) pose hazards to consumers and have been associated with more than 170 deaths from 2003–2012. 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. 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,

> "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

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[13] http://www.cpsc.gov//Global/Research-and-Statistics/Injury-Statistics/atv2011.pdf

> consumers, but will also discourage the use of fire retardant chemicals (FRs) in furniture filling materials, which have been associated with serious health impacts to humans, wildlife, and the environment."[14]

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 which will improve fire safety standards and will not lead to the use of potentially toxic fire retardant chemicals.

4. Low Income Child Safety

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

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

The report identified the following about unintentional injuries suffered by children:

- Unintentional injuries represent the leading cause of death and injury for children between the ages of one and fourteen. Each year, such injuries are responsible for about 5,000 child deaths, about 5 million child emergency room visits, and millions more unreported injuries.
- These injuries are suffered disproportionately by children from low-income families. In fact, several studies show that income is a better predictor of risk than either race or ethnicity.
- The death rates of several important types of unintentional injuries may be considerably higher for low-income children – at least double for deaths from motor-vehicle accidents, fires, and drownings – than for higher-income children, according to a study that reviewed child deaths reported in Maine.
- Non-fatal injury rates were also much higher for low-income children. One study found the highest rate among low-income children and the lowest rate among high-income children. Another study found that children receiving Medicaid had injury rates double those of the national average.
- Higher injury rates are related both to environmental factors – e.g., more hazardous streets, unsafe playgrounds, older and less safe houses and appliances – and to human factors – e.g., higher incidence of smoking, less income to afford safety precautions, less parental supervision in single-parent families, and less knowledge about product safety and prevention.

[14] http://www.cpsc.gov/LIBRARY/FOIA/FOIA08/pubcom/flamm4.pdf at pages 144-148.

We look forward to working with the CPSC to explore how to better identify the correlation between unintentional injury and socioeconomic status as well as how to reduce deaths and injuries associated with consumer products that impact low-income children.

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.

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