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# INDUSTRY PERSPECTIVES ON THE CONSUMER PRODUCT SAFETY COMMISSION

## HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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# INDUSTRY PERSPECTIVES ON THE CONSUMER PRODUCT SAFETY COMMISSION

**WEDNESDAY, FEBRUARY 10, 2016**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE,
COMMITTEE ON ENERGY AND COMMERCE,
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:15 a.m., in room 2322 Rayburn House Office Building, Hon. Michael Burgess (chairman of the subcommittee) presiding.

Members present: Representatives Burgess, Lance, Blackburn, Harper, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Brooks, Schakowsky, Clarke, Kennedy, Welch, and Pallone (ex officio).

Staff present: Rebecca Card, Assistant Press Secretary; James Decker, Policy Coordinator, Commerce, Manufacturing, and Trade; Graham Dufault, Counsel, Commerce, Manufacturing, and Trade; Melissa Froelich, Counsel, Commerce, Manufacturing, and Trade; Paul Nagle, Chief Counsel, Commerce, Manufacturing, and Trade; Olivia Trusty, Professional Staff, Commerce, Manufacturing, and Trade; Dylan Vorbach, Legislative Clerk; Michelle Ash, Democratic Chief Counsel, Commerce, Manufacturing, and Trade; Christine Brennan, Democratic Press Secretary; Jeff Carroll, Democratic Staff Director; Lisa Goldman, Democratic Counsel, Commerce, Manufacturing, and Trade; Tiffany Guarascio, Democratic Deputy Staff Director and Chief Health Advisor; Caroline Paris-Behr, Democratic Policy Analyst; Diana Rudd, Democratic Legal Fellow; and Andrea Sowall, Democratic Staff Member.

Mr. BURGESS. The Subcommittee on Commerce, Manufacturing, and Trade will now come to order. The Chair will recognize himself for an opening statement.

## OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

I want to welcome everyone to the committee this morning. This morning we do continue our oversight of the Consumer Product Safety Commission and its mission to protect consumers against unreasonable risks of injury associated with consumer products. It is a very timely hearing, as we prepare to enter into our budget season.

This subcommittee held a hearing earlier this Congress with four of the Commissioners present about the status of the agency agenda. Really two key issues emerged that warrant further attention. First, the need for collaboration between the Commission and in-

dustry to achieve voluntary safety standards for regulated products. Secondly, there were concerns about the Commission's overextended rulemaking docket. There were concerns about mission creep and there were concerns about repeated requests for unprecedented user fee authority without the requisite justification. And I did stress at the time and will stress again today that when your mission is safety and your resources are scarce, it is critical that you prioritize your activities where you have clear authority and where you can protect the most people.

I hope we will hear about progress today, particularly on the recreational off-road vehicle front. I hope that we will hear about a Commission that wants to use technology to help innovation, rather than impede it. We have done a whole set of hearings on technology disrupting industry. At some point, we need to look at how technology can disrupt Washington and make it work, make Washington work better to encourage innovations and to encourage job creation.

The innovation driven by the private sector cannot be replicated in the confines of the Government. This is recognized by the preference for voluntary safety standards and the Commission's authorizing statute, the National Technology Transfer and Advancement Act, and even in the Office of Management of the Budget. Their recent circular A–119, where they coordinate and clear things through the Office of Management of the Budget that is currently in the process of being updated.

The American National Standards Institute, the Underwriters Laboratory are widely known and respected institutions that have worked with industry within and outside the Commission's jurisdiction to help develop voluntary consensus standards. These standards are technical in nature and are generally set to achieve, as their name implies, performance goals, as opposed to the Government mandating product construction.

Turning to the Commission's rulemaking docket and request for unprecedented user fee authority, I am interested in hearing from our witnesses today about how these outstanding issues impact a company's ability to plan for the future and a company's ability to innovate. For example, since our last hearing, there has been no change in the status of some of the most controversial processes in rulemaking. This includes a rulemaking that is still pending to upend the incredibly successful voluntary recall program. The import surveillance rulemaking, commonly known as the 1110 Rule has now been turned into a pilot program with eight participating companies. The pilot's implementation guide was implemented just a few weeks ago to reflect the first feedback received from the Customs and Border Protection Support Network Working Group. The Commission has renewed their request for unprecedented user fee authority which, besides the constitutional question at hand, is premature, given the early stages of the pilot project.

I am interested to hear from the panelists what outstanding issues remain with the pilot's development and what benchmarks we should be looking for when the Commission reports on the pilot's progress.

Finally, it is incumbent upon this subcommittee to find out whether there has been any progress on reducing third party test-

ing burdens for small businesses in the United States. This is a bipartisan concern and has been addressed multiple times by Congress since 2011. It is frustrating to be sitting here today years later without this issue being resolved.

I think we all share the goal of preventing tragic and unfortunate injuries from consumer products. I certainly look forward to hearing from our witnesses about the status and tenor of their working relationship with the Commission and how these relationships can be leveraged to achieve the common safety goal. Industry certainly must do its part.

[The prepared statement of Mr. Burgess follows:]

## PREPARED STATEMENT OF HON. MICHAEL C. BURGESS

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This subcommittee held a hearing earlier this Congress with four of the Commissioners about the status of the agency agenda. Two key issues emerged that warrant further attention. First, the need for collaboration between the Commission and industry to achieve voluntary safety standards for regulated products. Second, there were concerns about the Commission's overextended rulemaking docket, mission creep and repeated requests for unprecedented user fee authority without the requisite justification. I stressed at that time and will stress again that when your mission is safety and your resources are scarce it is critical that you prioritize activities where you have clear authority and where you can protect the most people.

I hope that we will hear about progress today, particularly on the R O V front. I also hope that we will hear about a Commission that wants to use technology to help innovation rather than hinder it. We have done a whole set of hearings on technology disrupting industry. At some point we need to look at how technology can disrupt Washington and make it work better to encourage innovations and job creation.

The innovation driven by the private sector cannot be replicated in the confines of the Government. This is recognized by the preference for voluntary safety standards in the Commission's authorizing statute, the National Technology Transfer and Advancement Act, and even the Office of Management and Budget's Circular A—119 that is currently being updated.

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Mr. BURGESS. And now I would like to recognize the ranking member of the subcommittee, Ms. Schakowsky from Illinois, 5 minutes for an opening statement, please.

**OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Ms. SCHAKOWSKY. I thank the chairman—we have got some feedback here—for holding today's hearing on the Consumer Product Safety Commission. I appreciate the opportunity to highlight the successes of the Commission and to learn where even more progress can be made.

This hearing is to focus specifically on industry perspectives. And while it is important to hear from business under the CPSC oversight, I believe the focus should always be on the Commission's impact in protecting consumers from harmful products and that is what I plan to spend my time on today.

This subcommittee played a major role in the enactment of the Consumer Product Safety Improvement Act, which was signed into law by President Bush in 2008. It was the product of broad bipartisan negotiation and it passed the House by a vote of 407 to nothing. The legislation gave CPSC additional authority and resources so it could become the consumer watchdog that Americans deserve. It included a provision requiring mandatory standards and testing for infant and toddler products, such as cribs and high chairs, as well as a requirement for postage paid recall registration cards to be attached to products so that customers can be quickly notified if the products are dangerous and I was proud to author both of those improvements.

The CPSIA also included mandatory toy safety standards, including banning lead and dangerous phthalates in toys which are preventing injuries and saving lives.

The Commission has taken its enhanced authority and support to improve consumer product safety from cribs to toys, to cleaning products and I look forward to hearing from our witnesses about those successes and others.

I also look forward to hearing from our witnesses their ideas for how to improve consumer outreach. In the context of auto safety, we have discussed ways to improve notice to consumers of recalls and how to increase consumer responsiveness to recalls. That same concept is just as important in this context, where notice to consumers and consumer response is actually much lower but where failure to act can have a similar deadly consequence.

I will say that I am disappointed that today's hearing does not include a member panel on bills related to CPSC oversight and regulation of guns, which no less than four members have asked for. With an ever worsening gun crisis in this country and a legitimate debate about whether CPSC should have the authority to protect

consumers in this area, it seems obvious that we should be exploring these legislative proposals. Unfortunately, requests to testify from Representatives Engle, Honda, Robin Kelly, and Maloney were denied by the majority.

Again, I look forward to hearing from our witnesses about the progress we have seen at the Consumer Product Safety Commission and where the Commission should go from here.

Let me just say with a couple minutes, before I was elected to office, I identified myself as a consumer advocate. And I am sure many of you enjoy or appreciate being able to see dates on food. And in 1970, when I was a very young housewife, we got together, five of us, six of us, I was the sixth, and modestly called ourselves National Consumers United, all six of us. And we went to work cracking the codes that were on every product. You could not tell how old the food was. It was kind of a raucous campaign with lawyers involved from the retailers, et cetera. And finally, we did win this because it has so much favor among consumers but it also really helped the retailers with their inventory control. Because seeing everybody being able to see the dates, there were no laws passed, but the whole idea mushroomed, snowballed, and now people really rely on those dates.

So, I guess my point is this, that we can find ways where consumers and the industry, our interest coincide and we make life better for everyone. That incident as a very young housewife really changed my life, as someone who could get something done. And it has been my mission ever since that we find ways that we can make the marketplace more fair for consumers.

And I yield back.

Mr. BURGESS. The gentlelady yields back. The Chair thanks the gentlelady.

The Chair recognizes the gentlelady from Tennessee for 5 minutes for an opening statement, please.

**OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE**

Mrs. BLACKBURN. Thank you, Mr. Chairman. And I want to welcome those of you who are on the panel today. Please know we have a Medicaid hearing going on down on the first floor. So, we are going to be back and forth a little bit today in sharing our time.

The chairman mentioned some of the problems with the 1110 import system and we are going to want to come back to you on that issue with some questions. Third party testing burdens, there are some issues that remain with this program.

I really would like to just go a little bit to the point. We feel as if we have given you a mandate to reduce these regulatory burdens and testing burdens and to look at the marketplace as a whole and to say how do we achieve our goals with product safety, consumer safety, and how do we do this in an effective and efficient manner, that is going to be fair to the taxpayer. And we are going to look at you, come to you with some questions about how you are relieving that regulatory burden and what you see as being some best steps, next steps as we try to reduce that.

With that Mr. Chairman, I am going to yield back my time but say we do want to approach a couple of these specific issues with specific answers. Thank you.

Mr. BURGESS. The Chair thanks the gentlelady. The gentlelady yields back.

The Chair recognizes the ranking member of the full committee, Mr. Pallone, 5 minutes for an opening statement, please.

**OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PALLONE. Thank you, Mr. Chairman.

I want to start by noting that we received letters from Representative Engle, a member of the full committee, Mr. Honda, Mr. Maloney, and Ms. Kelly requesting a member panel at this hearing. And each of these members has introduced legislation that would amend the jurisdiction of the Consumer Product Safety Commission over guns and toy guns. And I think the issues raised by these members certainly is worthy of discussion and I am disappointed that the request was denied by the chairman and by the majority.

While the topic of today's hearing was listed as industry perspectives on the CPSC, I am encouraged that the perspective of consumer advocates was added and I look forward to that testimony.

In 2008, Congress passed the Consumer Product Safety Improvement Act, CPSIA, and in follow-up legislation 2011 made major improvements to CPSC's operations and to the safety of consumer products. One of the most successful sections of the CPSIA was the Danny Keysar Child Product Safety Notification Act, which was authored by our ranking member Schakowsky. And this portion of the law requires the Commission to develop mandatory safety standards for durable infant or toddler products, such as infant walkers, high chairs, and cribs. Final safety standards for 14 products have been promulgated and proposed safety standards for six more products have been issued.

And that is great progress but there is still more to do. As the Commission moves beyond implementation of the CPSIA, the Commission need an agile system to deal with emerging hazards. Recently, we have heard numerous reports of hoverboards catching fire or exploding, not to mention all those videos of riders falling off of their hoverboards.

There is the ongoing issue of artificial turf fields. For over a year, I have been calling on the CPSC and others to conduct a comprehensive review of these fields and questioning the safety of crumb rubber used on artificial playing turf and playgrounds across the country. That crumb rubber is made from recycled tires that often contain cancer-causing chemicals. It is clear that we need more information about the safety of crumb rubber. But in the meantime, kids play on it every day and so we need to begin this review immediately.

Although the CPSC Commissioners are not hear today, I look forward to hearing from our witnesses about how the CPSC can work with industry and consumer safety advocates on these types of emerging hazards. I want to know how the Commission can best

address foreseeable risk and be better prepared when unexpected problems occur.

We should strive for proactive safety instead of just waiting to react after injuries or deaths occur. We should continue to encourage new and innovative products but they must be safe for consumers.

And the CPSC plays a vital role in protecting lives of all Americans. It is a small agency with a big mission but we must ensure that the CPSC has the support from Congress and the resources it needs to fulfill its mission.

I yield back, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Thank you, Mr. Chairman. I want to start by noting that we received letters from Representatives Engel (a member of the full committee), Honda, Maloney, and Kelly requesting a member panel at this hearing.

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Thank you.

Mr. BURGESS. The gentleman yields back. The Chair thanks the gentleman.

The Chair would note, and I think the members of the subcommittee would agree with me, that we offer our condolences to

you and your family on the recent loss of your father. Certainly, our thoughts are with you, Frank.

That concludes our opening statements.

We want to thank all of our witnesses for being here today and for taking the time to testify before the subcommittee. Today's witnesses will have the opportunity to give opening statements, followed by questions from us. Our panel for today's hearing will include Mr. Erik Pritchard, the Executive Vice President and General Counsel for the Recreational Off-Highway Vehicle Association; Mr. Jonathan Gold, the Vice President for Supply Chain and Customs Policy at the National Retail Federation; Ms. Rachel Weintraub, the Legislative Director and General Counsel for the Consumer Federation of America; and Mr. Mark Fellin, Director of Regulatory and Legislative Affairs at the Juvenile Products Manufacturing Association.

We sincerely appreciate all of you being here today. We thank you for the privilege of your time. We will begin the panel with Mr. Pritchard and you are recognized for 5 minutes for an opening statement, please.

**STATEMENTS OF ERIK PRITCHARD, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, RECREATIONAL OFF–HIGHWAY VEHICLE ASSOCIATION; JONATHAN GOLD, VICE PRESIDENT, SUPPLY CHAIN AND CUSTOMS POLICY, NATIONAL RETAIL FEDERATION; RACHEL WEINTRAUB, LEGISLATIVE DIRECTOR AND GENERAL COUNSEL, CONSUMER FEDERATION OF AMERICA; AND MARK S. FELLIN, DIRECTOR OF REGULATORY AND LEGISLATIVE AFFAIRS, JUVENILE PRODUCTS MANUFACTURERS ASSOCIATION**

**STATEMENT OF ERIK PRITCHARD**

Good morning. Mr. Chairman, ranking member, members of the committee. My name is Erik Pritchard. I am the Executive Vice President and General Counsel of the Recreational Off-Highway Vehicle Association, commonly known as ROHVA. ROHVA is a not-for-profit trade association sponsored by Arctic Cat, BRP, Honda, John Deere, Kawasaki, Polaris, Textron, and Yamaha.

ROHVA was formed to promote the safe and responsible use of recreational off-highway vehicles, commonly referred to as ROVs or side-by-sides—I like ROV—manufactured and distributed in North America. ROVs are used by families, emergency personnel, and the U.S. military in a variety of environments ranging from mud to sand, to forest to trials. This is a vibrant high-growth industry and a bright spot in the U.S. manufacturing economy.

I last appeared before this subcommittee on May 19, 2015. Then, as now, the topic was the U.S. Consumer Product Safety Commission, CPSC, which is the principle Federal regulator of the ROV industry. But much has changed over the last 8 months since that hearing.

By way of background, ROHVA is accredited by the American National Standards Institute, ANSI, to develop voluntary standards for the equipment configuration and performance requirements of ROVs. Voluntary does not mean opt-in or opt-out. Voluntary standards become the benchmark against which product de-

sign and performance is judged. Really, voluntary means industry and other stakeholders, including the CPSC and consumers, voluntarily develop product standards pursuant to ANSI standards development procedures.

I am pleased to report that the ROV industry and the CPSC, as well as other stakeholders have worked together to develop an updated voluntary standard for ROVs, effectively mooting the CPSC's Notice of Proposed Rulemaking for ROVs. In this regard, CPSC staff's December 1, 2015 to ROHVA reads, "CPSC staff supports the proposed changes to the voluntary standard and believes the aggregate effect of improved vehicle stability, handling, and occupant protection will reduce injuries and deaths associated with ROV rollovers."

As a result of this support, we expect that once the updated voluntary standard is published, likely in a few months, CPSC staff will recommend that the Commission terminate the rulemaking. This positive outcome resulted from the joint efforts of industry and CPSC staff, and through Congress' leadership, including, in particular, the efforts of this subcommittee.

Without belaboring the history, industry discussions with the CPSC had some positive momentum back in September and October of 2014, when representatives of ROHVA and each member company traveled to Rockville and Bethesda, Maryland, to explain how close the parties were and that any differences could be overcome through further discussion.

Unfortunately, that momentum stalled on October 29, 2014, when the Commission voted three to two to issue its Notice of Proposed Rulemaking for ROVs. Nevertheless, the industry and CPSC resumed their discussions with meetings in March, May, July, and October 2015, culminating with ROHVA circulating the updated draft voluntary standard a few months ago.

The leadership and efforts of the U.S. Congress were instrumental in helping industry and the CPSC achieve this positive result. Senators and representatives from both parties repeatedly the CPSC to engage in the voluntary standards process, rather than pursue rulemaking. This subcommittee went further and elicited testimony from various stakeholders, including from CPSC Commissioners and the industry, regarding the ROV In-Depth Examination Act, the RIDE Act, which would require an independent examination of CPSC's proposals in supporting data by the National Academy of Sciences, among others.

Due to the successful agency-industry collaboration on the updated voluntary standard, however, it now appears that that review required by the RIDE Act will not be necessary. This process was costly and time-consuming for both CPSC and the industry and we appreciate the CPSC staff's diligence in working through the issues with us.

It is indisputable that the U.S. Congress has other important and complex business and yet, Congress and this subcommittee took the time to provide the necessary oversight essential to a properly functioning regulatory system. That is no small thing.

On behalf of the ROV industry, thank you for your dedication to helping resolve this important matter.

[The prepared statement of Mr. Pritchard follows:]

House Energy and Commerce Committee
Subcommittee on Commerce, Manufacturing and Trade
United States House of Representatives
Industry Perspectives on the Consumer Product Safety Commission
February 10, 2016

Testimony of Erik Pritchard
Recreational Off-Highway Vehicle Association

Good morning Mr. Chairman, Ranking Member, and Members of the Committee.

My name is Erik Pritchard; I am the Executive Vice President and General Counsel of the Recreational Off-Highway Vehicle Association, commonly known as ROHVA. ROHVA is a not-for-profit trade association sponsored by Arctic Cat, BRP, Honda, John Deere, Kawasaki, Polaris, Textron, and Yamaha.

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By way of background, ROHVA is accredited by the American National Standards Institute (ANSI) to develop voluntary standards for the equipment, configuration, and performance requirements of ROVs. "Voluntary" does not mean opt-in or opt-out, because voluntary standards become the benchmark against which product design and performance is judged. Rather, "voluntary" means industry and other stakeholders, including the CPSC and

consumers, voluntarily develop product standards pursuant to ANSI's standards development procedures.

I am pleased to report that the ROV industry and the CPSC (as well as other stakeholders) have worked together to develop an updated voluntary standard for ROVs, effectively mooting the CPSC's Notice of Proposed Rulemaking for ROVs. In this regard, CPSC staff's December 1, 2015 letter to ROHVA reads: "CPSC staff supports the proposed changes to the voluntary standard and believes the aggregate effect of improved vehicle stability, handling, and occupant protection will reduce injuries and deaths associated with ROV rollovers." As a result of this support, we expect that once the updated voluntary standard is published, likely in a few months, CPSC staff will recommend that the Commission terminate the rulemaking.

This positive outcome resulted from the joint efforts of industry and CPSC staff, and through Congress's leadership – including in particular the efforts of this Subcommittee.

Without belaboring the history, industry discussions with the CPSC had some positive momentum in September and October of 2014 when representatives of ROHVA and each member company traveled to the CPSC's offices in Bethesda and Rockville, Maryland to explain how close the parties were and that any differences could be overcome through further discussion. Unfortunately, that momentum stalled on October 29, 2014 when the CPSC voted 3 – 2 to issue its Notice of Proposed Rulemaking for ROVs. Nevertheless, the industry and CPSC staff resumed their discussions with meetings in March, May, July, and October 2015, culminating with ROHVA circulating the updated draft voluntary standard a few months ago.

The leadership and efforts of the U.S. Congress were instrumental in helping industry and the CPSC achieve this positive result. Senators and Representatives from both parties repeatedly

encouraged the CPSC to engage in the voluntary standards process, rather than pursue rulemaking. This Subcommittee went further and elicited testimony from various stakeholders, including from CPSC Commissioners and the industry, regarding the ROV In-Depth Examination Act (RIDE Act), which would require independent examination of the CPSC's proposals and supporting data by the National Academy of Sciences, in consultation with the National Highway Traffic Safety Administration and the Department of Defense. Due to the successful agency/industry collaboration on the updated voluntary standard, it now appears that the review required by the RIDE Act will not be necessary.

This process was costly and time-consuming for both the CPSC and the industry, and we appreciate CPSC staff's diligence in working through the issues with industry. It is indisputable that the U.S. Congress has other important and complex business. And yet Congress and this Subcommittee took the time to provide the necessary oversight essential to a properly functioning regulatory system. That is no small thing.

On behalf of the ROV industry, thank you for your dedication to helping resolve this important matter.

Mr. BURGESS. The Chair thanks the gentleman. The gentleman yields back.

Mr. Gold, 5 minutes for an opening statement, please.

**STATEMENT OF JONATHAN GOLD**

Mr. GOLD. Good morning Chairman Burgess, Ranking Member Schakowsky, and distinguished members of the subcommittee. Thank you for the opportunity to testify this morning and provide NRF's views on the activities and developments at the CPSC. I would like to ask that my full statement be included in the record.

NRF is the world's largest retail trade association, representing all segments of the retail industry. We have a proud history of engaging with the CPSC, especially since the enactment of the CPSIA. While we have had some issues with its implementation and interpretation, we have always sought to positively interact with the CPSC with the viewpoint and objective of ensuring that products our members sell are safe for American families.

NRF's members have no interest in selling unsafe or violative products. A vibrant and well-resourced CPSC and a marketplace free of unsafe products is aligned with the interest and desires of retailers and the safety well-being of their consumers.

NRF has, for several years, strongly encouraged the CPSC to create a permanent trade advisory group similar to the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection, the COAC, which routinely advises the CBP on the many complex issues related to both imports and exports of goods.

The CPSC did facilitate the formation of a product safety and working group under the COAC to advise on the proposed product safety certificate e-filing mandate, the Section 1110 Rule. We appreciate Chairman Kaye helping to facilitate this working group, which has led to the creation of the current e-Filing Alpha Pilot. Again, having an official advisory committee in place to tackle these and other complex supply chain-related issues will help the CPSC in the future.

Now, the Section 1110 Rule did contain many troubling provisions in addition to the sweeping new mandate, including possibly changing who is required to issue the CPSC certificate and expansion of the data required on the certificates. We hope the pilot will address some of these issues and concerns that we have moving forward.

NRF members are also concerned with two of the proposed regulations that may have little benefit to consumer safety but enormous burdens on the regulated industry. These include the proposed Voluntary Recall Rule and the so-called 6(b) Rule. NRF strongly questions these proposals' necessity, let alone the enhancement of product safety. We have placed new mandates and burdens on companies that voluntarily report information to and that offer to voluntarily recall products in conjunction with the CPSC.

Chairman Kaye has publicly stated that these two proposed rules are not his priorities. We would then urge the Commission to fully withdraw these proposals and initiate formal stakeholder discussions about how such rules can be best served and benefit consumers.

Another related proposal before the Congress is a renewed request by the agency for authority to impose user fees for the agency's Risk Assessment Methodology to screen imports for possible product safety violations and risk. While we strongly support risk-based targeting, we have many questions about how such user fee will be developed, collected, and used.

Mr. Chairman, we believe that programs such as the Retail Reporting Program could continue to provide valuable information to the agency. The program is in limbo right now, as the agency continues to conduct an internal review. We believe a robust retail reporting program will provide benefits to the CPSC, program participants, and most importantly consumers, by alerting the agency to product safety issues at the very earliest stage possible.

As the CPSC moves forward towards regulating in the enormously complex and fast-changing global supply chain, we strongly believe that the agency needs to further collaborate with all stakeholders to ensure that regulations not only meet their stated goal, but do so in a way that does not overly burden the industry. Regulations must not only work, but they must be implemented in a seamless manner.

I will note that there does appear to be a new spirit of bipartisanship among the Commissioners. Chairman Kaye, all of the Commissioners, and senior staff seem to be more willing to listen to the views, the concerns of agency stakeholders. These are very welcome trends and ones which we again hope will materialize into more permanent efforts to engage the public and those most impacted by the Commission.

Finally, Mr. Chairman, I would like to briefly raise an issue of concern for retailers; that is, the real and growing trend of the CPSC to look primarily to retailers for recalls and other corrective and punitive actions, rather than other participants in the supply chain that might be better positioned to both identify and respond to product safety issues. Traditionally, the CPSC has looked primarily to product manufacturers to identify and report product safety issues as well as undertake product safety recalls. This makes sense, since the product manufacturers are typically in the best position to identify, understand, and respond to product design, manufacturing, or other problems that may lead to a consumer hazard. That presumptions seems to have been reversed and more and more recalls are being sought first and, in many cases, solely of retailers.

Mr. Chairman, years of adjustment immediately following enactment of the CPSIA were difficult and, at times, even chaotic. Things seem to have regularized and NRF and its members recognize and appreciate the recent efforts of this Commission and the dedicated CPSC staff to try to bring additional clarity and stakeholder to the agency's still-changing policies and practices, though much more remains to be done on this front.

The traditional agency model of everything invented here no longer works in a real-time world of global supply chain dynamics. We are dedicated to continue positive engagement with the agency and its leaders to ensure that the safety of American families continues to be our mutual and primary objective.

Thank you again for the opportunity to testify and I look forward to questions.

[The prepared statement of Mr. Gold follows:]




TESTIMONY OF

JONATHAN GOLD

VICE PRESIDENT SUPPLY CHAIN AND CUSTOMS POLICY

NATIONAL RETAIL FEDERATION

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE

SBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE

HEARING ON

"INDUSTRY PERSPECRTIVES ON THE U.S. CONSUMER PRODUCT SAFETY COMMISSION"

FEBRUARY 10, 2016

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Good morning Chairman Burgess, Ranking Member Schakowsky, and distinguished members of the Subcommittee:

Thank you for the opportunity to testify this morning on "Industry Perspectives on the U.S. Consumer Product Safety Commission." I appreciate this opportunity to provide the Subcommittee with how the National Retail Federation's views on a number of activities and developments in recent years at the Consumer Product Safety Commission and the impact of those on the retail community.

The National Retail Federation is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and internet retailers from the U.S. more than 45 other countries. Retail is nation's largest private sector employer, supporting one in 4 U.S. jobs—over 42 million working Americans. NRF's *This is Retail* campaign highlights the industry's opportunities for life-long careers, how retailers strengthen communities, and the critical role that retail plays in driving innovation.

I would also like to state from the outset that NRF has a proud history of engaging with the CPSC, including since enactment of the landmark Consumer Product Safety Improvement Act of 2008. While we have had a number of issues with that law and its implementation and interpretation by the agency, we have always sought to positively interact with the CPSC. And we have always done so with the viewpoint and objective of ensuring that the products our members sell are safe for American families.

Indeed, it has been the retail community that continues to lead and innovate with numerous product safety initiatives and efforts that often go well beyond legal and regulatory requirements. NRF members have no interest in selling unsafe or violative products, and not only supports the CPSC in its mission to prevent, identify and remove such products from the market, but very often leads the charge to do so. A vibrant and well-resourced CPSC, and a marketplace free of unsafe products, is therefore absolutely aligned with the interests and desires of retailers, not to mention the safety and well-being of their customers.

In this spirit, NRF has, for several years, strongly encouraged the CPSC to create a permanent trade advisory group, similar to the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC), which routinely advises the CBP on the many complex issues and considerations relating to the importation of goods into the U.S. Unfortunately, the CPSC has not taken this step.

While the CPSC did recently help facilitate the formation of Product Safety Work Group under the COAC to advise primarily the CPSC on the pending product safety certificate e-filing mandate, the CPSC's non-statutory Open Meetings Policy precluded agency staff from even participating in several of the key meetings of that Work Group. We appreciate Chairman Kaye stepping-in to help to facilitate this Work Group, which has led to the creation of the current e-filing Alpha Pilot to help ensure the system will work prior to mandating it for all importers. Having an official advisory committee in place, which the agency has had in the past, to tackle these and other complex supply chain related issues will undoubtedly help the CPSC in the future.

These issues include the initial e-filing mandate I just mentioned as set forth in the agency's proposed new Certification, or "1110" Rule. That Rule, first proposed by the agency in 2013 with virtually no prior public input, contained many troubling provisions in addition to the sweeping new e-filing mandate, including possibly changing who is required to issue CPSC product safety certificates and also a dramatic expansion of the information required to be on certificates. In total, these requirements could add millions in compliance costs for many retailers and significantly impede the importation of many safe products. In addition to being under-informed, none of these potential new requirements have, to NRF's knowledge, been demonstrated or even credibly argued by the agency to improve the actual safety of consumer products sold in the U.S.

Pending CPSC proposals, however, do have the very real potential to severely interrupt the complex and real-time process of importing products into the U.S. According to the CPSC, during FY 2015, more than 192,000 importers brought into the United States imports of consumer products under the CPSC's jurisdiction having a total estimated value of

approximately $754 billion. That amounts to more than $2 billion worth of consumer product imports per day. Even seemingly small changes to what may be required for the entry of imports can cause enormous burdens and disruptions in this vital trade.

NRF believes two other prominent examples of proposed new regulations may have little benefit to consumer safety but enormous burdens on regulated industry. These regulations, the proposed Voluntary Recall Rule and the so-called 6(b) Rule, were notably developed without the benefit of prior stakeholder engagement. NRF strongly questions these proposals' necessity let alone enhancement of product safety, especially in light of their troubling new mandates and burdens on companies that voluntarily report information to, and that offer to voluntarily recall products in conjunction with, the CPSC.

Rather than expedite the process of undertaking voluntary product safety recalls, which are the vast majority of such recalls, NRF believes the proposed Voluntary Recall Rule would actually inhibit not only the initial willingness of companies to approach the CPSC with proposals to recall questionable products, but would likely drag-out the process of negotiating such recalls, neither of which would benefit consumers and may in fact keep hazardous products on the market for longer periods of time.

Likewise, the proposed new 6(b) Rule would significantly erode the protection from public disclosure of confidential business information that in most cases is voluntarily provided to the agency. Companies would therefore be even further discouraged from approaching the CPSC with information about products that may pose a safety concern, and about which retailers and other firms may be seeking CPSC input and guidance as to whether a recall may be necessary or appropriate.

Regarding both the proposed Voluntary Recall and 6(b) Rules, while Chairman Kaye has publicly stated that these two proposed rules are not, in his words, "his priorities," they nevertheless remain pending regulations before the Commission and have the potential to be finalized at any time. NRF would therefore again urge the Commission to formally withdraw

both proposed rules and initiate formal stakeholder discussions about how such rules, if they are to be promulgated, can best serve and benefit consumers.

Another, related CPSC proposal that is currently pending before the Congress is the renewed request by the agency for authority to impose so-called "user fees" for imported products under its jurisdiction, purportedly to expand the agency's Risk Assessment Methodology, or RAM system, for screening imports for possible product safety violations and risks. This sweeping new authority of the agency, which was again proposed without any public input, let alone any formal engagement of the trade or other agency stakeholders, is also largely a mystery to NRF and other stakeholders.

There are many questions about the proposal that the agency has yet to address. What will be the level of user fees assessed and against which consumer products? Only those subject to mandatory safety standards or all products under CPSC's latent jurisdiction? How will these fees be assessed and, more importantly, how in fact will they be used to expand RAM and to what end? Indeed, the RAM itself remains largely a mystery to the trade and all parties could well benefit from the input and suggestions of U.S. importers, the vast majority of whom have just as strong an interest in seeing unsafe and violative products from being imported into the U.S. as does the CSPC.

Mr. Chairman, we believe that programs such as the Retailer Reporting Program could continue to provide valuable information to the agency. The program is in limbo right now as the agency continues to conduct an apparent multi-year, non-public review, but we believe this program should be strengthened and expanded. NRF believes a robust Retailer Reporting Program will accrue to the benefit of the CPSC, program participants and most importantly, consumers, by alerting the agency to product safety issues as the very earliest possible stage.

As the CPSC moves towards regulating in the enormously complex and fast-changing world of international supply chains, not to mention the even more complex and uncertain world of the chemical safety of consumer products, NRF believes strongly that the agency needs to further collaborate with all stakeholders to ensure that regulations not only meet their stated goal,

but do so in a way that does not overly burden the regulated industry. We need to make sure that regulations will not only work, but also that they will be able to be implemented in a seamless manner.

I will note that, with much of what Chairman Kaye has observed as the "heavy lifting" of CPSIA implementation behind the agency, there does appear to be a new spirit of bipartisanship among the commissioners themselves, which NRF is pleased to see. Chairman Kaye and all the commissioners and senior agency staff do seem to be more willing to listen to the views and concerns of agency stakeholders. These are very welcome trends and ones which we, again, hope will materialize into more permanent efforts to engage the public and those most impacted by what the agency does and how it does it.

Finally, Mr. Chairman, I would like to briefly raise an issue that has not often been discussed before this Subcommittee or indeed generally to date: that is the real and growing trend of the CPSC to look primarily to retailers for recalls and other corrective and punitive actions, rather than other participants in the supply chain that may be better positioned to both identify and respond to product safety issues.

Not so many years ago, the CPSC looked primarily to product manufacturers to identify and report product safety issues to the agency, as well as to undertake product safety recalls. This is only logical, since it is product manufactures, and not the retailers, who are typically in the best position to identify, understand and respond to product design, manufacturing or other problems that may lead to a consumer hazard. Today, that presumption seems to have been reversed, and more and more recalls are being sought first and, in many cases, solely of product retailers – companies that in most cases have no involvement with the actual manufacture of those products.

To some degree, this is a result of the fact that a growing percentage of products under CPSC's jurisdiction are imports, often directly imported by retailers, and that, under the CPSC's statutes, a U.S. importer effectively steps into the shoes of an overseas manufacturer. However, where such is not the case, there seems to nevertheless be an inordinate focus on retailers,

especially those financially able to undertake a recall or to pay a penalty for failing to report an issue to the agency, even if there is another U.S. company against which it would be more appropriate to seek such actions.

Indeed, it is not just in the compliance arena where the CPSC is increasingly looking exclusively to retailers for action on potential product safety issues. Chairman Kaye has very publicly encouraged, for example, retailers to act on several issues where he has personally declared there to be a potential hazard but where there may not be either a mandatory safety standard or a finding of a product defect by the agency. This "ready, fire, aim" approach to the CPSC's mission is troubling to say the least.

This is by no means to say that retailers do not understand and take very seriously their obligations under the law. Indeed, in many cases, it is retailers that take the initiate to report potential safety issues to the CPSC and that volunteer to undertake the recall in order to remove potentially hazardous products from the market as soon as possible. But for the CPSC to, in effect, capitalize on this general spirit of cooperativeness and to then expect retailers to always be left holding the bag for flaws that occur further up in the supply chain is often simply unfair, and may not create the proper incentives for manufacturers to prevent or correct product safety issues before the products reach consumers. At the very least, this trend or policy, if indeed it is a new agency policy, should be thoroughly explained and openly discussed at the CPSC.

Mr. Chairman, the years of adjustment immediately following enactment of the CPSIA were difficult and, at times, even chaotic. Things seemed to have regularized somewhat in recent years, and NRF and its members recognize and appreciate the recent efforts of this Commission and the dedicated CPSC staff to try bring additional clarity and stakeholder engagement to the agency's still-changing policies and practices; but much more remains to be done on this front.

The traditional agency model of "everything invented here" no longer works in the real-time world of supply chain dynamics. And several of the agency's pending and possible future regulatory actions, including in the incredibly complex and resource-intensive arena of chemical regulation of products, may indicate that more unnecessary chaos is yet to come. NRF and its

members are dedicated to product safety and the mission of the CPSC, and we are dedicated to continued, positive engagement with the agency and its leaders to ensure that the safety of American families continues to be our mutual and primary objective.

Thank you again Mr. Chairman and Members of the Subcommittee for the opportunity to appear before you. I would be happy to address any questions you have.

Mr. BURGESS. The Chair thanks the gentleman.

The Chair now recognizes Ms. Weintraub, 5 minutes for your opening statement, please.

**STATEMENT OF RACHEL WEINTRAUB**

Ms. WEINTRAUB. Chairman Burgess, Ranking Member Schakowsky, Ranking Member Pallone, and members of the subcommittee, I appreciate the opportunity to provide testimony on CFA's perspectives on the CPSC.

I am Rachel Weintraub, Legislative Director and General Counsel with 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, research and education.

The CPSC has been working hard to protect consumers from product hazards. The CPSC has been communicating with businesses about CPSC rules in an unprecedented way, including the recent release of a regulatory robot, which will help businesses determine which product safety rules apply to their products in real time. The Small Business Ombudsman has been speaking to business stakeholder business groups, has provided direct guidance to thousands of callers and has revamped its Web site to provide clear information.

The implementation of the CPSIA has been a high priority and should continue to be so for the CPSC. The CPSC has promulgated more rules than it ever has in its history and has done so in a relatively short period. The rule are substantively strong and have had an important and positive impact on consumers. Because of the rules promulgated by the CPSC, over a dozen infant durable products, including cribs, infant walkers, play yards, and strollers must now meet new robust standards. For all of these products, third party testing and certification requirements are required. This work must continue.

Another high priority for the CPSC is the consumer incident database, saferproducts.gov, required by CPSIA. Some 27,273 reports have been posted to the site and the database is an important and useful tool for consumers, researchers, doctors, coroners, and the CPSC. We urge the CPSC and Congress to use this resource to protect consumers.

We urge the CPSC to prioritize these emerging and longstanding issues that they are already working to address. For example, the CPSC is actively investigating at least 48 hoverboard fires in 19 States. The CPSC sent out two statements on hoverboards warning consumers of potential risks, announcing investigations into the incidents and providing consumer recommendations. The CPSC announcements have been relied upon by many entities who have sought to protect consumers. Unfortunately, we know that these products remain in consumers' homes, potentially posing risks.

Potential safety concerns have been raised about crumb rubber from tire scraps that are used in 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. But

CPSC has since distanced itself from that release, causing consumer uncertainty and concern.

CPSC is providing technical assistance to California's review of crumb rubber and is working with other agencies with jurisdictions over this product. CPSC needs an increase in their budget appropriation to ensure that these and other emerging safety issues can be effectively addressed.

I now wish to discuss a few long-standing hazards that are priorities for the Consumer Federation and should also be for CPSC and Congress.

Window coverings. Due to the documented and persistent hazards that cords on window coverings pose to children, in May of 2013, CFA and others filed a petition requesting that the CPSC promulgate a mandatory standard to make operating cords for window coverings inaccessible. At least 11 children die each year, despite six industry attempts at developing adequate voluntary standards. Deaths and injuries can be eliminated by designs that already exist and are available on the market.

Flame retardants in consumer products. These can be found in numerous types of consumer products that have been associated with serious health problems. These chemicals migrate out from the household products into air and dust. Children are especially at risk.

The CPSC is considering a petition filed by CFA and others to adopt mandatory standards to protect consumers from health hazards posed by the use of non-polymeric, additive form, organohalogen flame retardants in children's products, furniture, mattresses, and the casings surrounding electronics.

Recreational off-highway vehicles pose hazards to consumers and the CPSC indicates there were 335 deaths and 506 injuries related to ROVs from January 2013 to April 2013. ATVs injured at least 93,700 people in 2014 and killed an estimated 638 people as well. More work needs to be done on these issues.

Recall effectiveness. The vast majority of consumers who own a product never find out that the product they own has been recalled. Much more needs to be done.

I thank you for your consideration.

[The prepared statement of Ms. Weintraub follows:]




**Consumer Federation of America**

February 10, 2016

Testimony of Rachel Weintraub,

Legislative Director and General Counsel, Consumer Federation

Before the

U.S. House of Representatives

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 that it ever has in its history and has done so in a relatively short period. The rules are substantively strong and have an important and positive impact on consumers.

Because of the rules promulgated by the CPSC, 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- 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[1] have been posted to 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 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. 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

[1] 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."[2] 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 compressive 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

[2] 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 8th; a 3-year-old girl in Texas on February 15th; a 4-year-old boy in Georgia on February 17th; and a 2-year-old boy in Maryland on March 1st. Each of these children died after the cord of a window covering strangled them. In 2014, we know of 9 deaths and in 2015, we are aware of 6 deaths, though that number is likely to increase.[3]

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.

[3] 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.[4]

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,[5] at least 93,700 people were injured while riding all-terrain vehicles (ATVs) seriously enough to require emergency room treatment

[4] 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/.

[5] 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.[6] 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.[7] According to the National Capital Poison Center, every year more than 3,500 people ingest button batteries.[8] According to a study released in June of 2012 in the American Academy of Pediatrics Journal,[9] *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.[10] We understand that progress has been made but that there is more work to do. We also urge the CPSC to work in

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[6] 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

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

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

[9] 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

[10] 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 Sates' 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.

Mr. BURGESS. The Chair thanks the gentlelady.

The Chair recognizes Mr. Fellin, 5 minutes to summarize your opening statement, please.

**STATEMENT OF MARK S. FELLIN**

Mr. FELLIN. Thank you, Chairman Burgess and Ranking Member Schakowsky for the opportunity to provide testimony to this committee.

JPMA is a is a national not-for-profit trade association representing 95 percent of the prenatal industry, including the producers, importers, and distributors of a broad range of child care articles that provide protection to infants and assistance to their care givers. Innovating, manufacturing, and providing safe products is a priority for JPMA members.

As a new father to my 5-week-old son, Tucker, I personally understand the importance of ensuring that our children are safe in all environments and that parents and caregivers are educated about the importance of using juvenile products safely.

My testimony today will focus on three areas. First, JPMA's relationship with the CPSC as it relates to Section 104 of the CPSIA. Second, the CPSC staff involvement throughout the ASTM process and, third, industry concerns that the integrity of the ASTM Standard setting process be maintained as it relates to Section 104 rules.

JPMA has been instrumental in the development of many key standards that have advanced public safety. For example, ASTM Subcommittee F15.18 on cribs, toddler beds, and changing tables received former Chairman Inez Tenenbaum's inaugural Chairman's Circle of Commendation Award for its work as crucial to the development of CPSC's new mandatory crib standards, the strongest in the world.

JPMA and CPSC staff have worked collaboratively throughout the ASTM process. Relying on each other's expertise, we have been able to enhance safety through the ASTM consensus process by facilitating the creation of effective standards based upon hazard data. Like any relationship, it is not always without complications. Let me be very clear. Our industry appreciates uniform national safety regulations. The ASTM process is the backbone of many advances in product safety. However, this process is based upon consensus agreement only after consideration of data and sound hazard analysis.

Over the years, our members have taken CPSC input into account when developing and revising the ASTM Juvenile Product Standards. We believe in the collaborative nature of the process. However, for its part, CPSC staff must better understand and appreciate the realities of implementing standards for the design and production of actual products.

As this committee knows, the CPSC is a data-driven agency. ASTM participants often rely on CPSC staff to provide summaries of verified incident data and engineering analysis. Historically, such data has been provided in accordance with CPSA Section 6 requirements. Unfortunately, most recently, such data has not been shared as required for effective standard setting. We urge the CPSC to provide such data, as available, and believe that the process works best when there is a two-way street.

We agree with the CPSC's recent recognition and strategic plan to address such shortfalls and applaud its desire to improve its data systems and increase databased decisionmaking.

Additionally, our members have significant concerns about the manner in which warnings are currently being discussed through the ASTM process. We remain committed to safety and advancing the standards but believe that arbitrarily changing language and/or format in the NPR, after it has been discussed and balloted on multiple occasions within the ASTM process, does not allow for the best standard to be incorporated as the final rule. Additionally, staff action has created the perception amongst many participants at ASTM that the CPSC will ultimately change the standard during mandatory rulemaking, regardless of consensus at ASTM.

At the end of last year, participants of ASTM shared in a letter to the Chairman this sentiment and urges CPSC to delay implementation of any juvenile product rulemaking specific to product, package, and instruction warning, until a consensus-based approach could be reached. That letter has been submitted for the record for your review.

JPMA believes strongly in the importance of effective recall, combined with Government cooperation. The CPSC's award-winning voluntary recalls program has saved manufacturers countless hours of negotiations and ensured that recalled products are voluntarily and quickly removed from traditional and virtual store shelves. The proposed changes to the voluntary recalls rule are unnecessary and problematic. Congress has had, on multiple occasions, the opportunity to make changes to the 6(b) process but has not. We believe that the confidentiality safeguards available under CPSA Section 6(b) are vital in maintaining a process that has been in place and working for decades.

While we do not agree with the Commission's decision to keep these projects in the operating plan, we do appreciate the Chairman's public commitments that neither of these will be heard for decisional vote.

The CPSC and JPMA share the same goal, to advance safety. We commend the Chairman for his willingness to work with industry on issues, such as the electronic filling of certificates at import. We are also encouraged with recent studies commissioned by the CPSC to look for ways to reduce the burdens posed by excessive third party testing requirements and hope that these efforts will finally result in meaningful relief to all companies, specifically small ones.

The CPSC leadership and staff continue to state that there is an open-door policy at the agency for all stakeholders. It is paramount that this policy be maintained and respected.

We look forward to our continuing engagement with the committee and the CPSC and the ability to walk through an open door.

Thank you Chairman Burgess and members of the committee for calling this hearing and inviting JPMA to testify. I look forward to your questions.

[The prepared statement of Mr. Fellin follows:]

Statement of Mark S. Fellin, MPS
Director of Regulatory and Legislative Affairs, JPMA
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Subcommittee on Commerce, Manufacturing and Trade
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Thank you Chairman Burgess and Ranking Member Schakowsky for the opportunity to provide testimony on "Industry Perspectives on the Consumer Product Safety Commission (CPSC)" to this Committee.

The Juvenile Products Manufacturers Association (JPMA) has a long and proud history of ensuring that juvenile products are built with safety in mind. JPMA members, who are comprised of parents, grandparents and caregivers, design products that help parents care for and protect their children. As an industry, we personally understand the importance of ensuring that our children are safe in all environments and that parents and caregivers are educated about the importance of juvenile product safety and best practices when choosing and using products for their babies and children.

On behalf of the JPMA members I have the honor of submitting and presenting the juvenile product industry's perspective of the ongoing working relationship between our industry and the CPSC. Since 2012, I have acted in the role of Director of Regulatory and Legislative of Affairs for JPMA and I have a tremendous appreciation for the work this Committee has done since the implementation of the Consumer Product Safety Improvement Act ("CPSIA") and related amendments thereto. Additionally, as both a former Congressional and CPSC staff member, I sincerely appreciate all the time and energy that staff have put in to making this hearing informative for all parties. Our Association has a long history of working with state and federal governments to advance JPMA's core mission to be an information source and to provide leadership for all stakeholders related to the production and safe use of infant products.

My testimony today will focus on three areas: (1) Association's relationship with the CPSC as it relates to Section 104 of the CPSIA, more commonly referred to as the "104 rules"; (2), CPSC staff involvement throughout the ASTM process: and (3) industry concerns that the integrity of the ASTM Standard setting process be maintained as they relate to required Section 104 rules that are currently part of the Agency's mandate and operating plan.

**I. Background of the JPMA**

The Juvenile Products Manufacturers Association (JPMA) is a national not-for-profit trade association representing 95% of the prenatal industry including the producers, importers, and distributors of a broad range of childcare articles that provide protection to infants and assistance to their caregivers. JPMA exists to advance the interests, growth and well-being of North American prenatal to preschool product manufacturers, importers and distributors marketing under their own brands to consumers. It does so through

advocacy, public relations, information sharing, product performance certification and business development assistance conducted with appreciation for the needs of parents, children and retailers. JPMA continues to work with government officials, consumer groups, and industry leaders on programs to education consumers on the safe selection and use of juvenile products.

**II. 104 Rulemaking**

The Danny Keysar Child Product Safety Notification Act, section 104(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"; Pub. L. 110-314, 122 Stat. 3016), requires the United States Consumer Product Safety Commission to promulgate consumer product safety standards for durable infant and toddler products. These standards must be substantially the same as applicable voluntary standards or more stringent than the voluntary standard if the Commission determines that more stringent requirements would further reduce the risk of injury associated with a product.

JPMA has been instrumental in the development of many key standards that have advanced public safety, with participation by expert engineers and product design consultants from our members in ASTM Subcommittees under F15.18 involved in the development of standards on cribs, toddler beds, play yards, cradles and changing tables and other durable infant products. This group received former Chairman Inez Tenenbaum's inaugural Chairman's Circle of Commendation award for its work as "crucial to the development of CPSC's new mandatory crib standards - the strongest in the world.[1]" JPMA and CPSC staff have worked collaboratively throughout the ASTM process. Relying on each others expertise, we have been able to enhance safety through the ASTM consensus process by facilitating the creation of effective standards based upon hazard data.[2] Unlike most federal standards, such standards do not remain static and are subject to periodic review and update.[3] JPMA appreciates all the time and energy that career agency staff expend by attending meetings and providing constructive feedback.[4] Like any relationship, it is not always without complications. Let me be very clear, our industry appreciates uniform national safety regulations. Our members take time out of their schedules, voluntarily and at their own cost in both time and money, to attend ASTM meetings, chair F.15 subcommittees, perform product testing to investigate whether proposed enhancements to standards improve safety, and provide feedback to the appropriate ASTM subcommittees. The ASTM process is the backbone of many advances in product safety.

[1] http://www.cpsc.gov/Newsroom/News-Releases/2012/CPSC-Chairman-Inez-Tenenbaum-Awards-Her-First-Safety-Commendations-to-Five-Individuals-and-Groups/

[2] Once a standard has successfully cleared the three levels of peer review provided by ASTM (subcommittee, main committee, and Society), it is assigned a fixed alphanumeric designation and receives an official approval date. An ASTM standard is capable of being cited in contractual language, referenced by a code body, or mandated by government as Congress did for toy safety specifications under ASTM F-963 et. Seq. and for Section 104 rules when CPSIA was enacted.

[3] Review and potential updates are required every five years at minimum, but often revisions occur more frequently.

[4] CPSC January 27, 2016 Final Rule to Amend 16 C.F.R. Part 1031 to expand participation of CPSC staff in voluntary standard setting processes.

However, this process is based upon consensus agreement, *only* after consideration of data and sound hazard analysis. In this regard, we do not favor regulating simply for the sake of regulating.

**A. ASTM Provides an Effective Forum for Standard Setting.**

Our members have actively participated in the various subcommittees where proposed changes to product, package and instruction warnings are being discussed. Seeing the need for uniformity across all juvenile product standards, the ASTM subcommittees independently formed a task group to develop consistent warnings. Over the years, our members have taken CPSC input into account when developing and revising the ASTM juvenile product standards. We believe in the collaborative nature of the process, and that the CPSC plays an important and vital role in that process. As part of this process, CPSC staff must better understand and appreciate the realities of implementing standards for the design and production of actual products. We remain concerned that CPSC staff not arbitrarily change language, placement or dynamic performance requirements within a standard without adequate justification. The ASTM process relies on individual participants' ability to comment on draft proposals, initiate revisions to a standard and review a final document before approval to ensure that all issues are vetted appropriately. While this process may take time from a CPSC standpoint, this approach assures that everyone's voice is heard and that the ***"best standard"*** is available for publication and consequently CPSC staff reference during Final Rulemaking as required for durable juvenile products.

In connection with development of ASTM Standards, participants often rely on CPSC staff to provide summaries of verified incident data and engineering analysis as part of the process of risk hazard analysis and development of performance requirements. Historically, such data has been provided while also maintaining confidentiality in accordance with CPSA Section 6 requirements. Unfortunately, such data has not recently been as forthcoming as required.[5] We urge the Commission to provide such data as is available to ensure all parties have the necessary informed to make informed decisions.

JPMA also agrees with the Commission's recent recognition in its Strategic plan to address this shortfall when it noted "Difficulty in identifying emerging risks, as compared to known hazards, is another data- related area of vulnerability for the CPSC. Each of the strategic goals in the new strategic plan involves strategies and specific initiatives aimed at improving data systems and increasing data-based decision making.[6]"

**B. Warning Statements Must Be Consistent Across Standards**

JPMA and our members have significant concerns about the manner in which warnings are currently being discussed during the ASTM process. From our standpoint, the CPSC

[5] IE: October 19, 2015 letter from ASTM Gate Subcommittee Chair Jon Robinson to staff requesting incident data to support proposed changes to the gate standard and subsequent CPSC response letter dated November 24, 2015 that did not provide requested data or information.

[6] CPSC Strategic plan 2016-2020 Section 2.1

has been inconsistent in its warnings proposals and proposed revisions. We remain committed to safety and advancing the standards. Arbitrarily changing language and /or format in the NPR, after it has been discussed and balloted on multiple occasions within the ASTM process, does not allow for the best standard to be incorporated as the final rule. Additionally, it has created the perception amongst many participants at ASTM that the CPSC will ultimately change the standard during mandatory rule making regardless of consensus at ASTM. We think we all can agree that this is **not** good rulemaking.

On December 21, 2015, and after several meetings both at the staff and Commissioner level, over 30 individuals representing juvenile product manufacturers, testing laboratories, independent consultants who participate in ASTM, consumer groups and other supply chain stakeholders, wrote a letter[7] to the CPSC urging them to delay implementation of any juvenile product rulemaking specific to product, package and instruction warnings until a consensus based approved approach could be reached within the ASTM process.[8]

The Chairman has embraced the concept of adherence to ANSI Z535, a recognized standard governing the appropriate development of labeling requirements. We welcome such recognition. In this regard, however, assigned staff must embrace this process and provide justification for suggested warnings and rationale for placement sought. Additionally, staff should recognize that they are subject to the requirements of such standard setting processes and appreciate the collaborative nature required in a consensus standard setting process under ASTM process rules. Such processes have served all interested parties well over the past several years.

Across several subcommittees (Infant Bath Tubs, Bouncers, Children's Chairs, High Chairs, etc.), there has been inconsistent messaging coming from CPSC staff as it relates to warnings and warnings format in the various standards. We believe that many of the changes proposed by CPSC staff are circumventing the collaborative nature of the ASTM process, are confusing for both manufacturers and the respective testing labs, and also go beyond ANSI Z535 standard requirements.

In this context, there are no studies or data that demonstrate that the very specific warnings format and wording from CPSC will change consumer behavior more effectively than other formats and wording formerly adopted.

Additionally, we believe that many of the changes are not advancing overall product safety for the consumer. For instance, CPSC's recommendations for warning placement increase the potential that bi-lingual warnings will not be feasible. Even the proposed requirements for "non-compressed Sans Serif" are not generally understood in the printing industry. In our opinion, CPSC staff should not seek to regulate borders, panels, or coloring beyond ANSI requirements. Changes and suggestions such as this do not advance

[7] December 21, 2015 letter to CPSC Chairman Elliot Kaye expresses process concerns regarding Warning Labels as well as recommendations regarding process moving forward.
[8] Such concerns are independent of conformance with 16 CFR 1500.121

safety, make manufacturing products for the US market more cost prohibitive and may not allow for innovations to accommodate new designs. Finally highly specific warning and format requirements from CPSC staff risk possible misalignment of standards with other countries.[9] At a time when governments openly talk about alignment of standards, this approach can lead to further conflict with worldwide requirements.

Like the CPSC, we share the mutual objective of advancing product safety. Many of us dedicate significant personal time, and resources at ASTM meetings. We appreciate CPSC's dedication and believe they play a valuable role in the standards setting process. However, in order to more efficiently ensure that the best standard is available for the consumer, we have requested that the CPSC delay any portion of a proposed rule that incorporates proposed warning language revisions until these issues can be thoroughly vetted and incorporated into the ASTM process. We want to be active partners in this enterprise and are hopeful that the agency appreciates our concerns as genuine.

**III. Pending Projects Under CPSC Operating Plan**

JPMA believes strongly in the importance of an effective recall combined with government cooperation. Our manufacturers pride themselves on their ability to reach consumers and educate care-givers when a recall occurs. For years, the CPSC has been a tremendous asset in getting potentially unsafe products off the store shelves. Their award winning voluntary recalls program[10] has saved manufacturers countless hours of negotiations and ensured that recalled products are voluntarily removed from the shelves as quickly as possible. Additionally, this program affords the CPSC the opportunity to save staff time and resources by not having to investigate defective product claims. From our perspective, the proposed changes to the voluntary recalls rule are significantly problematic. As the oft used adage asks, "If it isn't broke, why are we looking to find ways to fix it"? The proposed changes will not change the way "bad actors" are currently engaging with the CPSC, but could reduce the efficacy such recalls by responsible actors and lead to conflict in the efficient implementation of voluntary recalls as bureaucratic requirements are imposed and required to be extensively reviewed and negotiated.- Many of our manufacturers are small "mom and pop" entities who might not have resources to engage in extensive negotiations of formal voluntary recalls as prescribed in the proposed rule.[11]

As this Committee is aware, Congress has had on multiple occasions the opportunity to make changes to the 6b process.[12] Like Congress, we agree that the confidentiality safeguards available under CPSA Section 6b remain important to assuring the exchange of

[9] Health Canada has expressed concerns during Ad Hoc Warning Label Committee meetings regarding proposed changes and regulation alignment.
[10] http://www.cpsc.gov/en/Business--Manufacturing/Recall-Guidance/Innovations-in-American-Government-Award-Fast-Track-Recall-Program/
[11] In November 2013, the CPSC issued a proposed rule (78 Fed. Reg. 69793) that could negatively impact the Commission's voluntary recall process and would place significant burdens on manufacturers and retailers. Despite extensive opposition to the proposed rule, and Statements that it was not a priority it remains in the Commission operating plan.
[12] http://www.regulations.gov/#!documentDetail;D=CPSC-2014-0005-0018

confidential data by manufacturers voluntarily reporting to the CPSC and in connection with the staff's ability to obtain proprietary information from entities conducting voluntary recalls.[13]

While we do not agree with the Commission's decision to keep these projects on the operating plan, we do appreciate the Chairman's public commitments that neither of these will be heard for decisional votes.

At JPMA, safety has been, and always will be, our top priority. Our members strive to work collaboratively with both federal and state legislators and regulators to advance product safety. We urge this committee and CPSC and to continue to look for opportunities outside the consensus standards process to encourage collaboration between industry, CPSC and the rest of the product safety community. We would like to thank and commend Chairman Kaye for his willingness to work with industry on issues like the electronic filing of certificates at import. His leadership in bringing the various stakeholders together to solve a problem is key to effective rulemaking. In working with the Customs Advisory Committee (COAC), CPSC has proposed a pilot program that takes into consideration many of the implementation challenges presented, while achieving the shared objective of stopping unsafe products from coming into the country. We are also encouraged with recent studies commissioned by CPSC to look for ways to reduce the burdens posed by excessive third party testing requirements, in ways that do not compromise a product's safety, and we hope that these efforts will finally result in meaningful relief to small companies.

Regulations and legislation play an important and vital role in ensuring that only the safest products make it to market, and JPMA will continue to support and advocate for regulation that is meaningful and beneficial to consumers. The CPSC leadership and staff continue to state that there is an open door policy at the agency for all stakeholders. JPMA and its members take advantage of the opportunity and engage on a regular basis to ensure all information and positions are considered in any decisional matters by the Commission. It is paramount that this policy be maintained and respected for all issues that affect the regulated community and that considerations of thoughtful, insightful and expert industry information is considered during each stage of any process. Without this process, consumers will not be well served. We look forward to our continuing engagement with this Committee and the CPSC and the ability to walk through an open door.

Thank you Chairman Burgess and Members of the Committee for calling this hearing and inviting me to testify today. I look forward to your questions.

[13] http://c.ymcdn.com/sites/www.jpma.org/resource/collection/DAD0B69F-A001-4829-931E-1131DAF39D79/JPMA_Voluntary_Recalls_Comments_Final_-_Feb.3,2014.pdf

Mr. BURGESS. The Chair thanks the gentleman.

The Chair thanks all of our witnesses today. I certainly thank you for spending your time with us this morning.

We will move now into the questions portion of the hearing. I will recognize myself for 5 minutes for questions first.

And Mr. Fellin, congratulations on the birth of your 5-week-old.

Mr. FELLIN. Thank you.

Mr. BURGESS. You look awfully well-rested for someone with a 5-week-old at home.

Mr. FELLIN. I have a very supportive wife.

Mr. BURGESS. There you go.

Well, your members are pretty heavily engaged in voluntary standards in a unique manner. Can you give us a sense of the overall relationship between your industry and the Commission? Where is the collaboration particularly strong and where are there points of tension?

Mr. FELLIN. Overall, the relationship between our agency and the CPSC in the ASTM process is extremely strong. We have had multiple occasions where CPSC has referenced the final ASTM rule without changes. So, for the most part, it is a good and positive dialogue.

Where there is concern right now amongst industry and our relationship are really when it comes down to warning labels and the way that discussion is currently occurring. There has been a lot of work, many ad hoc committees that have discussed this and, unfortunately, the resolution just doesn't seem to come to fruition with this issue.

Mr. BURGESS. Are you hopeful or optimistic that that gulf could be bridged?

Mr. FELLIN. Unfortunately, based on recent discussions, I feel like we are at an impasse. And the fear is that the CPSC is going to go ahead with rulemaking and incorporating of the ANSI standards without necessarily going through the ASTM process.

Well, thank you for sharing that with us. Perhaps that is something where the subcommittee could have some additional interest.

Mr. Pritchard, you were here before and I certainly thank you for your remarks this morning. It is rare, as a member of Congress, when we hear that we have done our job and things have worked. So, I appreciate you for sharing that experience with us.

But in May when you testified, your industry was right in the middle of updating its voluntary safety standard. It was contentious with the Consumer Product Safety Commission staff. How important was it for your industry that the CPSC staff reevaluated their recommendations to the Commission once the voluntary standard was updated?

Mr. PRITCHARD. So, I think the factor in the middle of that, the reevaluation or the recommendation to the Commissioners, I think what they have done is they have evaluated the updated draft standard, which they received late last year, seemingly approve it, based on their letter. We have had good conversations about it and in our view, we are moving forward to finalizing the voluntary standards.

At that time, we think that the staff will recommend that the Commission terminate the rulemaking. But to get from where we

were to here, took a lot of steps and a lot of conversations. And frankly, Congress' involvement was crucial. There is just nothing else to say about it.

I think we were in a place where we had our position, they had their position and someone needed to help come in and break the logjam and get the parties talking to each other and listening to each other a little bit better.

And I would just want to add to that point that those conversations have continued. And so I think we are in a much better place than we were 8 months ago, even 6 months ago.

Mr. BURGESS. And that is to what you attribute the breaking of the logjam? Because when you were here before, it was pretty tense.

Mr. PRITCHARD. It was tense and it remained that way for a while. I do believe it broke the logjam but I think you can't underestimate the CPSC staff's willingness to still engage with us in those discussion. We did keep talking. They deserve credit for continuing to talk with us and those conversations were in-person, on the telephone, offsite to see the vehicles being tested. So, it was a collective effort but I can't understate the importance of your involvement.

Mr. BURGESS. OK, just as a point of congressional trivia, I am the chairman of the Congressional Motorcycle Caucus. So, I wanted to share that with everyone in full disclosure.

Well, and I will, too, say the staff at the Consumer Product Safety Commission—it has been a few years since I have been out there and visited with the staff, but I have done that. In fact, we were working on the bill in 2007 and 2008 and the staff is certainly nonpartisan. Certainly, they are dedicated to their job of consumer safety. Some days, or some things, or some areas where they look quite innovative in their ability to actually create the tools that they needed to test a particular product. So, I just want to echo your sentiment on what a good job that the staff does and certainly, they don't get singled out for praise often enough.

Mr. Gold, I just want to address one thing with you and I may provide some follow-up questions for you. In your testimony finally, I would like to briefly raise an issue that has not been discussed with the subcommittee or generally to date, the recalls being visited upon the retailer, as opposed to the manufacturer.

And when I sat on this subcommittee many years ago when Chairman Rush was the subcommittee chair, this seemed to be a significant problem that products that were going to be recalled were finding their way into the country and then the recall happens. And I remember Chairman Rush expressing some concern that some of these products that were recalled for a valid reason might end up in discount houses in neighborhoods across the country. Is that to which you were referring in that part of your testimony?

Mr. GOLD. Mr. Chairman, no. Unfortunately, we are seeing instances where just products in general, the CPSC is going to the retailer first to push for recalls. We were seeing some issues, two issues that were mentioned earlier like hoverboards and window coverings, where the CPSC is going through the retailer and trying to make sure that products were pulled off the shelves or a recall

is done, without working through the process and working with the manufacturers.

It is a longstanding process. We just feel like there is more emphasis now on going to the retailer because they are the consumer-facing aspect to push that action before going through the process.

And as far as the other products we were talking about, this is where kind of the worst-based methodology comes in in risk targeting and the ability to do that to make sure you don't have these volatile products coming into the country from the start.

Mr. BURGESS. Yes, I do want to follow up with you in writing for the record.

Ms. Schakowsky, you are recognized for 5 minutes for questions, please.

Ms. SCHAKOWSKY. Well, hoverboards have come up a number of times. They were one of the most popular holiday gift this year. But unfortunately, we have been hearing more and more reports about hoverboards exploding and catching fire unexpectedly. So far, at least 20 U.S. colleges, several major airlines, and a few cities have banned them. And some retailers have started taking them off the shelves.

Just yesterday, ABC News reported that a home fire in Tennessee was caused by a hoverboard that burst into flames. But a consumer who really wants one, can still find one and they are still unregulated.

So, Ms. Weintraub, when it becomes apparent that a new product poses a safety risk, how can we ensure that things move quickly to reduce the number of accidents, such as leveraging rules that already exist for similar products or component parts?

Ms. WEINTRAUB. Well, I think what you suggested is exactly right. I mean we need safety standards. And I think for this product, we don't need to start from scratch. And UL, for example, is expert in lithium-ion batteries. There are other standards. They are already moving on a standards process.

Hoverboards could fit into motorized scooters with an ASTM and they are also beginning the voluntary standard process. Since they don't need to start from scratch, hopefully, this process will move faster.

But even before a product comes on the market, we think it is the responsibility of the manufacturer to do a risk assessment, figure out what hazards could this product pose, what hazards have other similar products posed, and are there similar standards, if not exact standards that couldn't be complied with to prevent that type of hazard.

Consumers also, in a case like this, need concrete information. They need to know whether a product that their child is riding, that is sitting in their home could explode, could cause a fire.

So, we hope investigations that the CPSC is conducting, and our understanding is they have been working around the clock, they worked over the holidays, we are very much hoping that this investigation will lead to the information so that consumers can have concrete information so that products that have caused fires will be recalled. And that is what consumers need, clear information.

While it is very positive that there are some retailers that aren't selling these products, it is still very consuming and they are still very available for purchase.

Ms. SCHAKOWSKY. Hoverboards are not exclusively a child's product. So, they are not subject to the same safety standards as toys. Is there a gap that we should be concerned? Should there be more strict standards in place for products like hoverboards which are not made just for kids but are certainly used by kids?

Ms. WEINTRAUB. I think there is a gap for any product that is not subject to a voluntary or mandatory standard and we have seen this with infant and juvenile products, as well as with other products like hoverboards that when there is not a standard already in place, there can be risks. And I think this product very much shows what can happen when there is not a standard and when manufacturers are not testing their products to similar types of standards to ensure, in this case, that the batteries and the charging mechanisms don't overheat and pose a fire risk.

Ms. SCHAKOWSKY. I wanted to ask you about imports. The Chairman of CPSC has said that inexpensive models of hoverboards manufactured in China are of particular concern and that many of the problematic units seem to be coming from there. Customs and Border Protection recently seized almost 3,000 counterfeit hoverboards that they said "posed a potential health risk to U.S. consumers."

So, can you talk about some of the challenges associated with ensuring the safety of imported consumer products?

Ms. WEINTRAUB. Sure, especially in cases where products are manufactured overseas, imported, and there is not an entity in the U.S., it is very difficult for the CPSC to talk with that entity, to conduct a voluntary recall, to discuss safety issues. So, I think that poses a specific risk to these types of products. I think it is for that reason that retailers who are the first contact that consumers have with these products are being contacted and do have a responsibility. And we certainly think that everyone in the supply chain from the manufacturer to the retailer, to testing labs, the entire supply chain has a responsibility to ensure that products on the market don't pose risks to consumers.

And this is also why we are very supportive of CPSC's efforts at import surveillance because another layer in product safety is to prevent these products from entering the U.S. market and getting into our homes.

Ms. SCHAKOWSKY. Great. I will yield back. Thank you. Thank you very much.

Mr. BURGESS. The Chair thanks the gentlelady. The gentlelady yields back.

The Chair now recognizes the gentleman from Kansas, the author of the RIDE Act, 5 minutes for questions, please.

Mr. POMPEO. Thank you very much, Mr. Chairman.

Mr. Pritchard, what are the lessons learned? How do we repeat the success that we collectively add to your industry, CPSC and their staff, us here on the committee and the Congress? What are the lessons about timing and how we can be constructive to work together to get good outcomes for consumers and for manufacturers a well?

Mr. PRITCHARD. So, I think there a couple steps and I will base it on our experience but I think that they can be applied fairly broadly.

One, I think when industry realizes that there is an impasse with the Commission, then industry needs to bring it to your attention and let you know that there is a problem. I think at the Commission, if they are in discussions with industry, they should keep those discussions going.

In my view, voting out the Notice of Proposed Rulemaking was a profound mistake and I will tell you why today and what I said then. Essentially, the Notice of Proposed Rulemaking puts industry on the defensive. And so then, in response, industry submits comments back, which are critical, which puts the Commission on defensive. So, at that point, it is really hard to have a discussion because everybody has basically got their backs up, trying to defend positions, rather than trying to reach the best outcome.

So, it is really this. Industry has got a part to play in keeping the discussion going. The Commission has a part to play in keeping the discussion going. And I think then Congress has to be involved early enough to be part of those discussions, to let the parties know that Congress is paying attention and that Congress is expecting a sensible resolution because I am assuming you all don't want to have to deal with legislation every time an impasse comes up, whether it is with this Federal regulatory agency or another one.

Mr. POMPEO. That is a pretty fair assumption. Thank you for that.

Ms. Weintraub, you talked about the Consumer Product Safety database a little bit in your opening comments. You said there were 27,000. What period was that over?

Ms. WEINTRAUB. So, that is from when it——

Mr. POMPEO. Is that from inception?

Ms. WEINTRAUB. Inception. Conception—no, not conception. Creation.

Mr. POMPEO. From when it began.

Ms. WEINTRAUB. When it began. I think it went online in 2011 until January 21, 2016.

Mr. POMPEO. And tell me what benefits you can tangibly identify that resulted from that.

Ms. WEINTRAUB. Sure. Well, as you well know, with 6(b), there was a limited amount of information that the CPSC has been able to communicate naming brands of products.

So, before, if a consumer was interested as Mr. Fellin has been, in purchasing a product for a new baby, there is limited information. He is in a different case because he is an expert but there is limited information that you can get from CPSC's Web site, other than general information about hazards associated with strollers, in particular.

So, what this database has created is a resource for consumers. They could see if they are looking for a stroller what consumers' experience has been. They can see if they own a stroller, whether someone else has a similar experience or maybe it is just specific to their use.

So, I think it has really created a much more robust and much more rich resource for consumers, as well as for researchers and

others. Something else we have been able to identify is sort of well what are the product categories that are most represented. Are there trends? So, we have looked at his data for that type of stuff.

Mr. POMPEO. Do you know what the error rate is then, that is complaints that were made, items listed of those 27 that were just flat out wrong, they had the wrong manufacturer, it was un-useful information or even worse?

Ms. WEINTRAUB. I am sorry, do I know the number that had errors?

Mr. POMPEO. Yes, that were just flat out wrong.

Ms. WEINTRAUB. I do not.

Mr. POMPEO. Like if somebody was mad and they wrote down it was Brand X and it turned out they had nothing to do with Brand X.

Ms. WEINTRAUB. I do not.

Mr. POMPEO. Do you know how many hours were spent for manufacturers responding in the way that they are required to respond by law to items that appear on the CPSC database?

Ms. WEINTRAUB. I do not.

Mr. POMPEO. Do you know how much it costs them to do that?

Ms. WEINTRAUB. I do not.

Mr. POMPEO. So, not tangible benefits that have been identified. That is, we can quantify that and you have no idea of what those costs were.

Ms. WEINTRAUB. I do not have knowledge of those costs.

Mr. POMPEO. Great, thank you.

Mr. Chairman, I yield back.

Mr. BURGESS. The Chair thanks the gentleman. The Chair recognizes the ranking member of the full committee, Mr. Pallone, 5 minutes for questions, please.

Mr. PALLONE. Thank you, Mr. Chairman.

My questions, initially, are to Ms. Weintraub about the crumb rubber, the crumb rubber issue. Over the last several years, questions have been raised about the safety of artificial turf, which is used in schools, parks, daycare centers, and sports fields throughout the country. An NBC News report in October 2014 documented a growing group of young athletes diagnosed with non-Hodgkin's lymphoma who played on artificial turf fields filled with crumb rubber. And the crumb rubber is often made from recycled tires, which contains carcinogens.

Following the NBC report, I sent a letter to the Centers for Disease Control asking for an official study to examine risks of continued exposure to crumb rubber. And in May 2015, during a hearing in front of this committee, CPSC Chairman Kaye agreed with me that more research is needed. And in October 2015, Chairman Upton and I sent a letter to the EPA, once again, expressing concerns on this issue. But I have to say that I am disappointed that still nothing has been done.

And clearly, this is a complicated issue. Many agencies are involved. So, Ms. Weintraub, are you aware of any existing industry standards to prevent the use of toxic chemicals in artificial turf?

Ms. WEINTRAUB. I am not aware of a specific standard for crumb rubber. We could certainly hope that since it is going into a children's product that similar standards could be used as guidance,

for instance, in terms of lead and other heavy metals, but I am not aware of a specific standard.

Mr. PALLONE. Is the research sufficient to conclude that exposure to crumb rubber is safe and that it is OK for kids to play on it, you think?

Ms. WEINTRAUB. No, I do not think the research is sufficient, and we very much support your position and that of the CPSC that more research is needed and that all the entities, State, Federal, need to work together as quickly as possible to research this issue.

Mr. PALLONE. I think you answered my next question. It was about CPSC's limited resources to investigate the possible health effects of prolonged exposure to crumb rubber. And you said that you do think it would be beneficial for them, CPSC to work with the other agencies.

Artificial turf and crumb rubber has been in use for more than a decade. They are using it on playing fields, playgrounds across the country but there are a lot of serious safety questions that linger unanswered, while our children and athletes continue to be exposed. Let me ask you again. What can the CPSC do to address safety and health concerns with new products, not just crumb rubber, but with new products before they come to market so that our children are not the test subjects?

It often seems like the product comes to market and then if things go wrong, OK, then we take another look at it. Can we look do things differently in that regard?

Ms. WEINTRAUB. I think we can. I think the responsibility lies with the manufacturers of the products to ensure that they meet standards, if standards exist. And then if no specific standards exist that they use those as guidance to ensure that they don't pose risks to consumers. We actually think that for many products, such as infant and toddler products, that product should not go on the market if there is not a voluntary standard.

Mr. PALLONE. You know I think that the public thinks it is the opposite. They are shocked when you tell them well, the product goes on the market and then we see if it is safe. They assume that is has already been tested and safe before it goes on the market. But that is not the case. Correct?

Ms. WEINTRAUB. Correct. And that is certainly true. I mean consumers perceive that if a product is available for sale that has been tested by some entity for safety. We have tried to bridge that gap with CPSIA for infant and toddler products but we still have a long way to go.

Mr. PALLONE. Well, let me just ask one more question about the artificial fields. I am also concerned about the possible physical injuries that can occur while playing on artificial fields, such as joint injuries from increased resistance or burns from overheated turf. Should the CPSC also be investigating these other possible safety concerns, in your opinion?

Ms. WEINTRAUB. Definitely.

Mr. PALLONE. All right. I have a minute left. I wanted to ask a little about emerging hazards but I know I don't have much time. Is there a difference in how emerging hazards from consumer products are handled when they relate to a defect, as opposed to an unintended use, such as kids biting into laundry pods? I know when

my wife starting using these laundry pods, I was wondering what they were. My understanding is that kids will think they are candy.

So you know the question is, does that response tend to be faster for one than the other of those two types of things?

Ms. WEINTRAUB. You know I really think, and I worked on the laundry pod issues as well as many others, and I think one of the biggest responsibilities of a manufacturer is to think of foreseeable use, which may include unintended use. But foreseeable use of how the product is used in the real world must be thought about, must be assessed, and the product must be designed for that foreseeable use.

Mr. PALLONE. OK, thanks a lot.

Mr. BURGESS. The gentleman yields back. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Kentucky, Mr. Guthrie, 5 minutes for questions, please.

Mr. GUTHRIE. Thank you, Mr. Chairman. Thank you for conducting this meeting and I thank all the witnesses for being here.

My first question is for Mr. Pritchard. Based on your recent experience of vetting the ROV voluntary standard, should we be concerned about how the Commission is using or not using scientific data to support these policy positions?

Mr. PRITCHARD. Our experience was that the data did not support the Commission's claims.

I want to go back in time. We received the Notice of Proposed Rulemaking in a briefing package and it had a lot of claims in it with references to data and incident reports that were separate. So, we requested all of those records and all that data and couldn't get it. We couldn't get it and we ultimately filed a FOIA appeal, which was granted in its entirety some months later.

When we dug into the data, the data did not match, in our view, the claims and we explained that in our comments back to the Commission in response to the Notice of Proposed Rulemaking. I don't know if that means that there is a profound issue or a fundamental issue. I can just tell you that we had an issue with the data.

Mr. GUTHRIE. Mr. Gold or Mr. Fellin, do you have any comments on that type of—that is fine. I have got another question. You can go ahead.

Mr. FELLIN. We have had similar concerns along the ASTM process where we have requested data from the agency, both verbally at ASTM meeting and then also in writing to the various CPSC staff members on it and have been denied that information.

Mr. GUTHRIE. I have a question for you, Mr. Fellin. In May 2012, the GAO published a report recommending that the Commission staff participate more actively in the voluntary standards process. Given your experience with the agency, is the delay between the publication data of the GAO report, May of 2012, and the effective date of the new rules, March 3rd of this year, typical?

Mr. FELLIN. I think it all depends on staff resources and the priorities of a given Commission.

Mr. GUTHRIE. Well, given the importance of voluntary standards to the product safety and the Commission's mission, should this rule update have been priority over other of their undertakings?

Mr. FELLIN. From JPMA's perspective, CPSC already plays a vital role in the 104 rulemakings, which I think are a unique standard-setting process. We raised concerns with the proposed rule mainly that agency staff not have undue influence over the process and that staff not dictate Commission decisions. But I can't speak as to whether or not it should have been a higher priority for other industries.

Mr. GUTHRIE. OK, thank you very much.

And Mr. Gold, you mentioned the Commission's open meetings policy in your testimony. Transparency is what we all want to see happen. It is a Government good. It is what we need to have in place, but just a question about it.

What impact does this policy have on the Commission's ability to communicate with industry and are there circumstances where Commission resources have benefitted from feedback from the industry prior to releasing the proposed rule?

Mr. GOLD. Thank you, Congressman. So, I think the alpha pilot is probably the prime example of where there was an issue because, as this working group was created under the COAC, which is a Customs advisory committee, we had plenty of discussions with Customs but yet, CPSC was not in the room for these discussions, our technical discussions on how supply chains work, how data is transferred, who owns it at what point in time. So, as this is a CPSC rulemaking, they are going to be relying on CBP to collect the data, not having CPSC in the room to understand some of these difficulties was a little challenging because we would have to CBP to provide us information from CPSC with questions and challenges, and that we would have the discussion, and we would have to rely back on CBP to go back to CPSC to do the interpretations.

So, we fully understand transparency and the need for that but there are certain times when you have to have these technical meetings where you have companies who are talking about very business confidential information as far as how their supply chains work and what data they have and when they have it. Those kinds of meetings get very technical and we think should be closed. And this is where an advisory committee, whether it is a FACA or some other committee could help with this process moving forward.

It would have been nice, had we had the opportunity to have these working group discussions or stakeholder meetings before the 1110 rule was put out to talk about some of this so we didn't have a rule put out that everybody was opposed to and listed a whole number of concerns. Had we had those discussions in advance and talked about the complexities, and really had discussion about what is it that CPSC wants, what it is that industry can provide, it would have been a better position to be in than where we are now. We are glad we have the pilot in place to really work through some of these technical issues and try and figure out how this is best going to work.

Again, we are very supportive of risk-based targeting. We think this will help but because of the complexities, we can't just put a

rule out and expect everyone to do it. This needs to be worked through because of the technical aspect of it.

Mr. GUTHRIE. OK, thank you. My time has expired. I yield back.

Mr. BURGESS. The Chair thanks the gentleman. The gentleman yields back.

The Chair recognizes the gentlelady from New York, Ms. Clarke, 5 minutes for questions, please.

Ms. CLARKE. I thank you, Chairman Burgess for this very important hearing. And to all of our witnesses today, thank you for lending your expertise to the subject matter at hand.

I want to raise the issue of recall effectiveness. We would all like to avoid problems before they happen but sometimes unexpected harms arise. In these cases, the CPSC works with the manufacturer of a defective product to conduct a recall but notice to consumers is difficult and recall response rates tend to be very low.

So, Ms. Weintraub, do you have any ideas on how the CPSC or industry can be more proactive in reaching consumers when there is a recall on a product?

Ms. WEINTRAUB. Yes, I do. Thank you very much for the question.

Both Kids in Danger and the Chairman have said that those involved in selling products should use the same amount of energy and resources that they do to sell a product to get a product back that has been recalled. And we are very far from that goal.

I think there are many things that both the CPSC and those in the supply chain can do, using innovative technology, using social media, using information that retailers and others have about consumers who bought specific products. I think one of the issues is targeting the right people, ensuring that the people who have the product, who bought the product know about a recall.

I also think it is important for the information to be clear. These things should be called recalls. They should be available on the Web sites. They should be communicated clearly with a very clear action for what the consumer should do, clearly articulating the risk. And I think this is a subject that many have been working on for a long time but it needs a lot more attention.

Ms. CLARKE. Thank you.

Mr. Fellin, the Danny Keysar Child Product Safety Notification Act requires manufacturers of durable infant products to provide consumers with a postage-paid registration card with each product to improve the effectiveness and response rate of recalls. What are your member companies doing to increase the rate of return on those registration cards?

Mr. FELLIN. Recall effectiveness is something that I think our industry, as well as the consumer groups and governmental have the same priority and that is to get the message out as quickly as possible. We were proud last year to actually work with CFA and the consumer groups to develop an "It's Not Hard! Fill Out the Card!" campaign. And the whole process of that was to educate consumers that it takes 2 minutes. It is postage paid for, fill out the card, get it back to the manufacturer.

While manufacturers continue to try and figure out innovative ways to try and reach the consumer, the last thing we want as an industry is to have a product that has been recalled reach the

hands of another consumer and we look to continue to work with the agency. And I have asked the agency, in meetings with them, to conduct a workshop that would bring a lot of these issues to the foreground and discuss recall effectiveness because it is a priority for industry as well.

Ms. CLARKE. You just mentioned that you are looking into alternative methods as well. Can you drill down on that a little bit?

Mr. FELLIN. Of course. A lot of our manufacturers, based on the fact that a lot of parents nowadays are younger and much more tech savvy have also published registration information on their web pages. There is also technology out there that has begun to allow to take pictures of various information will allow the products to be registered that way. So, we are constantly evaluating and looking at ways in which to improve that aspect of products.

Ms. CLARKE. Very well. Thank you.

Mr. Gold, often, manufacturers do not have a relationship with consumers but retailers do. What are you member companies doing to help get notice to consumers when there is a recall?

Mr. GOLD. You know I think they are doing as much as they possibly can. I think, again, as Mr. Fellin said, having this workshop to talk about recall effectiveness and how messages are put out I think is very important. It is not as easy for a retailer to just throw up a recall notice on their Web site, there are challenges there. And I think we need to talk through that and figure what is the best way.

Ms. CLARKE. You said they are doing the best that they can. Is there something specific that they are doing?

Mr. GOLD. I don't have the specifics——

Ms. CLARKE. OK.

Mr. GOLD [continuing]. How retailers are doing it. It really depends on the retailer, the relationship, how they are getting information out the customers or the users.

Ms. CLARKE. Any examples?

Mr. GOLD. I don't have any.

Ms. CLARKE. OK.

Mr. GOLD. I can provide you some later on. I just can't provide you any right now.

Ms. CLARKE. OK, sure. Thank you.

Mr. Chairman, I yield back.

Mr. BURGESS. The Chair thanks the gentlelady.

The Chair recognizes the gentlelady from Indiana, Mrs. Brooks, 5 minutes for questions, please.

Mrs. BROOKS. Thank you, Mr. Chairman. I want to thank the witnesses for their insight.

Indiana is actually the home of a very, very large presence of toy companies and juvenile product manufacturers across our State. And Mr. Fellin, you probably know well that Dorel is the largest juvenile product manufacturer in the Nation. It is based outside of my district down in Columbus, Indiana, but 950 people work around the clock many shifts to try to ensure that they are producing incredibly safe, the safest products possible.

I have a company called IMMI based in Westfield that works closely with Dorel to try to ensure that they are designing products that are safest on the road. And then in my district that I recently

visited a toy manufacturer—I am sorry—a puzzle manufacturer called Package Right, a puzzle facility in Tipton, and I am very pleased to learn that they actually brought production back from China in order to ensure safety and to reinvest in our economy.

Back in May, I asked the Chairman—and Mr. Fellin, I will start with you—I asked the Chairman of the CPSC about what actions they have taken to provide relief to companies for some of the third party testing requirements and he mentioned the Office of the Ombudsman, that it is providing support and assistance to find out whether or not they need certain testing. And I am curious whether or not from your companies that you work with, how have they found the Ombudsman Office either helpful or is it sufficient in reducing the costs and burdens to your member companies?

Mr. FELLIN. I don't know if it has necessarily helped in reducing the cost. But in terms of helping navigate a very complex regulatory framework, the Office of the Ombudsman has been extremely helpful in that capacity.

Mrs. BROOKS. Are you still dealing with a lot of the smaller manufacturers with respect to their third party testing burdens and can you share a bit more about that?

Mr. FELLIN. Absolutely and it doesn't just extend to the small manufacturers. Our large manufacturers feel the testing burden just the same.

We are certainly encouraged by the agency's desire to promulgate studies on ways to reduce burden and our industry has been very active and testified at the CPSC hearings with regards to burden reduction.

Since Congress allocated funds specific to burden reduction, we have yet to see any meaningful reduction in that capacity but we certainly would welcome it.

Mrs. BROOKS. And when did that happen that Congress allocated?

Mr. FELLIN. I believe in last year's Appropriations Bill, they allocated $1 million.

Mrs. BROOKS. And you have seen nothing done with that $1 million?

Mr. FELLIN. To my knowledge, we have not seen anything that would provide meaning for you.

Mrs. BROOKS. OK. I am curious whether or not any of the other panelists are aware as to whether or not CPSC has used the appropriated dollars. Is anyone aware of this issue?

Mr. GOLD. I am aware of the issue but I am not aware, again, as Mr. Fellin, that the work continues. I think folks are waiting to continue to see CPSC put out more guidance and more ways for companies to reduce testing burdens. I know there was additional monies put in the budget but we are, again, waiting to see the effectiveness of this.

Mrs. BROOKS. Mr. Gold and Mr. Fellin, you both mentioned in your testimony a lack of transparency in the Commission's justification for a number of the activities, including proposals to amend the voluntary standards processes and proposed rulemakings. How important do you think it is for the Commission to justify its activities and prioritization of activities? And it would seem that it would help this committee ensure that the committee's

actions are directly tied to its critical safety mission in a measurable way. And so how important is it that you think, and I guess all of you, to justify its activities and prioritization of its activities, when we don't know how they are using even the funds that have already been appropriated?

Mr. FELLIN. The CPSC routinely says that they are a data-driven agency and they continue to request from our members data when making any decision. And I think, in any relationship, providing data and a rationale for why you are doing things just provides good dialogue. And I would hope that in any decision that they were making, that they provided the proper rationale for doing so.

Mrs. BROOKS. Mr. Gold?

Mr. GOLD. I would agree. I think two-way communication is critical, especially as you are looking at some of these issues to get a full understanding of what the issue is and what is a reasonable response and how do we move forward is critically important.

We see this with other agencies as well. We think it is important to have the bidirectional conversation and bidirectional education, where the complexities in the supply chain are understood and realized. So, if there are issues with recall, let's have a workshop and a dialogue so that you get the best and brightest minds in a room and have a conversation on how to make this work better.

If there are issues of recall is not happening because of some companies who don't do it, don't punish those who are always doing this the right way. Let's focus on how do we go after those bad actors.

So, I think that conversation is extremely important and the justification is just as important.

Mrs. BROOKS. Thank you. And just from my conversations, Mr. Chairman, child safety is number one priority for all these companies. Thank you. I yield back.

Mr. BURGESS. The Chair thanks the gentlelady.

The Chair recognizes the gentleman from Vermont, Mr. Welch.

Mr. WELCH. No, I yield, Mr. Chairman. I don't have questions.

Mr. BURGESS. Very well. The Chair then recognizes the vice chair of the subcommittee, Mr. Lance from New Jersey, 5 minutes for questions.

Mr. LANCE. Thank you, Mr. Chairman.

Mr. Gold, at a recent public Commission meeting, there was a discussion between the Commissioner Buerkle, whom we know, and Import Surveillance staff about the new pilot project to improve targeting of potentially unsafe products at the border. During the discussion and the video is available on the Commission's Web site, the staff was asked about its justification for adding the name of the testing lab to the list of mandatory disclosures for the pilot.

The staff said that it had no quantitative information to support the proposal. Is it concerning that the Commission is putting together a pilot program without data to support its work and is there a risk that this undermines the willingness of companies to participate in the project?

Mr. GOLD. Yes, but again, our hope is that with the pilot project we can actually identify what are the data elements that are needed to help enhance risk management.

Part of the concern is that there is always a request for more data but more data isn't always necessary. From our perspective, we would have had a better conversation from the outset with CPSC asking what data do you think you need, what are you currently getting, and how is that helping risk assessment, as opposed to just putting out a notice saying here is what we think we need but not fully understanding the process by which all that information is acquired and what benefit that might actually accrue to the agency.

So, again, coming back to having an advisory committee to fully dig into these issues before a notification or regulation is put out, we think is extremely important. Again, especially if there is no justification on the front end for why they need it, then we have to question well, why are you proposing it.

So, again, having that conversation in advance to get a full understanding of what the concern is, how can we better address it and going into the conversation about what data is available, who owns it at what point in time, how readily available is it, how can we can get it to the Commission, we think are all questions that should have been done in advance of the NPRM coming out.

Hopefully now, with a pilot project in place, a lot of these questions can be addressed.

Mr. LANCE. Thank you. Is there anyone else on the panel who would like to comment?

Mr. Gold, how important is the voluntary recall process to retailers? How would the changes proposed by the Commission to the voluntary recall process have an impact on retailer's ability to get potentially harmful products off of their shelves?

Mr. GOLD. It is extremely important and I think, as was noted earlier in the discussion today, it is an award-winning program. The Commission, themselves, have noted that it is extremely important. I think there are concerns that any of these changes that have been proposed might stymie some of the information that might come to the Commission. Right now, there is times where there is not enough clarity on whether or not a report needs to be made.

So right now, retailers, they have guidance from the Commission when in doubt, report. If they have questions going forward with some of the new requirements, they not be so ready to report if they really don't have true knowledge of the issue.

So, I think continuing with the program that they have in place, if there are improvements that can be made, again, let's sit down, have a conversation and figure out what changes need to be made or adjusted to handle some of the issues.

Mr. LANCE. Thank you. And again, Mr. Gold, do your members have concerns with the user fee as proposed by the CPSC in the budget request of last year and this year? And is there a scenario that your members would support such a user fee?

Mr. GOLD. We definitely have concerns not knowing exactly how user fee is going to be used. There are still issues with the RAM, the Risk Assessment Methodology which is continuing to be built.

We have, in the past had issues with other agencies collecting user fees intended for one purpose, they get siphoned off for something else.

Mr. LANCE. No, that never happens. No.

Mr. GOLD. So, that continues to be a concern. Again, if we can have full visibility into the system, how it is going to work, and have a conversation about it before just instituting a user fee, there might be some willingness. But again, not knowing how it is going to work, there are definitely concerns.

Mr. LANCE. Thank you. Is there anyone else on the panel who would like to comment?

Seeing none, then, Mr. Chairman, I yield back 45 seconds.

Mr. BURGESS. The gentleman yields back, and the Chair thanks the gentleman.

Let me just ask if there is anyone on the subcommittee who would seek additional time with our witnesses this morning.

Seeing no further members wishing to ask questions for our panel, I would like to thank, again, our witnesses for being here today.

Before we conclude, I would like to submit the following documents for the record by unanimous consent: a letter to the subcommittee from the American Home Furnishings Alliance, a statement from the Retail Industry Leaders Association.

[The information appears at the conclusion of the hearing.]

Mr. BURGESS. Pursuant to committee rules, I remind members they have 10 business days to submit additional questions for the record and I ask the witnesses to submit their responses within 10 business days upon the receipt of those questions.

Without objection, then the subcommittee is adjourned.

[Whereupon, at 11:36 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

## PREPARED STATEMENT OF HON. FRED UPTON

As we enter a new budget season, I am pleased we are circling back to examine industry perspectives on the Consumer Product Safety Commission. I understand there were improvements in particular circumstances that the witnesses can tell us about, but I'm also interested in the witnesses' views on which issues to prioritize when evaluating the Commission's budget request.

The scope of the Commission's jurisdiction in combination with its limited size and budget merits close attention to ensure that consumers' trust in this agency is not eroded because of activist agendas.

I am interested in hearing from the witnesses today whose members engage on a regular basis with the Commission. There have been a number of recurring issues and we need to find a way to break the logjam and move forward.

The voluntary standards process has been a success in covering much more ground than mandatory rulemakings by the Commission could have accomplished. What's more, the voluntary standards process proves how committed industry and the Commission are to making safe consumer products available in the U.S.

At the risk of sounding like a broken record, I would also like an update on the Commission's activities to reduce third-party testing burdens. There have been multiple bipartisan directives from Congress to help small businesses in this area, and they have not been met with substantial action from the Commission.

The relationship between the Commission and industry is mutually beneficial and should be fostered to protect consumers. All relationships require work, and it is worth exploring how to improve the relationship here because of its impact on consumer safety—particularly for the safety of families in southwest Michigan.




February 8, 2016

The Honorable Michael Burgess
Chairman
Subcommittee on Commerce, Manufacturing and Trade
Energy and Commerce Committee
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Dear Chairman Burgess and Ranking Member Schakowsky,

Thank you for the opportunity to provide testimony for the record in accordance with your hearing entitled "Industry Perspectives on the Consumer Product Safety Commission." The American Home Furnishings Alliance (AHFA) represents 450 manufacturers and importers of residential furnishings that include upholstered furniture, wood furniture, home office, and decorative accessories. Member companies participate in a highly competitive global market characterized by ever-changing style preferences, margin pressures, and the tendency of consumers to postpone big-ticket purchases if their perceptions of value and function are not satisfied. Member companies provide approximately 100,000 manufacturing jobs throughout the US and represent a $35 billion segment of the nation's economy.

In October 2015, the AHFA, along with other industry associations, submitted a petition to the CPSC urging the commissioners to promptly adopt California's flammability standard, Technical Bulletin 117-2013 (TB 117-2013), as the national flammability standard for upholstered furniture. California's standard adequately addresses the risk of upholstered furniture flammability and will greatly enhance fire safety for consumers throughout the country.

**I. Overview**

For over 40 years, since it inherited the Flammable Fabrics Act ("FFA") from Congress in 1973, the CPSC has been evaluating whether it should adopt national regulations that would establish flammability standards for residential upholstered furniture. Since 1981, CPSC has focused on cigarette-smolder ignition as the primary risk of fires resulting from residential upholstered furniture.

The CPSC proposed a flammability standard in 2008 that focused primarily on protecting against fires started by smoldering materials, the leading cause of furniture fire deaths. Consumers, public health advocates, and the furniture industry welcomed this approach. The State of California, which mandated the open flame test for furniture fillings in 1975, refined the CPSC's 2008 proposal in the development of TB 117-2013. This refinement recognized that focusing on smolder ignition adequately addresses the risk of upholstered furniture flammability and that other ignition sources currently either pose an insignificant risk or are not addressable. Significantly, the new approach adopted in California addresses fire safety without necessitating the use of flame retardant chemicals. As a result, suppliers and manufacturers in the home furnishings industry have predominantly removed flame retardant chemistry from their products.

The CPSC held a stakeholder meeting in 2014 to discuss open flame testing and solutions. Open-flame ignition of residential upholstery presents an entirely different risk of ignition than smoldering ignition and simultaneously presents a much greater technical challenge to both the Commission and the industry. Open-flame testing is incredibly burdensome for manufacturers, requiring a full scale "build one-burn one" testing scheme – i.e., testing of each cover fabric on each design – rather than a significantly more cost-effective small-scale testing scheme.[1] Barrier technology, is inconclusive at best and ineffective at worst in addressing the primary cause of residential upholstered furniture fires.

Currently available barrier technology utilized for mattresses – which have a simple, uniform shape and a limited number of ticking fabric types and uses – is not well suited for application to residential upholstered furniture. The various geometries, spatial relationships, designs, construction, cover fabric options, and consumer uses all prevent a simple, uniform application of barrier technology to the range of residential upholstered furniture, preventing a "one-size-fits-all" solution.

Unfortunately, over 8 years have passed and the CPSC has not yet finalized its 2008 proposed rule. TB 117-2013 was developed with broad stakeholder participation and the test methods are reproducible, repeatable, reliable, well known and practiced by industry and independent laboratories. The vacuum created by the lack of progress on this issue at CPSC is evidenced by the growing number of state legislatures moving to address upholstered furniture flammability individually. While TB 117-2013 is helping enhance fire safety, CPSC continues to allow the perfect to be the enemy of the good. Adoption of TB 117-2013 allows CPSC to expeditiously and efficiently finalize this rule making, which is supported by all the affected stakeholders, and reallocate limited and critical resources to other pressing issues.

## II. Recent Petition for Rulemaking to Adopt California's Flammability Program

On October 30, 2015, nine associations, including the International Association of Firefighters and the furniture and upholstery industries filed a Petition for Rulemaking urging the CPSC to simply adopt California's current TB 117-2013 as a national harmonized standard—in order to address the issue of smolder-ignition for residential upholstered furniture in a practical and cost-effective manner. On November 25, 2015, the Assistant General Counsel to the CPSC refused to create a new docket or to notice and solicit public comments on this "material" Petition for Rulemaking. [2]

The CPSC tried to justify this action by claiming the following: in the preamble to an outdated 2008 notice of proposed rulemaking, CSPC had "discussed the adoption of all, or portions, of the TB 117 standard that was in effect at that time." However, in its November 25 letter, CPSC admitted that "significant changes" were made in 2013 to TB 117 by TB 117-2013. In 2013, California dramatically modified and improved TB 117-2013, which now exclusively focuses on the risks of smolder-ignition of cover fabrics through repeatable and reproducible test methods that can be met *without the use of flame retardants*.

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[1] As a result of technological limitations, the use of flame retardant chemicals is currently the only practical way for manufacturers to meet an open-flame standard.

[2] On January 14, 2016, the CPSC Assistant General Counsel sent a follow-up letter which stated: "The Commission has the authority to issue a supplemental notice of proposed rulemaking without a petition. Whether to take the action you suggest is a decision for the Commission, not the Office of the General Counsel."

**III. Outstanding Concerns**

The CPSC appears to have buried the Coalition's Petition in the dormant and outdated 2008 Rulemaking docket. The version of TB 117 that was rejected by the CPSC (more than 8 years ago) was fundamentally different than the improved TB 117-2013, which is the basis of the Coalition's 2015 petition. Accordingly, the CPSC should respond to the Petition by formally noticing and soliciting public comments on the new TB 117-2013.

In short, national adoption of the widely accepted TB 117-2013 standard is now due. This standard provides the double benefit of public safety and health by addressing the risk of upholstered furniture flammability while eliminating the necessity for flame retardant chemicals.

The AHFA greatly appreciates the opportunity to provide this testimony to the Subcommittee. We are committed to producing and selling safe products to our consumers and feel that the most expedient solution is available to the CPSC through the California revised standard.

Please feel free to contact me with any further questions or comments.



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**Written Statement for the Record of the Retail Industry Leaders Association**
**"Industry Perspectives on the Consumer Product Safety Commission"**
**February 10, 2016**

**Subcommittee on Commerce, Manufacturing, and Trade**
**Committee on Energy and Commerce**
**U.S. House of Representatives**

Chairman Burgess, Ranking Member Schakowsky, and distinguished members of the Subcommittee, thank you for the opportunity to submit this statement for the record on behalf of the Retail Industry Leaders Association ("RILA"). RILA appreciates the opportunity to provide the perspective of its members regarding the activities of the U.S. Consumer Product Safety Commission ("CPSC").

RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry (retailers, product manufacturers, and service providers), which together account for more than $1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad. RILA members are also among the largest U.S. importers.

RILA offers this statement for the record in the spirit of collaboration on product safety issues with the goal of ensuring all consumer products sold in the Unites States meet the highest safety standards and that CPSC's rulemaking and enforcement actions support this goal while also facilitating legitimate trade. This Subcommittee could assist retailers to advance these ends by considering the following three CPSC-related RILA priorities.

- *First*, the scope of any new CPSC import e-filing requirements should be limited to high risk products and importers and only include those data elements proven to be critical to enhancing CPSC's risk-based import surveillance. Additionally, as surveillance of

imports is part of the CPSC's core mission of ensuring the safety of consumer products distributed and sold in U.S. commerce, funding for the CPSC's import surveillance activities should come from the agency's operating budget not user fees.

- *Second*, the CPSC should continue taking a leadership role on product safety issues and expand its position as a data driven agency by formalizing and expanding the current Retailer Reporting Program pilot and committing the necessary budget and personnel to conduct a recall communications effectiveness study. Any final rule related to voluntary recalls should incorporate and be based upon the results of the scientific study.
- *Third*, RILA and other stakeholders have called for the CPSC to establish a permanent advisory committee in order to enable the CPSC to be proactive on emerging safety issues and to better inform the CPSC's decision making and rulemaking process. At a minimum, the CPSC should develop a consistent practice of establishing informal working groups to proactively address specific safety-related issues.

Each of these issues is discussed in more detail below.

## I. Import Surveillance

The CPSC has sole and shared jurisdiction over a wide range of millions of consumer products that are imported into the United States annually. RILA's members fully support the CPSC's mission of product safety and consumer protection and its efforts to advance its import surveillance activities through enhancement of its Risk Assessment Methodology ("RAM") and targeting of potentially unsafe and non-compliant products prior to importation. Any new CPSC-related data element e-filing requirements for importers of consumer products should be designed to attain maximum safety benefits while placing the least burden on legitimate trade through risk prioritization of products and importers subject to the e-filing requirements and the use of data elements that have been clearly demonstrated to improve risk-based import surveillance targeting. In order to maximize and leverage the agency's limited resources, RILA has consistently urged the agency to develop a robust Trusted Trader program that provides significant trade benefits for those low-risk importers willing to subject their product safety and import processes and supply chains to CPSC scrutiny. Finally, there are significant legal and operational issues related to the implementation of the CPSC's user fee proposal, and RILA

recommends that Congress fund a nationalized import surveillance program through the normal appropriations process rather than granting statutory authority for the CPSC to collect user fees.

*A. Any New CPSC E-Filing Requirements Should Target High Risk Product and Importers and not unduly Burden Legitimate Trade*

President Obama's Executive Order 13659 – Streamlining the Export/Import Process for America's Business ("EO 13659")[1] establishes a "single window" at the border and calls for the reduction of "unnecessary procedural requirements that add costs to both agencies and industry and undermine our Nation's economic competitiveness." With respect to CPSC's recent e-filing proposal and Alpha Pilot, RILA believes two conditions are necessary in order for the agency to achieve a result consistent with EO 13659: (1) the selection of specific e-filing data elements proven to provide useful information for precise targeting of violative products; and (2) the imposition of such e-filing requirements on only higher-risk product categories and high risk importers.

RILA recognizes and appreciates that the CPSC has already responded to overwhelming stakeholder concerns and input and moved in a direction more consistent with EO 13659 by abandoning its original "certificate e-filing" proposal, and instead, focusing on the e-filing of five specific data elements for certain imported products. Additionally, the agency is conducting an "Alpha Pilot" with companies who have volunteered to develop and test the IT systems and processes that the CPSC is creating for importers to file the required data elements.

However, because the costs for implementing, maintaining, and operating an e-filing capability will be significant and mostly borne by companies, including retailers, who are following the rules and importing compliant products, it is essential that the agency show that each of the five Alpha Pilot data elements enhances CPSC's targeting of noncompliant products. The five data elements include: 1) product identification – model number, UPC code; 2) manufacturer – name and address; 3) a listing of all of the CPSC regulations that apply to the product; 4) the name, address and contact information for all the testing labs or in-house facilities where the product was tested; and 5) where applicable, an attestation to the existence of a certificate of compliance for the product. The costs associated with the new CPSC e-filing requirements are primarily driven by the later three data elements that require new internal

[1] 79 Fed. Reg. 10657-60.

company systems to manage the complex job of matching a particular import line entry with the corresponding data from the appropriate certificate of compliance. RILA members annually import millions of products with a corresponding large number of related certificates of compliance. The systems necessary to tie the required data elements to an individual line entry on an import entry do not currently exist and the significant cost of building and maintaining them cannot be overstated. This is especially true when those costs are aggregated across millions of different products being imported by thousands of individual companies.

Given the significant costs associated with the use of these data elements, it is absolutely essential that each data element be proven as critical to the agency's efforts to effectively target noncompliant products. To date, no such empirical evidence regarding the value of these three data elements to enhance CPSC's import surveillance targeting has been put forward by the CPSC.

Adding to RILA's concern about the lack of information regarding the value of these data elements is the fact that the CPSC has not put forward a transparent plan that clearly articulates how the agency will assess and measure whether each of the proposed individual data elements currently part of the CPCS's e-filing Alpha Pilot would advance the agency's import surveillance targeting efforts. CPSC Commissioner Ann Marie Buerkle has cast doubt on whether the Alpha Pilot will yield useful data in this regard, stating "the pilot, as designed, will shed no light on the usefulness of [the data elements] or any of the information collected because one of the criteria for eligibility to participate in the pilot is that an applicant '[h]ave a history of compliance with CPSC requirements.'" Commissioner Buerkle's statement goes on to point out that this conclusion is supported by a statement by CPSC Chairman Elliot Kaye that the pilot "'is not primarily intended to reach conclusions about each data element.'"

Additionally, the agency's current proposal takes a scatter shot approach and envisions e-filing of data elements for *all* regulated products imported to the U.S. (and some products subject to CPSC's Section 15(j) rules) without regard for the relative risk of different product categories. This broad-brush approach fails to leverage and focus the agency's limited resources and fails to take into consideration that some products are not only more likely to be noncompliant than others, but different products also present greater risks to consumers. Imposing e-filing requirements on a product just because it is regulated where the benefits to consumer safety are very low and the corresponding burden for importers is extremely high (*e.g.*, adult clothing

subject to the CPSC's general wearing apparel requirements), would, in fact, create "unnecessary procedural requirements that add costs to both agencies and industry and undermine our Nation's economic competitiveness." Instead, the agency should conduct a risk-based analysis to determine which products present sufficient risk such that e-filing requirements directly improve consumer product safety and not merely impose paperwork burdens on importers.

RILA hopes to build on its past constructive dialogue with the CPSC to help develop a framework that will ensure the agency's e-filing approach is risk based and cost-benefit justified prior to the implementation of any new requirements. RILA urges Subcommittee to inquire about the CPSC's plan to implement e-filing requirements in a manner consistent with EO 13659 and to continue its oversight and monitoring of this issue to ensure the CPSC e-filing requirements directly advance product safety while not unduly burdening importers.

### *B. Development of a Robust Trusted Trader Program is Critical to Effective Import Surveillance*

RILA members strongly support the development of a robust Trusted Trader program as part of the CPSC's overall import surveillance program. Currently, the CPSC and Customs and Border Protection ("CBP") operate a joint government/industry partnership program entitled Importer Self-Assessment-Product Safety ("ISA-PS") pilot program. In order to become a member of the ISA-PS program, an importer's product safety and import compliance programs, processes, controls and oversight are subject to CPSC and CBP scrutiny. Additionally, ISA-PS participants are required to report incidents, issues and any changes made in program processes or procedures to the CPSC on an annual basis. Despite CPSC's efforts, importer participation in the ISA-PS program has been low primarily because of the perceived lack of enhanced benefits for importers who are already classified as low-risk importers.

Last year, the CPSC allocated significant staff resources to move from the current ISA-PS pilot program, to a full-scale Trusted Trader program. RILA supports this initiative and recommends that any new Trusted Trader program include those companies that currently participate in the ISA-PS program. Trusted Traders should also be exempted from any future e-filing requirements in recognition of having passed CPSC's scrutiny of their product safety and import processes and demonstrated the reliability of their supply chains. An exemption from future e-filing requirements would be a significant benefit to low risk importers and will drive

participation in a Trusted Trader program while allowing the CPSC to focus its limited resources on higher risk importers.

In CPSC's draft 2016-2020 Strategic Plan, the agency envisions the finalization of a Trusted Trader program that would facilitate legitimate trade and confer faster time-to-market benefits to program participants. In CPSC's FY 2016 Operating Plan, however, it is unclear what work is being done and what goals will be accomplished with respect to the development of a Trusted Trader program this year. RILA believes greater emphasis should be placed on the development of a robust Trusted Trader program. Although RILA appreciates CPSC's inclusion of the Trusted Trader program in its 2016 Operating Plan and 2016-2020 Strategic Plan, the agency should articulate more specifics on what activities will take place in 2016 and outline a more detailed roadmap for its plans to engage stakeholders on the development and implementation of a robust Trusted Trader program.

### *C. CPSC's Import Surveillance Activities Should be Funded Through the Normal Appropriation Process Rather Than User Fee Authority*

The CPSC in its Fiscal Year 2015 and most recently in its Fiscal Year 2016 budget request has requested that Congress grant statutory authority to the CPSC to allow it to promulgate user fees to fund the nationalization of its import surveillance RAM program. RILA members strongly support the CPSC's efforts to strengthen and expand its import surveillance program and have actively engaged with the CPSC to accomplish this goal; however, there are significant legal and operational issues related to the implementation of the CPSC's proposal to impose user fees on importers of consumer product generally.

RILA believes the only appropriate mechanism to fund a nationalized RAM program is through the normal congressional appropriations and oversight process. In order for a user fee program to be consistent with U.S. international obligations, the user fee must be connected to some service or benefit accorded to the user. However, the RAM program and import surveillance are core CPSC enforcement functions that render no tangible benefit or "service" to the "users" or importers who would pay the fee. The CPSC's proposal to "tax" all importers of consumer products is unlike legitimate user fee programs where other agencies charge user fees for special programs that confer specific benefits or services on the company paying the fee (such as FDA's user fee program related to the processing of medical device and prescription

drug applications). Because a nationalized import surveillance program is a core agency function, the only proper funding source is the CPSC's operating budget as appropriated and overseen by Congress. To date, Congress has not entertained legislation that would grant the CPSC user fee authority and RILA urges the members of this Subcommittee not to support any future legislative efforts to confer such authority to the CPSC.

## II. Product Recalls

RILA and its members have always supported efforts by the CPSC to improve its ability to quickly identify emerging product safety hazards. RILA has repeatedly called for the formalization of CPSC's Retailer Reporting Program ("RRP") pilot into one that more effectively feeds the CPSC information from retailers and manufacturers to allow the agency to quickly detect and take timely action on new emerging product safety hazards. RILA also shares CPSC's goal of improving recall effectiveness but firmly believes any changes to the current recall process must be thoughtful and effective in identifying level of risk to consumers. Methods of communicating recalls to consumers should be based on a formal CPSC commissioned study and analysis of the issue. Additionally, RILA believes the Notice of Proposed Rulemaking to Amend 16 CFR 1115 (Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices) ("Voluntary Recalls Rule"), which was first proposed in 2013 and garnered significant stakeholder opposition, should not be finalized as originally proposed and that the agency should accurately reflect in its Regulatory Agenda and Operating Plan documents whether it actually intends to finalize this rule.

### *A. CPSC Should Engage with All Interested Stakeholders on Formalizing and Enhancing the Retailer Reporting Program Pilot*

Over the past ten years, the CPSC has worked with several retailer and manufacturers on a pilot program entitled the Retailer Reporting Program or RRP whereby participants, in return for specified benefits, provide the CPSC, on a weekly or bi-weekly basis, information regarding product safety incidents along with related detailed product specific information. The CPSC is able to aggregate this information along with other information received from other sources, including saferproducts.gov and National Electronic Incident Surveillance System (NEISS) data, to conduct data analytics and identify new and emerging safety hazards. At the height of the

pilot program, there were five retailer and two manufacturer participants, with an additional half a dozen companies with pending applications to participate in the program. However, the CPSC has not allowed any new participants for the last several years, pending an internal review of the efficacy of the RRP and a determination of whether to move forward and formalize the program with broadened participation or to discontinue the pilot. The uncertainty surrounding the status of the program and previously promised benefits has caused one participant to withdraw from the program with the unfortunate result of eliminating a major source of valuable product specific safety incident information for the CPSC.

RILA has repeatedly offered to engage directly with the CPSC on enhancing the current RRP and is hopeful that the agency will make the effort to improve the program rather than discontinuing the current pilot or continuing it in a way that lessens the incentives for retailers to provide these reports to the agency. Given the value of the data that retailers possess, RILA believes it would be a mistake to do anything other than to expand and formalize the program.

Retailers have a unique relationship with their customers and in the normal course of their business gather a large amount of data about customers' interactions with the products that they sell. In many instances, retailers serve as part of the "front line" with respect to consumer feedback regarding product safety. Customers report their experiences with products, including experiences that may involve a potential safety issue, to the retailer where the item was purchased rather than to the product manufacturer. Customers communicate product-related information through product reviews, stated reasons for product returns, complaints to a company's customer service department, saferproducts.gov, insurance claims, and product liability cases. The RRP was meant to capitalize on the fact that information quickly submitted to the Commission from retailers concerning safety issues with products may be among some of the first reports the agency receives—making the RRP an important way for the agency to get ahead of emerging hazards.

To date, the agency has based its review of the usefulness of the data received through the *pilot* RRP, which was not standardized, and instead, operated through multiple independent agreements with the participating companies. RILA believes that the usefulness of the safety-related data received through the RRP would be more properly evaluated if the Commission explored what the program could look like and how it would function if it were formalized. Due to the nature and magnitude of the question, RILA believes CPSC staff should engage with

current and potential future RRP participants through a public workshop and then make a formal recommendation on the future of the RRP to the full Commission during 2016. This type of stakeholder meeting will ensure both stakeholders and the CPSC benefit from the opportunity to have a full dialogue and exchange of information concerning the RRP. A formal briefing package and Commission vote will also ensure full transparency to CPSC's stakeholders, including Congress, on the staff's and Commission's rationales underlying such a major agency decision.

*B. CPSC Budgetary and Resource Commitment to a Recall Effectiveness Study*

The CPSC, consumer advocates, manufacturers, retailers and consumers all share the common goals of timely and effectively informing consumers about product recalls and quickly removing potentially unsafe and noncompliant products from the marketplace and consumers' homes. All stakeholders in the consumer products arena would like to see recall effectiveness improved and the development of a new system for clearly communicating level of risk to consumers. The CPSC's current classification of all "full product" recalls and "repair only" corrective actions as "Recalls" regardless of the level of risk to consumers fails to provide consumers with the information they need to truly understand the risk identified in the specific product recall. We urge the CPSC to explore whether a tiered recall classification system, similar to how the Food and Drug Administration handles food safety issues, would better inform consumers of product safety risks. In addition, some methods currently used to communicate recalls, including mandated in-store recall posters are outdated. Recall information should be communicated to consumers using those methods of communication that consumers have identified as how they want to receive product recall information. RILA believes that such a complex issue is deserving of a comprehensive and empirically-based study on how to improve recall effectiveness and communication of recall information to consumers. Accordingly, RILA believes the CPSC should designate an appropriate amount of resources to conduct a formal study into these questions.

RILA has previously called on the CPSC to dedicate resources to take a more scientific approach in determining the best ways to achieve greater recall effectiveness. Despite these requests from RILA and other stakeholders, including consumer advocates, the agency has not dedicated resources to a formal study or hosting a stakeholder workshop on this issue. Instead,

the agency has made repeated blanket criticisms of the regulated community for "not doing enough" and attempted to improve recall effectiveness on an ad-hoc basis through seemingly random application of new, unproven, requirements on companies conducting recalls. While RILA shares the goal of enhancing recall effectiveness, this type of ad-hoc approach is not ideal because the new requirements are used by the agency on an inconsistent basis and not based on empirical data and stakeholder input.

A more effective approach to improving recall effectiveness and a much easier path to gaining industry cooperation would be for the CPSC to conduct studies and/or consumer surveys on recall awareness trends to determine the most effective methods of communicating product recall information to consumers.

### C. *The CPSC Should the Change "Final Rule" Designation for Voluntary Recalls Rule to Reflect its Non-Priority Status*

RILA submitted extensive comments concerning many of the serious issues its members have with this rule, including the needless formalization of corrective action plans by making them legally binding.[2] RILA's primary concern is that the proposed rule would gut the current successful Fast Track Recall Program and slow the process for quickly removing potentially unsafe and noncompliant goods from the U.S. market. We will not repeat the litany of concerns that RILA and other stakeholders share concerning this proposed rule because the CPSC's Chairman has repeatedly stated that this proposed rule is not among his priorities and it appears that a majority of the Commission still correctly believes this "process-focused" rule does not warrant the use of resources at the expense of the Commission's other "product safety-focused" priorities. However, the CPSC's 2016 Operating Plan, which states the rule will be finalized this year, does not reflect this prioritization. The discrepancy between the public statements by the CPSC Chairman and the most recent Operating Plan creates significant uncertainty for potentially impacted stakeholders. RILA believes the agency should provide predictability to the regulated community by accurately reflecting the status of this rule in its 2016 Operating Plan and similar documents by clearly stating the agency's intention not to move forward with a final rule. Such action would be consistent with how the CPSC has treated other non-prioritized

[2] Comments of the Retail Industry Leaders Association on the CPSC Proposed Amendments to Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices (CPCS Docket Number 2013-0040).

pending rulemakings (*e.g.*, pending rulemakings on Firepots and Fuel Gels or VGB Public Accommodations), which do not appear in the CPSC's Operating Plan as a final rule.

## III. The CPSC Should Take Proactive Steps to Advance Stakeholder Engagement

RILA recognizes that the CPSC, through the Chairman's efforts, has increased engagement with the stakeholder community. While these efforts are greatly appreciated, they have often taken place in an ad-hoc and reactive manner as certain issues arise rather than on an on-going proactive basis. Whether through a Federal Advisory Committee Act ("FACA") compliant stakeholder advisory group or the continued use of public workshops for complicated issues, RILA believes the agency should formally plan for and utilize these types of stakeholder forums in order to help inform and shape the agency's policies and decision making in a more proactive and constructive manner.

### *A. Establishment of a Permanent FACA Compliant Stakeholder Workgroup*

Various government agencies (*e.g.*, Consumer Financial Protection Bureau and CBP) have established FACA advisory groups for the purpose of direct and proactive stakeholder engagement on ongoing issues. The CPSC already has yielded the benefits of participating in CBP's Advisory Committee on Commercial Operations during the development of its e-filing Alpha Pilot. However, the CPSC has consistently avoided the formation of any type of permanent stakeholder advisory group by citing the time and resources needed to comply with FACA. While RILA understands that CPSC's satisfaction of the FACA requirements could take up to a year, at least two years have already elapsed since RILA and other stakeholders first recommended formation of such a group to the CPSC. In addition, the resources necessary to facilitate such a group are already being expended to some extent on more informal forums for stakeholder input. Any additional resources necessary to support such a group would be justified by the benefits of establishing this type of forum for the agency and its stakeholders to jointly collaborate and better inform CPSC's policy development, rulemaking, and engagement work in a proactive manner rather than the current ad-hoc and reactive approach.

### *B. Continued and Increased Use of Stakeholder Meetings and Workshops*

RILA believes the CPSC and its stakeholders have benefitted greatly from the agency's use of public meetings and workshops and encourages their continued use for significant and

complex issues. While RILA believes CPSC should take the steps necessary to form a permanent FACA advisory workgroup, this does not mean the agency should discontinue the use public meetings and forums targeting specific issues even after such a group is established. These types of stakeholder workshops have been useful in dealing with the complex issues associated with proposed e-filing requirements and could also be used to assist with other complicated rulemakings such as the proposed Voluntary Recall or 6(b) rules. RILA appreciates the CPSC's past use of these types of forums and encourages the CPSC's continued and increased utilization of these mechanisms for gathering valuable stakeholder input prior to moving forward on important rulemakings and other agency initiatives.

Thank you again for the opportunity to provide comments to the Subcommittee on retailers' product safety priorities and CPSC's current engagement with stakeholders. RILA shares the Subcommittee's and CPSC's commitment to improving consumer product safety and the effectiveness of product recall communications looks forward to working with the Subcommittee and the agency to take steps to reach these goals.

Sincerely,



Kathleen McGuigan
Senior Vice President, Legal & Regulatory Affairs

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

March 3, 2016

Mr. Erik Pritchard
Executive Vice President, General Counsel
Recreational Off-Highway Vehicle Association
2 Jenner Street, Suite 150
Irvine, CA 92618-3806

Dear Mr. Pritchard,

Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, February 10, 2016, to testify at the hearing entitled "Industry Perspectives on the Consumer Product Safety Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Thursday, March 17, 2016. Your responses should be mailed to Giulia Giannangeli, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to **Giulia.Giannangeli@mail.house.gov.**

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

House Energy and Commerce Committee
Subcommittee on Commerce, Manufacturing and Trade
United States House of Representatives
Industry Perspectives on the Consumer Product Safety Commission
February 10, 2016

Testimony of Erik Pritchard
Recreational Off-Highway Vehicle Association

Responses to Additional Questions for the Record

The Honorable Gregg Harper:

1. In your testimony to the subcommittee last year you highlighted the lack of scientific support for the Commissions' ROV safety standard proposals. Did the Commission's approach change between then and now? If so, how did it change?

Thank you for the follow-up questions and opportunity to respond. I am not aware of any changes in the Commission's approach. In the case of ROVs, CPSC staff and the ROV industry finally were able to find common ground following numerous discussions and information exchanges.

2. The Commission recently updated its rules regarding staff participation in the voluntary standards process. During the update, the Commission acknowledged that a mixture of voluntary and mandatory standards "can increase product safety better than either mandatory or voluntary activities alone." Do you agree with that statement and do you believe that view is held throughout the Commission?

The answer depends on the circumstances of the particular industry and/or product. In the case of ROVs, the CPSC's Notice of Proposed Rulemaking (NPR) was counter-productive. CPSC staff and industry had been engaged in direct technical communications and meetings, and the issuance of the NPR had the effect of quashing those discussions. I am confident that the parties could have found agreement on a revised voluntary standard in the Fall of 2014 had the NPR not been voted out 3 to 2. Unfortunately, this experience suggests the Commission prefers rulemaking over voluntary standards, even when confronted with contradictory scientific evidence.

FRED UPTON, MICHIGAN
CHAIRMAN

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RANKING MEMBER

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COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
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Majority (202) 225–2927
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March 3, 2016

Mr. Jonathan Gold
Vice President
Supply Chain and Customs Policy
National Retail Federation
1101 New York Avenue, N.W.
Washington, DC 20005

Dear Mr. Gold,

Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, February 10, 2016, to testify at the hearing entitled "Industry Perspectives on the Consumer Product Safety Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

House Committee on Energy and Commerce
Subcommittee on Commerce Manufacturing and Trade
Additional Questions for the Record – Jonathan Gold, NRF
"Industry Perspectives on the Consumer Product Safety Commission"

**The Honorable Michael C. Burgess, M.D.**
**In your testimony, you discussed concerns with how retailers are increasingly the first organization that CPSC is contacting during the recall process instead of the product's manufacturer. In previous sessions of Congress, concerns were raised about recalled products making their way into the stream of commerce through discount retail chains. Please explain your concerns with the CPSC's outreach process during a recall, and additionally, what is being done in the retail industry to ensure that recalled products are not reentering the stream of commerce through discount merchants.**

Thank you for your question, Mr. Chairman.

NRF members understand and take very seriously their obligations under the law with respect to product recalls in conjunction with CPSC. In my testimony, I raised the legitimate concern of our members that increasingly the CPSC has looked to retailers first and foremost to undertake product safety recalls, whereas in the past the agency has generally looked primarily to manufacturers to do so.

While the Consumer Product Safety Act clearly allows the CPSC to seek a product recall from retailers, it is very often the product manufacturer that is best positioned to understand in the first instance whether or not a product defect exists, and how to address that if such exists. The CPSC has been going straight to retailers and "asking" them to stop selling products long before the agency has made any safety determinations about that product (for instance, window blinds and hoverboards). This goes against the regulatory process. The apparent trend to look first to retailers to undertake a recall, in our view, is inappropriate.

To address the second point in your question, NRF is eager to engage the CPSC in a fulsome dialogue to explore the issue of recall effectiveness, and we were pleased to recently learn of the CPSC's planned workshop in this regard for later this year. It is in every retailers' best interest to remove violative or unsafe products from sale immediately and we are eager to explore every reasonable avenue to do so.

Relatedly, NRF takes issue with any attempt by the CPSC to effectively avoid its statutory guidelines by asking or demanding that retailers remove from sale products that have not been determined to be either unsafe or in violation of a federal product safety standard. Such requests in our view are inappropriate and not in keeping with the letter or spirit of the agency's statutes.

Moreover, our members continue to strive to maximize recall effectiveness and ensure recalled products do not end up back in the stream of commerce. For example, recalling companies routinely promote recall press releases via their web sites and social media, as well as other means to alert consumers about recalls. Once they are aware of the recall they will take steps to

remove the recalled product based on the corrective action plan, including instituting stop sales on the recalled product and destruction of the product if necessary.

We look forward to a further, positive engagement with CPSC to maximize consumer response to recalls generally.

**The Honorable Gregg Harper**

**Prior to joining the retailers, you spent some time with Customs and Border Protection. How would you describe the level of coordination between the CPSC and CBP? Does industry have confidence in how CPSC is working to collaborate with other agencies at the border to truly improve targeting for unsafe imports?**

The level of coordination and cooperation between the CPSC and CBP has drastically improved since the passage of the Consumer Product Safety Improvement Act (CPSIA). However, there are certainly areas where cooperation and coordination needs improvement. This also includes collaboration with affected stakeholders.

Specifically, as CPSC continues to focus on risk-based targeting through its Risk Assessment Methodology (RAM), there needs to be continued collaboration with CBP to ensure alignment on strategy and methodology. This again is where it would be valuable to work with the importing community to improve overall risk based targeting. It is especially important that strategy and protocols are aligned between CPSC and CBP when a determination is made to stop a shipment at a port of entry. It is imperative that there be a clear understanding among the agencies as to what the protocols will be when a shipment is stopped due to a product safety (CPSC) concern.

To its credit, the CPSC has participated in many meetings of the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC). In addition, a product safety work group was set up under the COAC to help advise CPSC as they worked to develop the Alpha Pilot for the electronic submission of the General Certificates of Conformity as part of the Section 1110 rule. NRF welcomed and appreciated this action by the CPSC.

However, the functionality of the Working Group was made difficult because CPSC could not participate directly in the meetings due to the agency's Open Meetings Rule. NRF and other stakeholders (indeed, several Commissioners) have noted this problem with respect to industry stakeholders and we would encourage the CPSC to seek a solution that invites both transparency and full engagement on what are very often sensitive issues. NRF and other industry groups continue to believe a CPSC advisory committee comprised of key stakeholders will be beneficial for the agency and will help improve the collaboration and coordination with CBP and industry as a whole.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States
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March 3, 2016

Mr. Mark Fellin
Director of Regulatory and Legislative Affairs
Juvenile Products Manufacturers Association
1550 M Street, N.W., Suite 824
Washington, DC 20005

Dear Mr. Fellin,

Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, February 10, 2016, to testify at the hearing entitled "Industry Perspectives on the Consumer Product Safety Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

The Honorable Michael C. Burgess, M.D
Chairman
Subcommittee on Commerce, Manufacturing, and Trade
2125 Rayburn House Office Building
Washington, DC 20515

JPMA

Thank you Chairman Burgess for the opportunity to testify before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, February 10, 2016 for the hearing entitled "Industry Perspectives on the Consumer Product Safety Commission."

Our Association was grateful for the opportunity to provide our insights and assist the Committee in its evaluation of the Consumer Product Safety Commission. In response to Congressman Gregg Harper's questions for the record, I submit the following attached responses. Please do not hesitate to contact me via email at mfellin@jpma.org or phone at 202-429-0436 if you have any further questions.

Sincerely,

[redacted]

Mark S. Fellin, MPS
Director of Regulatory and Legislative Affairs
Juvenile Products Manufacturers Association

1. The Commission recently updated its rules regarding staff participation in the voluntary standards process. During the update, the Commission acknowledged that a mixture of voluntary and mandatory standards "can increase product safety better than either mandatory or voluntary standards alone." Do you agree with that statement and do you believe that view is held throughout the Commission?

In 2008, Congress passed the Consumer Product Safety Improvement Act ("CPSIA"), most notably Section 104, often referred to as "Danny's Law" which requires the CPSC to study and develop safety standards for more than 20 "durable" infant and toddler products. Additionally, the Commission is required to either make the existing voluntary safety standards for these products mandatory or provide for a stricter safety standard. To further enhance this law, the CPSC is required to promulgate two rules every six months until all products have a mandatory safety standard promulgated subject to rulemaking under administrative procedural requirements pursuant to CPSIA.[1] We believe that this process **would not be achievable** if it were not for the work conducted by ASTM and the various stakeholders of the Juvenile Products Subcommittee of F15.

An important part of the ASTM F15 Consumer Products Subcommittee's effectiveness has been its ability to address emerging issues – and CPSC staff participation in such efforts, as well as the consideration of CPSC-collected injury and incident data, have been critical to enhancing the subcommittee's effectiveness as well. We appreciate the work conducted by CPSC technical staff over the years and their professional expertise, and valued input in the development of such standards.

We agree with the CPSC's decision that career technical staff can serve as voting members of voluntary standards development organizations and committees for consumer products,[2] but believe that given the required rulemaking process mandated by congressional statute that staff cannot lead such committees or act in a manner that abrogates or overwhelms the consensus process for setting such Standards at ASTM. The Commission's responsibility should be to proceed as required by statute in a reasonable manner. Further, the Commission should continue to consider other merit based dynamic performance requirements and promote global alignment of safety standards.

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[1] Public Law 110-314, August 14, 2008 Consumer Product Safety Improvement Act of 2008, Section 104 as amender by HR2715, Section 3.

[2] 16 C.F.R.1031

From a regulatory standpoint, we continue to urge the Commission that the Standard setting process at ASTM should be adhered to by Commission staff and mandatory requirements should not substantially deviate from such requirements adopted within ASTM. We continue to remind the Commission of the statutory requirement that the Commission fairly examine and assess the effectiveness of any voluntary consumer product safety standards for durable infant or toddler products and adhere to the requirements of 553 of title 5, United States Code in promulgating consumer product safety standards. Being an "Agency based on sound science," we continue to advocate that the Commission only makes changes based upon evidence before it, and that more stringent standards would further reduce the risk of injury associated with such products.

In adhering to such requirement, the Commission should not delegate such responsibility to its staff. Additionally, obligations that conflict with ASTM requirements should not arbitrarily be imposed by staff without an adequate justification based upon a preponderance of evidence. We hope that the input provided will allow for more transparency as well as collaboration moving forward.

From a Commission standpoint, it is my opinion that the consensus belief is that collaborative rulemaking is the best method to achieve safety standards.

2. How fundamental are the new changes for Commission staff participation in the voluntary standards process for your industry?

From our standpoint, the changes for Commission staff to participate in voluntary standards negligible due to current staff involvement in the process. Our concerns, which are further illustrated below, relate to the potential that could exist for backdoor rulemaking and career staff acting on behalf of the Commission without a sufficient evidentiary justification.

JPMA and its members believe CPSC career technical staff plays a vital role in the development and improvement of ***consensus based*** ASTM standards. As you may be aware, the ASTM process rests on developing a standard that has been established within the consensus principles of the organization and which meets the requirements of ASTM procedures and regulations.[3]

Given the vote by the Commission to permit staff to assume a voting role in such standard setting process, JPMA believes that CPSC staff should be required to adhere to ASTM principles and the consensus standard setting process. Active agency participation in voluntary consensus standards development generally leads to more robust and comprehensive standards. However, we continue to have significant concerns that CPSC staff

[3] http://www.astm.org/ABOUT/faqs.html

could view their vote as being more important than other members of the Subcommittee or as an opportunity to mandate specific requirements be included in the standard without adequate vetting and approval of the Commission on the record per prescribed rulemaking procedures. The CPSC is aware that ASTM:

> [s]tandards development work begins when members of an ASTM technical committee identify a need or other interested parties approach the committee. Task group members prepare a draft standard or work item, which is reviewed by its parent subcommittee through an electronic balloting system. After the subcommittee approves the document, it is submitted concurrently to the main committee and the entire membership of ASTM.[4]

We believe that this process, with required periodic review and updates required for such rules,is the most efficient and effective way to update and enhance standards. If CPSC staff participants do not agree with recommendations made by specific subcommittees that they have the opportunity to cast negative votes during the balloting process. As is the case with all members, we believe it is the responsibility of the individual(s) who submitted their negative vote to convince their fellow subcommittee members of their rationale for the negative in order to change the standard. In such an event, the unsubstantiated, rejected recommendation should not be included in the final mandatory standard.

We believe that the integrity of the ASTM consensus standard setting process must be maintained. As this decision gets incorporated into practice, we continue to have concerns that unless proper procedures are adopted to safeguard required Commission consideration and action on the record, arbitrary backdoor rulemaking could result. In this respect deference to ASTM standards, unless a preponderance of evidence on the record indicates otherwise, should be required.

[4] Ibid.

**Juvenile Products Manufacturers Association, Inc.**
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