



## Consumer Federation of America

April 17, 2019

Testimony of Rachel Weintraub,

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Before the

U.S. Consumer Product Safety Commission

Hearing on

“Agenda and Priorities FY 2020 and/or 2021”

Acting Chair Buerkle, Commissioners Adler, Baiocco, Feldman and Kaye, I appreciate the opportunity to provide testimony today about the Consumer Product Safety Commission’s (CPSC’s) agenda and priorities for Fiscal Year (FY) 2020 and 2021. I am Rachel Weintraub, Legislative Director and General Counsel at Consumer Federation of America (CFA). CFA is a non-profit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education.

The CPSC is an incredibly important independent agency. Its mission impacts every American, every day: to protect the public from unreasonable risks of injury or death associated with the use of consumer products. The CPSC has numerous tools to fulfill this mission and all of these tools must be used singularly or in combination to effectively protect consumers. For the CPSC to fulfill its mission, it relies upon the authority Congress granted to it through the passage of the Consumer Product Safety Act. The CPSC’s mission relies upon Agency action to issue mandatory standards, assess civil and criminal penalties, work on voluntary standards, conduct recalls, and educate consumers. The use of these tools, in combination, has historically led to the most effective consumer protections.

We hope that the Agency increases its focus on mandatory standards. For example, the FY 2019 Operating Plan included 12 mandatory standards in various stages of rulemaking, while the FY 2020 Budget Request<sup>1</sup> includes 7 such rulemakings. Acknowledging that some of the rulemakings in 2019 will be finalized, the decrease in the number does indicate that the CPSC can and should dedicate at least the same resources to the same number of rulemaking proceedings, and not less, in FY 2020. It is imperative for consumers and for the regulated community that the CPSC’s laws are enforced rigorously and consistently and that all of the tools Congress gave to the CPSC are used.

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<sup>1</sup> [https://www.cpsc.gov/s3fs-public/FY%202020%20Congressional%20Justification.pdf?2rDJohfEbN6lAgu5l\\_kLtcV3W1W\\_JNqo](https://www.cpsc.gov/s3fs-public/FY%202020%20Congressional%20Justification.pdf?2rDJohfEbN6lAgu5l_kLtcV3W1W_JNqo) at 26.

I am going to focus my testimony on key product safety issues facing American consumers.

## **A. Product Safety Issues**

### **I. Window Coverings**

Last December, a new version of the window covering voluntary standard went into effect, which for the first time, requires some window coverings to be cordless. The standard requires window coverings sold as stock products (products sold “as is” in terms of color, design features, size) to be free of dangerous accessible cords. While it is significant that a subset of window coverings will, for the first time, be cordless, there is much more work to do to prevent consumers from the strangulation hazards posed by corded window coverings.

This updated version of the American National Standards Institute/Window Covering Manufacturers Association (ANSI/WCMA) standard was preceded by decades of mounting deaths and injuries caused by window covering cords, and extensive advocacy efforts by CFA, Parents for Window Blinds Safety, the American Academy of Pediatrics and others to protect children from the strangulation hazard posed by these cords. As a recently published Pediatrics journal article reported, approximately eleven children die and 80 children are treated for entanglement and near fatal injuries every year as a result of window cord strangulation.

We are concerned that non-compliant products could be sold online and that hazardous corded stock inventory will be liquidated throughout 2018 and 2019. Further, the CPSC should rigorously monitor the marketplace to ensure that loopholes do not exist that allow for more products to be considered custom, which would minimize the effect of the standard. CFA’s initial research has found some evidence of online retailers selling stock products with cords and failing to provide appropriate warnings. The CPSC should prioritize reducing deaths and injuries from corded window coverings and should take steps to ensure that there is full compliance with the voluntary standard and work to ensure the immediate development of an effective voluntary standard that limits the strangulations risks posed by custom products.

### **II. 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% of U.S. residents have measurable quantities of toxic flame retardants in their blood. Children are especially at-risk because they come into greater contact with household dust than adults do. Studies show that children, whose developing brains and reproductive organs are most vulnerable, have three to five times higher levels of flame retardants than their parents.

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

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

While the CPSC has voted to move forward with our petition and has acknowledged that the CPSC has clear authority under the Federal Hazardous Substances Act to regulate potentially toxic chemicals, that there is clear legal precedent for the CPSC to regulate a class of chemicals, and that there is strong scientific evidence documenting the hazards posed to consumers by these chemicals, a Chronic Hazard Advisory Panel (CHAP) process has been convened to protect consumers from the health hazards posed by flame retardants, while not diminishing fire safety protections. We urge the Commission to take significant steps to reduce the risks posed by these chemicals.

### **III. Internet of Things- Connected Products**

The research firm Gartner estimated that by the end of 2017 there would be 8.4 billion "connected things" in use worldwide, of which more than 5 billion would be consumer applications, and that by the year 2020 these numbers will have more than doubled.<sup>2</sup> As more and more consumer products are connected, it is imperative that the CPSC lead efforts to address and prevent product safety risks posed by connected products.

While the Internet of Things (IoT) offers many potential benefits for consumers, there are many concerns as well, including concerns about safety and security. It is crucial for policymakers to put adequate protections in place.

The CPSC had a hearing last May which sought to gather stakeholder input about the CPSC's role in regulating connected consumer products. While the hearing was substantive, it is not clear what the CPSC is doing to protect consumers from the risks posed by connected consumer products. At the May hearing, CFA identified product risks and recommended that such risks posed by connected products should be addressed as early as possible in the design of the products. Manufacturers of connected products must show the same commitment to addressing product risks regardless of whether the cause is due to a software, hardware, or other design defect. While mandatory standards are often preferable because they are enforceable, efforts to create voluntary standards are underway, and CFA as well as the CPSC are involved in ASTM's efforts to develop a standard for connected products. We also urged the Commission to create an Interagency Working Group with the Federal Trade Commission, National Institute of Standards and Technology (NIST) and any other agency that shares jurisdiction over and has knowledge of connected products. The Interagency Working Group should have clear goals, clear deadlines, and a commitment to effectively address the risks posed by connected products.

The public would benefit from the sharing of agency expertise and knowledge and from a joint commitment to addressing the risks posed by connected products. We understand that some interagency efforts have begun but are not aware of the specific agency activity. Commissioner Kaye has released a White Paper on this topic as well.<sup>3</sup> Finally, and unfortunately, we know of reports<sup>4</sup> that an electronic

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<sup>2</sup> Press release February 7, 2017, available at <https://www.gartner.com/newsroom/id/3598917>.

<sup>3</sup> <https://www.cpsc.gov/about-cpsc/commissioner/elliott-f-kaye/statements/statement-of-commissioner-elliott-f-kaye-regarding-a>

<sup>4</sup> <https://www.wired.com/story/xiaomi-scooter-hack/>

scooter's Bluetooth module was hacked and that the hacker was able to control the braking and acceleration of the scooter. The CPSC must take enforcement action to protect consumers from this unequivocal product safety hazard and from all product safety risks posed by connected products.

#### **IV. Liquid Nicotine**

According to a 2018 article in *Pediatrics*,<sup>5</sup> there were 8,269 liquid nicotine exposures among children less than 6 years old reported to U.S. poison control centers from January 2012 to April 2017. The Child Nicotine Poisoning Prevention Act became law in January of 2016 and gave the CPSC the authority to ensure that packaging of liquid nicotine complies with the Poison Prevention Packaging Act. Unfortunately, the CPSC has struggled to effectively enforce this law. Initially the CPSC misinterpreted the start date of the law, unnecessarily delaying application of this important rule to all products on the marketplace. Compounding that delay, the CPSC then did not require the use of flow restrictors in its initial 2018 guidance letter to industry. While we are encouraged that the CPSC has since clarified that the law requires flow restrictors and given industry notice of the test it will use for enforcing that standard, we remain concerned about the lack of vigorous enforcement of this important law, given that clearly noncompliant products remain ubiquitously available on the market. We urge the Commission to immediately and effectively enforce the law, monitor the market and take enforcement actions for those products that don't comply.

#### **V. Electric Scooters**

The growth of electric scooters (or e-scooters) across the United States has been profound. Along with increased numbers of these products across the country are increased reports of injuries. A Consumer Reports investigation identified 1,500 e-scooter injuries across the country from late 2017, with numerous gaps in data collection and reporting.<sup>6</sup> The CPSC, however, has not released data on electric scooters nor publicly announced efforts to take action to monitor, investigate, track or reduce incidents. The CDC has announced that it will conduct an investigation into these incidents with the Austin Public Health Department "after spreading reports of injuries and deaths related to scooters in cities including the District, Los Angeles and Dallas; it also follows recent news of scooter failures and breakdowns."<sup>7</sup> The CDC investigation will focus on "developing and evaluating methods to find and count the number of injuries related to dockless electric scooters."<sup>8</sup> The CPSC should engage in this type of investigation and lead efforts to enforce reporting obligations, recall unsafe products, track and release incident data, and take other actions to protect consumers.

#### **VI. Portable Generators**

Portable generators in or near homes pose a hidden hazard to consumers who do not realize the serious risk of carbon monoxide (CO) poisoning that these products pose. On average, there are

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<sup>5</sup> Govindarajan P, Spiller HA, Casavant MJ, et al. E-Cigarette and Liquid Nicotine Exposures Among Young Children. *Pediatrics*. 2018;141(5):e20173361

<sup>6</sup> <https://www.consumerreports.org/product-safety/e-scooter-ride-share-industry-leaves-injuries-and-angered-cities-in-its-path/>

<sup>7</sup> [https://www.washingtonpost.com/transportation/2019/03/15/cdc-is-studying-e-scooter-injuries/?utm\\_term=.931c039fd4cd](https://www.washingtonpost.com/transportation/2019/03/15/cdc-is-studying-e-scooter-injuries/?utm_term=.931c039fd4cd)

<sup>8</sup> [https://www.washingtonpost.com/transportation/2019/03/15/cdc-is-studying-e-scooter-injuries/?utm\\_term=.931c039fd4cd](https://www.washingtonpost.com/transportation/2019/03/15/cdc-is-studying-e-scooter-injuries/?utm_term=.931c039fd4cd)

about 70 deaths and several thousand non-fatal injuries every year associated with CO poisoning from portable generators.<sup>9</sup>

The CPSC began rulemaking in 2006 and published an ANPR in December 2006 to consider whether there may be an unreasonable risk of injury and death associated with portable generators.<sup>10</sup> Currently two voluntary standards (UL 2201 and ANSI/PGMA G300) address the safety aspects of portable generator carbon monoxide emissions.

We urge the CPSC to expeditiously complete and release the findings of its evaluation of the efficacy of each standard, assess the impact of these standards on the marketplace, take enforcement actions to protect consumers from products that do not comply with an adequate standard, and if the determination is made that neither of the two voluntary standards are adequate or not complied with, the Commission should issue a final mandatory safety standard addressing the risk of carbon monoxide poisoning associated with these products.

## **VII. Senior Safety**

In 2014, under Commissioner Adler's leadership, the CPSC introduced a Senior Safety Initiative. At that time 65% of product related deaths occurred to seniors who made up 13% of the population. The CDC also documents that in 2015, medical costs for falls, just one injury pattern, of many, that senior's experience, totaled more than \$50 billion.<sup>11</sup> The CDC predicts that since the U.S. population is aging, both the number of falls and the costs to treat fall injuries are likely to rise. The population of seniors is growing, predicted in 2030 to comprise 20% of the population and the fall death rate for older adults increased 30% in the United States from 2007 through 2016.<sup>12</sup> Thus, vastly more must be done by the CPSC and others to address this issue. Certain consumer products, such as liquid laundry packets have caused numerous deaths of seniors, yet the current voluntary standard has a focus exclusively on children. CPSC should lead efforts, based on their own data collection efforts, to ensure that voluntary standard efforts, mandatory standard efforts, enforcement, other actions, contemplate senior use and injury and death patterns, and revive, update, and prioritize a new Senior Safety Initiative.

## **VIII. High Powered Magnet Sets**

We were alarmed by the United States Court of Appeals for the Tenth Circuit decision that struck down the CPSC's high powered magnet set rule that we supported strongly. We are concerned by the consequences of that decision. Already, more rare earth magnets are entering the market, creating hidden hazards that could severely injure or even kill children who swallow more than one magnet. We urge that the CPSC take immediate action to promulgate a strong mandatory standard to protect children from the harms posed by these products, and carefully monitor the marketplace and incidents.

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<sup>9</sup> CPSC, Proposed Rule: Safety Standard for Portable Generators, 81 Fed. Reg. 83556-83615 (Nov. 21, 2016).

<sup>10</sup> <https://www.federalregister.gov/documents/2016/11/21/2016-2692/safety-standard-for-portable-generators>

<sup>11</sup> <https://www.cdc.gov/homeandrecreationalafety/falls/fallcost.html>

<sup>12</sup> <https://www.cdc.gov/homeandrecreationalafety/falls/adultfalls.html>

## IX. Furniture Tip-Overs

According to the CPSC's most recent data, every two weeks, a child dies as a result of a piece of furniture, appliance or television falling on him or her. Further, each year, more than 38,000 children are injured as a result of a piece of furniture, appliance or television tipping over. Between 2000 and 2011, there were 363 tip-over related deaths. Eighty-two percent of those deaths involved children younger than 8 years old.<sup>13</sup> While the ASTM standard for furniture has been modestly strengthened, much more needs to be done to improve the standard. Further, increased efforts are necessary to bring all of the stakeholders together to collectively address this increasingly problematic, multifaceted and dangerous injury pattern. We support the #anchorit campaign that seeks to educate consumers about the need to secure furniture to the wall. Further, we are deeply concerned about the inadequacy and ineffectiveness of the Ikea MALM dresser recall and urge the CPSC as well as IKEA to do much more to reach out to consumers to encourage them to return the dressers and obtain a refund. We support that the CPSC must move expeditiously on an effective mandatory standard. We also support legislation, such as the Sturdy Act, to require the CPSC to promulgate a strong mandatory standard that will reflect real world use, make furniture stable, and prevent tip-overs.

## X. Laundry Packets

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

“Some children who have put the product in their mouths have had excessive vomiting, wheezing and gasping. Some get very sleepy. Some have had breathing problems serious enough to need a ventilator to help them breathe. There have also been reports of corneal abrasions (scratches to the eyes) when the detergent gets into a child's eyes.”<sup>14</sup>

In 2019, thus far, according to the American Association of Poison Control Centers, there have been 2,097 children<sup>15</sup> 5 and younger exposed to laundry packets, in 2018 there were 9, 445,<sup>16</sup> in 2017, 10,883<sup>17</sup> children 5 and younger were exposed<sup>18</sup> to laundry packets, in 2016, 13,004 children 5 and younger were exposed to laundry packets.<sup>19</sup> In 2015, there were 13,112 exposures and in 2014 there

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<sup>13</sup> CPSC Report, Preliminary Evaluation of Anchoring Furniture and Televisions Without Tools, May 2015.

Available on the web at: <http://www.cpsc.gov/PageFiles/182505/Tipover-Prevention-Project-Anchors-withoutTools.pdf>

<sup>14</sup> Laundry Detergent Packets, American Association of Poison Control Centers, <http://www.aapcc.org/alerts/laundry-detergent-packets/>

<sup>15</sup> <https://aapcc.org/track/laundry-detergent-packets>

<sup>16</sup> See <https://aapcc.org/track/laundry-detergent-packets>

<sup>17</sup> See <https://aapcc.org/track/laundry-detergent-packets>

<sup>18</sup> The American Association of Poison Control Centers defines “exposure” to mean when someone has had contact with the substance in some way; for example, ingested, inhaled, absorbed by the skin or eyes, etc. Not all exposures are poisonings or overdoses., <https://aapcc.org/track/laundry-detergent-packets>

<sup>19</sup> <https://aapcc.org/track/laundry-detergent-packets>



were 12,204.<sup>20</sup> In 2013, poison centers received reports of 10,777 exposures to highly concentrated packets of laundry detergent by children 5 and younger.<sup>21</sup>

According to a Consumer Reports article from 2017,<sup>22</sup> laundry pods pose risks of death to adults with dementia. The Consumer Reports article cites CPSC data indicating “8 deaths related to ingesting liquid laundry packets in the U.S. between 2012 and early 2017 that have been reported to the Consumer Product Safety Commission. Two of the cases were young children and six were adults with dementia.”<sup>23</sup>

While the voluntary standard addresses the packaging container of the packets to some degree, the burst strength and flavor of the packets, and includes warning labels, more should be done. CFA and other organizations have urged that the voluntary standard not only ensure that the outer packages are child resistant, but also require that the packets are individually wrapped to prevent ingestion or eye exposure. Multiple layers of safety are needed to protect children from hazards posed by laundry packets – particularly given that a significant number of children have gained access to loose detergent packets, and when they do, injury can be almost immediate. Critically, all relevant data should be reviewed to determine whether the voluntary standard is effectively reducing incidents.

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

We further urge the CPSC to carefully monitor the incident data to ensure that incidents are decreasing. If the data indicates that the voluntary standard is not successfully addressing the hazard posed by laundry packets, we urge the CPSC to move forward with an effective mandatory standard.

## **XI. Recreational Off Highway Vehicles and All-Terrain Vehicles**

### **1. Recreational Off-Highway Vehicles (ROVs)**

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 652 ROV fatalities between January 1, 2013 and April 1, 2019. We have documented 17 deaths in 2019 alone and 150 fatalities in 2018, the highest recorded annual fatality count we have documented. In 2017 we documented 130 deaths and in 2016 we documented

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<sup>20</sup> Laundry Detergent Packets, American Association of Poison Control Centers, <https://aapcc.org/track/laundry-detergent-packets>

<sup>21</sup> American Association of Poison Control Centers <https://aapcc.org/track/laundry-detergent-packets>

<sup>22</sup> <http://www.consumerreports.org/laundry-cleaning/liquid-laundry-detergent-pods-pose-lethal-risk/>

<sup>23</sup> Ibid.

118 deaths. These numbers are likely underestimates as they are based solely on media reports and may grow as more data becomes available about additional deaths.<sup>24</sup>

We are concerned about the increasing number of ROV related fatalities, the increasing number of ROV recalls, and that more effective action is not being taken for known fire hazards posed by ROVs. First, CFA did an analysis<sup>25</sup> of off highway vehicle (OHV) recalls and found that over the past eight years, there have been 89 OHV recalls, and the number of recalls has increased from two recalls in 2010 to 24 recalls in 2017. We defined OHVs to include all-terrain vehicles (ATVs), recreational off-highway vehicles (ROVs), and utility task vehicles (UTVs). CFA's analysis of U.S. Consumer Product Safety Commission (CPSC) OHV recall reports since 2010 found that the highest number of recalls occurred during the past three years, from January 1, 2015 through December 17, 2018. 2017 has the most recalls of all the years analyzed. In addition, CFA analysis of CPSC OHV recall reports from January 1, 2010 through December 18, 2018 found that 19 brands<sup>26</sup> were involved in the recalls, and the brand with the most recalls was Polaris.<sup>27</sup> CPSC reports identified at least 62 injuries and two deaths linked to OHVs that were subsequently recalled. Also, more than one million<sup>28</sup> OHVs were estimated to be sold and subsequently recalled. We urge the CPSC to immediately and rigorously investigate what is causing the increase in OHV recalls.

OHV companies must do everything necessary to ensure the safety of their products. While we applaud companies for taking responsibility and recalling their products, problems should be identified before the products enter the marketplace and pose risks to consumers, evidence of harm associated with products should be immediately reported to the CPSC and recalls should be conducted quickly and effectively. The CPSC must investigate why the number of OHV recalls are increasing, must carefully review the industry-wide incidents and recalls, evaluate the effectiveness of the ATV and ROV standards to address these safety problems, and, along with OHV manufacturers, work to prevent these tragedies and improve the safety of these vehicles.

In addition, we are concerned about a failure to remove known fire hazards from the market in a timely and effective manner. On December 19, 2017, the CPSC and Polaris issued a short statement about Polaris RZR 900 and 100 Recreational Off-Highway Vehicles (ROVs) and fire safety risks.<sup>29</sup>

The statement informs consumers about fires that have been caused by two models of Polaris ROVs. The joint statement includes, “[M]ost of the vehicles were voluntarily recalled by Polaris in April 2016 to address fire hazards. However, users of the vehicles that were repaired as part of the April 2016 recall, continue to report fires, including total-loss fires. The 2017 RZR’s were not included in the April 2016 recall, but these models have also experienced fires.” While it is critically important that the CPSC and

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<sup>24</sup> Available at <https://consumerfed.org/off-highway-vehicle-safety/>

<sup>25</sup> <https://consumerfed.org/analysis-ohv-recalls-increasing-number-ohvs-pulled-market-due-safety-concerns/>

<sup>26</sup> Brand, is used to denote the type of OHV being recalled. While the brand is sometimes synonymous with the manufacturer, it is sometimes the name of an OHV produced by a manufacturer of a different name. In some instances, it is not clear from the recall notice who the manufacturer is.

<sup>27</sup> A single CPSC recall notice can include a single model or multiple models, as well as a single model year or multiple model years, or any combination of these factors.

<sup>28</sup> There were five CPSC recall notices that included golf carts alongside OHVs. The CPSC recall notices did not separate the total units of the OHV products from the golf cart products. Therefore this total includes some units of golf carts.

<sup>29</sup> <https://www.cpsc.gov/content/joint-statement-of-cpsc-and-polaris-on-polaris-rzr-900-and-1000-recreational-off-highway>



Polaris warn consumers of this fire hazard, the statement does not provide consumers with enough information to protect themselves and their families. The statement includes that fires have been associated with the recalled ROVs, ROVs that have been previously repaired as part of the recall, and ROVs that have not been subject to the recall.

We are very concerned that consumers do not have the information needed to protect themselves from the fire hazard identified in the joint statement. We wrote a letter to CPSC urging action one month after this statement was issued and it has now been over three months since the public was alerted to the fire hazard. Consumers unwittingly are operating and riding ROVs that both Polaris and the CPSC know pose an unreasonable fire risk.

We urge the CPSC to immediately provide clear information to consumers about ROVs that are catching fire, as mentioned in the December 19, 2017 statement. We urge the Commission to immediately recall and stop sale of the ROVs mentioned in the statement that have been associated with fires but not previously subject to recall, to re-issue recalls for the vehicles previously recalled and previously repaired as part of the recall program, to conduct a thorough evaluation as to why these fires are occurring and implement solutions to prevent these fires. The voluntary standards for these vehicles must be reevaluated to address these problems. That consumers are continuing to operate products that are known to have caused fires is creating a significant safety risk to consumers.

Finally, we urge the CPSC to issue injury and fatality statistics for ROVs annually. The CPSC releases this type of data for ATVs and it is an important addition to the public health research on ATVs. We need that same data for ROVs every year and we urge the CPSC to conduct this analysis and release it annually.

## **2. All-Terrain Vehicles**

According to the most recent data released by the CPSC<sup>30</sup> there have been more than 15,000 ATV-related fatalities occurring between 1982 and 2017. In 2017, there were an estimated 93,800 ATV-related, emergency department-treated injuries in the United States. An estimated 26 percent of these involved children younger than 16 years of age. The estimated number of ATV related fatalities was 708 in 2015, though the 2015 data is not considered complete and the number of fatalities will almost certainly increase as more data is received.

In 2017, ATVs killed at least 59 children younger than 16, accounting for 20 percent of ATV fatalities. Forty-four percent of children killed were younger than 12 years old. Children under 16 suffered an estimated 24,800 serious injuries in 2017. This represents 26 percent of all injuries.

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

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<sup>30</sup> [https://www.cpsc.gov/s3fs-public/atv\\_annual%20Report%202017\\_for\\_website.pdf?qLMnEEqa.T8KSOdW0r8qGqpUC7gObqEd](https://www.cpsc.gov/s3fs-public/atv_annual%20Report%202017_for_website.pdf?qLMnEEqa.T8KSOdW0r8qGqpUC7gObqEd)

(ROV) and found that all states that allow ATVs on roads also allow ROVs on roads. We lead a coalition that seeks to engage municipalities, counties, states, and other entities that are considering increasing OHV on road access.

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. Similarly, 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.

The CPSC must prioritize the issue of ATV safety. The CPSC's ATV rulemaking was required to be finalized in August of 2012. 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. We also urge the CPSC 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 and should seek to reduce the significant time lags in releasing ATV death and injury data.

## **B. Consumer Product Safety Commission Authority and Enforcement**

### **XII. Civil and Criminal Penalties**

A critical aspect of the CPSC's authority is enforcement of the CPSC's rules and laws. Based on numerous past recalls, we understand that there are numerous civil penalties that are currently pending but have not yet been assessed. We urge the Commission to effectively take actions to protect consumers and enforce its laws. We are concerned that in the last quarter of 2017, there were no civil penalties<sup>31</sup> and that in fiscal year 2018 there was one civil penalty.

- In FY 2019, thus far, the CPSC has collected 2 civil penalties, ranging from \$1,000,000 to \$3,850,000; and no criminal penalties.
- In FY 2018, the CPSC collected 1 civil penalty for \$27,250,000; and no criminal penalties.
- In 2017, the CPSC collected 6 civil penalties, ranging from \$3,800,000 to \$5,800,000; and no criminal penalties.
- In 2016, the CPSC collected 5 civil penalties, ranging from \$2,000,000 to \$15,450,000; and no criminal penalties.
- In FY 2015, the CPSC collected 10 civil penalties, ranging from \$700,000 to \$4,300,000; and no criminal penalties.

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<sup>31</sup> See <https://www.stericycleexpertsolutions.com/wp-content/uploads/2018/02/ExpertSolutions-RecallIndex-Q42017.pdf>

- In FY 2014, the CPSC collected 4 civil penalties, ranging from \$600,000 to \$3,100,000; and no criminal penalties.
- In FY 2013, the CPSC collected 7 civil penalties, ranging from \$400,000 to \$3,900,000; and one criminal penalty of \$10,000.
- In FY 2012, the CPSC collected 10 civil penalties, ranging from a consent decree, to monetary penalties ranging from \$214,000 to \$1,500,000 million dollars; and no criminal penalties.
- In FY 2011, the CPSC collected 14 civil penalties, ranging from a consent decree for a permanent injunction, to monetary penalties ranging from \$40,000 to \$960,000; and one criminal penalty for \$16,000.
- In FY 2010, the CPSC collected 7 civil penalties, ranging from \$25,000 to \$2,050,000 million; and no criminal penalties.
- In FY 2009, the CPSC collected 37 civil penalties, ranging from \$25,000 to \$2,300,000; and no criminal penalties.

Of note is the Department of Justice's recent criminal indictment of two officials for failing to comply with the CPSC's rules.<sup>32</sup> This is an important deterrent and signal to industry that violations of the law will not be tolerated.

We are concerned about the recent trend of fewer civil penalties assessed, and except for the one civil penalty in 2018 that included numerous vehicles of one manufacturer, the trend of lower civil penalty assessments. Civil and criminal penalties serve an important deterrent effect to non-compliance with the laws enforced by the CPSC and we urge the CPSC to prioritize this important element of its enforcement responsibilities when the violations represent disregard for the CPSC's laws.

### **XIII. Section 6(b) of the Consumer Product Safety Act**

Section 6(b) of the Consumer Product Safety Act is one of the most anti-consumer, anti-transparency provisions in existing laws. Section 6(b) requires that before the CPSC can name a company publicly, it must seek their permission.

The impact of this provision is vast. While the CPSC has historically collected consumer complaints, most are hidden from the public for long periods of time until and if a recall is announced. This means that too often, consumers are unwittingly using products that the CPSC and manufacturers know pose safety hazards. Further, the reach of 6(b) impacts the CPSC's ability to name specific products in their research, which occurred with lead kits in 2007.<sup>33</sup> Despite the fact that the CPSC found numerous home lead kits unreliable, it did not name them. Similarly, in a furniture stability study in 2016,<sup>34</sup> the CPSC identified certain furniture that did not meet existing voluntary safety standards, but did not name the products (nor take enforcement action to protect consumers). Section 6(b) also acts as an obstacle to obtaining information from the CPSC through FOIA requests. Importantly, SaferProducts.gov is written outside of the scope of section 6(b), and provides critical information about specific products that pose a risk of harm.

### **XIV. Recall Effectiveness**

<sup>32</sup> <https://www.justice.gov/opa/pr/two-corporate-executives-indicted-first-ever-criminal-prosecution-failure-report-under>

<sup>33</sup> <https://www.cpsc.gov/id/node/19866>

<sup>34</sup> [https://www.cpsc.gov/s3fs-public/Product%20Instability%20or%20Tip%20Over%20Report%20August%202016\\_1.pdf](https://www.cpsc.gov/s3fs-public/Product%20Instability%20or%20Tip%20Over%20Report%20August%202016_1.pdf)

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 and baby 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 prioritize this issue and take actions that will result in more effective recalls. We urge the CPSC to work with manufacturers of infant and baby products to maximize awareness about product registration.

The CPSC should lead efforts to increase direct notice to consumers; expand the use of marketing strategies and technology; consider consumer and business incentives to promote effective recalls and consider disseminating additional information on best practices. The Commission should also use all of its tools to communicate about recalls such as sharing every recall on Twitter and Facebook, something that Kids In Danger (KID) identified in their recent *2018 Children's Product Recalls* report,<sup>35</sup> that the agency and manufacturers have not been doing.

### **XV. CPSIA Implementation**

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

Because of the rules promulgated by the CPSC, numerous 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 are required.

The CPSC has additional infant durable product rules to promulgate under section 104, the Danny Keysar Child Product Safety Notification Act. We urge the CPSC to continue to commit the staff time and resources necessary to prioritize the promulgation of these rules as quickly as possible, as the CPSC's work has not kept pace with the timeline established by the CPSIA. We have been concerned about the CPSC's past delay of the standards for gates. In addition, the CPSC has the authority to add additional products under section 104 and we urge the agency to use this authority to protect infants and toddlers. The promulgation of mandatory safety standards for rules under section 104 is a critical component of the CPSIA that consumers recognize as necessary to ensure safety when using children's products.

### **XVI. SaferProducts.gov**

We appreciate that the Commission held a hearing on SaferProducts.gov in March of this year and responded positively to the recommendations CFA, KID and CR made to the Commission. While the Commission immediately provided a link to SaferProducts.gov on CPSC's web page, we urge the Commission to take additional action and share their plan to update SaferProducts.gov more

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<sup>35</sup> <https://kidsindanger.org/wp-content/uploads/2019/03/KID-2019-Recall-Report.pdf>

broadly and include, at a minimum, recommendations that we made at the SaferProducts.gov hearing based on CFA's, KID's and other' analysis of SaferProducts.gov. CFA recommends that the CPSC:

- **Increase use:** Develop and implement and publicly share a plan to increase awareness and use of the database by the public, as well as healthcare professionals and other permitted reporters, through a more consumer friendly interface as well as outreach and training.
- **Fold additional data sources into SaferProducts.gov:** Collect the information statutorily required for a report to be included in SaferProducts.gov when collecting information for the CPSC's other databases. For instance, while there is a field on each report on the database to link it to associated recalls, the recall information is not always included – leaving consumers in the dark about their use of a recalled product.
- **Analyze data and release reports:** SaferProducts.gov contains a great deal of data; CPSC could have a positive impact on injury prevention if it would release an annual report evaluating the trends in harm posed by products in the database. Other reports on specific emerging hazards or items in the news could be done more regularly.
- **Analyze why published reports are decreasing each year:** We know that the number of published reports on SaferProducts.gov has been decreasing each year. The CPSC should identify why this is occurring and seek to reverse the trend.

We look forward to working with the Commission to improve SaferProducts.gov.

## **XVII. Conclusion**

The CPSC plays a critical role in ensuring that consumers are safe from product hazards. We urge the Commission to use all of the tools Congress gave it to protect consumers from potentially hazardous consumer products. We urge the Commission to prioritize and address the issues we outlined today as soon as possible as many pose urgent hazards to consumers. Consumer Federation of America looks forward to working with the Commission to address these issues.