

May 2012

CONSUMER
PRODUCT SAFETY
COMMISSION

A More Active Role in
Voluntary Standards
Development Should
Be Considered



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Why GAO Did This Study

Growing numbers of recalls in 2007 and 2008, particularly of children's products, focused increased attention on CPSC. Consumer products can be subject to mandatory or voluntary standards, or both. Questions have been raised about the level of compliance with voluntary standards and CPSC's ability to encourage compliance. The Consolidated Appropriations Act of 2012 directed GAO to analyze manufacturers' compliance with voluntary industry standards. This report evaluates (1) what is known about the extent to which manufacturers comply with voluntary standards for consumer products, (2) CPSC's authority and ability to require compliance with voluntary standards, and (3) the consequences for manufacturers that fail to comply with voluntary standards.

To do this, GAO reviewed CPSC's statutory and regulatory authorities to encourage compliance with voluntary standards; reviewed agency documents and literature on consumer product safety; analyzed data on CPSC corrective actions; and met with representatives from national consumer, industry, legal, and standard-setting organizations who have expertise in developing consumer product safety standards.

What GAO Recommends

To strengthen the adequacy of voluntary standards, CPSC should review the policy for participating in voluntary standards development activities and determine the feasibility of assuming a more active, engaged role in developing voluntary standards. CPSC supported the recommendation.

CONSUMER PRODUCT SAFETY COMMISSION

A More Active Role in Voluntary Standards Development Should Be Considered

What GAO Found

Although the Consumer Product Safety Commission (CPSC) enforces compliance with mandatory federal safety standards, it is also required by law to rely on voluntary safety standards when it determines that the standard adequately addresses the product hazard and is likely to have substantial compliance. Voluntary standards—developed by industry, consumer, and government participants through a consensus process—cover many of the thousands of types of products in CPSC's jurisdiction. Compliance with voluntary standards is not routinely tracked, but it is generally considered to be high by industry participants. Compliance with these standards also depends on industry and legal factors, such as retailer requirements to demonstrate proof of compliance with voluntary safety standards and risk of liability in product liability lawsuits.

Because voluntary standards do not have the force of law, CPSC cannot compel compliance with them. However, noncompliance with a voluntary standard can inform a determination of a substantial product hazard by the CPSC that in turn can lead to CPSC enforcement actions. CPSC has exercised its expanded authority to place a product on the substantial product hazards list. Specifically, it designated drawstrings from children's upper outerwear and hair dryers without a ground fault circuit interrupter as hazardous products, and Customs has seized violative items at ports. CPSC also participates in standard development activities with industry and consumer representatives and monitors select voluntary standards. CPSC attends standard development meetings, supplies hazard and injury data and analysis, and provides input on draft standards. However, CPSC's regulation prohibits staff from voting on the final standards or from participating in any meeting that excludes other groups, such as media or consumers. CPSC's rationale for limiting involvement in standards development activity is to maintain its independence—such as not appearing to endorse a specific standard. Office of Management and Budget guidance gives agencies discretion to determine their level of participation in standard setting activities, including full involvement in discussions, serving in leadership positions, and voting on standards. A January 2012 White House memorandum states that the federal government may need to be actively engaged in standards development and implementation, including playing an active role in standard setting and assuming leadership positions in Standard Development Organization committees. Committee participants GAO spoke to value CPSC's input but generally agreed that CPSC should participate earlier and take a more active role in standards development. These actions could enhance CPSC's oversight, and may strengthen voluntary standards.

Manufacturers that fail to comply with voluntary standards can face consequences when CPSC has determined that noncompliance poses a significant risk of injury or death to consumers. CPSC can take corrective action against the manufacturer, including recalls, or take longer term action to ban the hazardous product. CPSC has focused much of its surveillance and compliance work on imported products. For fiscal years 2008 through 2011, 80 percent of CPSC recalls have been of imported products that may be subject to voluntary standards, highlighting challenges CPSC faces in helping to ensure the safety of consumer products.

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Abbreviations

ANSI	American National Standards Institute
CPSA	Consumer Product Safety Act
CPSC	Consumer Product Safety Commission
CPSIA	Consumer Product Safety Improvement Act
NIST	National Institute of Standards and Technology
OMB	Office of Management and Budget
SDO	Standards Development Organization
UL	Underwriters Laboratories, Inc.

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Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

May 21, 2012

The Honorable Richard Durbin
Chairman
The Honorable Jerry Moran
Ranking Member
Subcommittee on Financial Services and General Government
Committee on Appropriations
United States Senate

The Honorable Jo Ann Emerson
Chairwoman
The Honorable José E. Serrano
Ranking Member
Subcommittee on Financial Services and General Government
Committee on Appropriations
House of Representatives

Growing numbers of recalls in 2007 and 2008, particularly of toys and other children's products, focused increased attention on the Consumer Product Safety Commission (CPSC). On August 14, 2008, the Consumer Product Safety Improvement Act (CPSIA) was enacted to reform CPSC and strengthen its authority to enforce consumer product safety standards.¹ Many safety standards covering consumer products are known as voluntary standards, developed by industry, consumer, and government representatives through a consensus process. Questions have been raised about the level of compliance with voluntary standards and CPSC's ability to encourage compliance.

Voluntary standards are generally determined by standard-setting organizations, with input from government representatives and industry groups, and are also referred to as "consensus standards." These voluntary standards do not have the force of law. Amendments in 1981 to the Consumer Product Safety Act (CPSA)—CPSC's original authorizing legislation—directed CPSC to defer to voluntary standards rather than issue mandatory standards if it determines that the voluntary standard adequately addresses a potential product hazard and that there is likely to

¹Pub. L. No. 110-314, 122 Stat. 3016 (2008).

be substantial compliance with it.² CPSC monitored or provided technical support for 174 new, revised, or reaffirmed voluntary standards from fiscal years 2007 through 2011, according to CPSC reports.

In the Consolidated Appropriations Act, 2012 Congress directed us to analyze compliance with voluntary industry standards for consumer products overseen by CPSC.³ In this report, we evaluate (1) what is known about the extent to which manufacturers comply with voluntary standards for consumer products, including inexpensive imported products; (2) CPSC's authority and ability to require compliance with voluntary standards; (3) the consequences for manufacturers that fail to comply with voluntary standards; and (4) CPSC's efforts to identify patterns of noncompliance.

To address these objectives, we reviewed CPSC's statutory and regulatory authority to encourage compliance with voluntary standards. We also reviewed CPSC's standard operating procedures, performance and accountability reports, budget documents, and our relevant prior reports. We met with cognizant CPSC officials to discuss their authorities and their ability to enforce them, including all of CPSC's current commissioners and the Chairman.⁴ Additionally, we obtained and analyzed data from CPSC's compliance databases to identify (1) the number of reported instances of noncompliance; (2) the number of times these instances led to a corrective action; (3) the numbers of corrective actions that resulted; (4) the number of product units recalled; and (5) the type of standard, if any, that covered the product. We assessed the reliability of these data by reviewing existing information about the data and the system that produced them, and interviewing agency officials knowledgeable about the data and related management controls. Based on this assessment, we determined the data to be sufficiently reliable for the purposes of this report. We interviewed the three standards

²Consumer Product Safety Amendments of 1981, Pub. L. No. 97-35, title XII-A, 95 Stat. 357, 703 (1981), amending 15 U.S.C. §§ 2056 and 2058.

³Consolidated Appropriations Act, 2012, Division C - Financial Services and General Government Appropriations Act, 2012, Title V, Pub. L. No. 112-74, § 504, 125 Stat. 786, 908 (2011).

⁴The Consumer Product Safety Act established CPSC as an independent regulatory commission. The act provides for the appointment by the President of five commissioners for staggered 7-year terms. One of these commissioners is designated the Chairman, who directs all the executive and administrative functions of the agency. See generally 15 U.S.C. § 2053. As of May 2012, CPSC was led by four commissioners.

development organizations that coordinate the development of more than 90 percent of voluntary standards developed with CPSC staff technical support. We obtained testimonial and documentary information from national consumer, industry, and legal organizations that have expertise in working on voluntary standards development for consumer products. See appendix I for additional information on our scope and methodology.

We conducted this performance audit from January 2012 to May 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

CPSC was created in 1972 by the Consumer Product Safety Act to regulate certain consumer products and address those that pose an unreasonable risk of injury; assist consumers in using products safely; and promote research and investigation into product-related deaths, injuries, and illnesses.⁵ According to CPSC, this jurisdiction covers thousands of manufacturers and types of consumer products. CPSC does not have jurisdiction over some categories of products, including automobiles and other on-road vehicles, tires, boats, alcohol, tobacco, firearms, food, drugs, cosmetics, medical devices, and pesticides. Other federal agencies—the National Highway Traffic Safety Administration, U.S. Coast Guard, Department of Justice, Department of Agriculture, Food and Drug Administration, and Environmental Protection Agency—have jurisdiction over these products.

⁵Pub. L. No. 92-573, 86 Stat. 1207 (1972), codified, as amended, at 15 U.S.C. §§ 2051-2089. In addition to enacting the CPSC's organic authorities, the Consumer Product Safety Act transferred to CPSC enforcement authority under four existing statutes: the Flammable Fabrics Act, 15 U.S.C. §§ 1191-1204, the Federal Hazardous Substances Act, 15 U.S.C. §§ 1261-1278, the Poison Prevention Packaging Act, 15 U.S.C. §§ 1471-1477, and the Refrigerator Safety Act, 15 U.S.C. §§ 1211-1214. CPSC has also subsequently been charged with administering other safety statutes such as the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. §§ 8001-8008, and the Children's Gasoline Burn Prevention Act, 15 U.S.C. § 2056note. These statutes confer various regulatory and enforcement powers on CPSC with respect to the specialized areas that they cover, including in some cases authority to prescribe safety standards as well as labeling and packaging requirements.

CPSC has jurisdiction over thousands of types of consumer products and hazardous substances, many of which are subject to mandatory regulations or voluntary standards, or both.⁶ Mandatory standards are federal rules set by statute or regulation that define the requirements consumer products must meet. These standards establish performance and labeling criteria that products must meet before they are manufactured, imported, distributed, or sold in the United States. CPSC may set a mandatory standard when it determines that a voluntary standard would not eliminate or adequately reduce a risk of injury or finds that substantial compliance with a voluntary standard would be unlikely.⁷ The Commission also may impose a mandatory ban of a hazardous product when it determines that no feasible consumer product safety standard adequately would protect the public from an unreasonable risk of injury.⁸ In some cases, Congress has enacted a specific statutory requirement for CPSC to create a mandatory standard, or convert a voluntary standard to a mandatory standard. For instance, CPSIA mandated the conversion of voluntary standards for durable infant and toddler products, all-terrain vehicles, and children's toys to mandatory standards.⁹ Mandatory standards and bans are enforceable by CPSC, allowing the agency to stop imported products that do not meet federal requirements at ports and seek civil or criminal penalties for violations of the mandatory standards or bans. Approximately 200 products are currently regulated and subject to mandatory standards, including automated garage door openers, fireworks, and children's cribs.

Many consumer products under CPSC's jurisdiction, including smoke alarms, candles, and portable generators, are subject to voluntary standards.¹⁰ More than 700 standards development organizations (SDO)

⁶CPSC officials said that certain products are covered by both mandatory and voluntary standards. In these cases, certain features of a product may be covered by a mandatory standard, while other features are subject to a voluntary standard. For example, safety features for bicycle brakes, frames, pedals, and tires are stipulated by a mandatory safety standard, while specifications for serial numbers to facilitate recalls and identification of stolen property fall under a voluntary standard.

⁷15 U.S.C. § 2056.

⁸15 U.S.C. § 2057.

⁹15 U.S.C. §§ 2056a, 2056b, and 2089.

¹⁰According to CPSC, prior to the passage of CPSIA, the ratio of voluntary standards to mandatory standards was 10 to 1.

develop most voluntary standards used in the United States, including safety standards. SDOs include private-sector professional and technical organizations, trade associations, and research and testing entities. According to CPSC, three SDOs—Underwriters Laboratories, Inc. (UL); ASTM International; and the American National Standards Institute (ANSI)—coordinate the development of more than 90 percent of voluntary standards developed with CPSC staff technical support. Participants in the standards development process include representatives from government agencies, manufacturers, consumers, retailers, testing laboratories, technical experts, and other interested parties. In general, most SDOs operate by principles that govern the voluntary standards process, such as openness, balance, consideration of views and objections, consensus vote, and the right to appeal. The process of developing consensus standards is designed to be transparent, with written procedures covering each step. Participation in the standard development process is intended to be voluntary. Standards developed by an SDO are considered the property of the SDO. CPSC officials told us that once a standard is published and copyrighted, members of the public and government agencies generally must purchase them.

The National Institute of Standards and Technology (NIST), the federal agency that coordinates standard activities, maintains a database of standards that have been incorporated by reference into federal regulations. NIST also has online search tools that members of the public may use to locate other standards—including voluntary standards not incorporated by reference into federal regulations—but according to agency officials, the agency does not collect or maintain voluntary standards.

CPSC's voluntary standards activities are overseen by a Voluntary Standards Coordinator, appointed by the Commission's Executive Director. The coordinator is the senior agency official responsible for managing the Commission's voluntary standards program. One of the coordinator's main duties is to prepare and submit to the Commission a semiannual summary of staff's voluntary standards activities. Duties also include providing advice and recommendations for the development of new voluntary standards or the revision of existing voluntary standards, in conjunction with CPSC management. The coordinator also proposes policies and guidelines concerning voluntary standards activities, reviews associated public comments, and prepares recommended policies for approval by the Commission. The coordinator works with SDOs, and recommends and trains CPSC staff to serve as technical experts to those organizations. Further, the coordinator is the liaison to industry

associations, other government agencies, and any other group interested in voluntary standards.

CPSC's Office of Compliance and Field Operations, currently with 166 staff, has primary responsibility for helping ensure compliance with product safety standards. Its activities include enforcing mandatory standards and reporting requirements, investigating product hazards, and determining corrective actions (such as recalls) for manufacturers not in compliance with safety standards.¹¹ CPSC also has an Office of Import Surveillance and Inspection that coordinates enforcement efforts with U.S. Customs and Border Protection to help ensure import compliance with safety standards. CPSC has investigators stationed at some ports of entry to assist in surveillance activities. In a past report, we made recommendations to strengthen CPSC's ability to target unsafe consumer products, especially imported products.¹² We recommended that CPSC work to educate foreign manufacturers about U.S. product safety standards and best practices, including the importance of complying with voluntary standards. CPSC concurred with our recommendation. The 2011-2016 Strategic Plan states that CPSC has been seeking to create and strengthen partnerships with domestic and international stakeholders, including foreign regulators and manufacturers, to improve product safety throughout the supply chain. Also, CPSC's Office of Education, Global Outreach, and Small Business Ombudsman has separately developed and issued plans for addressing consumer product safety on a country-specific and regional basis.

¹¹The Office of Compliance and Field Operations conducted formal voluntary standards compliance programs until 2002, when it transferred the function to CPSC's Office of Hazard Identification and Reduction.

¹²See GAO, *Consumer Safety: Better Information and Planning Would Strengthen CPSC's Oversight of Imported Products*, [GAO-09-803](#) (Washington, D.C.: Aug. 14, 2009).

Standards Development Process, Industry Certification, and Legal Factors Help Ensure Compliance with Voluntary Standards

Industry representatives and consumer groups we spoke to said that compliance with voluntary standards developed through the consensus process is generally considered to be high, although they do not track compliance. Some representatives and consumer groups said that it can reach 90 percent for some standards. However, consumer product safety experts suggested that standards for some products have lower compliance, especially commonly low-priced items, products primarily sold over the Internet or by nonconventional retailers, products made by a large number of manufacturers, or products primarily manufactured overseas. For instance, cigarette lighters manufactured overseas and sold at low prices in the United States have been found to be noncompliant with voluntary standards.

Standards Developed through a Consensus Process with Open Participation Generally Gain High Compliance

Consumer product safety experts we spoke to generally said that industry prefers voluntary to mandatory standards. They noted the voluntary standard development process is faster than mandatory rulemaking, and allows the industry a greater level of input. According to CPSC, the time required for mandatory rulemaking varies depending on the complexity of the product or of the rule requirements, the severity of the hazard, and other agency priorities, among other factors.¹³ For example, a legal expert told us that a mandatory rulemaking for cigarette lighters took 10 years from the decision to take action to final rule. CPSC also has been considering a mandatory rule to address the risk of fire associated with ignitions of upholstered furniture since 1972. Generally, the flexible process for developing voluntary standards is considered to facilitate revisions to the standards. Working through SDOs, interested parties have been able to revise existing standards to respond in a timely manner to emerging hazards or risks. According to two legal experts, a disadvantage of mandatory standards is that revision or repeal can be difficult. One expert also told us that because mandatory standards set fixed requirements for product safety, the rules can stifle product development and innovation.

Industry participants told us that advantages of the voluntary standards process include open participation and proceedings by consensus, which

¹³Interested parties generally have 60 days to comment on an Advance Notice of Proposed Rulemaking (ANPR) and 75 days to comment on a Notice of Proposed Rulemaking. CPSIA contains some provisions designed to shorten the timeframe for rulemaking, such as making an ANPR optional, though it may be issued when the CPSC deems it a necessary part of rulemaking.

can help ensure compliance with the resulting standards. Other industry representatives said that they also invest considerable time and resources in writing standards, which raises the likelihood of compliance.

Factors that affect compliance for some manufacturers include discerning and accessing applicable standards. Some consumer product safety experts told us that some small businesses and foreign manufacturers are not aware of applicable standards for their products. CPSC has responded by extending greater outreach to these businesses through the agency's Office of Education, Global Outreach, and Small Business Ombudsman. The office coordinates with, and provides education and outreach activities to, various domestic and international stakeholders, including manufacturers, retailers, resellers, small businesses, and foreign governments. Among its responsibilities, the office works with foreign governments and regulatory bodies to help them increase their capacity to develop voluntary and mandatory product safety standards and plans to develop information and guidance tailored specifically to small batch manufacturers. Staff from this office plan to update the CPSC web page to assist small businesses in learning about their obligations under CPSIA, by informing them about voluntary standards, and encouraging them to comply. CPSC also plans to conduct two extended training exchanges with foreign partners, including developing country officials, to increase foreign regulatory agencies' understanding of CPSC procedures and policies and help ensure that CPSC safety standards are met for U.S.-bound exports.

Some Retailers and Industry Associations Require Proof of Compliance with Voluntary Safety Standards to Sell Consumer Products

Although not legally mandated for voluntary standards, some retailers require a certification mark or other proof of compliance from manufacturers before they will agree to sell their product in stores.¹⁴ For instance, according to a legal expert, specialty retailers who sell gas fireplaces require proof of adherence to a new standard, which is being revised to address a safety hazard, for glass panels for the front of gas fireplaces. For many products, consumers and retailers expect that they meet a minimum safety standard, such as a voluntary standard. Some retailers conduct their own product safety programs, often certifying

¹⁴A certification mark is used on the goods and services to provide a visible guarantee that those goods and services meet standards set by the owner of the certification mark. UL, owner of one of the most commonly-seen certification marks, certifies that consumer products comply with safety standards.

compliance with safety standards through testing at third-party labs, to better ensure the safety of products sold in their stores.

In addition, some industry associations have programs to certify compliance with voluntary standards applicable to their members' products.¹⁵ Entities found not to be in compliance with applicable standards could lose the right to bear the association's certification mark. Industry associations that have certification programs include the furniture industry and children's products manufacturers. One furniture association provides hang tags to members who have paid to certify their conformance with the industry-developed standards, primarily addressing fire hazards. A group representing children's products manufacturers has implemented a lab testing and inspection process to certify members' compliance with applicable standards. Manufacturers contract with the industry group to receive certification that their products, such as cribs, strollers, and baby walkers, comply with standards.

Certain Industries Prefer Mandatory Standards to Ensure a Level Playing Field and Preempt State Laws

Although industry representatives and legal experts we spoke to said that manufacturers largely prefer voluntary over mandatory standards, they also told us that certain industries have sought mandatory standards. Two reasons were cited for an industry's preference for mandatory standards: first, to level competition across an industry sector, especially where some manufacturers were not complying with the voluntary standard to which the rest of the industry agreed; and second, to preempt divergent state laws.¹⁶ The Lighter Association, a group representing cigarette lighter manufacturers, petitioned CPSC in 2001 to adopt the prevailing voluntary standard for lighters as a mandatory standard. The association cited widespread noncompliance with the voluntary standard, especially for lighters imported from China. Although CPSC has not as yet promulgated a general rule for mechanical requirements for cigarette lighter safety, it had adopted a regulation requiring child-resistant mechanisms for disposable lighters in 1994. A legal expert who has worked with the arts and creative materials industry told us that the industry sought to convert the industry's voluntary standard, developed

¹⁵Provisions of CPSIA impose certification requirements for imported products that are subject to mandatory safety rules under statutes enforced by CPSC as well as third-party lab testing for products subject to children's product safety rules. 15 U.S.C. § 2063.

¹⁶Mandatory safety standards under the CPSC generally preempt state and local standards dealing with the same product risks unless they are identical to the federal requirements. See 15 U.S.C. § 2075.

with input from consumers and product users, to a mandatory standard to preempt differing laws in at least seven individual states.

**Risk of Potential Liability
in Product Liability
Lawsuits Helps Ensure
Industry Compliance with
Voluntary Safety Standards**

Potential liability in product liability lawsuits for noncompliance with voluntary standards is another factor that affects compliance. Consumer product safety experts also told us that the risk of incurring reputational and financial costs associated with product liability lawsuits provides an incentive for manufacturers to comply with voluntary standards. Courts generally consider noncompliance with a voluntary standard as relevant evidence to establish a product defect or to prove a case of negligence. By the same token, if litigants can show compliance with applicable voluntary standards, the compliance may provide evidence of lack of a product defect or negligence. However, evidence of compliance usually is not sufficient on its own to negate liability.¹⁷

**While CPSC Cannot
Legally Require
Compliance with
Voluntary Standards,
Industry Monitoring
and Participation in
Standards
Development Help
Encourage
Compliance**

CPSC cannot compel compliance with voluntary standards. However, according to CPSC officials, the agency has requested that U.S. Customs and Border Protection seize at the ports defective products that are subject to voluntary standards and that constitute a substantial product hazard. CPSC also participates in voluntary standard development activities, although their effectiveness is limited by constrained resources and a restrictive meetings policy. While consumer product safety experts value CPSC's input, they generally agree that earlier and more active participation could increase CPSC's efficiency and effectiveness in developing standards.

¹⁷Compliance or noncompliance with mandatory governmental standards likewise is relevant in product liability litigation and generally carries even greater weight than a voluntary standard.

Though Voluntary Standards Do Not Have the Force of Law, CPSC Is Using Expanded Legal Authority to Seize Defective Products

Since voluntary standards do not have the force of law, the Commission cannot compel compliance with them. Noncompliance with a voluntary standard, however, can inform a determination of a substantial product hazard by the CPSC. The CPSA defines a substantial product hazard as a failure to comply with an applicable consumer product safety rule, which creates a substantial risk of injury to the public; or a product defect, which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.¹⁸ If the CPSC finds that a product presents a substantial product hazard, it can lead to an enforcement action, such as a public notice or recall. Consequences for noncompliance with voluntary standards that amount to a substantial product hazard are discussed in the next section of this report.

We found that CPSC does not routinely track broad product compliance with voluntary standards. Although they have internal guidance for monitoring compliance with voluntary standards, CPSC officials said that the agency has not conducted a formal program to test for product conformance with voluntary standards since 2002. The agency cited limited resources and competing priorities, including Congressional mandates and monitoring mandatory standards, as reasons for not doing so. According to CPSC officials, following the enactment of CPSIA in 2008, the agency reallocated resources from voluntary standards activities towards meeting mandatory rulemaking deadlines required in the act.

With the enactment of CPSIA in 2008, CPSC was granted expanded legal authority relative to certain voluntary standards under section 15(j) of the Consumer Product Safety Act to create a substantial product hazard list.¹⁹ It allows the Commission to issue a rule for any consumer product or class of products identifying certain characteristics whose presence or absence must be deemed a substantial product hazard. CPSC must determine that the characteristics are readily observable and that the hazard has been addressed by voluntary standards. CPSC must also determine that voluntary standards have been effective in reducing the

¹⁸15 U.S.C. § 2064(a). Product safety rules for this purpose include mandatory safety standards and product bans under CPSA as well as similar standards and bans under other laws enforced by CPSC.

¹⁹15 U.S.C. § 2064(j), added by section 223(a) of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, 122 Stat. 3068.

risk of injury from the products and there is substantial compliance with the voluntary standards. When CPSC publishes a rule making such determinations, the products involved are subject to all of the enforcement consequences that apply to a substantial product hazard.²⁰ Among other actions, the product must be refused admission into the United States. CPSC works cooperatively with Customs and Border Protection staff at ports of entry to detect and seize defective products. Agency officials stated that, to date, CPSC has twice exercised authority under section 15(j) to identify products containing substantial product hazards: children's upper outerwear containing drawstrings, because of risk of strangulation; and hand-supported hair dryers without integral immersion protection, due to risk of electric shock.

We spoke with legal experts to discuss their views on the CPSC's expanded authority to declare substantial product hazards. Two legal experts told us that exercising the authority essentially converts a voluntary standard to a mandatory one without undergoing the established rulemaking procedures. According to one expert, the expanded authority gives the CPSC the ability to use the voluntary standards that were intended to address design and performance issues to create a mechanism for seizure of defective products at the ports, without putting the burden of proving a substantial product hazard on the CPSC. Another product safety expert also said that the expanded authority will not substantially enhance CPSC's enforcement capability because inspectors must have the ability to readily observe the hazard at the port of entry. Some hazards are not readily observable and require testing for compliance, such as lead content. CPSC told us that while the section 15(j) authority allows them to respond more quickly to substantial product hazards, not enough time has passed to assess the effect this authority will have on helping ensure compliance with voluntary standards.

²⁰Section 15(j) provides that rules issued under that authority are subject to judicial review in the same manner as mandatory safety rules. Such rules may be affirmed only if CPSC's determinations are supported by substantial evidence. 15 U.S.C. § 2060(c).

CPSC Participates in Standards Development Activities, but Its Effectiveness is Limited by Resource Constraints and a Restrictive Meetings Policy

CPSC staff participate in the voluntary standard development process by providing expert advice, technical assistance, and information based on data analyses of the numbers of and causes of deaths, injuries, or incidents associated with the product. According to CPSC, it supplies the standard-setting bodies with epidemiological and health science data, including extrapolated injury and death data from hospitals; death certificates associated with products causing the death where available; anecdotal data; and incident reports from SaferProducts.gov.²¹ CPSC officials said that support of voluntary standards development can be moderate or intensive. They told us that a moderate level of support would include reading the minutes of subcommittee meetings and monitoring the proceedings. More intensive support may consist of conducting and presenting CPSC research, performing lab tests, and writing draft language for the standard.

CPSC officials told us that in developing voluntary standards, CPSC interacts primarily with ASTM International for children, juvenile, toddler, and infant products; ANSI for products such as bicycles and garage door operators; and UL for electrical products. CPSC staff told us they have a representative who serves as a nonvoting member on the board at ANSI and on ANSI's accrediting council.²² According to ANSI representatives, CPSC staff participate in discussions related to accrediting and maintaining procedures for international standards. Representatives from UL told us that CPSC staff participate in UL's Consumer Advisory Council, which convenes at least once a year to discuss products and standards.

According to CPSC officials, the agency has recommended 31 products for SDO standards review, development, or revision for fiscal years 2007 through 2011. In fiscal year 2011, CPSC staff report that they provided technical support and contributed to the completion of work on 37 new, revised, or reaffirmed voluntary standards, while they provided technical

²¹SaferProducts.gov is a database maintained by CPSC. Through a web portal, consumers and others meeting statutory requirements may submit reports of harm or the risk of harm from products and can search for information on products reported to be unsafe that they own or may be considering for purchase. See 15 U.S.C. § 2055a.

²²ANSI's role in standards development differs from that of SDOs. ANSI serves as administrator and coordinator of the U.S. private sector, voluntary standardization system. ANSI also accredits U.S. standards developers using criteria based on international requirements. SDOs accredited by ANSI include ASTM International, UL, and the National Fire Protection Association.

support or monitored the development of 60 voluntary safety standards. These standards addressed hazards associated with cradles and bassinets, children’s play yards, portable generators, and garage door openers, among other products. According to CPSC’s Operating Plan, the agency plans to monitor 68 voluntary standards in fiscal year 2012, including standards addressing tip-over hazards of kitchen ranges, cadmium levels in children’s jewelry, strangulation risk posed by window blind cords, and sulfur emissions in drywall (see table 1).

Table 1: Voluntary Standards and Code Revisions Supported by CPSC Staff for Fiscal Years 2007 through 2012

	2007	2008	2009	2010	2011	2012 (planned)
Number of standards/code revisions supported	66	74	39	61	60	68
Number of CPSC voluntary standard project managers ^a	26	25	22	30	29	24-27

Source: CPSC.

^aCPSC officials told us that employees may be involved with more than one voluntary standard and their level of involvement can vary significantly. The numbers reflect those employees who are project managers/contacts. They may be supported by other CPSC technical staff in specific areas such as engineering sciences, human factors, health sciences, and laboratory sciences.

CPSC officials told us that voluntary standards monitoring activity decreased substantially after the enactment of CPSIA because of reallocation of resources to meet the act’s requirements. The number of standards selected for monitoring was at a 5-year low in fiscal year 2009; however, the number of voluntary standards selected for monitoring has increased in the past 3 fiscal years and is expected to continue at current levels in the near future. CPSC officials said that staff recommendations based on criteria, such as death and injury data, available resources, and exposure of vulnerable populations to hazards, guide the selection of standards to monitor. They told us that staff consider where participation in voluntary standard setting could help reduce unreasonable risk of injury posed by a product. Management considers and approves or rejects the staff recommendations based on Commission priorities and available resources. Staff approved recommendations are then sent to the Commission for final approval. According to CPSC’s Operating Plan and Performance Budget, the agency plans one recommendation to voluntary standards or revisions to code organizations for fiscal year 2012. The Operating Plan also includes plans for two new data analysis or technical review activities on carbon monoxide alarms and enhanced smoke alarms. Additionally, 10 activities related to nanotechnology in consumer

products are planned for fiscal year 2012.²³ These activities will identify the potential release of nanoparticles from selected consumer products and determine the potential health effects from such exposure, which may lead to CPSC participation in voluntary standards development, according to CPSC officials.²⁴

CPSC officials said that the level of support provided by CPSC to standards development and monitoring is dependent on available resources. One CPSC staff member is assigned to each standard as a project manager responsible for monitoring committee activity and draft revisions. According to CPSC officials, the 68 standards to be monitored in fiscal year 2012 represent the limit the agency can handle given current resource and staff levels. For example, about 25 staff are responsible for monitoring the activities related to these standards. Sixty-eight standards is a small fraction of standards developed for consumer products. For instance, ASTM International has developed more than 12,000 standards while UL maintained more than 1,400 as of 2011. These standards cover many types of products, not exclusively consumer products.

CPSC's relationship with SDOs is outlined in CPSC regulations.²⁵ CPSC policy sets criteria for deciding on CPSC's involvement in voluntary standards activities. The criteria include:

- the likelihood the voluntary standard will eliminate or adequately reduce the risk of injury addressed,
- the likelihood that there will be substantial and timely compliance with the voluntary standard,
- the likelihood that the voluntary standard will be developed within a reasonable period of time,

²³Nanotechnology relies on the ability to design, manipulate, and manufacture materials at the nanoscale. Nanoscale refers to materials on the order of one billionth of a meter.

²⁴In the area of human health, scientists believe some characteristics of nanoscale particles could produce both positive and negative consequences. For example, nanoscale silver is highly effective as an antibacterial agent. However, some scientists believe that carbon nanotubes exhibit properties similar to asbestos fibers and may become lodged in organs harming humans and animals.

²⁵16 C.F.R Part 1031.

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- openness to all interested parties,
 - establishment of procedures to provide for meaningful participation in the development of standards by representatives of a variety of interested parties, and
 - due process procedures.

CPSC's regulation guides the extent and form of CPSC staff involvement in voluntary standards organizations. Staff may attend standards development meetings, take an active part in the discussions, and provide data and explanatory material, but CPSC's regulation prohibits staff from voting on the standards or from holding leadership positions in standards development committees. Except in extraordinary circumstances and with the approval of the Executive Director, they cannot become involved in standards development meetings that are not open to the public (including members of the media) for attendance and observation.²⁶ This may include technical subcommittees largely comprised of industry representatives. The regulation also states that active involvement in standards development activity must not be done in a manner that might present an appearance of preferential treatment for one organization or group or put CPSC's impartiality at risk.

CPSC has authority to revise its regulations pertaining to voluntary standards activities. The first regulation concerning involvement in standards development was issued in 1978, and revised in 1989 and again in 2006. According to CPSC, its regulation is similar to the Office of Management and Budget's (OMB) Circular No. A-119 (Revised), which provides guidance for agencies participating in voluntary consensus standards bodies.²⁷ However, in our review of CPSC's regulation, we found the agency interpreted its level of participation more strictly than OMB guidance for such activities as voting on standards and taking leadership positions. CPSC's rationale for limiting involvement in standards development activity, as described in its regulation, is to maintain its independence—such as not appearing to endorse a specific

²⁶UL and ASTM International told us that they maintain an ANSI-accredited voluntary standards development process, which includes openness to any interested party.

²⁷Office of Management and Budget, *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities*, Circular A-119 (revised). (Washington, DC: February 10, 1998.)

standard. OMB guidance states that agency representatives should participate actively and on an equal basis with other members, including full involvement in discussions, technical debates, registering of opinions, and if selected, serving in leadership positions. According to OMB guidance, agency representatives may vote at each stage of the standards development process unless prohibited by law or their agencies. A January White House memorandum further outlines principles for federal government engagement in standards activities, especially where statute, regulation, or administration policy identifies a national priority. Specifically, it states that the federal government may need to be actively engaged or play a convening role to accelerate standards development in standard setting and implementation, including supporting leadership positions for federal agency staff in SDO committees.

Consumer Product Safety Experts Value CPSC's Input, but Also Called For Earlier and More Active CPSC Participation

CPSC, consumer groups, and industry officials with whom we spoke generally viewed CPSC's participation in voluntary standards development activities favorably. Consumer groups and other consumer product safety experts told us that CPSIA has strengthened CPSC's authority, effectiveness, and level of influence at SDOs. They also told us that the industry now knows that if they do not develop an adequate voluntary standard, CPSC will make a mandatory standard for those products specified by CPSIA. According to consumer representatives who have participated in the process, the dynamic has changed: prior to CPSIA, CPSC's input was ignored or voted down. With their new authority, CPSC is more active and their input is incorporated a great deal more, resulting in stronger and more protective outcomes, especially for durable goods for infants. Consumer group representatives also told us that CPSC's involvement in standards development has been effective for helping ensure consumer participation, especially since the passage of CPSIA. In one instance, a consumer group had concerns about the standards development process for window blind cords because of what it thought was a lack of transparency, limited access to information, and lack of consideration of its views, after they were excluded from participating in a technical subcommittee. CPSC appealed directly to industry groups to open the process, and consumer groups eventually were allowed to participate in the window blinds standard development.

CPSC officials told us that staff's effectiveness in standards development partially depends on their own persuasiveness and the direction given from top management. Management recommends and approves staff to participate in standards development activity based on their ability to listen, negotiation skills, analytical proficiency, and level of technical and

scientific expertise. Staff also receive training from the Voluntary Standards Coordinator to prepare for SDO meetings. According to CPSC officials, staff selected to participate in standards development activities may seek further advice and training from the Voluntary Standards Coordinator and other colleagues as needed.

While consumer product safety experts we spoke to said that CPSC has good working relationships with the SDOs, some added that the agency could take a more active role in standards development activities. Voluntary standard committee participants told us that they value CPSC's contributions during standards development, one group especially valued its incident data and analysis, and another appreciated the agency's ability to help ensure an inclusive process. One industry official told us that they work collaboratively with CPSC; for example, they receive data from the CPSC in the process of developing voluntary standards for particular products. In one case, CPSC had identified, through its incident data, a laceration hazard resulting from a certain design of high chair with two hooks on the back. CPSC communicated this information to industry representatives, and it was incorporated into the voluntary standard process for the product. Another industry stakeholder told us that CPSC is viewed as a valuable partner in stronger standard development. By simply being present at voluntary standards development meetings, CPSC shows the industry that it is monitoring their activities.

Other consumer product safety experts said that CPSC's participation in committees could be more active and its position on the draft standards better articulated. Because of limitations stemming from CPSC's regulation governing staff participation in standards development activity, the resulting standard may not fully reflect the CPSC staff input and the standard development process can be delayed. According to some consumer product safety experts, CPSC staff are restrained and act largely as observers at standard development committee meetings. Others said that, at times, CPSC staff does not challenge the adequacy of the standards. For example, although CPSC converted the voluntary standard for all-terrain vehicles to a mandatory standard in 2009, as required by CPSIA, in the view of some experts, all-terrain vehicles remain covered by a weak standard. In public statements regarding the all-terrain vehicle standard, one CPSC commissioner said that the recent update to the standard, while not diminishing the safety of the product, remains a low threshold for federal safety standards. Our analysis of CPSC public recall notices showed that there have been 36 recalls of all-

terrain vehicles involving 15 companies for fiscal years 2007 through 2011.²⁸ Manufacturers have recalled all-terrain vehicles for reasons such as a risk of a crash caused by pieces of the main suspension breaking off and a risk of loss of vehicle control due to faulty speed controls. Recall notices do not indicate if the hazards posed by the product are covered by voluntary or mandatory standards. In discussions with consumer product safety experts, they said that if CPSC challenged the adequacy of the standards more frequently this would send a signal to industry that the agency was committed to obtaining a high level of safety in voluntary standards.

Some industry representatives emphasized that they wanted CPSC's more active and earlier participation in standards development. They said that they would benefit from more information about CPSC's views on specific provisions of a standard, such as certain performance requirements, level of risk tolerance, or aspects of a product CPSC wanted changed. Some industry representatives said that if the agency's position on a standard were more apparent from the outset, the process would be faster and more efficient, which could result in stronger standards. One industry representative also noted that more active and earlier participation would allow CPSC to consider unforeseen business consequences of their proposed revisions to standards earlier in the process. For instance, according to this industry representative a revised standard for child bed rails was delayed by CPSC proposing costly revisions after the standard had already been approved by SDO participants.²⁹

²⁸CPSIA has mandated the conversion of standards for all-terrain vehicles from voluntary to mandatory. 15 U.S.C. § 2089.

²⁹The standard was approved by SDO participants in October 2010. CPSC proposed changes in January 2011 to address a hazard. In April 2011, a draft standard identical to CPSC recommendations received negative votes from other participants and discussions continued to address the disagreement. The standard that was finalized in February 2012 reflected all points of view.

CPSC Can Impose Corrective Actions When Noncompliance with Voluntary Standards Presents a Substantial Product Hazard

Manufacturers can face consequences ranging from civil monetary penalties to the reputational and financial losses associated with corrective action if their products fail to comply with voluntary standards and if they present a substantial product hazard. Corrective actions include recalls, which encompass refunds, replacements, or repairs. CPSC may also sue to prevent distribution or sale of a product pending completion of a recall proceeding. Although voluntary standards do not have the force of law, manufacturers are legally required to report substantial product hazards to CPSC.³⁰ Every manufacturer of a consumer product must inform the Commission if they obtain information that reasonably supports the conclusion that the product contains a defect that could create a substantial product hazard.³¹ Such a report may include information the manufacturer obtained about a product outside the United States if it is relevant to products sold or distributed in the United States.³² Manufacturers that knowingly fail to report potential substantial product hazards could be subject to civil or criminal penalties. In 2011, CPSC negotiated out-of-court settlements in which five companies agreed to pay \$3.26 million in civil penalties related to their failure to report substantial product hazards to the agency.

Although failure to meet a voluntary standard alone is not sufficient for CPSC to take action against a company—because voluntary standards are not enforceable by law—CPSC’s analysis of the evidence of noncompliance and determination that the product could pose a substantial product hazard can lead to corrective action. According to CPSC’s interpretive regulations, compliance or noncompliance with applicable voluntary standards may be a factor in determining whether a substantial product hazard exists.³³ To determine if corrective action is needed, CPSC staff review incident reports on a daily basis and forward them to appropriate integrated teams for extensive analysis. CPSC integrated teams comprise subject matter experts such as engineers,

³⁰Manufacturers must also notify the Commission immediately if they obtain information which reasonably supports the conclusion that a product distributed in commerce (1) fails to comply with a voluntary standard upon which the Commission has relied under the CPSA, (2) fails to meet a consumer product safety standard or banning regulation under the CPSA or another law enforced by the Commission, or (3) creates an unreasonable risk of serious injury or death. 15 U.S.C. § 2064(b).

³¹15 U.S.C. § 2064(b).

³²16 C.F.R. § 1115.12(f).

³³16 C.F.R. § 1115.6.

human factors experts, health scientists, statisticians from the Office of Hazard Identification and Reduction, and compliance officers from the Office of Compliance. The teams then assess the reports for hazard type, whether the incident affected vulnerable populations, and the severity of injury. CPSC also collects data on injuries and deaths for products under its jurisdiction, and staff conduct investigations on specific injury cases to gain better knowledge of how the product was involved. Based on analysis of these data, the integrated teams decide if further action would be warranted, such as additional monitoring of the situation, an in-depth investigation, or a product safety assessment. In our discussions with CPSC officials, they told us that the agency decides on further actions based on other agency priorities, resources, and the level of risk that a product poses. Once CPSC has identified a hazardous product, the agency will take action to remove the product from the market. If a recall is necessary, CPSC staff negotiates with the responsible company to seek a voluntary recall, if appropriate.

Manufacturers that report product defects propose a remedy that must be deemed acceptable to CPSC staff. This often involves the product's recall, which consists of the purchase price refund, repair, or replacement of the product. CPSC considers whether the plan adequately addresses the risk of injury presented by the product. For example, if the manufacturer's proposed solution was to repair its product, CPSC engineers would test the repair to determine if it addressed the hazard adequately. Similarly, if the proposed solution was a refund, CPSC officials would evaluate the refund process to determine if it would cause undue burden to the consumer. CPSC takes steps to ensure that recalled products are not reintroduced in the market through second-hand stores by monitoring the internet and through market surveillance programs. Table 2 contains information about CPSC's recall activities for fiscal years 2007 through 2011 for products covered by mandatory standards and those that are unregulated.

Table 2: CPSC Recalls of Regulated and Unregulated Products for Fiscal Years 2007 through 2011

Fiscal year	Number of recalls of regulated products	Number of recalls of unregulated products
2011	30	383
2010	60	416
2009	46	452
2008	169	449
2007	92	385
Total^a	397	2,085

Source: CPSC.

^aThese recalls were tabulated from CPSC data for regulated and unregulated products. Unregulated products may include those covered by voluntary standards. According to CPSC officials, recalls of unregulated products are not necessarily associated with violations of voluntary standards; on some occasions the recall could be associated with issues in manufacturing or assembly of the product.

In our review of CPSC documents, the agency focused much of its surveillance and compliance work on imported products. According to CPSC, approximately 80 percent of recalls from 2008 through 2011 have been of imported products. The agency's Office of Import Surveillance and Inspection has primary responsibility for product surveillance at ports of entry in cooperation with other appropriate federal agencies. U.S. Customs and Border Protection notifies CPSC and other regulatory agencies with import safety responsibilities of the arrival of imported products and provides information about those products. CPSC identifies potentially unsafe products and requests that U.S. Customs and Border Protection set them aside for CPSC examination. Once samples are delivered to or taken by CPSC for examination, CPSC may detain the shipment pending further examination and testing, conditionally release the shipment to the importer's premises pending examination and testing, or release the shipment to the importer outright. Compliance investigators examine the sample to determine whether it (1) complies with the relevant mandatory standard or standards; (2) is accompanied by a certification of compliance with relevant product safety standard that is supported by testing, in some cases by a third party, (3) is or has been determined to be an imminently hazardous product; (4) has a product defect that presents a substantial product hazard; or (5) is produced by a manufacturer who failed to comply with CPSC inspection and

recordkeeping requirements.³⁴ According to a CPSC notice, from October 1, 2011, to December 1, 2011, officials identified about 240 noncompliant products at ports of entry, including defective hair dryers, lamps, and holiday lights.

Table 3 illustrates standards activities and recall actions for selected products for fiscal years 2007 through 2011. Some products are covered by both mandatory and voluntary standards, which may address different aspects of the product features. For example, all-terrain vehicles, cribs, infant bath seats, infant walkers, and cigarette lighters are subject to both mandatory and voluntary standards.

Table 3: CPSC Standards Activities and Recall Actions for Selected Products for Fiscal Years 2007 through 2011

Product	CPSC standards activities as of 2011^a	Corrective actions, 2007-2011
All-terrain vehicles	Mandatory standard, amended November 2008; effective date: April 2009. Voluntary standard last revised December 2010. CPSC is completing rulemaking, per P.L. 112-28, and will monitor product through planned field enforcement programs.	36 recalls involving 15 companies
Candles	Six ASTM International voluntary standards relating to candles and candle products. Last revision for three standards, 2009; last revision for two standards, 2007; last revision for one standard, 2005. CPSC continues to work with ASTM International in developing standards for candle products.	45 recalls involving 35 companies
Cribs	Mandatory standards, December 2010 (last update); effective date June 28, 2011. Voluntary standards last revised 2011. CPSC issued final rules regarding crib standards and will continue to monitor this product area.	56 recalls involving 37 companies
Extension cords (power cords)	Voluntary standard related to cord sets and flexible cords and cables, October 2008.	5 recalls involving 5 companies

³⁴An imminently hazardous consumer product presents imminent and unreasonable risk of death, serious illness, or severe personal injury. 15 U.S.C § 2061(a). CPSC states that it has not used its authority to refuse admission of an imminently hazardous consumer product because it requires filing an action in U.S. District Court, which is a resource-intensive process. Instead, CPSC states that it works cooperatively with the manufacturer to remove the product from the market, which can include seizure and detention of products at the port by Customs and Border Protection, if necessary.

Product	CPSC standards activities as of 2011^a	Corrective actions, 2007-2011
Infant bath seats	Mandatory standard, 2010 (last update). Voluntary standard last revised 2011. CPSC issued final rule in 2010 and will continue to monitor this product through planned field enforcement programs.	No corrective actions ^b
Infant walkers	Mandatory standard, 2010. Voluntary standard, last revised June 2011. CPSC issued final rule in 2010 and will continue to monitor this product through planned field enforcement programs.	3 recalls involving 3 companies
Cigarette lighters	Mandatory standard for child resistance, 1994. Advance Notice of Proposed Rulemaking for mechanical malfunction, 2008 (no decision on proceeding). Voluntary standard for mechanical malfunction, most recent edition of voluntary standard is 2010. Utility lighters voluntary standard 2010.	3 recalls involving 3 companies
Portable generators	Advance Notice of Proposed Rulemaking, 2006. Voluntary standard, last revised 2011. CPSC is conducting technical work related to carbon monoxide emissions from portable generators.	5 recalls involving 5 companies ^c
Space/electric heaters	Voluntary standard, July 2007. CPSC staff is participating in voluntary standard activities for portable and fixed-position electric heaters under UL Standards Technical Panel 1042 to address fires associated with electric heaters.	13 recalls involving 11 companies
Window blinds	Voluntary standard, March 2009. CPSC is participating in voluntary standard activities to address strangulation hazards associated with cords on window covering products manufactured under the existing standards.	41 recalls involving 38 companies

Source: GAO analysis of data from SaferProducts.gov.

Note: Some of these recalls included items sold at discount stores, retail liquidators, or dollar stores, but often this information may not be known unless that specific store initiates the recall.

^aCPSC continues to participate in standards activities for these products. Through April 2012, there have been updates to standards for some of these products.

^bCPSC issued a Safety Alert involving one company.

^cThere are no recalls involving generators and a carbon monoxide hazard, which is the focus of current CPSC standards work.

CPSC Databases Do Not Identify Products with Voluntary Standards, but the Agency Collects Data That Could Help Identify Patterns of Noncompliance

CPSC has no tracking mechanism specific to voluntary standards in its compliance database, but the agency can identify patterns of noncompliance and address safety hazards. CPSC tracks reports of noncompliance with mandatory standards and identifies potential product hazards. CPSC has two internal databases for tracking noncompliance one for regulated products (products subject to mandatory standards) and the other for products that could pose a substantial product hazard (either unregulated products or products subject to voluntary standards).³⁵ In discussions with CPSC officials, they told us that there is no field in the databases to indicate whether a product is covered by one of the thousands of existing voluntary standards. However, they noted that they have internal policies for tracking compliance with voluntary standards. According to agency officials, CPSC's policy states that when staff has determined that noncompliance with voluntary standards amounting to a substantial product hazard has occurred, staff should create a file with a case number to track this issue. The case number is an internal tracking number that does not correspond to the unique identifier assigned by SDOs and cannot be linked to a voluntary standard.³⁶ However, agency officials said that if CPSC finds that the product poses a substantial product hazard and staff determine that the voluntary standard is inadequate or that no standard exists, they refer the case to the voluntary standards coordinator to address through standard setting activities.

CPSC's compliance databases for both the regulated products and substantial hazard (section 15) products are case management systems. According to CPSC officials, more than 50,000 distinct firm names are in the databases. CPSC can classify incidents by manufacturer, retailer, distributor, and country of origin. In some cases a foreign company may have a U.S. agent or representative, making it difficult for CPSC's database to discern whether the reporting company is foreign or domestic. In addition, CPSC assigns more than 800 different product and product category codes to help track case files. CPSC's case files track information about the firm, the product, the type of noncompliance, and other relevant information. The agency also tracks correspondence with

³⁵Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2) provides that a product not covered by a mandatory rule presents a substantial product hazard if it has a defect which, because of various factors, creates a substantial risk of injury to the public.

³⁶CPSIA directed CPSC to upgrade and improve its information technology systems. Pub. L. No. 110-314, § 212(b), 122 Stat. 3052. In its March 2012 Operating Plan and Performance Budget, CPSC indicated that it has been creating a single data source to help provide linkages across CPSC data systems.

the manufacturer, distributor, retailers, and public about the case, as well as the corrective action implemented to address the noncompliance.

Agency officials said that the databases have the capacity to track 26 hazards in 8 hazard categories, including fire hazards for fabrics, materials, and electric appliances; mechanical hazards in children's, household, and sports and recreation products (involving choking, strangulation, and other injury hazards); electrocution; and chemical hazards. Staff use data from the compliance databases to identify types of product defects such as those associated with design, construction, and packaging of a product, or absence of warning labels or instructions. They also track the number of defective products in the market and assess the severity of risk of defects and likelihood of injury.

In addition to tracking trends from compliance data, agency staff, including the Hazard Analysis Division, perform a range of statistical analyses across reported incident data to identify patterns of noncompliance. CPSC staff said they analyze compliance in terms of the product rather than the manufacturer. Incident data comes from various sources, including retailers; manufacturers; public safety professionals; health care professionals; death certificates; news reports; state and local governments; and incident reports submitted by consumers through CPSC's website, SaferProducts.gov. CPSC staff identify potential emerging patterns, produce estimates of injuries and quantify the frequency of fatalities based on emergency room data, test for injury trends over time, and characterize hazard patterns. Analysts evaluate these data on a daily basis and report increased frequency of reports for a given product or manufacturer to appropriate teams in the agency. Officials said that on a weekly basis, analysts apply algorithms across reports to characterize the frequency by product code. They generate statistics comparing the number of reports received in the week for particular products to the number received for the same product over a 20-week period. CPSC officials then use the data to determine which incidents should be investigated and report on their findings to internal teams. For example CPSC has identified instances of appliance tipovers and issued press releases with information to consumers to raise awareness of tipover hazards. To address this, the agency plans to participate in standard revision activity to address kitchen range tipovers.

In a previous report we addressed CPSC work resulting from identification of certain hazard patterns. We reported that during the 1980s, the data CPSC collected on injuries and fatalities related to all-terrain vehicles, especially among children, led it to file a lawsuit alleging that the vehicles were an imminently hazardous product. CPSC and

manufacturers eventually settled the lawsuit through a consent decree in which manufacturers and distributors agreed to implement certain safety measures and stop selling certain vehicles considered dangerous for young children.³⁷ In its fiscal year 2012 Operating Plan and Performance Budget, CPSC also noted that it plans to update safety publications addressing children's hazards, fire and electrical hazards, mechanical hazards, sports and recreational hazards, and chemical and combustion hazards.

Conclusions

Voluntary standards establish safety guidelines for many of the thousands of consumer products in CPSC's jurisdiction. CPSC is required by law to rely on these standards, developed through consensus by industry, consumer, and government participants, when the standards are adequate to address the risk of harm and substantial compliance with them is likely. Because of the substantial prevalence of voluntary standards for consumer products, CPSC's early and active participation in standards development activity is critical to establishing adequacy of the standard. If CPSC finds that a manufacturer does not comply with a voluntary standard and it creates a substantial product hazard, the agency can seek a corrective action, such as a recall; however, CPSC does not have the authority to compel compliance with voluntary standards as such. For fiscal years 2008 through 2011, 80 percent of recalls have been of imported products that may be subject to voluntary standards, highlighting challenges CPSC faces in helping to ensure the safety of consumer products. CPSC has taken steps to ensure compliance by (1) performing industry surveillance through analysis of incident and other data, (2) participating in standards development activities, and (3) monitoring selected voluntary standards. Although CPSC regularly participates in standard development activity to the extent possible, consumer product safety experts we spoke to generally agreed that earlier and more active CPSC participation could increase its efficiency and effectiveness in developing standards. Our review also found that CPSC regulations concerning meetings policies and allowable conduct for CPSC staff participating in standards development activity are generally more restrictive than the existing general government policy on such participation. While OMB guidance gives agencies discretion to determine their level of participation in standard setting activities, CPSC

³⁷GAO, *All-terrain Vehicles: How They Are Used, Crashes, and Sales of Adult-Sized Vehicles for Children's Use*, [GAO-10-418](#) (Washington, D.C.: Apr. 8, 2010).

has chosen to limit participation to maintain impartiality and avoid appearance of endorsing a specific voluntary standard. Further, a recent White House memorandum on national standards policy states that where statute, regulation, or administration policy identifies a national priority, the federal government may need to be actively engaged or play a convening role to accelerate standards development and implementation. Changing regulations to enable staff to more actively participate, especially when working with technical committees for which CPSC has expertise and permitting CPSC staff to vote on the standard, could result in stronger voluntary standards without compromising CPSC's independence. Without more active participation from CPSC, standards emerging from standards development organizations risk being less stringent and may be inadequate to protect the public from hazards.

Recommendation for Executive Action

To strengthen the adequacy of voluntary standards, we recommend that the Chairman of CPSC direct agency staff to review the policy for participating in voluntary standards development activities and determine the feasibility of assuming a more active, engaged role in developing voluntary standards.

Agency Comments and Our Evaluation

We provided a draft of this report to CPSC for comment. In their written comments, reproduced in appendix II, CPSC supported our recommendation and wrote that staff would review agency policies and determine the feasibility of changes to the policies. CPSC staff also provided technical comments that were incorporated, as appropriate.

We are sending copies of this report to interested congressional committees and the Chairman and commissioners of CPSC. In addition, the report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-8678 or cackleya@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.



Alicia Puente Cackley
Director, Financial Markets and Community Investment

Appendix I: Scope and Methodology

To evaluate the extent to which manufacturers comply with voluntary standards for consumer products, we interviewed officials from the Consumer Product Safety Commission (CPSC) and national consumer, industry, standard-setting, and legal organizations that have expertise in working on voluntary standards development for consumer products. We reviewed internal CPSC operating procedures and learned about the agency's outreach programs to educate the public about safety standards. We reviewed statutory authorities and procedures for establishing voluntary standards. We interviewed the three standards development organizations that coordinate the development of more than 90 percent of voluntary standards developed with CPSC staff technical support to learn about how standards and certification programs are developed.

To evaluate CPSC's authority and ability to encourage compliance with voluntary standards, we reviewed CPSC's statutory and regulatory authority related to voluntary standards. We also reviewed CPSC standard operating procedures, performance and accountability reports, and budget documents to obtain information about CPSC's work plans with respect to voluntary standards. We met with cognizant CPSC officials, including all of CPSC's current commissioners and the Chairman, to discuss their authorities and ability to enforce them. We reviewed relevant laws, regulations, and our prior reports on CPSC's authorities. We interviewed legal experts in the consumer product safety field regarding CPSC's authorities. We conducted a literature search for information regarding CPSC's effectiveness in getting manufacturers to comply with voluntary standards. We attended a conference on the adequacy of voluntary standards sponsored by the Consumer Federation of America and a conference by the International Consumer Product Safety and Health Organization on trends in international consumer product safety.

To evaluate the consequences for manufacturers that fail to comply with voluntary standards, we reviewed documents from CPSC officials and obtained and reviewed publicly available data on recalls and other corrective actions. We obtained and analyzed data collected by CPSC through SaferProducts.gov regarding product safety incident reports and corrective actions assigned to manufacturers whose products did not comply with voluntary standards. We assessed the reliability of these data by (1) reviewing existing information about the data and the system that produced them and (2) interviewing agency officials knowledgeable about the data and related management controls. We found the data to be reliable for the purposes of determining the number and trends of product safety incident reports and corrective actions. We interviewed CPSC

officials, legal experts, and consumer and industry participants to learn of possible corrective actions that could be imposed on firms that fail to comply with voluntary standards. Further, we conducted a legal literature search for information about CPSC's authorities to determine consequences for manufacturers who fail to comply with voluntary standards.

To evaluate CPSC's efforts to identify patterns of noncompliance with voluntary standards, we interviewed CPSC officials about their data collection methods and internal processes for analyzing incident data and tracking patterns. We obtained and reviewed data from CPSC's compliance databases to identify (1) the number of reported instances of noncompliance; (2) the number of times these instances led to a corrective action; (3) the numbers of corrective actions that resulted; (4) the number of product units recalled; and (5) the type of standard, if any, that covered the product. We assessed the reliability of these data by (1) reviewing existing information about the data and the system that produced them and (2) interviewing agency officials knowledgeable about the data and related management controls. Based on this assessment, we determined the data to be sufficiently reliable for the purposes of this report.

We conducted this performance audit from January 2012 to May 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Consumer Product Safety Commission



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

May 16, 2012

Ms. Alicia Puente Cackley
Director, Financial Markets and Community Investment
U.S. Government Accountability Office
411 G Street, NW
Washington, DC 20548

Dear Ms. Cackley:

The U.S. Consumer Product Safety Commission (CPSC) appreciates the opportunity to review and provide comments on the draft U.S. Government Accountability Office report "A More Active Role in Voluntary Standards Development Should Be Considered."

The draft report provides a comprehensive review of the CPSC's voluntary standards program and we appreciate the breadth of the review. We support the recommendation that the CPSC Chairman "direct agency staff to review the policy for participating in voluntary standards development activities and determine the feasibility of assuming a more active, engaged role in developing voluntary standards." CPSC staff will review agency policies and determine the feasibility of changes to the policies, such as staff voting on standards and holding leadership positions on voluntary standards committees.

Thank you again for providing us with the opportunity to comment on the draft report.

Sincerely,

Handwritten signature of Inez M. Tenenbaum.

Inez M. Tenenbaum
Chairman

Handwritten signature of Robert S. Adler.

Robert S. Adler
Vice Chairman

Handwritten signature of Nancy A. Nord.

Nancy A. Nord
Commissioner

Handwritten signature of Anne M. Northup.

Anne M. Northup
Commissioner

CPSC Hotline: 1-800-638-CPSC (2772) ★ CPSC's Web Site: <http://www.cpsc.gov>

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

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In addition to the individual named above, Debra Johnson, Assistant Director; Nina E. Horowitz; DuEwa Kamara; Angela Messenger; Barbara Roesmann; Jessica Sandler; Andrew Stavisky; and Henry Wray made major contributions to this report.

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