



U.S. CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, Maryland

Public Hearing
Commission Agenda and Priorities
for FY 2020 and FY 2021

Wednesday, May 1, 2019
10:00 a.m.

EDT		Presenter	Affiliation
10:00 AM	Opening	Acting Chairman Buerkle	
10:05 AM	Panel 1	1 Benjamin Hoffman, MD, FAAP	American Academy of Pediatrics
		2 Rachel Weintraub	Consumer Federation of America
		3 William Wallace	Consumer Reports
		4 Megan DeLong	Conner's Legacy Foundation, Inc.
10:45 AM	Panel 1 Questions	Commission	
11:25 AM	Panel 2	5 Karin Athanas	International Federation of Inspection Agencies (IFIA) Americas
		6 Nancy Cowles	Kids in Danger
		7 Crystal Ellis	Mom of Camden Ellis, Pat Founding Member
		8 Carri McQuerrey-Funk	Maddie's Message
12:05 PM	Panel 2 Questions	Commission	
12:45 PM	----- Lunch Break -----		
1:45 PM	Panel 3	9 Kristen Kern	American Apparel & Footwear Association
		10 Autumn Moore	Retail Industry Leaders Association
		11 Dr. Diana Zuckerman	National Center for Health Research
		12 Remington Gregg	Public Citizen
2:25 PM	Panel 3 Questions	Commission	
3:05 PM	Adjourn	Acting Chairman Buerkle	

Presenters

Agenda and Priorities FY 2020 and/or 2021

May 1, 2019

1. Benjamin Hoffman, MD, CPST-1, FAAP
American Academy of Pediatrics
2. Rachel Weintraub
Legislative Director and General Counsel
Consumer Federation of America (CFA)
3. William Wallace
Senior Policy Analyst
Consumer Reports
4. Megan DeLong
Founder and President
Conner's Legacy Foundation, Inc.
5. Karin Athanas
Senior Policy Manager
International Federation of Inspection Agencies (IFIA), Americas
6. Nancy Cowles
Executive Director
Kids In Danger
7. Crystal Ellis
PAT Founding Member
Mom of Camden Ellis
8. Carri McQuerrey-Funk
Founder, Maddie's Message
9. Kristen Kern
Government Relations Representative
American Apparel & Footwear Association (AAFA)
10. Autumn Moore
Director Regulatory Affairs & Compliance
Retail Industry Leaders Association

11. Diana Zuckerman, Ph.D.
President
National Center for Health Research

12. Remington Gregg
Counsel for Civil Justice and Consumer Rights
Public Citizen

American Academy
of Pediatrics



DEDICATED TO THE HEALTH OF ALL CHILDREN™

May 1, 2019

Comments of
Ben Hoffman, MD, FAAP
**Chair, AAP Council on Injury, Violence and Poison Prevention Executive
Committee**

On behalf of the
American Academy of Pediatrics

Comments before the
U.S. Consumer Product Safety Commission

“Commission Agenda and Priorities, FY 2020”

Good morning Acting Chairman Buerkle, and Commissioners Feldman, Baiocco, Adler, and Kaye:

My name is Dr. Ben Hoffman, and I am here today on behalf of the American Academy of Pediatrics (AAP). The AAP is a non-profit professional organization of 67,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults.

I am a pediatrician and currently serve as Chair of the AAP's Council on Injury, Violence, and Poison Prevention Executive Committee. I am a Professor of Pediatrics at the Oregon Health Sciences University (OHSU) in Portland, OR, and I am Medical Director of the Tom Sargent Child Safety Center at OHSU.

The AAP appreciates the opportunity to make recommendations to the U.S. Consumer Product Safety Commission (CPSC) on its agenda and priorities for the 2020 fiscal year. Unintentional injuries remain the number one cause of death in children 1-19, and the fifth leading preventable cause of death for newborns and infants under 1.¹ The AAP strongly supports all efforts to reduce the incidence of child unintentional injury and related morbidity and mortality. Pediatricians look to the guidance of CPSC in assuring parents of the safety of durable infant and toddler products and toys and acting to protect children from environmental hazards and household dangers. Parents and caregivers trust that the products they provide for

¹ <http://www.cdc.gov/safekid/nap/index.html>; see also <https://www.cdc.gov/injury/wisqars/LeadingCauses.html>

their children are safe because CPSC monitors injuries and fatalities to proactively prevent harm to children.

The AAP appreciates the large jurisdiction that the CPSC has, and the many different hazards it must address. However, many of our recommendations to the Commission this year are identical to the recommendations we have made to CPSC over the past several years, which demonstrates the importance of CPSC action to protect children from harm and address these chronic concerns.

Below are the areas that the AAP believes the CPSC should prioritize in the coming fiscal year in order to protect children's health and safety:

Safe Sleep

There is a critical need to expand CPSC's work to reduce the high incidence of sudden unexplained infant death (SUID). While much progress was made on SUID early in the efforts of AAP and governmental partners in promoting safe sleep practices, we have seen very little progress in reducing SUID in a decade or more. In some high-risk groups the rates are going in the wrong direction.

The U.S. Centers for Disease Control and Prevention (CDC) estimate that there are about 3,500 SUID cases annually in the U.S.² The CPSC is in a unique position to help address the public health problem of SUID through its jurisdiction over infant products and opportunities to communicate with families, caregivers, and health care providers. We call on CPSC to reduce

² U.S. Centers for Disease Control and Prevention (2018). About SUID and SIDS. Retrieved from <http://www.cdc.gov/sids/aboutsuidandsids.htm>.

the hazard posed by certain infant sleep products, and to use its position to promote improved understanding of how best to promote safe sleep among high-risk families.

The recent recall of the Rock ‘n Play Sleeper, which a Consumer Reports article linked to 32 infant deaths³, underscores what pediatricians have said for years; inclined infant sleepers are dangerous and have no place in a safe sleep environment. Infants should always sleep on their back, on a separate, flat and firm sleep surface without any bumpers or bedding. While we appreciate the recall of that deadly product, CPSC needs to do much more to protect families from the preventable tragedies they can experience using these products. When parents purchase a product for the baby or child, they understandably may assume that it is safe to use. CPSC sends parents a dangerous message by allowing other inclined sleep products to remain on the market. We urge you to eliminate this product category altogether so these deadly products are no longer available.

In addition, CPSC should strengthen its safe sleep messaging by banning crib bumpers. Crib bumpers have no place in a safe sleep environment. There is no evidence that bumper pads prevent injuries, and there is a potential risk of suffocation, strangulation or entrapment. The AAP also supports a ban on supplemental mattresses in play yards with non-rigid sides. Supplemental mattresses for play yards with non-rigid sides do not have a place in

³ See <https://www.consumerreports.org/recalls/fisher-price-rock-n-play-sleeper-should-be-recalled-consumer-reports-says/>

a safe sleep environment. These products pose a suffocation hazard to infants. The availability of supplemental mattresses is contradictory to the safety standard for cribs and play yards and undermines efforts to promote a safe sleep environment.

The CPSC's safe sleep awareness campaign has been a useful tool for pediatricians seeking to help parents understand what constitutes a safe sleep environment for babies, and we are glad to see that the information is available in Spanish as well as English. The Commission should continue its work promoting safe sleep behaviors and removing unsafe sleep products from the marketplace, including work with other federal agencies and stakeholder groups including the AAP. But education is not enough.

We continue to see new, unregulated sleep products on the market every month, and we remain deeply concerned that parents are placing their infants in these products thinking they are safe, when there is in fact no standard or testing done to make sure they will not suffocate a child. We strongly believe that the CPSC has a role to play in keeping such products off the market. I am happy to have a follow-up discussion with the Commission about specific unregulated sleep products of concern. These regulatory actions, investigation of optimal safe sleep messaging, and sustained public health communication will be central to CPSC efforts to address SUID.

Infant Walkers

Infant walkers have been a source of concern among pediatricians for years. They can lead to serious injuries from falls down stairs and gaining access to objects that would otherwise be out

of reach. In addition, there is concern that their use delays motor development.⁴ The AAP has long supported a ban of the manufacture and sale of these dangerous products, and urges the CPSC to ban them.

Liquid Nicotine

Liquid nicotine is a highly toxic product that poses a serious risk of negative health effects and death for children. The AAP strongly supported the enactment of the *Child Nicotine Poisoning Prevention Act of 2015*, which requires CPSC to enforce a mandatory child resistant packaging standard for liquid nicotine containers, including the use of flow restrictors.

Pediatricians have been frustrated with the slow pace of implementation of this law, including CPSC's initial confusion about the law's clear requirement for flow restrictors on liquid nicotine containers. We are heartened that the Commission released new guidance to industry this year outlining the flow restrictor requirement and test for product compliance. Across the country, it remains easy to purchase flagrantly noncompliant products. We urge the Commission to place a significant emphasis on enforcing this law to get dangerous products off store shelves.

Pediatricians stand ready to work with CPSC compliance staff to support your critical enforcement efforts.

Drowning

Drowning is the leading cause of death for children ages 1-4, and the second leading cause of death among teens. Recognizing the serious threat of drowning and pediatricians' role

⁴ <https://pediatrics.aappublications.org/content/142/4/e20174332>

in educating families to prevent it, earlier this year the AAP released an updated policy statement on the prevention of drowning⁵, and new resources for parents, caregivers, and others on drowning prevention.⁶ The AAP has promoted CPSC's Pool Safely materials along with other educational references as part of those efforts, and would welcome opportunities to work together to further reduce the child fatality toll of drowning.

Laundry Detergent Packets

Reducing child exposures to liquid laundry detergent packets remains a priority for the Academy. These products are uniquely hazardous to children, and child exposures to them continue at an alarming rate. Children are uniquely vulnerable to these product exposures as a result of their colorful and appealing design, and their highly toxic formulation. The AAP has participated in the ASTM process to improve the safety of these products, and we were glad to see the ASTM F3159-15 voluntary standard published in 2015, but our concerns remain as it does not include a number of elements urged by pediatricians. For example, the ASTM voluntary standard does not require the laundry packets to be individually wrapped to keep children from easily accessing them if a caregiver drops one or if a container is left open momentarily.

In addition, we remained concerned that the ASTM subcommittee's work to track the efficacy of the voluntary standard uses inappropriate metrics. The appropriate way to use a public health approach in assessing the standard's efficacy is to calculate an incidence rate of packet exposures, by dividing the number of exposures to the packets by the number of

⁵ <https://pediatrics.aappublications.org/content/pediatrics/early/2019/04/15/peds.2019-0850.full-text.pdf>

⁶ <https://www.aap.org/en-us/about-the-aap/aap-press-room/campaigns/drowning-prevention/Pages/default.aspx>

individuals at risk of exposure. However, despite our suggestions to the contrary the group has also included measures which divide the number of exposures by the number of products sold – a number which is growing every year, and which is not a public health-based measure. We are concerned that such a metric falsely makes it appear that the ASTM standard is more effective than it really is by masking an unacceptably high child exposure rate. It is equivalent to trying to demonstrate the effectiveness of an intervention to reduce Zika virus related disease by measuring the number of Zika cases divided by the mosquito population. We urge CPSC to stay engaged in the ASTM process, and to ensure that follow-up of the implementation of the standard occurs, appropriate metrics are used to evaluate effectiveness, and that meaningful decreases in exposures and exposure rates occur.

Window Coverings

Window covering cords present an avoidable home hazard. Infants placed in cribs near a window may reach out, grab the dangling pull cord, pull it into the crib and become entangled. Toddlers playing near a window cord are also at risk of becoming entangled. A study published in *Pediatrics* in December 2017⁷ found that from 1990 to 2015, there were an estimated 16,827 window blind–related injuries among children younger than 6 years of age treated in emergency departments in the United States, corresponding to an injury rate of 2.7 per 100 000 children. The most common mechanism of injury was “struck by” (48.8%). Entanglement injuries

⁷ Onders B, Kim EH, Chounthirath T, et al. Pediatric Injuries Related to Window Blinds, Shades, and Cords. *Pediatrics*. 2018;141(1):e20172359. Available at: <http://pediatrics.aappublications.org/content/early/2017/12/07/peds.2017-2359>.

accounted for 11.9% of all cases, and among this subgroup, 98.9% involved blind cords, and 80.7% were to the neck. Overall, most injuries (93.4%) were treated and released.

Data from the CPSC's National Electronic Injury Surveillance System and In-Depth Investigation (IDI) databases were retrospectively analyzed for this study. In IDI reports for 1996 through 2012, researchers identified 231 window blind cord entanglement incidents among children under 6 years of age, and 98.7% involved the child's neck; entanglements with the window blind's operating cords (76.4%) or inner cords (22.1%) were the most common. Two-thirds of entanglement incidents included in the IDI database resulted in death, resulting in 155 fatalities (67.1%). Although many of the injuries in this study were nonfatal and resulted in minor injuries, cases involving window blind cord entanglements frequently resulted in hospitalization or death.

CPSC should adopt a mandatory safety standard that eliminates accessible window blind cords for all window blinds. The AAP was glad to see some previous progress on a voluntary standard recommending cordless window coverings for all "stock" products. This represents a very long-overdue step forward by the industry. However, the AAP urges the CPSC to apply this safety standard to custom blinds as well, and to make this voluntary standard a mandatory one. A mandatory standard prohibiting accessible window covering cords is the only way to ensure that all children are protected from this avoidable hazard in all homes going forward. For example, the voluntary standard will not affect rental units in which tenants are unable to change the window coverings to cordless ones, leaving some families vulnerable.

High-Powered Magnet Sets

The AAP was among the groups strongly supportive of a ban on high-powered magnet sets due to the grave injuries caused when ingested in multiples. The AAP applauded the 2013 recalls of the dangerous products by CPSC⁸ and Health Canada⁹ and the CPSC's 2014 safety standard to make the magnets safer and prevent the sale of unsafe magnets after children suffered critical injuries and even died after ingesting these magnets. High-powered magnet sets, marketed under names such as Zen Magnets, are composed of tiny high-powered magnet balls or cubes, often with 200 or more magnets to a set. When two or more magnets are swallowed, their attractive force (flux) allows them to find each other across or between different segments of the digestive system. For example, connections can occur between the stomach and the small intestine, between the small intestine and the colon, or across loops of bowel. These connections can lead to necrosis of the intestinal tissue, which can lead to serious infections, and even death.

Research shows that the CPSC and Health Canada efforts to ban high-powered magnet sets were working to protect children. Researchers studied the impact of Canada's recall by comparing data on magnet ingestion at the Hospital for Sick Children during the two years before the recall (2011 and 2012) and two years after the recall (2014 and 2015).¹⁰ In the initial two years, there were 22 multiple magnet ingestions, six operations and nine endoscopic

⁸ <https://www.cpsc.gov/Recalls/2013/high-powered-magnet-balls>.

⁹ <https://www.canada.ca/en/health-canada/services/consumer-product-safety/advisories-warnings-recalls/letters-notices-information-industry/information-manufacturers-importers-distributors-retailers-products-containing-small-powerful-magnets.html>

¹⁰ [http://www.jpeds.com/article/S0022-3476\(17\)30187-7/fulltext](http://www.jpeds.com/article/S0022-3476(17)30187-7/fulltext).

procedures. In the two years after the recall, there were five ingestions, one operation and four endoscopic procedures. “Government regulations are one of the strongest instruments in the policy toolbox to effect change,” researchers wrote. “... Our study shows that in this particular case, the policy intervention appears to have quickly mitigated the threat of multiple magnet ingestions.”¹¹

We were dismayed by the decisions by the Tenth Circuit Court of Appeals and the Federal District Court of Colorado to vacate a previous rule and recall order on these dangerous magnets. To prevent the known harms associated with high-powered magnetic sets, we urge the CPSC to re-issue its recall order and establish a strong mandatory safety standard for small rare-earth magnet sets without delay. A mandatory standard would prevent the widely recognized child harms from small magnets – up to and including death –before they occur, as opposed to a stop sale, which takes magnet sets out of commerce after they have already had an opportunity to enter the consumer marketplace.

TV and Furniture Tip-Overs

The AAP appreciated CPSC’s 2018 advanced notice of proposed rulemaking (ANPR) regarding furniture tipovers. The tragic child deaths from IKEA dressers should have, and could have, been prevented. While we appreciate the educational efforts that both the CPSC and IKEA have made using their “Anchor It” and “Secure It” campaigns, respectively, the best solution is simply to design a safer dresser that will not tip over and harm or kill children. Families living in

¹¹ <http://www.aappublications.org/news/2017/04/21/Magnets04211>.

rental homes or apartments may be prohibited by their landlord or lease from installing anchoring kits into the walls; for such children and families, the “Anchor It” campaign is meaningless. We look forward to additional progress from the CPSC towards a robust mandatory safety standard to prevent this hazard.

Like furniture tip-overs, TV tip-overs can result in horrific injuries or even death. We appreciate the CPSC staff’s March 2017 in-depth analysis of non-fatal injuries from TVs falling off furniture.¹² A July 2013 Pediatrics article found that between 1990 and 2011, an estimated 380,885 patients under eighteen were treated in emergency departments for a TV-related injury; this equals an average of 17,313 children a year, or 2 children every hour. The median age of patients was 3 years, children under five represented 64.3% of patients, and boys comprised 60.8%.¹³ Despite previous studies identifying the risks of TV tip-over injuries, newspaper articles highlighting local tragedies¹⁴, and the CPSC itself listing TV and furniture tip-overs in their top five hidden hazards¹⁵, safety standards for TV stability do not include the requirement that TVs be sold with anti-tip or anchoring devices. Both furniture and TV tip-overs are entirely

¹² https://cpsc.gov/s3fs-public/NonFatalTVInjuriesreportOctober2016March17_0.pdf.

¹³ <http://pediatrics.aappublications.org/content/132/2/267.full>

¹⁴ Breckenridge MB. Anchoring furniture can prevent tragedy. Beacon Journal. January 14, 2012. Available at: www.ohio.com/news/local/mary-beth-breckenridge-anchoring-furniture-can-prevent-tragedy-1.255040. See also: Toddler dies after TV falls on her. Times of Trenton. May 10, 2007. Available at: http://blog.nj.com/timesupdates/2007/05/post_71.html. See also Eldeib D, Stoffel M. TV tips over, kills 6-year-old boy. Chicago Tribune. November 1, 2011. Available at: http://articles.chicagotribune.com/2011-11-01/news/ctmetchild-tv-safety-20111101_1_flat-screen-televisions-tvs-head-injuries. See also Williams-Harris D. “We just need to learn from this.” Girl, 4, dies after TV set falls on her. Chicago Tribune. January 16, 2012. Available at: http://articles.chicagotribune.com/2012-01-16/news/chi-officials-girl-4-killed-after-tv-falls-on-her-inuniversitypark-20120115_1_gianna-share-custody-boyfriend.

¹⁵ US Consumer Product Safety Commission. Top 5 hidden hazards in the home. 2007. Available at: www.cpsc.gov/PageFiles/116304/hidden.pdf.

preventable events. Restraints securing these items to the wall can make all the difference but strengthening the stability performance requirements in the relevant safety standards would be the most effective solution. This may require a mandatory standard from CPSC to ensure that all manufacturers comply and that all consumers have an opportunity to keep their children safe from this hazard.

Flame Retardants

The AAP is a party to the 2015 petition led by EarthJustice and Consumer Federation of America urging CPSC to use its Federal Hazardous Substances Act authority to ban organohalogen flame retardants in four product categories: durable infant or toddler products, children's toys, child care articles, and other articles intended for use by children; furniture sold for use in residences; 6 mattresses and mattress pads; and the plastic casing of electronic articles. Organohalogen flame retardants are widely present in the environment and human exposure is extensive. These chemicals pose serious public health concerns, particularly for children. They are associated with adverse effects including: reproductive impairment; neurological effects, including decreased IQ in children, learning deficits, and hyperactivity; endocrine disruption and interference with thyroid hormone action; genotoxicity; cancer; and immune disorders. The AAP was pleased to see that the CPSC previously voted to move forward on a rulemaking on this topic, and to convene a Chronic Hazard Advisory Panel (CHAP) and to issue guidance to consumers and manufacturers. The AAP urges CPSC action on this dangerous class of chemicals.

Recreational Off-Highway Vehicles

Recreational Off-Highway Vehicles (ROVs) have become increasingly popular over the past few years for both recreational and work purposes. Our pediatricians see first-hand the tragedies and disabilities that can result from children on ROVs. The mechanism in the majority of ROV crash events causing injury and/or death is a vehicle rollover. When this happens, an occupant can easily be struck or pinned by the vehicle, especially if they are not using the ROV's restraint system. Pediatric victims are frequently ejected from ROVs because they are too small to reach the pedals and use a seatbelt.

Children are not developmentally capable of operating these heavy, complex machines. No child under the age of 16 should operate an ROV, and we must do all we can to ensure children do not operate these vehicles. Children should not even be passengers in ROVs, as safe methods of securing children in these vehicles have not been established. However, despite our best efforts to prevent child use of these machines, children continue to suffer injuries and deaths while driving or riding on them. We urge CPSC to continue prioritizing this issue, and support progress to allow the enactment of a strong mandatory standard that reduces the known injury and fatality hazards associated with these vehicles.

With regards to All-Terrain Vehicles (ATVs), the CPSC's own data demonstrates yet again that ATVs are not safe for children and should not be used by any child under the age of 16. However, children continue to drive and ride in these vehicles, and the injuries and deaths continue as a result. Children are not developmentally capable of operating these heavy, complex

machines. The CPSC can and must do more to prevent these incidents in the first place and protect children from further harm. The AAP continues to call upon the agency to reject the manufacture of a transitional, “youth model” ATV 7 for 14- to 16-year-olds that is capable of traveling at speeds up to 38 miles per hour. Preventing children from riding ATVs is still the most effective method to reduce injuries and deaths.¹⁶

There have been 15,000 documented ATV-related fatalities since CPSC began collecting data on ATV injuries in 1982. We need action from CPSC to protect children from injury and death associated with ROVs and ATVs. This should include expanding data collection to also incorporate ROV data, to more accurately reflect the ubiquity of those products and better equip CPSC with data needed for a public health approach to reducing child injuries and fatalities.

Conclusion

The CPSC is an important agency whose work impacts the lives of infants and children every day. We urge the Commission, as it moves forward into the next fiscal year, to prioritize work on the issues and products laid out herein. We are grateful for the opportunity to comment and look forward to assisting the Commission in protecting the health of all children. If you have any questions, please do not hesitate to contact Zach Laris in the Washington, D.C. office at 202/347-8600 or zlaris@aap.org.

¹⁶ Flaherty MR, Raybould T, Kelleher CM, et al. Age Legislation and Off-Road Vehicle Injuries in Children. *Pediatrics*. 2017;140(4):e20171164.



Consumer Federation of America

April 17, 2019

Testimony of Rachel Weintraub,

Legislative Director and General Counsel, Consumer Federation

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 Request¹ 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.

¹ https://www.cpsc.gov/s3fs-public/FY%202020%20Congressional%20Justification.pdf?2rDJohfEbN6IAgu5l_kLtcV3W1W_JNqc 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.² 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.³ Finally, and unfortunately, we know of reports⁴ that an electronic

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

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

⁴ <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*,⁵ 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.⁶ 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."⁷ The CDC investigation will focus on "developing and evaluating methods to find and count the number of injuries related to dockless electric scooters."⁸ 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

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

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

⁷ https://www.washingtonpost.com/transportation/2019/03/15/cdc-is-studying-e-scooter-injuries/?utm_term=.931c039fd4cd

⁸ 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.⁹

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.¹⁰ 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.¹¹ 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 2016.¹² 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.

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

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

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

¹² <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.¹³ 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 (AAPCC):

“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.”¹⁴

In 2019, thus far, according to the American Association of Poison Control Centers, there have been 2,097 children¹⁵ 5 and younger exposed to laundry packets, in 2018 there were 9,445,¹⁶ in 2017, 10,883¹⁷ children 5 and younger were exposed¹⁸ to laundry packets, in 2016, 13,004 children 5 and younger were exposed to laundry packets.¹⁹ In 2015, there were 13,112 exposures and in 2014 there

¹³ 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>

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

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

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

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

¹⁸ 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>

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

were 12,204.²⁰ In 2013, poison centers received reports of 10,777 exposures to highly concentrated packets of laundry detergent by children 5 and younger.²¹

According to a Consumer Reports article from 2017,²² 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.”²³

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

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

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

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

²³ 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.²⁴

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 analysis²⁵ 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 brands²⁶ were involved in the recalls, and the brand with the most recalls was Polaris.²⁷ CPSC reports identified at least 62 injuries and two deaths linked to OHVs that were subsequently recalled. Also, more than one million²⁸ 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.²⁹

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

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

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

²⁶ 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.

²⁷ 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.

²⁸ 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.

²⁹ <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 CPSC³⁰ 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

³⁰ 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 penalties³¹ 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.

³¹ 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.³² 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 2007.³³ Despite the fact that the CPSC found numerous home lead kits unreliable, it did not name them. Similarly, in a furniture stability study in 2016,³⁴ 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

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

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

³⁴ 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,³⁵ 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

³⁵ <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.



**Written Comments of Consumer Reports to the
U.S. Consumer Product Safety Commission on:
“Agenda and Priorities FY 2020 and/or 2021”
Presented by William Wallace, Senior Policy Analyst**

Submitted to the Office of the Secretary via cpsc-os@cpsc.gov
April 17, 2019

On behalf of Consumer Reports (CR), the independent, non-profit member organization,¹ thank you for the opportunity to testify about the CPSC’s agenda and priorities at the public hearing scheduled for May 1, 2019. We appreciate the chance to present our views to you on the Commission’s agenda and priorities for the next two fiscal years.

Throughout CR’s history, identifying marketplace hazards and improving product safety has always been a core part of our purpose, and it remains just as important today. In carrying out our work, we assess safety risks, investigate their impact on consumers, and inform the public and the CPSC when we find unsafe products—all on a data-driven basis. We push for safety standards to protect consumers from the risk of injury, including both mandatory consumer product safety standards and voluntary industry standards that should be reached through an open, consensus-based process. We support and defend the critical role of the CPSC, not just for consumers, but also for the sake of a fair marketplace in which companies benefit if they meet their responsibilities for their products to be safe.

With these broader objectives in mind, we highlight topic areas in the following comments that we hope the agency will emphasize in fiscal years 2020 and 2021. These topics are divided into two categories: (1) the CPSC’s role and its capabilities; and (2) hazards around the home, including those associated with furniture tip-overs.

¹ Founded in 1936, Consumer Reports uses its dozens of labs, auto test center, and survey research center to rate thousands of products and services annually. CR works together with its more than 6 million members for a fairer, safer, and healthier world, and reaches nearly 20 million people each month across our print and digital media properties.

The CPSC's role and its capabilities

The CPSC is a critical agency with an indispensable public health and safety mission, and it plays a significant role in protecting U.S. consumers despite lacking many of the tools and resources it would need to carry out all that it is capable of doing. It is essential for the CPSC to make effective use of the tools and resources it has; to leverage actions by companies, standards development organizations, advocates, and consumers to advance the public interest; to maximize the availability of information and accountability to the public regarding product safety; and to identify ways to improve the agency's work in the future. As it pursues these goals, we urge the agency to focus on several topics in particular.

Safety leadership and expertise

It is critical for the CPSC and Commission members to be vocal advocates for consumer safety. This leadership role should include communication of key safety messages on longstanding safety issues, as well as informing the public about new potential product hazards as quickly and prominently as possible. It also should include public and private efforts to push for companies and industry organizations to take key actions in support of safety that they may not want to undertake, and support for mandatory requirements when companies do not act voluntarily. The CPSC should set a high bar for safety culture, safety standards, and responses to safety issues. The agency should repeatedly and consistently urge companies and industry associations to reach that high bar, and require them to do so when they do not act on their own.

Given that the Consumer Product Safety Act generally requires the CPSC to rely on voluntary standards, it is especially important for the agency to help ensure that the voluntary standards-setting process yields timely and significant safety benefits to consumers. The Commission should consider each of the following to be a key agency priority: (1) CPSC testing and other research to provide data and direction to voluntary standard panels; (2) informed, vocal, and influential CPSC staff participation in voluntary standard panels; (3) open and balanced voluntary standard panels and fair standards development processes; (4) continual progress for safety on voluntary standard panels, including timely and robust updates to standards; and (5) retaining the credible use of mandatory standards to achieve safety goals through regulation if voluntary standards would not adequately reduce the risk of injury or if it is not likely that there will be substantial compliance.

In addition, the CPSC must value the safety expertise of CPSC staff. Staff should be empowered to take leadership roles in voluntary standards development, and should be permitted to cast votes on ballot items on the basis of their safety expertise and their independent assessment of the matter at hand. They also should be able to conduct research, educate the public, identify and reduce hazards, and pursue compliance and enforcement actions as the law and their experience dictate. As an independent regulatory agency, the CPSC has been directed by Congress to look out for the safety of Americans in a manner relatively insulated from outside pressures. The work of CPSC staff should always reflect this charge.

Recalls, market surveillance, and enforcement

Perhaps the most common way that consumers interact with the CPSC is when they learn of product recalls. CR assists the CPSC in its role investigating and overseeing recalls for product safety issues, including by communicating CR's research, comparative testing, and investigative findings to the agency, and by informing consumers of CPSC recalls through social media posts and articles. When a recall is warranted, CR considers it best for consumers if the recall happens as quickly, as completely, and as easily as possible. Recalls vary greatly in how well they fulfill these goals.

In addition, we urge the CPSC to keep up a commitment to market surveillance. It is important for the agency to monitor imports of products at as many ports as possible to prevent entry of dangerous products into the U.S. marketplace. The CPSC should also continue to more broadly monitor the marketplace to ensure that older unsafe products are removed from the second-hand market and childcare facilities, including through close work with online retailers to rid prominent websites of illicit or harmful products.

Availability of information and accountability to the public

Unfortunately, the CPSC operates under severe constraints on its ability to communicate clearly with the public about critical safety issues. The CPSC should be able to inform the public about legitimate safety hazards in a timely and complete manner regardless of whether or not a company wants that to occur. The agency should work to do so as broadly as possible within the confines of the statutory language of Section 6(b) of the Consumer Product Safety Act, while updating agency interpretations of Section 6(b) to maximize public availability of information and minimize internal agency administrative burdens to the greatest extent possible. As much as it can, the CPSC must prioritize its statutory mission to protect consumers over the anonymity of companies when their products have created a substantial risk of injury to the public.

While recognizing the significant effect of Section 6(b) on the agency, we urge the CPSC to take several steps regarding the availability of information and agency accountability to the public. First, it should be an agency priority to reduce Freedom of Information Act (FOIA) backlogs and other factors that cause responses to FOIA requests to be delayed, including beyond the dates by which responses are required. Second, the agency should develop ways for the public to more readily ascertain whether a company is living up to its obligations under a recall and is effectively getting unsafe products off the market and out of homes. This effort should include greater public availability of what has been agreed to under a corrective action plan, and the routine posting of monthly corrective action plan reports on *cpsc.gov*. Third, it is critically important for companies to follow through on their commitments to issue a recall and carry out related actions. Even if it cannot disclose the names of the companies or the products involved, the CPSC has an obligation to the public to push companies to carry out recalls that they have committed to undertake, and to achieve recalls that happen as quickly, as completely, and as easily for consumers as possible.

In addition, we continue to strongly support the *SaferProducts.gov* public database. We appreciated the opportunity to provide comments and recommendations to the CPSC about the

database earlier this year, and look forward to continuing to work with the CPSC to develop and implement enhancements to SaferProducts.gov that would bolster product safety and help protect consumers, including by: increasing reports of harm; taking steps to redesign and clean up parts of the website and ease the reporting process; and improving data source integration and the public availability of SaferProducts.gov data.

Funding and staffing

As we have said previously, and as we have communicated to the House and Senate Appropriations Committees, the CPSC should receive far greater funding and staff to implement more robust programs to prevent consumer harm, including within its hazard identification, voluntary standards development, international outreach, and import surveillance functions. It also should receive additional funding and staff to respond to safety problems in the marketplace, including within its field operations, compliance, and rulemaking functions. We appreciate the efforts of the Chairman and other commissioners to prevent cuts in resources and push for additional funds; at the same time, we recognize that the agency is not currently resourced at a level reflecting that product safety, truly, is a federal priority.

Hazards around the home

In keeping with the overarching recommendations we make, we urge the CPSC to prioritize several hazards that consumers can and do encounter around their home that are hidden, or that may be unknown or poorly understood while still posing a substantial risk.

Furniture tip-overs

CR is continuing its investigation into the dangers of furniture tip-over incidents to young children. Hundreds of deaths involving dressers and other clothing storage units (CSUs) have occurred since 2000, and thousands of emergency room-treated injuries happen each year because of these incidents. This terrible toll on children became a call to action for us, and over the past two years, CR has conducted extensive research, analysis of incident and injury data, and comparative testing of a cross-section of the marketplace to determine whether a given model is more or less likely to tip over relative to other models.

Based on our investigation, the industry's voluntary standard leaves too many children at risk. Our testing has demonstrated that it is feasible for dressers at all price points to pass a more rigorous test, and our analysis of the injury and fatality data shows why it is necessary for furniture manufacturers to meet a stronger standard. While it is essential, where possible, to help avoid tip-over incidents by securing dressers to walls—as the Anchor It! campaign advocates—we recognize that anchoring furniture is not always an option for tenants or those not handy with tools. Fundamentally, it is the industry's responsibility to ensure safer, more stable dressers, as safety should not rely on consumer skill at anchoring a dresser to a wall.

As a result, CR—in proud partnership with all of the parents who are painstakingly turning their tragedies into progress toward safer dressers—is calling on the CPSC to set a strong, mandatory safety standard, which, among other things, would allow the agency to

enforce the rules and more easily gain industry cooperation for recalls. We appreciate the Commission's recent move to include in the agency's budget request its plans for CPSC staff to complete a notice of proposed rulemaking briefing package addressing furniture tip-overs during FY 2020. We also were pleased to hear Commissioners' comments at the March 13 CPSC meeting regarding the seriousness of the CSU tip-over hazard and the broad recognition by the Commission that the furniture industry is not taking fast enough or strong enough action to improve the voluntary standard for CSU stability.

However—recognizing that developing Section 7 and 9 mandatory standards can take several years—CR also continues to urge furniture companies to take immediate action. We are pushing for the voluntary industry standard overseen by ASTM International to protect more children and cover more dressers by increasing the test weight to 60 pounds and by including dressers 30 inches and shorter in the standard. It is of the utmost importance for Commissioners and CPSC staff to actively support and encourage members of the furniture industry to back these improvements to the voluntary standard, and we thank those who have done so or are doing so.

Separately, to help ensure the fastest possible implementation of a stronger standard, we also are supporting passage of legislation in Congress to establish a strong, mandatory standard for the stability of dressers and other CSUs. We are urging Congress to swiftly pass this bill, known as the STURDY Act, to help prevent avoidable tip-over tragedies.

On the compliance and enforcement side, Acting Chairman Buerkle announced on February 27 that the CPSC will now consider dressers defective if they are within the scope of the current voluntary standard ASTM F2057-17 but fail to meet its provisions, and will investigate and seek corrective action as appropriate. As we have said previously, it is an open secret that there are dressers on the market that don't stay upright when put through basic testing, and yet there was not a single recall in 2018 for an unstable dresser.

We expected recalls of dangerous dressers to occur shortly following this announcement—and we are concerned that did not happen. It is the job of the CPSC and manufacturers to keep all dangerous dressers off the market and out of homes, and accordingly, we urge the CPSC to redouble its efforts to secure recalls and take appropriate enforcement action related to both those dressers that do not meet the current F2057 standard as well as the Ikea 8-drawer Hemnes dresser, which is tied to the death of two-year-old Conner DeLong yet has not been recalled.²

Portable generators

CR periodically tests and rates generators, including portable generators, and is exploring potential tests to account for portable generators' carbon monoxide emissions. CR also promotes safety by helping consumers use generators safely, including in stories published on CR.org.

² "Ikea Still Sells a Hemnes Dresser Linked to a Child's Death," Consumer Reports (Jan. 9, 2019) (online at www.consumerreports.org/furniture/ikea-still-sells-hemnes-dresser-linked-to-childs-death).

CR appreciates the extensive and ongoing work by the CPSC to examine the risk of carbon monoxide poisoning associated with portable generators. As the incident data make tragically clear, education and warning labels alone are not enough to protect consumers from carbon monoxide poisoning. With an average of about 70 deaths and several thousand non-fatal injuries annually³—and with at least 16 carbon monoxide poisoning deaths and several hundred injuries related to just one 2017 storm, Hurricane Irma—performance requirements are needed, and the CPSC should implement a mandatory safety standard for portable generators to address the risk of carbon monoxide poisoning and other safety risks associated with the products. Such a standard would apply across the marketplace, make it easier to recall noncompliant products, and more effectively protect consumers.

We support the CPSC’s research on portable generators, prior to finalizing the rule, to evaluate the effectiveness of the ANSI/PGMA and UL standards. It is essential to independently evaluate how likely these voluntary industry standards are to eliminate or mitigate generator-related deaths, injuries, and illnesses, and to independently assess their adequacy under section 7(b) of the Consumer Product Safety Act. This research should be made public and can help build toward what we advocate for consumers: a single, strong, enforceable standard that eliminates or significantly reduces deaths and injuries associated with these products.

Internet-connected consumer products

Internet-connected devices are becoming available in the marketplace at a rapid rate, and they present new safety challenges not adequately addressed by current standards or CPSC tools and resources. As we testified at a CPSC hearing in May 2018, we urge the CPSC, other government agencies, and all stakeholders to live up to a pro-consumer vision for the Internet of Things (IoT), where companies are obligated to take responsibility for product safety through application of safety-protective product design, development, and production processes. The recent IoT report by Commissioner Kaye and Dr. Midgett lays out a similar vision, and we look forward to continuing to work with the CPSC as it further develops its thinking on IoT and ramps up work to protect consumers from associated product hazards.

Safe sleep

The U.S. has the highest rate of sudden unexpected infant death (SUID) among all developed nations, and we are committed to preventing these tragedies. In February 2018, CR summarized the results of a new Centers for Disease Control and Prevention (CDC) study, outlining why progress has stalled in addressing SUID and what parents can do to keep their babies safer.⁴

The risks to infants from padded crib bumpers are severe.⁵ We agree with the November

³ CPSC, Proposed Rule: Safety Standard for Portable Generators, 81 Fed. Reg. 83556-83615 (Nov. 21, 2016).

⁴ Consumer Reports, “SIDS: What You Need to Know to Keep Your Baby Safe” (Feb. 13, 2018) (online at: www.consumerreports.org/sudden-infant-death-syndrome-sids-what-you-need-to-know-to-keep-your-baby-safe/).

⁵ See, e.g., American Academy of Pediatrics, “SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment” (Oct. 24, 2016) (online at: pediatrics.aappublications.org/content/pediatrics/early/2016/10/20/peds.2016-2938.full.pdf).

2016 joint policy statement by several commissioners that there is a “clear risk of injury or death associated with padded crib bumpers” and that parents and caregivers should not use them.⁶ The continued presence of padded crib bumpers on store shelves, and especially in-store displays, is misleading to consumers, and we do not support it—in short, the products should not be for sale.⁷

With respect to the products commonly known as inclined sleepers: while it is long overdue, we are pleased that Fisher-Price is recalling all 4.7 million Rock ‘n Play Sleepers on the market or in people’s homes. This action follows calls for a recall by several safety advocacy groups, including CR, as well as the American Academy of Pediatrics. We urge all consumers with a Fisher-Price Rock ‘n Play Sleeper to immediately stop using the product. AAP’s safe sleep recommendations say that babies should be placed alone to bed on a firm, flat surface in their own space, with no extra bedding,⁸ and this product conflicts with that advice.

We also are calling for an immediate recall of two inclined sleepers by the company Kids II that are linked to infant deaths and that conflict with expert medical advice. In the longer term, we strongly urge the Commission to set a standard under which any infant sleep product that does not align with safe sleep recommendations can be readily and quickly taken off the market by the agency, so that parents and caregivers do not unwittingly put their babies at risk.

Regarding the Rock ‘n Play recall, Fisher-Price and its parent company Mattel misled parents and caregivers by marketing this product as safe for sleep, and they owe it to their customers to give them full refunds, rather than partial refunds or company vouchers. That should be the case regardless of how long ago the product was bought, and we urge the Commission to press Mattel to provide consumers with these full refunds.

Liquid laundry detergent packets

The safety of liquid laundry detergent packets remains a significant problem—including, as a result of investigative work in 2017 by CR, the risks to cognitively impaired adults.⁹ With regard to the risks to young children,¹⁰ the ASTM F3159-15 standard may lead to a meaningful

⁶ Joint statement of CPSC Chairman Kaye and Commissioners Adler, Robinson, and Mohorovic recommending parents and caregivers not use padded crib bumpers (Nov. 3, 2016) (online at: www.cpsc.gov/s3fs-public/Joint%20Statement%20on%20Padded%20Crib%20Bumpers%20FINAL%2011.3.16.pdf).

⁷ See American Academy of Pediatrics, “CPSC Fails to Ban Crib Bumpers Dangerous to Infants” (Nov. 4, 2016) (online at: www.aap.org/en-us/about-the-aap/aap-press-room/pages/CPSC-Fails-to-Ban-Crib-Bumpers-Dangerous-to-Infants.aspx).

⁸ American Academy of Pediatrics, “SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment” (Oct. 24, 2016) (online at: pediatrics.aappublications.org/content/pediatrics/early/2016/10/20/peds.2016-2938.full.pdf).

⁹ See “Consumer Reports Finds Liquid Laundry Detergent Pods Pose Lethal Risk for Adults with Dementia,” Consumer Reports (June 15, 2017) (online at: www.consumerreports.org/media-room/press-releases/2017/06/consumer_reports_finds_liquid_laundry_detergent_pods_pose_lethal_risk_for_adults_with_dementia).

¹⁰ See “The problem with laundry detergent pods,” Consumer Reports (July 16, 2015) (online at: www.consumerreports.org/cro/magazine/2015/07/the-problem-with-laundry-detergent-pods); “Laundry Detergent Pods Caused Surge in Chemical Eye Burns in Children,” Consumer Reports (Feb. 7, 2017) (online at:

drop in injuries, and we currently are working closely with all stakeholders to ensure that there is adequate data and that there are meaningful reduction goals to measure the standard's effectiveness. However, given the demonstrated ongoing threat to young children, the CPSC should consider promulgating an enforceable mandatory standard if the voluntary standard does not soon demonstrate that it is effective. We will continue to urge households where children younger than 6 are ever present to skip these products altogether until there is a meaningful decline in injuries, and in 2017 we extended this recommendation to households with cognitively-impaired adults.

Toys and magnet sets

CPSC estimated in 2014 that potentially 2,900 emergency-department-treated magnet set ingestions occurred in the United States from January 1, 2009, through December 31, 2013.¹¹ We supported the strong mandatory safety standard for these products that was returned to the Commission by the Tenth Circuit Court of Appeals in November 2016, and we urge the Commission to expeditiously replace the standard with new measures that will prevent the kind of extensive, severe injuries that occurred in past years.

Pending and future CPSIA Sec. 104 standards

We strongly support and applaud the agency's ongoing efforts under Section 104 of the Consumer Product Safety Improvement Act, through which a broad group of stakeholders develop strong safety standards in a consensus-based process and the CPSC promulgates a mandatory standard that is either substantially the same or more stringent. As a result of the robust safety standards developed through this process, numerous infant and children's products are manufactured to be far safer than they once were, and compliance must be tested and certified by a third party. We urge the Commission to continue, in fiscal years 2020 and 2021, to make its Section 104 activities a top priority, given the demonstrated record of success.

Smoke alarms, carbon monoxide alarms, and appliance fires

According to the National Fire Protection Association, working smoke alarms increase the chance of surviving a fire by 50%, and between 2009 and 2013, fires in homes with no smoke alarms caused an average of 940 deaths per year (38% of home fire deaths). An additional 510 people per year (21% of home fire deaths) were fatally injured in fires in which smoke alarms were present but failed to operate.¹² According to the Centers for Disease Control and Prevention (CDC), during 2010–2015, a total of 2,244 deaths resulted from unintentional carbon monoxide (CO) poisoning, with 393 of those deaths occurring in 2015.¹³

www.consumerreports.org/product-safety/laundry-detergent-pods-sharp-increase-chemical-eye-burns-in-children).

¹¹ CPSC, Final Rule: Safety Standards for Magnet Sets, 79 Fed. Reg 59961 (Oct. 3, 2014).

¹² National Fire Protection Association, Smoke Alarms in U.S. Home Fires (online at: www.nfpa.org/news-and-research/fire-statistics-and-reports/fire-statistics/fire-safety-equipment/smoke-alarms-in-us-home-fires).

¹³ CDC, Quick Stats: Number of Deaths Resulting from Unintentional Carbon Monoxide Poisoning (online at: www.cdc.gov/mmwr/volumes/66/wr/mm6608a9.htm).

CR often stresses the importance of installing and maintaining smoke and CO alarms, and we at CR look forward to continuing to work with the CPSC to reduce deaths and injuries from fires and carbon monoxide poisoning in the home. The most recent CR buying guide and ratings on these alarms offer consumers comparative information about different products that were tested.¹⁴ To help keep consumers safe, CR also has shared information about how to ensure that smoke and carbon monoxide detectors function properly,¹⁵ and has sought to help prevent home fires in the first place by providing consumers with information on proper precautions to take.¹⁶

Mattress flammability

According to National Fire Protection Association estimates, home mattress fires caused one-third (3,100) of the 9,400 estimated reported home structure fires that began with mattresses and bedding per year in the 2007-2011 time frame; 16% (52) of the 330 mattress and bedding civilian fire deaths per year; 37% (502) of the 1,350 mattress and bedding civilian injuries per year; and 37% (\$132 million) of the \$361 million in direct property damage per year.¹⁷ Mattress fires continue to pose a significant risk to consumers, and the CPSC should keep prioritizing work to reduce associated deaths and injuries during the next two fiscal years.

Window covering cords

Efforts to address the risk of injury to young children from hazardous, accessible window covering cords have made progress, but there is more to be done. On average, one child dies every month in an incident associated with this hazard,¹⁸ adding up to hundreds of child fatalities in the more than 30 years that the problem has been well understood. CR continues to support the development, by the CPSC, of a mandatory standard to eliminate the risk of strangulation and prevent future tragedies. In the meantime, we urge all window covering manufacturers to conform to the latest version of the voluntary ANSI/WCMA standard and continue to work urgently to bolster the standard so it also requires custom products to be free of accessible cords. For their part, retailers of window coverings should commit, without delay, to only sell cordless products.

¹⁴ Consumer Reports, “Smoke & Carbon Monoxide Detector Buying Guide” (June 8, 2018) (online at: www.consumerreports.org/cro/smoke-carbon-monoxide-detectors.htm).

¹⁵ Consumer Reports, “How to Spot and Stop Carbon Monoxide Poisoning” (Oct. 31, 2017) (online at: www.consumerreports.org/home-safety/how-to-spot-and-stop-carbon-monoxide-poisoning); Consumer Reports, “Check Smoke and Carbon Monoxide Detectors When Moving Into a New Home” (March 9, 2013) (online at: www.consumerreports.org/smoke-carbon-monoxide-detectors/check-smoke-and-carbon-monoxide-detectors).

¹⁶ See, e.g., Consumer Reports, “How to Prevent Dryer Fires” (Oct. 18, 2018) (online at: www.consumerreports.org/clothes-dryer/how-to-prevent-dryer-fires).

¹⁷ National Fire Protection Association, RE: CPSC Request for Comments: Review of the Standard for the Flammability (Open Flame) of Mattress Sets under Regulatory Flexibility Act Sec. 610; Docket No. CPSC-2006-0011 (online at: www.regulations.gov/document?D=CPSC-2006-0011-0010).

¹⁸ CPSC, “Window Covering Cords Information Center” (online at: www.cpsc.gov/Safety-Education/Safety-Education-Centers/Window-Covering).

Table saws

More than 30,000 table saw injuries occur annually, with an average of ten amputations happening every day on the products.¹⁹ CR supports a performance standard to limit the depth of a cut, because it is a sensible approach that is feasible to meet and, according to the agency's estimates, would yield large net benefits. We urge the Commission to keep moving forward on the mandatory safety standard for table saws.

Battery and electronics system safety

CR remains concerned about the potential fire hazards of lithium-ion batteries and faulty electrical systems. The CPSC should continue its important research on battery safety and continue urging manufacturers to build safe electrical systems that meet effective standards.

Pressure washers

Due to an extreme potential risk of laceration, CR does not recommend pressure washers that come with nozzles that produce sprays of less than 15 degrees, and we are asking manufacturers to stop including tips and settings that produce such a narrow spray. The CPSC should make the same recommendation.

Bike helmets

In 2015, more than 1,000 U.S. bicyclists died, and there were almost 467,000 bicycle-related injuries, with approximately 85,000 head injuries attributable to bike accidents. Annually, about 26,000 of these bicycle-related injuries to children and adolescents are traumatic brain injuries treated in emergency departments. As has long been established, bicycle helmets reduce head injuries by up to 50%.²⁰

CR promotes bicycle safety, both by monitoring the helmet market and informing consumers of safe practices.²¹ In September 2017, CPSC and Pro-Tec announced the recall of the City Lite and Street Lite multi-sport helmets, following CR first discovering this issue in

¹⁹ Kevin C. Chung and Melissa J. Shauver, *Table saw injuries: epidemiology and a proposal for preventive measures*, National Institutes of Health PubMed Central (Nov. 2013) (online at: www.ncbi.nlm.nih.gov/pmc/articles/PMC4154236); Sadeq R. Chowdhury, Ph.D., Caroleene Paul, *Survey of Injuries Involving Stationary Saws, Table and Bench Saws, 2007-2008*, U.S. Consumer Product Safety Commission (March 2011).

²⁰ CDC, *Bicycle Safety* (June 5, 2017) (online at: www.cdc.gov/motorvehiclesafety/bicycle/index.html); Bicycle Helmet Safety Institute from the Department of Transportation 2017 report on bicycle injuries, "Helmet Statistics" (June 2017) (online at: www.bhsi.org/stats.htm); CDC, *Head Injuries and Bicycle Safety* (Jan. 28, 2015) (online at: www.cdc.gov/healthcommunication/toolstemplates/entertainmented/tips/headinjuries.html); American Association of Neurological Surgeons, *Sports Related Head Injury* (online at: www.aans.org/en/Patients/Neurosurgical-Conditions-and-Treatments/Sports-related-Head-Injury) (accessed July 11, 2017).

²¹ See, e.g., Consumer Reports, "4 Biking Safety Tips for Commuters" (Sep. 22, 2017) (online at: www.consumerreports.org/safety/biking-safety-tips-for-commuters).

January 2017 through independent testing.²² We continue to look forward to working with the agency and all stakeholders to ensure that the CPSC bicycle helmet standard continues to drive the market toward helmets that provide greater protection from impact.

Lawn mowers

According to published academic research, there were 934,394 lawn mower injuries treated in the U.S between 2005 and 2015—an average of 84,944 injuries per year.²³ Between 1990 and 2014, 212,258 children suffered lawn mower-related injuries, many of which resulted in long-term physical, psychological, and financial damage.²⁴ During these periods, the incidence of lawn mower injuries for children and the general population failed to decline.²⁵ Considering the severity and persistent incidence of lawn mower-related injuries, the CPSC should dedicate additional staff time and resources to potential design changes and safety equipment that could reduce the risk of injury to consumers.

Pool safety

From 2005 to 2014, an average of 3,536 fatal non-boating-related unintentional drownings occurred annually in the United States, or about ten deaths per day. About one in five people who die from drowning are children 14 and younger. Over 4,100 children younger than age 5 suffer submersion injuries and require emergency room treatment; about half are seriously injured and are admitted to the hospital for further treatment.²⁶ The CPSC rightly recognizes pool safety as a critical part of its current portfolio, and the subject should remain a priority as long as injuries and deaths remain elevated.

Conclusion

In conclusion, CR greatly appreciates CPSC's important efforts to address hazards associated with consumer products. We look forward to continuing to work with the agency to fulfill its mission in fiscal years 2020 and 2021.

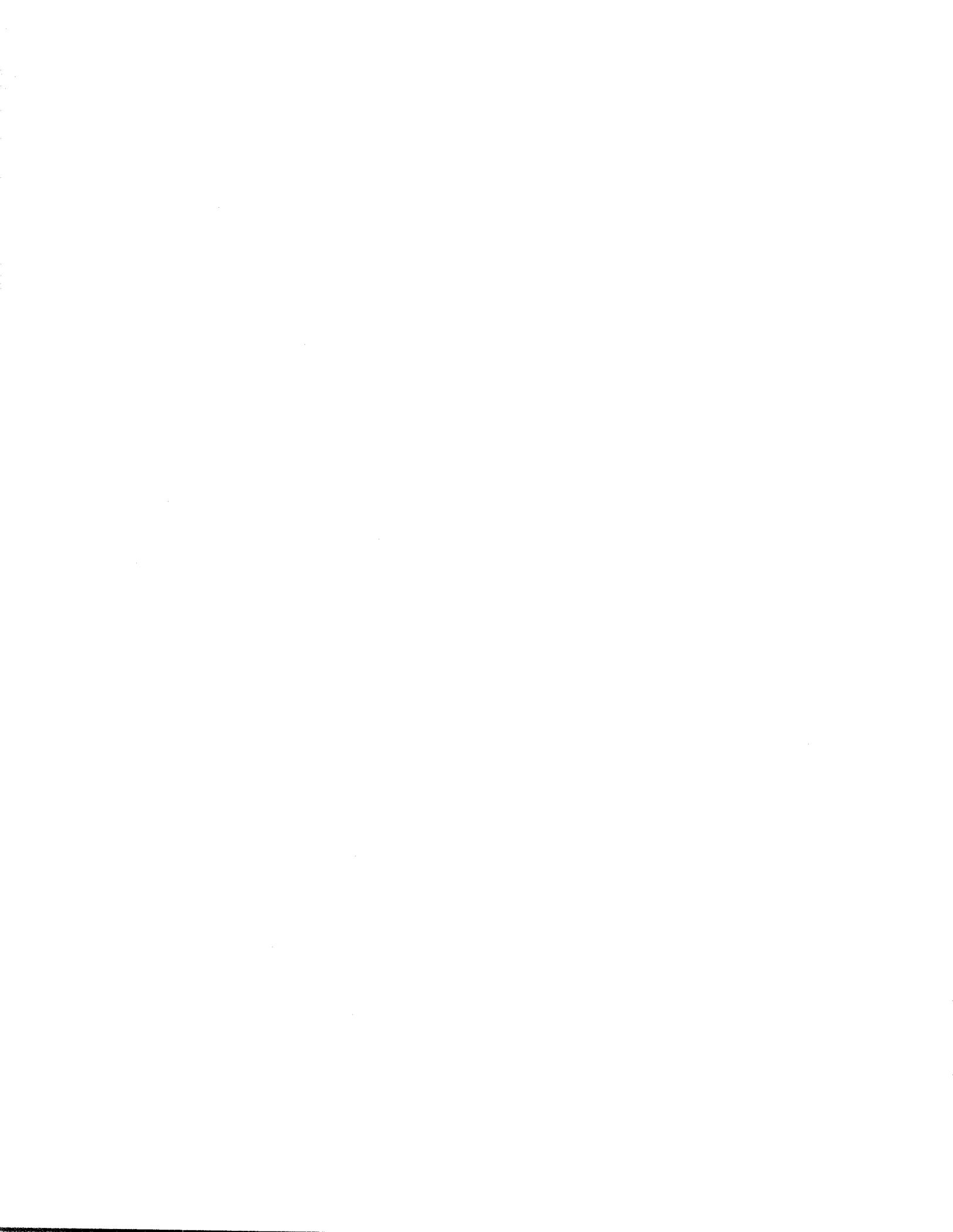
²² Consumer Reports, "Pro-Tec Recalls Bike Helmets After They Fail Consumer Reports' Tests" (Sep. 28, 2017) (online at: www.consumerreports.org/bike-helmets/pro-tec-recalls-bike-helmets-after-they-fail-consumer-reports-tests).

²³ Christopher Harris, Jonathan Madonick, and Thomas Ryan Hartka, *Lawn mower injuries presenting to the emergency department: 2005 to 2015*, *American Journal of Emergency Medicine* (Jan. 8, 2018)

²⁴ Karen Ren et al., *Children treated for lawn mower-related injuries in US emergency departments, 1990–2014*, *American Journal of Emergency Medicine* (Mar. 13, 2017); Marielena Bachier and Alexander Feliz, *Epidemiology of lawnmower-related injuries in children: A 10-year review*, *Society of Black American Surgeons* (2016).

²⁵ *Id.*

²⁶ CDC, "Unintentional Drowning: Get the Facts" (Apr. 28, 2016) (online at: www.cdc.gov/homeandrecreationalsafety/water-safety/waterinjuries-factsheet.html).





April 15, 2019

Statement of Meghan DeLong, Founder & President
Conner's Legacy Foundation, Inc
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CPSC Public Hearing Oral Presentation Request

Good morning, my name is Meghan DeLong. I am an educator, speech therapist, child development specialist, a graduate student in social work, and a consumer advocate representing Conner's Legacy Foundation and Parents Against Tip Overs. I would like to take a moment to thank you for this opportunity to address all of you today regarding the epidemic of furniture tip overs.

I am a mother to 2 children, Conner and Kaleb, whom I adopted through Department of Children and Families in 2016 and 2017. On Mothers Day, May 14, 2017, just 4 days after my second son's adoption was finalized, my family was changed forever when my 2 year old son Conner tipped his dresser over and subsequently died the next evening as a result of his injuries, which were defined as mechanical asphyxia. I did everything that I knew as a parent, and a professional, to make my home safe, but I didn't know about anchoring furniture. I had social services in my home on a monthly basis for 2 years and my home passed 3 separate home studies to ensure the safety of our home environment. They didn't know about furniture anchoring. I had done what I, and social services had deemed effective, to provide a safe and loving home for my children. I never knew that my family would become a statistic in a long line of families that preceded us.

In enduring this tragedy, I have become not only aware, but an expert, in what could have been done or what circumstances may have saved my son's life that day. As consumers, we believe that the items we purchase and put into our homes have passed mandatory safety testing and are safe to be used in our homes. I have learned a lesson that no parent should ever have to learn. I have learned that there is no such thing as a mandatory safety standard for furniture and that the clothing storage unit that killed my son, meets the inadequate voluntary safety standards that have been developed by ASTM. The statistics that surround furniture tip overs are astounding. According to the



data collected by the CPSC, a furniture tip over occurs every 17 minutes, an average of 15,600 emergency room visits are due to furniture tip overs, and one child dies every 10 days. Between 2000-2017 542 fatalities have been reported, 80%, which is 450, of those fatalities are children. Charles Zastro states that “a social problem exists when an *influential group* asserts that a certain social condition affecting a large number of people is a problem that can be remedied by collective action”. This is not only a social problem, but a social epidemic. Furniture tip overs have the potential to impact every home in America, yet to date, we have not been able to come up with effective collective action to remedy this issue.

There are several areas of concern when I think of how furniture tip overs effect our nation as a whole. The first and foremost concern is the industry’s unwillingness to engage in meaningful collective action to develop standards that are commensurate with a child up to, and including, 72 months of age. According to the CDC, a 5 year old child in the 95th percentile weighs on average, 64lbs. In the last six months there have been at least two tip-over incidents that involve a child between the age of 60-72 months of age. While these incidents were not fatal, the CSUs involved still tipped and a child was still injured. According to the scope of the current standard, it is intended to reduce injuries and deaths of children up to and including 72 months of age; hence these cases should be considered as reliable rationale but they are not at this point. Although Chairman Buerkle stated in her keynote speech at ICPSHO that the CPSC supports an increased weight of 60 lbs and lower height threshold of 27 inches, consumer advocacy groups, such as ourselves, are still receiving significant pushback from industry professionals that are unwilling to adapt the voluntary standard to fit this criteria. There seems to be constant holding pattern in which furniture industry is unable to understand the perspective of consumer groups and parents, and they question about the validity of incidents that have occurred to support the new rationale. This concerns me. How will the CPSC effectively monitor a standard that is not mandatory? Although the current standard is inadequate as at least one child, my son, has been killed by a dresser that meets the voluntary standard, it is my belief that the CPSC should allocate funds to ensure that furniture manufactures are indeed producing and manufacturing products that, at the very least, meet the voluntary safety standard.

My next area of concern is in regards to the effectiveness of recalls and the recall process. Although there have been reported fatalities with particular items, it is unfathomable that these products are not only still on the market, but are marketed as children’s items. In addition, it is important to take into consideration the effectiveness of a recall. Although an item may have been recalled, it does not mean that these products are finding their way out of consumers homes. Had I been aware of the historical furniture recall that took place in 2016, my son would still be here today. As an early childhood development specialist and a parent that spent 2 years with social services in my



home on a monthly basis, I was unaware of the recall. We need to improve the scope of how we are informing consumers of dangerous products, and this includes promoting saferproducts.gov in a more effective manner. I am aware and understand that 6(b) has tied the CPSC's hands when it comes to recalling dangerous products, which is why I feel that it is imperative that funding is used to repeal 6(b) in an effort to keep our children safe.

Our organizations are happy to be community leaders for the Anchor It! Campaign, however, since its establishment in 2015, there have been more injuries and fatalities that have occurred and the information that is available is not fully reflective of these new statistics. Many of the PSA's and social media posts have been beneficial, but there are others that could use some improvement. For example, the video of the Anchor It! moms is extremely impactful, but this gives consumers the illusion that no other families have been effected by this tragedy since it's publication. The reality is that there are many more families that have been shattered since this time. I would also like to mention the effectiveness of the some social media posts and tweets. As a professional working in social services with a background in child development and a parent who has lost a child, I feel that it is important to note that the visual representations that are accompanying the content is minimizing the reality and impact of what life actually looks like following an injury or fatality due to a furniture tip over. It is my belief that we need to give consumers a real life glimpse at what can happen when appropriate steps are not taken to ensure that homes are safe. I do not feel that masking the message with rainbows and butterflies is the best way to make this issue a reality for families. I would like to see funding in the coming fiscal years devoted to updating the Anchor It! Campaign so that it provides a more accurate and effect message to consumers.

Lastly, I would like to briefly comment on the declined amendment to section 104 presented by Commissioner Kaye and Commissioner Adler as well the proposed action presented by Commissioners Feldman and Commissioner Baiocco. I understand the reasoning for the negative votes to amend section 104, as this is not a universal change that would effect all CSU's, but it would at least force industry to adhere to a standard and thus at protect some children. I am encouraged, however, by the proposed action by Commissioner Feldman and Commissioner Baiocco to move the issue of furniture tip overs to an NPR in the coming fiscal year. After having a phone conversation with Commissioner Feldman, I am hopeful that we have the CPSC's support to make this a priority as furniture tip overs effect an astounding number of our most vulnerable population, our children. Every 17 minutes a furniture tip over happens. Every 10 days a child dies. This is unacceptable in a society that has the means to do better. When we know better, we do better. Let's work together to do better.



I am here today as a consumer advocate, but more importantly to be a voice for my son, Conner, and all the other children who have fallen victim to this tragedy. I have dedicated my time, knowledge, experience, and passion to educate our communities and to push for stronger standards nationwide. I hope that the budget for 2020 allows the CPSC to make furniture tip overs a priority in an effort to help ensure the safety of children by working to eliminate furniture tip overs. Thank you again for your time and willingness to hear my concerns today.



Conner Charles DeLong
February 4, 2015-May 15, 2017

"Conner was perfection. He was meant to leave a legacy in this world."



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April 17, 2019

Ms. Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission

Ref: "Agenda and Priorities FY 2020 and/or 2021"

Dear Ms. Mills,

The International Federation of Inspection Agencies ("IFIA") is pleased to provide comments and make oral presentations at the hearing on May 1, 2019 on the CPSC "Agenda and Priorities FY 2020 and/or 2021".

IFIA is the trade federation representing the independent third-party Testing, Inspection and Certification (TIC) industry. IFIA members provide services across a wide range of sectors: consumer products, medical devices, petroleum, mining and metals, food, agriculture among others. IFIA and its sister organization CEOC International have recently merged to form the TIC Council, a global trade association that brings together a total of approximately 90-member companies and organizations active in more than 160 countries.

We appreciate the opportunity to present at the hearing. Should you have any questions, please don't hesitate to contact Roberta Telles at +1 240 507-3392 / rtelles@ifia-federation.org.

Sincerely,

Sincerely,

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General comments

IFIA welcomes CPSC's outreach to stakeholders in requesting inputs for the Commissions' Agenda and Priorities for FY 2020 / 2021. IFIA recommends that CPSC continue seeking collaboration with industry and other groups in the fulfilment of its mission in order to leverage resources and multiply its impact.

Specifically, **IFIA recommends close collaboration with the independent testing, inspection and certification (TIC) industry through trade associations such as IFIA (soon to be the TIC Council, as we have recently merged with our sister association based in Brussels, CEOC).** IFIA members have a global footprint and are present in more than 160 countries and have the technical expertise and capabilities in all aspects of product safety. They provide services that help ensure safety and compliance across all stages of the supply chain, from the design stages to post-retail. Manufacturers, retailers, and importers of all sizes rely on our members as a cost-effective solution to meet their legal obligations and demonstrate compliance with safety standards and regulations.

Below are some suggestions of potential opportunities for collaboration for CPSC to consider:

1) Partner with IFIA members to leverage their technical expertise and global footprint in CPSC's training of manufacturers and designers:

Part of the services provided by IFIA members is training and advising manufacturers and designers on product safety requirements and best practices across the globe. These trainings help ensure that safety is being built in the earliest stages of the supply chain, and it is a preventive and cost-effective approach.

IFIA welcomed the opportunity to partner with CPSC in 2017 to deliver training to designers and manufacturers of lithium-ion batteries in China. This was a great example of partnership and collaboration with the private sector that CPSC should continue exploring in order to leverage private sector technical expertise and capabilities to help fulfill its mission. IFIA members welcome similar future opportunities to continue supporting CPSC's mission.



2) Leverage IFIA as a platform for the dissemination of best practices and other issues

Given the role that IFIA members play in not only providing testing but also advisory services and training on U.S. product safety requirements, CPSC could leverage IFIA members in educating and reinforcing best practices as members deploy their own individual trainings/webinars and other outreach efforts to the regulated community. IFIA can provide a platform for ongoing discussion and collaboration with the conformity assessment industry.

3) Organize stakeholders' roundtable on consumer product testing best practices

A roundtable could be a useful mechanism for testing labs and other stakeholders to share consumer product testing best practices and underlying technical considerations to address trends and issues. The roundtable could also be used as feedback mechanism from/to testing labs and provide an opportunity to identify areas where it would be beneficial that the labs work together on. IFIA would welcome the opportunity to help organize this roundtable in partnership with CPSC and other groups.

4) Engage with industry and counterparts to discuss emerging hazards, including IoT/cybersecurity

IFIA members are working with industry partners on cybersecurity and IoT related issues to help mitigate safety and performance risks. Their experience can be a valuable resource to CPSC as the Commission looks at IoT emerging issues within CPSC jurisdiction IFIA also recommends that CPSC exchange views with other government agencies/department who have already developed industry guidelines on IoT within their jurisdiction¹. Although the safety and security concerns for IoT among agencies are different and different solutions might be needed depending on a particular agency's reality, the exchange of good practices and lessons learned can provide valuable insights to inform future CPSC work on this area. CPSC should also consider updating incident reporting system to effectively track IoT related injuries and incidents. Such information provides valuable insights and guidance that can be used by industry, government, and the voluntary standard development process to further improve the safety and security of IoT devices.

¹ For example, NTIA in the U.S.: https://www.ntia.doc.gov/files/ntia/publications/draft-communicating_iot_security_update_0426.pdf

IFIA testified at the CPSC hearing on May 2018² and provided additional materials with Considerations for Future CPSC Guidelines on IoT³.

5) Leverage private sector conformity assessment when designing conformity assessment programs to fulfill policy needs

As described in OMB Circular A-119⁴, federal agencies are encouraged to rely on private sector conformity assessment (testing, inspection, certification, auditing, etc.) whenever possible to leverage efficiencies and save the agency's resources.

*"(...) agencies should recognize the possible contribution of private sector conformity assessment activities. When properly conducted, conformity assessments conducted by private sector conformity assessment bodies **can increase productivity and efficiency in government and industry, expand opportunities for international trade, conserve resources, improve health and safety, and protect the environment.**"*

Many governments across the globe increasingly rely on private sector third-party conformity assessment to save resources while fulfilling their mission to protect health, safety and the environment. The CPSC reliance on third-party testing for children's products, along with other measures, is an example of such public-private partnership that has been successful in helping drive compliance and keep children safe.

In addition, there are a variety of conformity assessment tools provided by the independent TIC sector that go well beyond testing that are used by manufacturers, retailers and importers, such as factory audits, capability audits, inspections, design evaluations, safety assessments, certification, among others. All these conformity assessment tools help mitigate risks, ensure compliance and give visibility across complex supply chains, making the TIC sector a trusted partner to industry and governments.

² http://www.ifia-federation.org/content/wp-content/uploads/IFIA_CPSC_The_Internet_of_Things_and_Consumer_Products_June2018_Final.pdf

³ "The Internet of Things (IOT) and Consumer Products Hazards," IFIA's Recommended Guidelines for Ensuring the Safety of Connected Devices, 2018 (<http://www.ifia-federation.org/content/publications/position-papers/>)

⁴ https://www.nist.gov/sites/default/files/revise/circular_a-119_as_of_01-22-2016.pdf



The choice of the appropriate conformity assessment method should always be based on risk assessment and confidence needs applicable to a particular situation, since there is no one size-fits-all in conformity assessment. Third-party conformity assessment provides higher levels of assurance of compliance with safety requirements: An IFIA survey⁵ reviewed small household appliances on the U.S. and EU markets have found that **17% of products that were NOT third-party certified had safety-critical failures (high risk or fire or permanent injury), compared to less than 1% for products with third-party certification.** This survey sheds light on the value of third-party conformity assessment in providing higher levels of confidence in compliance with safety standards and regulations and reinforces **how different avenues for demonstrating compliance deliver different levels of assurance.**

⁵ http://www.ifia-federation.org/content/wp-content/uploads/IFIA_CIPC_239_2014-2016_Market_survey_report.pdf



Fighting for Product Safety

**Comments of Nancy A. Cowles
Executive Director, Kids In Danger**

April 17, 2019
Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, Maryland 20814

Comments of Nancy Cowles, Executive Director, Kids In Danger
To the U.S Consumer Product Safety Commission on “Agenda and Priorities FY 2020 and FY 2021”

Thank you for the opportunity to submit comments on the CPSC’s agenda and priorities for FY 2020 and FY 2021. Kids In Danger (KID) is dedicated to protecting children by fighting for product safety. Our mission is to save lives by enhancing transparency and accountability through safer product development, better education and stronger advocacy for children.

I want to talk about three priority areas for CPSC in the coming two fiscal years: regulation, transparency, and innovation.

Regulation

Through the implementation of the Consumer Product Safety Improvement Act (CPSIA) and Danny’s Law or Section 104, the CPSC has successfully developed strong mandatory standards for 23 types of durable infant and toddler products – leaving just two from the list.

We appreciate the amount of time, energy, research and knowledge that CPSC staff dedicate to this task. We urge the CPSC to continue to prioritize this work, giving staff the time, resources and support they need to develop strong standards that will reduce injuries and deaths from nursery products. Because ASTM standards are such a key part of the Section 104 process, we also urge CPSC to fully vest the staff attending meetings to give strong guidance based on their research and data on the approach that will be most protective of children, including voting on key ballots.

The two remaining products – Expansion Gates and Expandable Enclosures and Infant Inclined Sleep Products require different approaches given current injury and death patterns and safety.

The ASTM Subcommittee has been slowly working to require all gates to meet a standard where they can be used more confidently to contain young children, keeping them away from potential hazards such as stairs or cooking activity. Currently many gates (those marked to NOT use at the top of stairs) only must withstand a 10-pound push-out force. CPSC staff has provided detailed information based on their research on what would make gates safer and been patiently waiting for the committee to

take those steps. We would urge CPSC to move ahead without the committee due to the continuing delay and issue the mandatory rule. Section 104 was not written to require following the lead of the ASTM or any standard process, but only to consider the standards and address areas where they are seen to not be stringent enough. In addition, I would urge CPSC to put vital warnings, such as using wall attachment methods to install, on the product itself where it is visible with every use. As with many nursery products, many other people other than the one who opened and assembled the product use it and must have guidance for safe use.

The rulemaking on Infant Inclined Sleep Products is a different story.

Products such as car seats, swings, bouncers, etc. are often used as alternative sleeping equipment by caregivers. However, research has thrown this practice into question.¹ Researchers have found that it can take as little as four minutes for an unattended infant to suffocate in these inclined products.

Infant inclined sleep products mimic this reclined, but not flat, sleeping position and have great appeal to parents. But as we saw from the recent coverage and recall of the Fisher Price Rock 'n Play Sleeper, those products carry similar risks and lead to deaths. Children can become entrapped in an unsafe position and suffocate or die of positional asphyxia if they slump due to the incline. *Consumer Reports'* article² documented 32 deaths due to these causes.

The AAP warns against infants sleeping on an incline or while restrained because of the additional hazards those features bring to a sleep environment. CPSC should stop the rulemaking on Infant Inclined Sleep Products and require all infant sleep products to be covered by either the bassinet, play yard, non-full size or full-size crib standards. This will eliminate products such as the Fisher Price Rock 'n Play, 4.7 million of which were recalled. There are other similar products still on the market which pose the same danger.

And while CPSC has issued a Notice of Proposed Rule Making on Crib bumpers and ASTM International, the voluntary standards organization, is looking at firmness, warnings and other measures, we still support a ban of padded crib bumper pads. The American Academy of Pediatrics has a strong recommendation against using crib bumper pads. The amount of time and money going into designing a possible test method for these unnecessary products would be better spent joining Maryland, Ohio, the city of Chicago, most major retailers and state child care regulators in the country in stopping the sale and use of padded bumper pads. A standard that doesn't fully address the risk and gives a false sense of safety to parents is more dangerous than no standard.

Further, we believe that the CPSC should seek to include in Section 104 rulemaking all durable infant and toddler products. Parents should have confidence that all the durable infant and toddler products – not just those that were commonplace when the bill was adopted -- are safe. This will require CPSC to evaluate new products as they enter the marketplace. All products intended for sleep should not be sold without meeting a mandatory standard.

¹ [https://www.jpeds.com/article/S0022-3476\(15\)00345-5/pdf](https://www.jpeds.com/article/S0022-3476(15)00345-5/pdf)

² <https://www.consumerreports.org/recalls/fisher-price-rock-n-play-sleeper-should-be-recalled-consumer-reports-says/>

Product Registration

As part of CPSIA, the Danny Keysar Child Product Safety Notification Act requires companies to provide prepaid product registration cards in a conspicuous location and a way to register online. The information gathered must only be used to notify the consumer in the event of a recall or safety notice. Direct notification is key to effective recalls and more should be done to encourage completion of registration by consumers, both for new products and ones they purchase on the secondhand market. While CPSIA requires the card and online site at a minimum, companies should be encouraged to innovate and add other methods such as scanning an icon or bar code on the actual product or partnering with technology companies that have new methods to gather registrations. It has now been 10 years since this requirement was implemented. In the coming year, CPSC should evaluate data from recalls conducted since that implementation to determine how it can be improved. This would include data on registration cards returned/online registrations, efforts to use the data during recalls and any obstacles, results of various types of recall participants responses and efforts by companies to increase registration numbers.

Recalls

Since 2001, KID has been reporting on children's product recalls annually. Last month, we released our report on 2018 recalls. We found the number of recalls overall was the lowest since 2003; and the number of children's product recalls as well as units of children's products recalled were the lowest since we started tracking³.

Sometimes low recall numbers are a good thing – pointing to safer products, but we see this as a sign of a slowdown in enforcement, leaving dangerous products on store shelves and in our homes. Indicators for this scenario include other less effective actions in lieu of recalls and fewer findings of design defects in the recalls that were announced.

I want to read this from my last year's testimony:

“We applaud the CPSC action to begin the mandatory recall process on Britax B.O.B. branded strollers involved in dozens of injuries. This is one of the tools in the CPSC's arsenal to protect consumers that is used too rarely. While it may not lead to a recall for a period of time, it does give consumers information previously hidden through Section 6(b) that they can use to protect their families.”

Alas, what a difference a year makes. Instead of a recall, CPSC settled for an anemic education campaign – announced during the shutdown and ending just 8 short months from now. What is the available data showing? Will the remaining 8 months solve the problem of wheels that fall off unexpectedly? What is CPSC and Britax doing to get even this weak response in front of consumers? We were concerned to read that they were not complying with the agreement in terms of notifying retailers and wonder what else is going unchecked. We urge CPSC to use evidence of continued incidents with this product to again call for a recall. In general, CPSC should use all the tools in their toolbox to get companies to agree to effective recall plans.

³ <https://kidsindanger.org/wp-content/uploads/2019/03/KID-2019-Recall-Report.pdf>

We have several recommendations for CPSC from our report that we have attached to this testimony. To summarize, we call on CPSC to increase their efforts and company's efforts to notify consumers through social media (usage down by 40% by both CPSC and companies from 2017) and direct notification, enforce the voluntary ASTM standard for furniture stability and recall noncompliant units, and reinvigorate efforts to find products with design hazards and get them off the market sooner. CPSC recalled fewer products for design hazards in 2018 than in 2017 (33% drop) despite 90% of the incidents and 100% of the injuries involved products recalled for design defects, not rule violations. In addition, the use of fast track also seems to be increasing – 51% of children's product recalls were fast track. According to CPSC, "Fast Track recalls are initiated by firms who commit to work with CPSC to quickly announce the recall and remedy to protect consumers." However, its use in April for the Fisher Price Rock 'n Play recall despite at least a year of scrutiny by CPSC gauged by the May 2018 warning on incline sleepers and 32 deaths seems to make us question why more companies are using this method that does not include a finding of a hazard.

Transparency

SaferProducts.gov

The CPSIA also charged the CPSC to create a product database for consumers incident reporting. **SaferProducts.gov** is the result of this mandate. We were happy to participate in the recent hearing on this database and urge CPSC to be transparent in the findings, recommendations and work plans for implementing the suggestions or additional plans to make the database more accessible and utilized.

Section 6(b)

There has been much talk lately about the release of information from CPSC without following the Section 6(b) procedures. And we agree – if companies have been afforded protection, CPSC should follow those rules prior to release. However, the information being protected has public safety implications. Section 6(b) restricts CPSC's ability to warn the public about product hazards and keeps consumers in the dark about dangerous products they have in their homes and use daily with their families.

Repealing 6(b) would allow many reports and safety issues to be made public. Parents should not have to wait until a recall effort is complete before learning their child is sleeping in a deadly crib, playing with a lead-tainted toy, or riding in a stroller prone to losing a wheel. Section 6(b) should be repealed. But as Acting Chairman Buerkle said in recent congressional testimony, "that is something that Congress must act on." CPSC is at this time bound by the law on Section 6(b). However, the shadow of the provision is much larger than the Act itself. Businesses use the cover of 6(b) to withhold already public information and for information the act was never intended to cover. We urge CPSC, while waiting for Congress to repeal the provision, to look closely at the way Section 6(b) is implemented at the agency – from the FOIA office to the communications or compliance divisions and bring it more in line with the law itself. This will at the very least, weaken its negative impact on public safety.

Freedom of Information Act (FOIA) Office

KID uses the FOIA process frequently. We request monthly progress reports on all children's product recalls, about a year after the recall. We request information, as we did on the IKEA recall and infant inclined sleep product in-depth investigations, when we believe information that could enhance public safety is contained in CPSC documents.

We have found the process to be tedious – the online form rarely works –even when we drag up the Internet Explorer that CPSC insists be used. We get a lot of paperwork and very little useful information. If the original response to our request is inadequate or wrong, it can again take months to get the information we requested. Most reports are heavily redacted, again even of publicly available information such as counting social media posts of a recall. Our ability to protect families is compromised by CPSC's inability to efficiently and effectively fill a request for information. We have two open FOIA requests from fall 2017 with no explanation of the delay until recently when we met with the Chief FOIA Officer. And while she was very responsive, I can't say the explanations were reassuring. CPSC has all kinds of barriers in place, such as Section 6(b) to keep consumers from getting information, but the FOIA office should be a welcoming portal to help CPSC be more transparent with what information they can share. We urge CPSC to prioritize this office for innovative updates.

Innovation

Recall Effectiveness

A lot of work appears to go into announcing a recall. However, we must stop thinking that is the goal. Removing unsafe products from consumer use is the goal.

Innovation is needed in the area of recall effectiveness. What we – you – are doing now with recalls is not working. From what we can gather from sparse data, the effectiveness rate has not changed significantly since KID first started working on the issue in 1998 – despite mindboggling changes in communication channels and tracking possibilities.

Much of the burden from recalls falls on consumers – listening to the news, filling out forms, waiting for and installing repairs. However, consumers are not the ones responsible for recalled products. This imbalance of burden and responsibility should be corrected.

While some Monthly Corrective Action Plan Reports are aggregated and posted on the CPSC website and provide insight into recall effectiveness – it carries a prohibitive caveat – if the company wants it to be public. Of the recalls announced during the five months covered by CPSC's postings, only 26% percent of children's product recalls have been included.

Furniture Tip Overs

If there were ever an issue that need innovation, it is furniture stability. We thank Chairman Buerkle for her announcements at the International Consumer Product Health & Safety Organization (ICPHSO) that she would begin enforcing the voluntary standard and calling on industry to adopt a new test

weight of 60 pounds and cover dressers 27 inches and above. Unfortunately, the work at ASTM seems to be stymied still by a refusal by some in industry to move the issue forward. We support the testimony of the PAT parents here today and submitting written testimony and urge CPSC to continue and expand your research efforts in this area and to be advocates in moving the process forward.

Ingestion Hazards

Parents are usually aware of choking hazards. Ingestion hazards are less understood but present clear dangers. These include button cell batteries, laundry packets, small powerful magnets, liquid nicotine and certain polymer balls that expand with fluid. Serious internal injuries, poisoning and death can be the result. In addition, as wearable technology and smart products multiply, there could be emerging hazards we have yet to identify. The CPSC should encourage manufacturers to use technologies that eliminate or further ameliorate the ingestion risk of these hazards.

Conclusion

Again, thank you for the opportunity to provide comments. We look forward to working with the CPSC in addressing these concerns and others that may arise.

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Fighting for Product Safety

Recommendations for CPSC From KID's Annual Recall Report

1. Social Media

1. **CPSC should publicize all recalls on social media.** KID research found that in 2018, CPSC publicized only 45% of children's product recalls on its Facebook page. This was a sharp decrease from 75% in 2017.
2. **CPSC should mandate/encourage companies to post about their product recalls on social media.** KID research found that of the 48 companies who issued recalls in 2018, only 16 were announced on the company's Facebook page, or 31%. In 2017, however, 51% of manufacturers who issued recalls announced them on Facebook. In 2018, only 17 recalls, or 33% of recalls, were announced on Twitter, and only two recalls, or 4%, were announced via Instagram. Posting on companies' social media is equally as important for those consumers who don't follow CPSC on social media but rather follow pages of the companies from which they regularly buy products.

2. Recall effectiveness

1. In addition to social media, recall efforts should involve multiple other methods – such as direct notification – to reach consumers and get hazardous products out of their homes.
2. **Access to recall effectiveness data must be improved.** KID requested access to CPSC recall effectiveness data through FOIA requests months prior to the release of our annual recall report. KID received an alarmingly small percentage of the data, and much of the pertinent data was redacted. This has been the case even during times where there was not a government shutdown. Consumer groups such as KID and other researchers are unable to analyze data if the data is incomplete or if we never receive the data in the first place. CPSC should be more transparent.

3. CPSC should be more transparent concerning known dangerous products.

1. **Incline Infant Sleep Products** KID has noticed vague statements made by CPSC concerning hazardous products, which aren't helpful for consumers; they can actually be harmful if it leads to more confusion. In May 2018, CPSC issued a warning that caregivers should stop using inclined sleepers once their baby can roll over. The warning also stated that the CPSC is aware of infant deaths associated with inclined sleep products. The CPSC did not provide information on whether there was a product recall, nor did it name any of the products associated with the infant deaths. Furthermore, the remedy that the CPSC suggests – using restraints to attempt to keep the baby in position – is not supported by the American Academy of Pediatrics. A recall was announced after KID's report in April 2019, but did not address other brands of sleepers.

- 2. Britax** In February 2018, the CPSC filed a lawsuit against Britax Child Safety, Inc. involving B.O.B. jogging strollers. At the time the lawsuit was filed, at least 200 consumers had a front wheel unexpectedly detach resulting in at least 50 injuries to children and 47 to adults. In November 2018, the CPSC settled the lawsuit with Britax and the terms of the settlement state that the remedy is an ‘information campaign’ that cannot be called a recall, despite offering replacement parts to some consumers. The BOB Information Campaign was released in January 2019 during the shutdown and does not provide a clear remedy. Consumers can only receive a remedy until January 10, 2020 which is an added limitation. If this were instead deemed a recall, there would not be a one-year time limit, and a recall would have made it illegal to sell the product on the secondary market. More consumers would have heard about it and understood it more if it were a recall. The CPSC was created to protect consumers from hazardous products. A product should be recalled if it is known to be defective, especially if it has led to dozens of injuries. Settlements such as this are unacceptable for consumers.
- 4. CPSC compliance should reinvigorate efforts to find products that have design hazards and get them off the market sooner.**

 - 1. Design Hazards** CPSC is recalling fewer products for design flaws, as opposed to rule violations. According to KID research, this past year recalls due to rule violations increased (43% in 2017 to 62% in 2018) and recalls from design flaws decreased (57% in 2017 to 38% in 2018). Design hazards that do not violate a mandatory rule take more time and effort to recall but are equally important to remove from market. In fact, 90% of the 1,275 total incidents reported in 2018 and 100% of the total injuries reported (21 injuries) were from recalls due to design flaws, rather than rule violations, and most products recalled for design flaws are recalled only after incidents or injuries have been reported. Recalls due to rule violations accounted for only 124 incidents and no injuries.
 - 2. Fast Track** Fifty-one percent of children’s product recalls were initiated by the company through the fast track program. That is good that they bring the defect to CPSC, often before an injury. But combined with the drop in recalls for design hazards shows that CPSC is doing even less to find and remove dangerous products from homes than the numbers might indicate. With 6(b) in place, we can’t know why that is – are companies reporting less regularly? Do fewer reports get investigated? Are fewer investigations taken to the recall stage?
 - 3. Unstable Furniture** According to the CPSC, one child dies every ten days from a furniture or TV tip-over. Yet, 2018 there were no furniture recalls. In 2017, Conner DeLong died when an IKEA Hemnes dresser tipped over. Despite his death and a viral video showing the same dresser tipping on twin toddlers, the dresser has not been recalled.

For more information and to follow up on any items, please contact Nancy Cowles at 312.595.0649 or nancy@kidsindanger.org.

U.S. Consumer Product Safety Commission
Attn: Alberta E. Mills, Secretary
4330 East-West Highway
Bethesda, MD 20814
Topic: Agenda and Priorities FY 2020 and/or 2021

Hello, my name is Crystal Ellis. I am an elementary educator, mom, and child safety advocate, representing our group, Parents Against Tip-Overs. I want to begin by saying thank you to each one of the commissioners for allowing me the opportunity to speak today.

In June of 2014, my son, Camden Ellis, was the 7th child to die (that we know of) due to unstable dressers made by Ikea. At the time, I thought this was a freak accident and I had no idea that this was a danger in my home. His dresser was 30 ¾" tall. When I discovered that he was not only the 7th child to die because of the negligence of this particular manufacturer, without a recall, but that children were dying at the rate of one every 10 days, I was absolutely devastated. How was this possible? I had taken multiple getting ready for baby classes, had put up baby gates, outlet covers, cabinet locks, and had our car seat professionally installed as a first time parent. None of the professional educators, health care providers, mom group leaders, or other parents had ever told me about the risk of dresser tip-overs killing my son. I know that there are many other parents in this country that also have no idea that their dresser is a risk in their home. They assume, as I did, that any product that is sold to consumers in the United States of America has been vetted and tested by their government and would not be sold if it could kill us. One death every 10 days is a crisis that needs to be immediately addressed. It has already been almost 5 years since the death of my son, over 14 years since the death of Kim Amato's daughter, Megan, the earliest death in our group, and not enough has been done to keep children safe today.

In our opinion, there are several factors that are keeping unsafe dressers in our homes. First is 6B. Commissioner Kaye said it best recently, when he said, "People die because of 6B. It is as simple as that." We have no idea why this rule is legal, when there are no similar restrictions on sister agencies or proof that it is acting as intended. I listened to the entire hearing the other day, titled "Is the CPSC fulfilling its mission?" Some lawmakers are trying to argue that we need to keep 6B to protect the manufacturers from the CPSC and even each other. Is there evidence of this problem being a major issue for the FDA? The NTSB? We would argue, no. This is outrageous. We need to eliminate 6B to protect consumers, the constituents. The restriction of information prevented my family from even having a chance to know that our dresser was unsafe. It allowed Ikea to delay the recall with an ineffective education campaign that ultimately resulted in the death of my friend, Janet's son, Ted.

This leads me to our next concern, the effectiveness and lack of recalls. In 2018, according to a recall report by Kid's In Danger, there were zero recalls of dressers. This is not because dressers are safer, because even dressers meeting the weak, ineffective voluntary standard are still killing children. To date, the evidence of dressers in the Ikea recall being actually returned and

taken out of homes is negligible. More should be done to push manufacturers to make a recall the most effective it can be. If they know how to market and sell a product to millions of consumers, then they know how to get the message of a recall to those same consumers. They need a bigger stick to get them to do what they know will make a difference. Also, if a dresser is, according to the manufacturer, meeting the voluntary standard but is still killing children, it should be recalled. This is clear evidence that their product is still not safe for consumers. We are encouraged by Chairman Buerkle's words at the ICHPSO conference, when she said that she would begin work to recall all dressers that do not currently meet the voluntary standard, because manufacturers and consumers need to know that the government expects manufacturers to make safe products to sell in the United States. This starts with compliance with safety standards in their industry. We expect to see strong and deliberate actions that back up these words so that manufacturers know there is an expectation to comply. This is an important interim step, as the CPSC finishes data collection testing that is already underway, to identify more specifics about the hazard.

Third, we would like to address the standard making process for dresser safety. By multiple accounts and measures this ASTM sub-committee, F15.42, is one of the most contentious sub-committee overseen by ASTM. They have stalled for years on addressing the furniture tip-over issue. There is a current ballot to vote on Chairman Buerkle's recommendations of raising the test weight to 60 pounds and lowering the height to 27", as well as clarifying the phrase "up to and including the age of 5" to say "including children up to 72 months old." We are wary that they will make this change, even with pressure from Chairman Buerkle, consumer advocates and parent consumers. We urge the CPSC to have a strong presence in future ASTM meetings, including the one next week, May 10th, to show that you are holding them accountable and to be a voice of clarification when disagreements arise (and they will). Some manufacturer members of the ASTM sub-committee have argued that we should make the current voluntary standard mandatory, but we know the current standard is not strong enough. Proof of this exists, unfortunately, with Conner DeLong's death and the viral video of the same Ikea Hemnes dresser falling on the Utah twins, both in 2017. We are also concerned that the creation of a mandatory standard from the current, weak voluntary standard, will make it much more difficult to get the standard to a strong enough standard to protect consumers.

We think we should make sure to continue funding saferproducts.gov with the changes suggested by consumer advocates and users because it is a chance for information, without the full repeal of 6B, to reach consumers.

Finally, we encourage the CPSC to continue to invest in the Anchor It! Campaign. While Parents Against Tip-Overs strongly believes that consumers should not have to finish making a product safe by anchoring it to a wall and safety should be built into the product design, we cannot ignore the fact that there are thousands of unstable pieces of furniture in American homes today. Part of our PAT mission is to educate consumers on the need to anchor furniture, and we need the Anchor It! Campaign as partners.

It was disappointing that CSUs were not added to section 104 when the commission voted on it in March. As both Commissioner Adler and Commissioner Kaye pointed out, just because we cannot save all with this solution does not mean we should not save some. To quote Commissioner Kaye directly, "We should be pursuing every authority available that we have. We should send a signal to industry that we are not leaving any tool unused." Especially in the absence of the passage of this proposal, it is absolutely imperative that we move forward with the proposal from Commissioner Feldman and Commissioner Biacco to move the tip-over hazard from an ANPR to an NPR. This issue needs to be addressed immediately and must be made a priority. Our two most vulnerable populations, children and seniors are at the greatest risk from this hazard and, as Commissioner Adler pointed out in the latest hearing, the senior population is increasing at the rate of 10,000 people per day, so the risk will continue to climb until it is resolved.

Today, Parents Against Tip-overs is here to be a voice for our children who have lost theirs. A voice for parents who are home today acting as full-time caregivers for their children who survived a tip-over incident, but have been left with life-altering injuries. And a voice for parents who cannot find theirs because they are overwhelmed by the darkness of grief and sadness that we have all, unfortunately, experienced. Thank you again for allowing me to speak today and I trust that the top priority for fiscal year 2020 will reflect eliminating the risk of furniture tip-overs.



U.S. Consumer Product Safety Commission
Attn: Alberta E. Mills, Secretary
4330 East-West Highway
Bethesda, MD 20814
TOPIC: Agenda and Priorities FY 2020 and/or 2021
April 17, 2019

Dear CPSC:

I want to first thank you, Commissioners, for allowing me to share my story with you today.

October 23, 2007, is the day our life became a blur, the day where our family was rocked to the core. It was late afternoon, I was at work. My husband and I worked for the same company in the same building. I remember the executive assistant came running out to find me, telling me there was an emergency and I had to go home. At first it didn't really hit me how bad this was... We hopped in the car and my husband frantically drove us home. We lived a short 3 miles from our office but the drive felt like 3 days. The whole way home we prayed that everything was ok. The only thing we knew was that our daughter had been injured. We pulled onto the street where we lived; it was like a scene from a movie -- police cars, fire trucks, ambulances—one of which was pulling off as we pulled up. I'll never forget jumping out of our moving vehicle to chase that ambulance that was carrying my daughter. They stopped for me, but they wouldn't let me in, they wouldn't let me ride to the hospital with them. They left me. We go inside to find my babysitter (who is also a family member) and 4-year-old son hysterical.

When our sitter went to get Madison up from her nap, she found her underneath her dresser. She frantically removed the dresser from our daughter's body; her face was blue but quickly regained normal color when the dresser was off of her. She thought there was hope. She immediately administered CPR while calling 911. What she experienced that day and what she saw has changed her life forever. We can only imagine that Madison was trying to get her juice cup sitting on top of her dresser.

As my husband and I go in the house, we realize the severity of the situation. The police question us on Madison, what WAS her age, what WAS her full name... I lost my cool. I didn't know my daughter was dead at that point, so I asked what do you mean what WAS her name...her name IS Madison Daley Funk!

My husband and I are driven to the hospital in the back of a police car, like criminals. We are making phone calls along the way, calling people who we felt were closer to God than we were, people who God would listen to their prayers, please don't let our daughter be dead. As we arrive at the hospital, we knew it was bad. The staff was positioned methodically along the corridor as we were escorted in to a tiny room just outside of the ER. When we got there, we already had a few close work friends who had

arrived just prior to us, so we weren't exactly alone. Almost immediately the emergency room doctor joined us, she knelt down next to my husband and me and very clearly said, "Mr. and Mrs. Funk, your daughter has died. We did everything we could for her. We are preparing her now for you to be able to see her. We will come and get you as soon as she is ready. "

A Blur. That's how this felt. How could this be happening? Not to us, not to our family. We are good parents, good people...things like this don't happen to good parents right? Wrong! I had only seen one other dead person in my entire life at this point, and now here I am holding my dead daughter. I didn't want to let her go. She didn't look hurt. You couldn't even see any injury. She died from blunt force trauma/ asphyxia. She had died immediately we were told. No suffering we were told. We would suffer from that moment on.

I couldn't believe how quickly my husband and I were separated and then questioned each by different detectives, while we were still in the emergency room. I guess time is of the essence. I know NOW that is standard protocol, but in the moment it felt terrible. While we were being questioned at the hospital, detectives were in our home. Imagine how my children felt listening to them lift the dresser and then tip it over, repeatedly ... testing to see if the force of the dresser "could really kill a child". Trying to determine how someone "couldn't hear it fall" from downstairs. (Hey for the record, our daughter took the force of the dresser, which is why no one heard the fall- that is logical, common sense!) We were investigated intensely by Virginia Beach police along with Child Protective Services. What a process. I would not want their jobs and am super grateful for their service, but none of that gratitude made this process any easier.

Once we arrived home that evening, I remember the hardest thing was telling my then eleven-year-old and four year old sons that their sister had died. She was in Heaven now. The coming months would be challenging as we helped them navigate their grief journey, all the while trying to navigate our own. Within the hour of our getting home, we got a phone call from LifeNet Health, asking for our daughter's organs. We said YES. It never occurred to us to say anything different. If we could help save another life, we would. We are proud to say that Madison's heart valves were placed with two different children! The miracle of organ donation is amazing and LifeNet Health has been a critical part of our healing.

Madison Daley Funk was two when she died a very preventable death. We could not sit back and do nothing. We knew if WE didn't know about furniture tip over dangers, other people may not know about it either. We called a furniture strap manufacturer and she sells us straps at cost. We give them away every chance we get. We designed our website (www.maddiesmessage.com) as a place to read our story and learn about furniture safety. We love to do Random Acts of Kindness in her honor to help share our story outside of our circle of friends. I regularly say, "Please strap your furniture –Don't wish you WOULD have".

But that is not enough. Although I've given out thousands and thousands of furniture straps, watched endless news stories, studied furniture tip over statistics, we are not making headway. The numbers are not getting better. Just as many children are dying today due to tip over accidents, as they were when my daughter died. The only logical response to prevent these accidents is to continue to include furniture tip overs as your highest priority for the 2020/2021 fiscal year. Please hold manufacturers accountable for the furniture they sell. Please help us by investing in the "Anchor It!" Campaign, and continue to be diligent in your support in the ASTM Sub-committee F15.42 meetings. I look forward to seeing a day where the death rate DECREASES. Thank you in advance for your valuable commitment to this topic.

Carri McQuerrey-Funk

Founder, Maddie's Message

Donor Mom/ Grief Companion

Furniture Tip Over Advocate





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Advocacy that fits.

April 19, 2019

Alberta E. Mills,
Division of the Secretariat,
U.S. Consumer Product Safety Commission,
4330 East-West Highway,
Bethesda, MD 20814

RE: Agenda and Priorities FY 2020 and 2021

Dear Secretary Mills:

On behalf of the American Apparel & Footwear Association (AAFA), I am providing these comments regarding the Consumer Product Safety Commission's request for comments on the Commission's agenda and priorities for Fiscal Years 2020 and 2021. Please also consider this a request for Kristen Kern to testify at the May 1st hearing.

AAFA is the national trade association representing apparel, footwear, travel goods, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands, our membership includes about 350 companies, drawn from throughout the supply chain. AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its nearly four million U.S. workers, and its contribution of \$384 billion in annual U.S. retail sales.

We are proud of the open and collaborative relationship that we share with the Commission. We are very grateful to have had multiple Commissioners share at AAFA product safety events, and our members have benefited from the knowledge shared by Commissioners at these events. With many of our members engaged in the production and sale of children's clothing and footwear, we are on the frontlines of product safety. It is our members who design and execute the quality and compliance programs that stitch product safety into every garment and shoe we make. To support our members in this effort, AAFA has taken the lead in educating our industry on the development, interpretation, and implementation of product safety standards and regulations.

The priorities that we hope that the Commission will adopt are as follows:

Reduce Testing and Regulatory Burdens Associated with Spandex

A few years ago, we began working with the Commission to review the testing burdens associated with testing of Spandex to meet the requirements of the Flammable Fabrics Act (FFA) – 16 CFR 1610. We have

brought up this project in past hearings, but as a short summary, the exemptions for fibers in plain surface fabrics, does not include Spandex. Our members have found that Spandex blends with other exempt fibers consistently pass flammability tests. AAFA compiled results from Spandex flammability tests and provided findings to the Commission to discuss exempting Spandex from current testing standards. We have been compiling some supporting information in addition to the data which we have already submitted, at the request of staff, including the financial impact of testing Spandex fabrics and the size of the Spandex market. We appreciate the Commission's willingness thus far to work together on this project, and going forward, we hope that the Commission can prioritize the review and assessment of the data concurrent to our research on the scope of the issue in preparation for filing a petition on the issue.

Allow Fabric as a Barrier for Inaccessible Parts

The CPSC should update the determination on inaccessibility and fabric barriers that renders it useless for footwear and clothing. In a 2009 guidance to industry on "Inaccessible Component Parts for Children's Products Containing Lead" the CPSC correctly stated that, "unlike other children's products that have lead-containing components that are accessible, children will not touch the lead containing component with the hands or fingers if the component is enclosed or encased in fabric." The CPSC also mentioned that "The Commission believes that, in general, fabric coverings may be considered barriers to physical contact with underlying materials..." Unfortunately, the guidance goes on to use the definition of "a toy that can be placed in a child's mouth" for the phthalate ban under the CPSIA to formulate their guidance for inaccessibility of a fabric barrier. However, apparel and footwear are not toys. While being worn as intended it is impossible for a child to swallow an article of clothing or a shoe and therefore the one-size-fits-all definition of an inaccessible toy does not apply to these categories. Due to this definition, the CPSC declared that, "For fabric-covered children's products, an additional test to determine whether any part in one dimension is smaller than 5 centimeters should be performed to see if it can be placed in the mouth. If mouthing or swallowing of a component part could occur, the material beneath the fabric covering is considered to be accessible to a child." This requirement renders the inaccessibility determination useless for our industry. Determining that fabric is a proper inaccessibility barrier – as practical experience suggests – would lower testing costs in the apparel and footwear industry by eliminating testing requirements for certain components that will be covered by fabric once the article is made.

Address Counterfeits as a Safety Issue

In response to conversations with CPSC Commissioners about potential product safety concerns created by counterfeit products, the AAFA has begun research with our membership to gather information on this priority issue. We are seeking to understand how companies address counterfeits from a safety perspective, which specific hazards are most common in counterfeit goods, and how the CPSC can collaborate on the issue. We hope that the CPSC will prioritize taking a more leading role in stopping counterfeit goods from entering the US, working with the CBP to develop a stronger system to detect counterfeits, and urging third party marketplaces to have rigorous anti-counterfeit programs in place.

Improve Recalls Process

In recent meetings with the Commissioners, AAFA and other industry associations brought up some challenges that companies have been having with the recalls process. We would like to reiterate our support for a smooth, transparent process of information sharing between companies and the CPSC around recalls. The AAFA is aligned with the industry coalition's priorities to review the recall process to allow more

flexibility, maintain open stakeholder involvement in any updated draft rules, and factor more than just returns into recall effectiveness. Additionally, we support the CPSC's goals of using technology to enhance the recall response, and of sharing best practices in recall marketing strategies.

In conclusion, we are delighted to have a positive relationship with the Commission, and we believe there are many opportunities for further collaboration. We look forward to working with the Commission to reduce testing and regulatory burdens, avoid safety issues created by counterfeit products, and improve the recall process for the benefit of consumer product safety and public health.

Thank you for your time and consideration in this matter. Please contact Kristen Kern of my staff at 202-853-9358 or kkern@aafaglobal.org if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink that reads "Rick Helfenbein". The signature is written in a cursive, flowing style.

Rick Helfenbein
President and CEO





RETAIL INDUSTRY LEADERS ASSOCIATION

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May 1, 2019

Office of the Secretary
U.S. Consumer Product Safety Commission
Office of the Secretary | Room 820
4330 East-West Highway
Bethesda, MD 20814

**Testimony for Hearing on
FY 2020 Proposed Agenda & Budget Priorities
U.S. Consumer Product Safety Commission
Autumn Moore
Director, Regulatory Affairs and Compliance
Retail Industry Leaders Association**

Introduction

Thank you for giving the public an opportunity to weigh in on how the U.S. Consumer Product Safety Commission (CPSC, Commission or Agency) should be allocating its finite resources. As discussed in detail at the recent U.S. House of Representatives Energy and Commerce Committee CPSC oversight hearing, the Agency would benefit, in any number of ways, with more federal funding. RILA members support the Agency's important consumer safety mission and goals. RILA has advocated Congress for an increase in CPSC's budget and will continue that effort, so that the Agency can fulfill its critical safety mission, fully funded.

By way of background, the Retail Industry Leaders Association (RILA) is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to reimagine and transform the retail ecosystem - and equip leading retailers to succeed in it. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

Executive Summary

RILA members appreciate the Commission's leadership on consumer product safety matters, including consumer education campaigns, and stakeholder and industry outreach. The CPSC and RILA members have a tradition of working together to address consumer product safety issues. For example, several of RILA's

members participate in the Agency's industry partnership programs, including the CPSC's voluntary Retailer Reporting Program pilot and RILA's member retailers regularly cooperate with the CPSC to promote CPSC's consumer education programs while also implementing product recalls. Through these efforts and others, RILA's members work with the CPSC to find practical ways to address consumer product safety concerns.

As the Commission determines its Fiscal Year 2020 priorities, RILA respectfully submits its recommendations, summarized below:

First, the CPSC should continue its efforts to enhance data-driven decision making by bolstering its data collection and analysis capabilities, particularly in the areas of product safety incident reporting. To this end, the current Retail Reporting Program pilot where participants partner with the Agency to provide real-time data on consumer product hazards, should be formalized and expanded.

Second, the CPSC should dedicate resources to implement several recommendations made by the Office of the Inspector General (OIG) to update processes and systems implementing Freedom of Information Act (FOIA) requests to ensure compliance with all applicable requirements, including the unlawful release of Section 6(b) of the Consumer Product Safety Act (16 C.F.R. § 1101) protected information so that only accurate information about manufacturers and importers is made public.

Third, as technology advances, an increasing number of consumer products are incorporating technology to enhance functionality and increase product efficiency. The CPSC needs to better understand these products to address any potential safety hazards associated with their use.

Fourth, the CPSC should develop a trusted trader program for low-risk importers as part of its import surveillance program to include importers that are currently certified as part of the joint Customs and Border Protection (CBP)/CPSC Importer Self-Assessment – Product Safety (ISA-PS) program.

Fifth, the Commission should maximize regulatory predictability for the regulated community by eliminating pending rulemaking activities for the Voluntary Recall Rule¹ and 6(b) rulemaking².

Each of these topics is discussed in more detail below.

1. Enhancing CPSC's Data Collection and Analytics Capabilities is Critical to the Agency's Data-Driven Safety Mission

The CPSC, as the primary federal agency with authority over the safety of consumer products, has a long-held position that it is a data-driven agency – in that its decisions and rulemakings are based upon sound

¹ 16 CFR Part 1115, [Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices](#). 78 Fed. Reg. 69793 (proposed Nov. 21, 2013)

² 16 CFR Part 1101, [Information Disclosure Under Section 6\(b\) of the Consumer Product Safety Act](#). 79 Fed. Reg. 10712 (proposed Feb. 26, 2014)

data and science. In today's rapidly changing marketplace, the volume of data that is relevant to important product safety issues is increasing at an exponential rate. The collection and analysis of data are now an important part of government and industry strategic planning processes and daily operations. For the CPSC to meet its core mission, it is critical that it invest in internal staff, information technology (IT) systems, and software resources to enhance the Agency's data collection and predictive data analytics capabilities. Without such resources, the Agency will fall woefully behind and will not be able to protect U.S. consumers.

One area where the Commission should dedicate increased data collection and analytics resources is the expansion and formalization of the so-called "Retail Reporting Program" (RRP). When the RRP was created, it was intended to capitalize upon the breadth of information that retailers and manufacturers gather about customers' interactions with products. The original concept for the pilot was that the CPSC could analyze information from disparate sources to identify emerging product safety risks and defect trends and work with manufacturers and retailers to recall defective products much earlier than under the current timeline, thereby preventing untold consumer injuries and property damage. This idea was truly unique and ahead of its time. The challenge for the CPSC in achieving the full benefits of the RRP has been that until recently, IT and data analytic tools had not yet been developed that could handle multiple reporting companies and the volume and complexity of information provided. Thus, the RRP stagnated and expansion of the program to other applicants has been closed while the Agency conducts an internal review of the program and how the Agency can best utilize the data provided for purposes of predictive analytics. What was impossible at the time of the creation of the RRP program, is commonplace now. Today, there are IT and data analysis solutions that can handle millions of data points and predictive analytic tools that enable government and businesses to identify patterns and trends and even predict consumer behavior.

Of course, for any new electronic reporting tool to be embraced by industry, it must to be easy to use and cost effective for reporting entities. If the CPSC moves forward in this direction, it is critical that it engage with and get input from stakeholders during the development process. One good first step would be for the Agency to begin formal rulemaking activity to allow interested stakeholders to help develop a true government-industry partnership, with defined benefits and requirements to participate.

One significant benefit would be having the data submitted to the Agency as a part of revised and expanded program, satisfy a company's initial 15(b) reporting requirement. To be clear, RILA is not advocating for this new program to absolve participants of their responsibility to fulfill all reporting obligations under section 15 of the Consumer Product Safety Act (CPSA). RILA members simply request that when the CPSC constructs the new government-industry partnership program, including determining the specific information required for reports, that any filing made under a new program fulfill a company's obligation to file an initial report under the Act. A second benefit to spur participation is for the CPSC to amend its regulations to clearly identify that company participation in the new program will be considered as a mitigating factor in civil penalty cases.

Another way to help make the program more efficient would be to break the program into tier levels. Those tiers could be for either participation level (i.e. number of data fields they contribute, as not every organization has the same level of information available to them), company size, or even another level of the agency's choosing. Having a variety of entry points into the program can increase participation and allow any size company to begin sharing valuable product safety information with the Agency. RILA asks only that those entry points to participation, or tier levels, be clearly defined so that industry has a strong understanding of where and how they can join the program. A codified and well-defined reporting program of this nature could transform the current procedures at the CPSC and truly bring it into the twenty first century, while providing maximum benefit to American consumers.

However, such a program will be not possible without dedication of significant funding and increased data analytics staffing, including a chief technology officer, proper training and software. RILA members were pleased that the Commission's most recent Fiscal Year 2019 Operating Plan included a project to evaluate the RRP program with a view for its potential expansion, and are hopeful that the result will be an investment of the Agency's data collection and analytic capabilities and formalization and expansion of the program. Once CPSC has updated technology and qualified staff to review incident data in a more effective and efficient manner, it can much quicker identify if additional information from a submitter would be required. The CPSC's mantra when it comes to reporting is, "if in doubt, report," and by allowing those participating in such a program to satisfy that initial report, the quality and quantity of data the agency will be able to review will be invaluable in identifying emerging hazards. RILA members urge the CPSC to invest in staff and resources to expand its data collection and predictive data analytic capabilities and to expand the RRP pilot.

2. Investing in Implementing the CPSC OIG's Reports Recommendations Will Ensure FOIA and 6(b) Compliance and the Release of Accurate Product Information to the Public

The CPSC recently announced that certain product incident summary information, including product and manufacturer/importer name information, typically protected under Section 6(b) of the Consumer Product Safety Act, was inadvertently made public. This unfortunate incident highlights the policy and rationale behind Section 6(b) protection, which is to ensure that any information that the CPSC releases about products and manufacturers/importers is accurate and not misleading. The releases involved reported incident information without context or related information regarding the results of any CPSC investigation including whether the incident was substantiated, if the product caused the injury, if there was a substantial product safety hazard or if the product did not meet mandatory safety standards. The CPSC's failure to follow the requirements of Section 6(b) and releasing of unredacted information contained in incident reports does not provide consumers a complete or accurate picture, misleads the public about what consumer products are indeed hazardous or noncompliant and puts manufacturers'/importers' reputations at risk. While this release of 6(b) protected data was not intentional, the Agency can and should take action to ensure that it does not happen again.

It is disappointing to note that the Agency has been aware of deficiencies in its FOIA and 6(b) processes, procedures, training and oversight for at least four years. In 2015, the CPSC's Office of the Inspector General (OIG) issued a report³ finding eleven different ways the Agency could improve the efficiency and accuracy of data being disseminated through the FOIA process. The report noted that no oversight was being done for information being sent out through certain departments of the Agency and that proper training of key staffers in FOIA processes was lacking. The most recent OIG report⁴ issued on October 30 of 2018 lists nine of those eleven 2015 recommendations as not yet addressed. Some of the key OIG recommendation that should be remedied as soon as possible are recommendations FOIA-1 "Revise and implement the CPSC FOIA Program directive and related appendices to ensure consistency with current legal requirements established by the FOIA to include document retention, training, fee assessment requirements, program monitoring, revenue reconciliation, timely updating of the public reading room" and FOIA-11 - "Management documents a review of the data fields in FOIAXpress for accuracy, completeness, and timeliness."

RILA strongly encourages the CPSC to review the OIG 2015 and 2018 reports and dedicate resources to implement the remaining nine recommendations to establish a more effective, organized, informed, and accurate FOIA processing system compliant with the Agency's 6(b) obligations. Having documented FOIA and 6(b) compliance policies and procedures, regular staff training, monitoring and oversight will ensure that complete and accurate information regarding product safety hazards is released to the public.

3. Investing in New Resources to Address Potential Safety Risks Associated with Emerging Technologies Including Internet of Things (IoT)

Internet of things technology is being incorporated into a wide array of consumer and industrial products. From smart door locks and security cameras, to home appliances, electronics, smart cars, personal care products, and wearables – the potential list of IoT products is endless. While these IoT products are meeting customers' demand for new functionality and increased convenience, they also create cybersecurity, privacy and safety challenges.

One of the first issues that the CPSC must face is whether the *mere possibility* for an IoT product to be hacked by a rogue actor creates a substantial product safety hazard. RILA's position is that it does not and urges the CPSC to look to the example of sister agencies that have addressed this issue. For example, the FTC understands that creating an impenetrable barrier that will completely prevent any cyber hacking is impossible, so instead, it requires companies to have a "reasonable" data security program that takes into consideration the sensitivity of the data collected, scale and scope of operations and level of risk if a breach occurs. We urge the CPSC to adopt similar reasonableness ideas around connected consumer products.

³ U.S.C.P.S.C., [Office of Inspector General Audit of the Freedom of Information Act Program](#), (September 30, 2015)

⁴U.S.C.P.S.C., [Office of Inspector General Semiannual Report to Congress April 1, 2018-September 30, 2018](#), (October 30, 2018)

To make sure that the CPSC is prepared to proactively tackle the complex IoT-related issues, the Commission must dedicate the resources and staffing to gain an understanding of new innovative technologies, how various technologies are being incorporated into consumer products, potential safety risks, and ways to mitigate those risks. Industry, trade, consumer advocates, and nongovernmental organizations are also working on these issues. By engaging with these stakeholders, Agency staff can learn about IoT product trends and ongoing stakeholder efforts to ensure IoT product safety.

Currently, there are multiple federal agencies including the Federal Trade Commission (FTC), National Highway Transportation Safety Administration (NHTSA), Department of Commerce, and the Department of Homeland Security (DHS), that are grappling with IoT-related issues. It is critical that federal agencies work together to develop a comprehensive risk-based approach to regulation of IoT products to address, privacy, cybersecurity and consumer safety concerns while promoting innovation and new product development. RILA members are encouraged by recent announcements of the CPSC taking the lead to develop an intergovernmental group to address connected consumer products to identify lanes of responsibility and understanding and urge the Agency to continue these efforts. We look forward to hearing the outcomes of this joint effort.

4. The CPSC Should Enhance Its Import Surveillance by Developing a Robust Trusted Trader Program

The CPSC is a small agency that has limited resources to conduct its critically import mission. For import surveillance, RILA members believe that the best use of these resources is to target high-risk importers and high-risk shipments. One way for the CPSC to conserve its limited resources is to leverage low-risk importers that are willing to partner with CPSC in a Trusted Trader program.

In theory, the CPSC already has a trusted trader program in the joint Customs and Border Protection (CBP)/CPSC Importer Self-Assessment- Product Safety (ISA-PS) pilot. However, the unfortunate truth is that the ISA-PS program has not lived up to its promise, in large part, because it lacks real and significant benefits to justify participants opening their product safety compliance program to CPSC's scrutiny and annual review. Nor, despite repeated requests from industry, has the CPSC provided data demonstrating benefits of ISA-PS program participation in terms of lower levels of inspections or holds of import shipments when compared to those importers that participate only in the Importer Self-Assessment or Customs-Trade Partnership Against Terrorism (C-TPAT) programs. Without concrete and demonstrable benefits, the ISA-PS program has stalled and failed to attract new participants.

As part of the CPSC's efforts to enhance import surveillance, RILA once again urges the Agency to create a new Trusted Trader program with clearly defined benefits such as: 1) exemption from any future import certificate E-Filing requirement; 2) program participation as a mitigating factor in enforcement cases; and 3) demonstrably lower percentage of CPSC inspections and holds for CPSC Trusted Trader participants. By developing a robust Trusted Trader program that will encourage low-risk importers to participate, the CPSC will be able to focus its limited import surveillance resources on high-risk importers and high-risk shipments

where the potential for detecting and preventing non-compliance and unsafe consumer product is much more likely.

5. The CPSC Should Clarify Rulemaking Priorities and Increase Regulatory Predictability For the Regulated Community by Withdrawing Pending Rulemakings That Do Not Directly Advance Product Safety

There are several process-focused rulemakings, including proposed amendments to the Voluntary Remedial Actions and Guidelines for Voluntary Recall rule (16 C.F.R. § 1115), and the proposed amendments to information disclosure rules under Section 6(b) of the Consumer Product Safety Act (16 C.F.R. § 1101) that have been pending before the Commission for quite some time. RILA and other stakeholders submitted extensive comments on both the proposed Voluntary Recall and Section 6(b) rules detailing serious issues with each proposal⁵. The Commission has indicated on multiple occasions that both proposed rules, being primarily process-focused, did not warrant the expenditure of resources among the Commission's other priorities. RILA members agree with the CPSC's ordering of agency priorities. However, RILA asks that the agency vote to formally terminate both rulemakings. Having these rules continually be pending creates uncertainty for the regulated community since a pending rulemaking could be revived and finalized at any time despite significant concerns by stakeholders. To provide industry with increased regulatory predictability, RILA urges the Agency to vote to remove these rulemakings from its regulatory agenda.

Conclusion

In closing, RILA members strongly support the CPSC's safety mission and share the Agency's commitment to protecting consumers and ensuring that all products sold to U.S. consumers meet or exceed all applicable safety requirements and standards. The CPSC's open-door policy for all stakeholders extended not only to commissioners and their staff, but also to the career staff within the Agency, has truly let the CPSC be the example for how a government agency can engage with stakeholders to achieve important public policy goals. RILA offers these comments to continue that great partnership and collaboration and to enhance the work of the CPSC going forward.

Sincerely,

Autumn Moore
Director Regulatory Affairs and Compliance

⁵ [RILA Comments](#) on Proposed Amendments to Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices (Docket Number CPSC- 2013-0040), February 4, 2014

⁶ [RILA Comments](#) on Information Disclosure under Section 6(b) of the Consumer Product Safety Act (CPSA) Docket No. CPSC-2014-0005, April 28, 2014





NATIONAL CENTER FOR HEALTH RESEARCH

The Voice For Prevention, Treatment And Policy

Diana Zuckerman, Ph.D., President of the National Center for Health Research
Comments on the U.S. Consumer Product Safety Commission
Agenda and Priorities for FY2020/2021

The National Center for Health Research is a nonprofit research center staffed by scientists, medical professionals, and public health experts who analyze and review research on a range of health issues. Thank you for the opportunity to share our views concerning the Consumer Product Safety Commission's (CPSC) priorities for fiscal years 2020 and 2021. We greatly respect the essential role of the CPSC, as well as the challenges you face in selecting the most important priorities.

We want to start by emphasizing two issues involving chemicals in products that affect our health and our children's health, artificial turf and playground surfaces and organohalogen flame retardants. We also want the CPSC to consider expanding its role in providing guidelines for the production of sport and recreational helmets to reduce the risk of head injuries. These issues are clearly consistent with CPSC priorities.

Artificial Turf and Playground Surfaces

This issue needs to be a priority, because children are exposed to these synthetic rubber and plastic fields and playgrounds day after day, year after year. We appreciate the CPSC's ongoing efforts to investigate the safety of crumb rubber on playgrounds and playing fields. As your study using focus groups to examine children's use of playgrounds and exposure to playground surfaces has shown, children who use playgrounds with artificial surfaces could be exposed to the chemicals in these surfaces.¹ Unfortunately, the materials that make up these surfaces are often treated as "trade secrets," making it impossible to know what is in them and to compare the safety of various products. Meanwhile, the companies that make these products often make claims regarding safety that are not supported by well-designed studies or standards. In fact, we have repeatedly heard erroneous claims in testimony at the state and local government level – erroneous claims that CPSC has concluded these materials are safe. As we all know, CPSC has not yet drawn conclusions of safety or harm.

We encourage you to closely evaluate the research that has been done, focusing on independently funded research of short-term and long-term safety issues. We also urge you to carefully examine the EPA/CDCs studies when they are completed, to ensure that the studies were well designed, appropriately implemented, and accurately interpreted. We need information that can protect our children from harm.

We strongly urge you to convene a Chronic Hazard Advisory Panel (CHAP) to examine the short-term and long-term risks of different types of artificial turf used in playing fields and children's playgrounds.

The rubber and plastic that make up these surfaces contain chemicals with known health risks, which are released into the air and get onto skin and clothing. Crumb rubber – whether from recycled tires or “virgin rubber”-- includes endocrine disruptors such as phthalates, heavy metals such as lead and zinc, as well as other carcinogens and skin irritants such as some polycyclic aromatic hydrocarbons (PAHs) and volatile organic compounds (VOCs).^{2,3,4,5,6} Other plastic or rubber surfaces also contain many of these chemicals.⁷ While one-time or sporadic exposures are unlikely to cause long-term harm, children's repeated exposures over the years, especially during critical developmental periods, raise the likelihood of serious harm. There are few activities that children experience for as many hours in their early years as playgrounds and playing fields.

In addition to the long-term risks of cancer and hormone disruption, these fields can also cause short-term harms. Artificial turf generates dust which may exacerbate children's asthma.^{8,9} Fields heat up to temperatures far higher than ambient temperature, reaching temperatures that are more than 70 degrees warmer than nearby grass; for example, 180 degrees when the temperature is in the high 90's and 150-170 degrees on a sunny day when the air temperature is only in the 70's.^{10,11,12,13} We have measured the temperatures ourselves and been shocked by the results. These temperatures can cause heat stress and burns.

Fields made of crumb rubber have been marketed as reducing injuries compared to grass. However, research has shown that this is not the case. We have spoken to students terribly harmed by turf burn, and studies have indicated increased risk for some types of injuries, including joint, foot, and brain injuries.^{14,15,16,17,18,19} That is the reason that only two Major League Baseball parks use artificial turf and why the soccer World Cup is now always played on grass.

Organohalogen Flame Retardants

The National Academies of Sciences, Engineering, and Medicine is expected to finish the scoping plan to assess the hazards of organohalogen flame retardants (OFRs) later this year.²⁰ We encourage you to convene a CHAP to use this scoping plan to evaluate OFRs and to develop regulations to address OFRs in children's products, upholstered residential furniture, mattresses/mattress pads, and the plastic casing of electronic devices. In addition, it is essential to consider current flammability standards to determine if there are changes that would improve their safety from chemical exposures as well as exposures during a fire.

OFRs are not bound to products to which they are added, so they migrate out of products and into dust. This allows them to get onto our skin and food and into the air. Furthermore, due to

their widespread use and the long-lasting nature of OFRs, consumers are continuously exposed to OFRs.²¹ In addition, many OFRs bioaccumulate in our food supply.^{22,23,24,25} As a result, OFRs are present in nearly all people in the U.S.^{26,27}

CPSC should focus on this issue because of the potential for hormone disruption, altered brain development, reduced ability to get and stay pregnant, and the timing of puberty.^{23,28,29,30,31} While not all OFRs have been sufficiently studied to determine whether all are unsafe, those that have been sufficiently studied have proved to be harmful to health.

While the Commission and consumers are concerned about fire hazards as well, it seems that these flame retardants may not be effective at preventing deaths in real world situations.^{32,33} When the chemicals burn during a fire, the inhaled smoke is more toxic to humans, and exposures could result in serious harms, including death.

Helmets for Sport and Recreational Activities

We also urge the CPSC to focus new attention on the safety of helmets intended to protect against brain injuries during athletic activities. Currently, CPSC only provides guidelines for bicycle helmets. However, many organized sports and recreational activities use helmets to reduce the risk for severe head injuries, including baseball, football, snow sports, skiing/snowboarding, and climbing. They are not necessarily designed to prevent mild concussions.³⁴ We encourage you to consider developing guidelines for helmets for other sports to ensure that they reduce this risk without interfering with vision or hearing or other safety concerns. We encourage CPSC to consider how design changes could improve the ability of helmets to prevent severe head injuries as well as mild concussions.

There are up to 3.8 million concussions reported each year related to sport or recreational activities, with most reported for children and adolescents.³⁵ However, this number is likely an underestimate.³⁶ While concussion injuries due to sport and recreation activities are typically less severe than from other causes, there is potential for long-term effects for some people that harm their health and quality of life.³⁷ In general, it is widely accepted that helmets can reduce the risk of concussion and other head injuries. However, there is much room for improvement and helmet design components can reduce the risk that a head injury causes a concussion.^{38,39}

Final Thoughts

CPSC has a key role to play in protecting children and adults from harmful products used in their daily life. Flame retardants and many different chemicals in artificial turf and playground surfaces get into the air and dust and thus into our bodies. These chemicals tend to have greater risks for fetuses and children. There are large gaps in our knowledge about the chemicals in the products on the market, because the companies do not provide that information to the public. Ideally, the potential health impact of all of these chemicals would be evaluated in the final

product before it was sold. Since that is not happening, we must constantly play catch-up to identify health risks, often years after millions of children and adults have been exposed. Too often, the lack of independently funded and publicly available research has been used to mislead the public. Claims that “there is no evidence of harm” are misunderstood to mean “there is no harm.” While research is lacking regarding the exact extent of the dangers of many of these products, there is already sufficient evidence that probable carcinogens and other toxic chemicals are being used.

Brain injuries from contact sports have become a concern to families across the country. Helmets have been assumed to reduce the risk of concussion and other head injuries, but the lack of publicly available and understandable scientific evidence about which helmets work best under what circumstances means that families can not make informed decisions. Meanwhile, there are design components that could be improved to make helmets more effective at preventing injury.

While reducing exposures to dangerous products is key, there will always be some potential for harm. Whether those harms are from the intended use of a consumer product or an unintended but foreseeable use, CPSC has a very important role to play in reducing harm. For that reason, improving the timeliness and targeting of information campaigns to warn parents and children about harmful products is also a key task of the CPSC.

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April 17, 2019

Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission.
4330 East West Highway
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RE: Written Comments on the Consumer Product Safety Commission's Agenda and Priorities for FY 2020 and 2021

Public Citizen appreciates the opportunity to submit comments to the Consumer Product Safety Commission (CPSC or Commission) Agenda and Priorities Hearing for Fiscal Years 2020 and 2021.¹ Public Citizen is a national non-profit organization with more than 500,000 members and supporters. We represent the public interest through legislative and administrative advocacy, litigation, research, and public education on a broad range of issues that include product safety and consumer rights in the marketplace.

Public Citizen is eager to see the CPSC increase its focus on addressing product safety hazards through mandatory standards on a number of issues including window coverings, portable generators, high-powered magnets, and preventing furniture tip-over, among others.² In addition, we believe it is crucial that the agency turn more of its focus to increasing the recall effectiveness rate, addressing a safety framework related to the Internet of Things, and increasing its use of technology to make the agency work better.³ These comments, however, will focus on issues that

¹ Notice of Public Hearing, Commission Agenda and Priorities, 84 F.R. 10050 (March 19, 2019).

² See generally Rachel Weintraub, Consumer Federation of America, *Testimony* (April 9, 2019), available at <https://docs.house.gov/meetings/IF/IF17/20190409/109316/HHRG-116-IF17-Wstate-WeintraubR-20190409.pdf> and Nancy Cowles, KIDS in Danger, *Testimony* (April 9, 2019), available at <https://docs.house.gov/meetings/IF/IF17/20190409/109316/HHRG-116-IF17-Wstate-CowlesN-20190409.pdf>.

³ *Id.*; see also Commissioner Elliott S. Kaye, U.S. Product Safety Commission, *Statement Regarding a Framework of Safety for the Internet of Things* (Jan. 31, 2019), available at <https://www.cpsc.gov/s3fs-public/A%20Framework%20for%20Safety%20Across%20the%20Internet%20of%20Things%20final.pdf?UpCcEciXfBujjwss1FkF9HOxh8IVtA2u>.

Public Citizen works on most closely: increasing transparency, improving the effectiveness of the Commission, holding corporate wrongdoers accountable, and ensuring that companies that recall dangerous products do a better job of getting harmful items out of people's homes.

I. Section 6(b) of the Consumer Product Safety Act contributes to the agency's lack of transparency.

Section 6(b) of the Consumer Product Safety Act restricts the CPSC from publicly disclosing any information from which the public can readily ascertain the identity of a manufacturer or private labeler of a consumer product unless certain criteria are met, which can have the effect of stopping the flow of pertinent information from getting to the public. As a result, Section 6(b) has restrained the CPSC's ability to proactively disclose safety hazards to the public. Section 6(b) is outdated, anti-consumer, and intended solely to protect the reputation of businesses that put harmful products on the market.

In January 2008, a Public Citizen report revealed that the Consumer Product Safety Commission took an average of 209 days to warn the public about hazardous products in the 46 cases from 2002 to 2008 in which the Commission levied fines against the manufacturers.⁴ It was clear that while information regarding dangerous products was known by the manufacturers and the agency, it was withheld for unreasonable amounts of time from parents, children, and other users of these products. Consumers remained at risk while the dangerous products stayed on the market. We found that the delay in reporting dangerous products or issuing recalls was partially caused by the agency's lack of urgency at the time, as well as a lack of resources. However, it was also unnecessarily hamstrung by limitations within its governing statute—restrictions that do not apply to other, similarly situated government agencies.

1. 6(b) unnecessarily shields important health and safety information from the public.

As currently written, section 6(b) restricts the CPSC from publicly disclosing any information from which the public can readily ascertain the identity of a manufacturer or private labeler of a consumer product, unless: (1) the Commission takes reasonable steps to ensure the information is accurate, (2) disclosure is fair in the circumstances, and (3) the disclosure is reasonably related to effectuating the purposes of the CPSA and other laws administered by the Commission.⁵

When Congress passed the Consumer Product Safety Improvement Act (CPSIA) in 2008, rather than remove 6(b) from statute, Congress decided to require the CPSC to create saferproducts.gov. We are pleased that Congress required the Commission to create the database

⁴ Taylor Lincoln, *Public Citizen: Hazardous Waits: CPSC Lets Crucial Time Pass Before Warning Public About Dangerous Products 2* (2008), available at <https://www.citizen.org/sites/default/files/hazardouswaits.pdf>.

⁵ 15 U.S.C. §2055(b).

to give consumers more information to enable them to avoid purchasing dangerous products. It is clear that saferproducts.gov has become a critical tool for protecting consumers from potential hazards and helps to close the time gap between the manufacturer learning of a hazard and the information actually reaching consumers—an unfortunate result of Section 6(b). It was obvious when the CPSIA was enacted that a database would not completely eradicate the problems caused by 6(b). With ten additional years of knowledge, this assertion is even truer today. While we continue to applaud the database, true transparency requires 6(b) to be removed from law.

Section 6(b) has restrained the CPSC in its ability to proactively disclose safety hazards to the public. To our knowledge, no other federal agency that deals with public health and safety is subject to similar public disclosure restrictions. 6(b) negatively affects consumers by unnecessarily shielding critical product safety information from public view. There is no legitimate justification for this law, and Congress should eliminate it. We have repeatedly encouraged the CPSC to make the case to Congress. We recently did so in testimony before the U.S. House of Representatives Subcommittee on Consumer Protection and Commerce during a hearing that explored whether the Commission is fulfilling its mission to keep consumers safe.⁶

However, until the law is changed the Commission must act quickly to update its 6(b) implementing regulations 6(b) to improve the process as much as feasible under current law.

2. Until Congress removes 6(b) from the law, it should require the Commission to finalize rulemaking aimed at easing the law's restrictions.

Until Congress eliminates Section 6(b), the CPSC must prioritize the rulemaking that it has begun in order to increase proactive disclosures by the Commission. Like the statute, section 6(b)'s implementing regulations are outdated and pro-industry.

The 30-year old CPSA rule is emblematic of the avoidable obstacles that thwart the Commission's ability to modernize and advance consumer safety. Advances in technology and communication since the rule's adoption have gone unaddressed. Unnecessary delays swallow up efficient dissemination of public safety information. One obvious example is the Commission's inability to publicly disseminate information that has previously been publicly disclosed which simply gives business and manufacturers another built-in opportunity to influence the process before releasing critical product safety information.

Public Citizen supports the goals of the proposed rule, which would greatly serve consumers and maximize transparency and openness including: (i) ensuring the information subject to the 6(b) Information Disclosure Regulation conforms with, and does not go further than, the statutory

⁶ Remington A. Gregg, Public Citizen, *Testimony* (April 9, 2019), available at <https://docs.house.gov/meetings/IF/IF17/20190409/109316/HHRG-116-IF17-Wstate-GregR-20190409.pdf>

language of Section 6(b), thereby ensuring the regulation is not more restrictive of public disclosure of product information than required by current law; (ii) exempting publicly available information from the 6(b) Information Disclosure Regulation, including information posted on the consumer product safety information website; (iii) eliminating redundant notice requirements to manufacturers regarding information that is substantially similar to a previous disclosure; and (iv) eliminating the restriction on public disclosure of manufacturer comments.

Since the Commission issued a Notice of Proposed Rulemaking in February 2014 to amend the 30-year old rule implementing section 6(b), the rulemaking has seen little traction. Section 6(b) puts American lives and health at risk with burdensome procedures and delays that block public disclosure of crucial information on dangerous products. Section 6(b) is a relic that handcuffs the CPSC's core regulatory function of warning the public about potentially defective products and compels the CPSC to waste already scarce budgetary resources on procedures that do not serve any consumer protection or product safety goal.

We urge the Commission to continue with the proposed rulemaking without further delay.

II. The Commission must collaborate with technologists with expertise to make saferproducts.gov better.

We strongly support the consumer product safety database saferproducts.gov, which was created by Section 212 of the CPSIA. We appreciate the CPSC's commitment to this critically important consumer tool and encourage the Commission to enhance its utility. If administered correctly, with some small modifications, it could far better serve the mission of providing a central national repository for critical product safety information, and become a more effective tool to avert death or injury to the public.

We recommend that the CPSC make the website's visibility a top priority and dedicate resources to advertising it on social media and in any media statements or responses issued by the Commission. Specifically, we strongly urge the Commission to implement the recommendations in the saferproducts.gov report issued by the Consumer Federation of America, Consumers Union, Kids in Danger (KID), Public Citizen, and the U.S. Public Interest Research Group (U.S. PIRG), which stated, "there is room to improve both the database itself and how the CPSC collects, uses, and disseminates data." We recommended that the Commissioner do so in the following ways:

- Work to increase the database's use by healthcare professionals, consumers and advocates;
- Fold additional data sources from other CPSC databases and resources into saferproducts.gov;

- Increase the data analysis that the agency performs, expand and improve the data categories of harm that are listed in the database, and annually report the data's findings. All of this will help the agency and the public understand if there are: (1) patterns in the reports of harm that the CPSC should know about and (2) potential product types that the agency and manufacturers should be aware of that are most likely to cause hazards to a consumer's safety.

While some of these recommendations (which are discussed more extensively in the report) could be easy to implement, some may be more challenging. As the Commission considers improvements to saferproducts.gov, Public Citizen has continuously urged the Commission to collaborate with technologists and innovators, including those who have experience in the private sector, to collaborate in order to implement the recommendations that we have made to the Commission. Thus far, to our knowledge, the Commission has failed to take our advice.

III. Public Citizen applauds the use of civil and criminal penalties against corporate wrongdoers.

When Congress passed the original Consumer Product Safety Act in 1972, it not only created the CPSC, but gave it the Commission the authority to impose monetary penalties against product manufacturers for placing unsafe products into the marketplace. Criminal and civil penalties serve as an important tool to discourage companies from cutting corners when manufacturing products and they also create an incentive to ensure that manufacturers quickly report product defects.

1. Criminal and civil penalties should be used robustly in order to serve as an effective deterrent tool.

The CPSIA amended the Consumer Product Safety Act in several important ways, including by increasing the cap on penalties from \$8,000 to \$100,000 per violation, and from \$1.825 million to \$15 million for a series of related violations.⁷

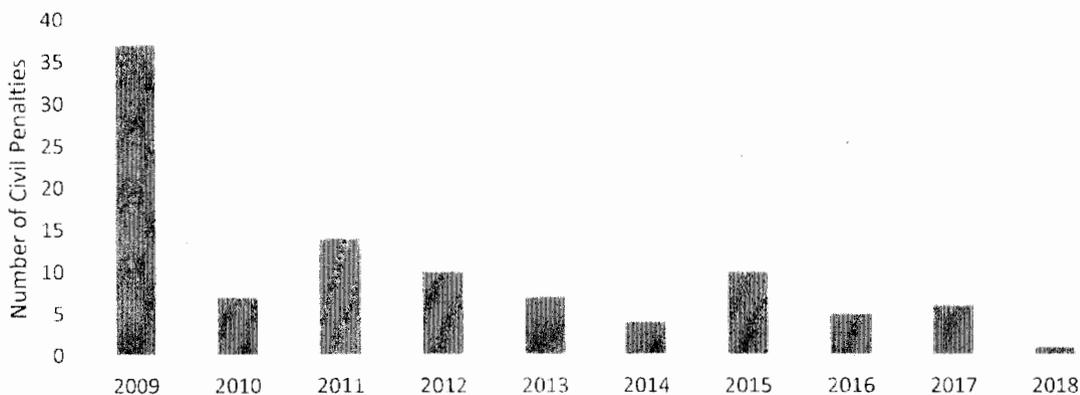
Over the last ten years, the CPSC has used its broadened authority wisely and has increased the amount that it imposes on companies. In 2017, for example, the CPSC imposed a record fine against Polaris, a recreational off-road vehicle (ROV) manufacturer for multiple product safety violations including, among other things, failing to notify the CPSC about defects in some of their ROVs. By the time Polaris notified the Commission, the company had received 150

⁷ *Consumer Product Safety Improvement Act Tenth Anniversary Album 38* (2018), available at <https://consumerfed.org/wp-content/uploads/2018/08/cpsia-anniversary/?page=1>.

complaints about ROVs catching fire, including a fire that resulted in the death of a 15 year-old passenger.

While CPSIA gave commissioners discretion to use increased penalties in the judgements imposed on companies, and they had been making use of the higher penalty possibilities, that trend has slowed since the Trump administration came into power. According to a recent Public Citizen report, in Trump’s first year in office, the CPSC “[i]mposed about \$21.4 million in penalties with an average penalty of \$5.3 million. That was down from \$37.3 million a year earlier...”⁸—Barack Obama’s last year in office. In addition, according to our research, the Trump administration-run CPSC has “completed no enforcement actions in the fourth quarter of 2017 or the first quarter of 2018.” The CPSC imposed its first penalty of the Trump administration in April 2018.

**Number of CPSC Civil Penalties
2009-2018**



9

2. The dip in enforcement is troubling.

The dip in enforcement actions at the CPSC is a troubling trend that is directly tied to the change in the Commission’s leadership.

Congress empowered the CPSC with the responsibility of imposing penalties on companies when they place dangerous products into the marketplace and fail to report or otherwise open consumers up to injury or death. Civil penalties are a tool that should be used robustly, both to protect consumers against harm and to carry out Congress’s intent when it increased the CPSC’s

⁸ Rick Claypool et al., *Corporate Impunity: “Tough on Crime” Trump is Weak on Corporate Crime and Wrongdoing* 34 (2018), available at <https://www.citizen.org/sites/default/files/corporate-enforcement-public-citizen-report-july-2018.pdf>.

⁹ Information in the graph was compiled by Consumer Federation of America.

civil penalty authority a decade ago. We hope the agency will reverse the current trend and instead go back toward imposing meaningful civil penalties on corporate wrongdoers in furtherance of its important mission to ensure that only safe products make it into the marketplace.¹⁰

Last month, the Department of Justice (DOJ) brought the first criminal charge against corporate wrongdoers for failing to promptly notify the Commission that a product presented a risk of injury or death to consumers.¹¹ The two corporate executives, who sold residential dehumidifiers in the United States, allegedly failed to disclose for at least six months that the dehumidifiers could catch fire. DOJ also alleges that the corporate executives continued to sell the dehumidifiers to retailers with false certifications that the products met safety standards while also withholding information about the product catching fire from retailers and insurance companies that paid for damages that resulted from the fires. Under that law, “manufacturers, importers, and distributors of consumer products” are required to “immediately” report information to the CPSC that reasonably supports the conclusion that a product contains a defect that could create a substantial product hazard or creates an unreasonable risk of serious injury or death.¹² While long overdue, Public Citizen is encouraged that the Department is using its authority to hold the most blatant corporate wrongdoers criminally responsible. We urge the Commission to work with the Department of Justice to identify others who should be prosecuted under this statute.

IV. Ensuring effective and prompt recalls

The agency has been largely unsuccessful in getting consumers to return unsafe products to retailers, and recall rates remain shockingly low. The average rate at which consumers participate in corrective actions is about 6% for all product types.¹³ In 2017, the Commission hosted a workshop on recall effectiveness. Public Citizen was eager to collaborate with the Commission to help find innovative ways to improve the outreach and effectiveness of recalls. Along with Consumer Federation of America and Kids in Danger, we submitted a list of recommendations to make the workshop productive and impactful, such as inviting technology and marketing experts and academics to the workshop for their input.¹⁴ Unfortunately, these

¹⁰ See generally Alan Zibel, *Consumer Carnage: How Federal Enforcement of Consumer-Protection Laws Has Declined Under Trump* (2019), available at <https://www.citizen.org/sites/default/files/consumeragencies.pdf?eType=EmailBlastContent&eId=eb0584cf-dbf0-4251-b01a-b0e86d86066a>.

¹¹ Press Release, Department of Justice, Two Corporate Executives Indicted in First-Ever Criminal Prosecution for Failure to Report Under Consumer Product Safety Act (Mar. 29, 2019), available at <https://www.justice.gov/opa/pr/two-corporate-executives-indicted-first-ever-criminal-prosecution-failure-report-under>.

¹² 15 U.S.C. § 2064.

¹³ Letter from Consumer Organizations to the U.S. Consumer Product Safety Commission (Sept. 5, 2018), available at <https://consumerfed.org/wp-content/uploads/2018/09/consumer-comments-on-recall-effectiveness.pdf>.

¹⁴ *Id.*

recommendations were not incorporated into the workshop, nor has there been follow-up actions to that meeting other than a recently released report.¹⁵ We urge the Commission to continue this important conversation by expanding voices on this topic beyond those initially assembled to ensure that all viewpoints are solicited and the right expertise is in the room. It cannot be overstated how important it is for the Commission to actively solicit the views of especially technologists and those with experience innovating with the federal government.

Moreover, we urge the Commission to do more to increase the unacceptably low recall return rate for Ikea dressers. This piece of furniture has sadly injured 91 and killed 8 children after this model of dresser tipped over onto them.¹⁶ Since the high-profile recall was announced in 2016, Ikea has only given 175,000 refunds and re-installed 268,000 dangerous dressers despite the fact that the recall affected more than 17 million dressers.¹⁷ We urge the Commission to redouble its effort to demand more from Ikea to increase its efforts.

V. Improving FOIA responses

The Commission must dedicate sufficient resources in order to respond to Freedom of Information Act (FOIA) requests in a timely manner and consistent with its statutory obligations. The average reported time for responding to simple and complex requests is 25 and 67 working days, respectively.¹⁸ Public Citizen still has not received requested documents from a FOIA request that was submitted on September 25, 2018.¹⁹ We urge the Commission to redouble its efforts to speed up its response time and continue to reduce its FOIA backlog.

VI. Conclusion

The Commission faces many challenges. Until Section 6(b) is removed from the law, the agency will be constrained and thwarted from releasing certain important information without agreement from manufacturers. In the interim, it is critical to improve the profile and usability of saferproducts.gov so that the public, advocates, and Congress have the most accurate picture of product safety hazards and to help track harmful product trends. Moreover, the data suggest that Commission leadership is prepared to continue a “less enforcement is best” attitude. We urge the agency to more wholly embrace its mission to protect the public from unreasonable injury or death by promulgating robust rules and standards to protect consumers and hold corporate

¹⁵ Joseph F. Williams, *Recall Effectiveness Workshop Report* (2018), available at https://www.cpsc.gov/s3fs-public/Recall_Effectiveness_Workshop_Report-2018.pdf?R1VyLltrl8M_id.2vkAkIHoUZjaSCab.

¹⁶ *IKEA Reannounces Recall of Malm and Other Models of Chests and Dressers Due to Serious Tip-Over Hazard; 8th Child Fatality Reported; Consumers Urged to Choose Between Refund of Repair*, IKEA.COM (Nov. 21, 2017), https://www.ikea.com/us/en/about_ikea/newsitem/112117-MALM-and-Chest-of-drawers-Recall.

¹⁷ We do not have updated statistics, but urge the Committee to seek them from the Commission and/or Ikea.

¹⁸ *Consumer Product Safety Commission*, <https://www.foia.gov/> (last visited Apr. 5, 2019).

¹⁹ FOIA Request from Public Citizen to Consumer Product Safety Comm'n (Sept. 25, 2018) (acknowledging receipt of the request on November 19, 2018) (on file with the author).

wrongdoers accountable with strong penalties that serve as an effective deterrent. And, when it's clear a product is causing harm, it must force companies to do a better job of getting recalled products out of the hands of consumers.

Public Citizen is acutely aware of the CPSC's enormous jurisdictional obligations and the challenges posed by disproportionately modest resources. Despite this, we believe that if the Commission proceeds with a mandate to prioritize consumer safety above all else—including above the interests of business and industry—the CPSC can fulfill its decree to advance product safety and protect the lives and health of Americans.

Thank you for the opportunity to provide comments and we look forward to working together to improve the consumer safety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Remington A. Gregg". The signature is fluid and cursive, with a long horizontal stroke at the end.

Remington A. Gregg
Counsel for Civil Justice and Consumer Rights
Public Citizen
Congress Watch Division

Written Comments

Agenda and Priorities FY 2020 and/or 2021

May 1, 2019

1. Janet McGee, MBA
Founder & President of The Lifted, LLC
2. Daniel Mustico, Vice President, Government & Market Affairs
Outdoor Power Equipment Institute, Inc.
3. The Magnet Safety Association
Submitted by Nancy Nord, Esq. OFW Law
4. Andy S. Counts, Chief Executive Officer
The American Home Furnishings Alliance (AHFA)
5. The American Academy of Pediatrics (AAP)
Consumer Federation of America (CFA)
Consumer Reports (CR)
Kids In Danger (KID)
North American Society for Pediatric Gastroenterology Hepatology & Nutrition
(NASPHAN)
U.S. Public Interest Research Group (PIRG)
Submitted by Camille Bonta, Summit Health Consulting
6. Kimberly Amato, PT
Founder, Meghan's Hope
7. Lisa Siefert
Shane's Foundation
8. Brett Horn
Charlie's House, The Home Safety Site
9. Nancy Blogin, Executive Director
National Fireworks Association
10. Hovding Sweden AB
Submitted by Nancy Nord, Esq. OFW Law

U.S. Consumer Product Safety Commission

Attn: Alberta E. Mills, Secretary

4330 East-West Highway

Bethesda, MD 20814

TOPIC: Agenda and Priorities FY 2020 and/or 2021

April 17, 2019

Dear CPSC:

As all of the CPSC Commissioners and Chairman Buerkle are aware, my 22-month-old son, Ted, died on Valentine's Day in 2016 from an Ikea MALM dresser that tipped forward onto his little body while we thought he was taking a nap. We didn't hear the dresser fall. It was 6 weeks before his second birthday. While I initially thought Ted's death was a freak accident, I have come to believe his death was a result of the ASTM sub-committee F15.42 not acting swiftly to improve the safety standard for Clothing Storage Units (CSUs) when furniture tip-overs became a known issue many years before Ted died. His death was also a result of the CPSC's inability to protect consumers from this known issue by leveraging all avenues possible, directly because of an underfunded agency and the muzzle that Section 6(b) wraps around the mouths of the CPSC.

However, I would like to take a moment to acknowledge and commend the progress the CPSC has made on this issue since Ted's death. First, it does not go unnoticed that furniture tip-overs are a priority for Chairman Buerkle and all four of the Commissioners. Chairman Buerkle has sought additional funding for the agency, and has publicly declared at the 2019 ICPHSO Symposium that she supports raising the ASTM test weight up to 60 pounds and lowering the height requirement to 27 inches as an immediate, interim solution until further CPSC test findings can be realized. Commissioners Kaye and Adler proposed amending Section 104 to include CSUs, an action that would have most definitely saved lives by covering juvenile CSUs in a mandatory standard. Commissioners Baiocco and Feldman proposed amending the FY 2020 to move this topic from data analysis status to NPR status to keep this issue on a timeline, which was passed 5-0. Chairman Buerkle, Commissioners Kaye, Adler, Baiocco, and Feldman have all taken time out of their schedule to meet with me and other founding members of Parents Against Tip-overs to further understand tip-overs and discuss possible solutions. All of these aforementioned actions by the agency have been important to reaching the end goal of protecting innocent children in the U.S. and ending furniture tip-overs. Thank you for all of your efforts thus far. I urge the CPSC to keep going. Don't stop. Don't delay. We're in the middle of this marathon and we need to keep moving forward and stick to a rigorous timeline, as children continue to be vulnerable to this hidden danger inside homes today.

At the recent hearing for the House Consumer Protection and Commerce Sub-committee, "Is the CPSC fulfilling its mission," I heard Commissioner Kaye say, "We should be pursuing every authority available that we have. It would send a signal to industry that we are not leaving any tool unused." I could not agree more with Commissioner Kaye. As a consumer, I continue to engage with the ASTM sub-committee F15.42 for Clothing Storage Units, CPSC Anchor It! staff, the CPSC dresser testing group, CPSC compliance, the CPSC Chairman and Commissioners, consumer groups, fellow tip-over parents, and legislators. Since my son died, I have dedicated my life to leaving no stone unturned. I ask the agency to approach the furniture tip-over issue as aggressively as possible and not let up until we have full confidence that the safety standard for CSUs is adequate in protecting children.

I urge you to keep furniture tip-overs your highest priority in the 2020/2021 fiscal year. Help us pursue every avenue possible. Be a strong presence in the ASTM Sub-committee F15.42 meetings. Invest in your Anchor It! Campaign. Hold manufacturers accountable when their CSUs do not meet today's safety standard. Pressure them in all ways possible for a recall when their CSU meets today's weak standards, yet has been known to cause injury or death. Support, communicate, and engage with the CPSC dresser testing team so that the findings can be discovered quickly and timely action can be taken. With every day that passes, children's lives continue to be at stake.

This upcoming September, I should be watching Ted, who would be five-years-old now, get onto the school bus for the first time. Instead, I will be watching from the sidelines as his would-be classmates partake in this tradition. As each milestone happens, my family and I re-grieve the life that was taken from us too soon. Trust me when I say this heartbreaking reality never leaves my mind, and I will do whatever I can to prevent another family from experiencing this pain. I trust the CPSC will, too.

Signed,

Janet D. McGee

Bereaved Mother

Founder & President of The LifTed, LLC

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Outdoor Power Equipment Institute

April 16, 2019

Division of the Secretariat
U.S. Consumer Product Safety Commission
Room 820
4330 East-West Highway
Bethesda, MD 20814
Filed electronically to cpsc-os@cpsc.gov

Re: OPEI comments to CPSC “Agenda and Priorities FY 2020 and/or 2021”

Dear Secretary Mills:

The Outdoor Power Equipment Institute (“OPEI”) appreciates this opportunity to provide comments to the CPSC’s Agenda and Priorities for FY 2020 and/or 2021.

OPEI is an international trade association representing the manufacturers and their suppliers of non-road gasoline powered engines, personal transport & utility vehicles, golf cars and consumer and commercial outdoor power equipment (“OPE”). OPE includes lawnmowers, garden tractors, trimmers, edgers, chain saws, snow throwers, tillers, leaf blowers and other related products.

OPEI is an ANSI-accredited Standards Developing Organization (“SDO”), responsible for the administration of industry proposals for voluntary safety standards applicable to member manufacturer products. This effort serves as a core OPEI function assisting member manufacturers in their individual and collective efforts to promote consumer product safety as their priority.

OPEI commends CPSC for the strategic priorities outlined in its FY 2020 Performance Budget Request (to Congress). Taken together – the focus on risk; import surveillance; collaboration, education and outreach; and data (-driven) – appropriately serve to focus the agency’s mission in times of finite budget resources and a complex and growing agenda of work. Further, these areas of focus are well aligned with many of the issues and recommendations which OPEI would like to share in these comments, including many which are repeated from our submission on this subject just last year.

Please consider the following comments responsive to the four questions specified in the subject Federal Register request.

1. What are the priorities the Commission should consider emphasizing and dedicating resources toward in the fiscal year 2020 Operating Plan and/or the fiscal year 2021 Congressional Budget Request?

a. Voluntary standards

As the SDO for our members and industry, OPEI urges the CPSC to continue to strengthen its reliance on and participation in voluntary standards development as the preferred means of addressing product safety. The reliance on this framework, largely unique to the United States, allows the agency to focus its resources, and sometimes mandatory remedies where necessary, on the highest risk products and suppliers.

In OPEI’s own case, CPSC has historically participated in the development of OPEI-proposed ANSI standards as an active “canvass” body participant. To-date such participation has taken the form of CPSC staff registering an abstention vote, often accompanied by prescriptive



technical comments. OPEI believes that this approach has served industry proposed standards well, since it achieves both agency involvement and a continued separation of the unique roles of the CPSC and the SDO.

OPEI recommends that CPSC always strive to build new and improve existing working relationships with accredited Standards Developing Organizations and further help lead efforts at educating the public about the use of voluntary standards to address the important issue of consumer product safety in the United States. Such efforts are critical to increasing public understanding, acceptance, and participation in the standards development process – reducing the demand on agency resources which could be focused on the highest risk priorities.

b. Commonsense modernization of safety standards

Consistent with SDO efforts to assure that voluntary standards are modernized to reflect the state of art and current market realities, OPEI also urges the CPSC to prioritize these goals both in their involvement in voluntary standards and their maintenance of existing mandatory standards. Such modernization should always be measured to not exceed state of art and market conditions, and should always be based on public consideration of all available data and good science.

In line with this request and expectation, OPEI has petitioned the CPSC for consideration of an amendment to the existing mandatory safety standard for walk-behind power lawn mowers¹, to allow for the alternative use of a pictorial-only hazard warning in place of the decades-old warning now required by the standard. This requested amendment is non-material and limited in that it does not alter any of the material provisions of the standard, and instead only provides product manufacturers with the alternative to use a pictorial-only on-product warning for blade contact hazards. This important modernization would a) provide product manufacturers / suppliers with the alternative opportunity to harmonize global warnings using long-standardized and utilized pictorials, and b) better serve consumers with diverse linguistic and comprehension skills through the use of pictorial warnings.

OPEI looks forward to the public review of this proposal, and requests that CPSC prioritize the timely consideration and terminus of this petition process.

c. Public data-quality and collection

OPEI commends CPSC's stated prioritization of assuring that integral and publicly available data is the primary basis for agency decision-making.

OPEI relies on the National Electronic Injury Surveillance System ("NEISS") database, and other agency collected data available under Freedom of Information Act ("FOIA") request, as an important basis for our incident review in the ANSI standard development process. These tools and their continuance are an imperative public service. Consistent with OPEI's comments to this similar request during each of the past two years, we would like to echo the following recommendations for consideration.

While NEISS provides a broad set of incident reports involving consumer products, and as such is an important resource, CPSC should never stop exploring methods to provide more detailed

¹ 16 CFR Part 1205 – Safety Standard for Walk-Behind Power Lawn Mowers [Federal Register / Vol. 84, No. 68 / Tuesday, April 9, 2019 / Proposed Rules / 14043]

and accurate information by way of the NEISS database. NEISS is a good indicator of trends but cannot be relied upon for detailed information.

NEISS product coding must be maintained consistent with products in the marketplace to assure that NEISS incidents correlate to well defined product groupings. This is best assured through active cooperation between CPSC staff and affected stakeholders, possibly as part of voluntary standards development engagement.

d. Use of and access to public data

If CPSC incident data is to be the basis for cooperative consumer safety and standards development efforts between CPSC and industry, it is imperative that CPSC have advance engagement with industry to discuss data of concern, before issuing public statements and/or reports. This trust and ability to make attempts at reaching consensus are imperative to cooperation and an effective voluntary standards development process.

Equally important to this cooperation is that stakeholders can rely on consistent and timely access to such data, either through cooperative work at CPSC's request or by stakeholder request through the Freedom of Information Act. While OPEI understands that FOIA processing places considerable demands on agency resources, not helped by government work stoppages, we nonetheless urge the agency to prioritize improvements in the timely processing of such requests.

e. Recall effectiveness

OPEI members use and value the "Fast Track" recall program as a streamlined means for getting recalls launched in partnership with the CPSC, with the express shared goal of quickly communicating information to consumers concerning company products. However, OPEI members have found that time and time again the execution of a "fast track recall" takes months after a Corrective Action Plan ("CAP") is submitted. Instead of focusing on substantive details, most often these delays are a result of negotiating minor aspects of press releases, posters, Facebook messages or other public outreach activities outlined in the CAP. The resulting delays undermine the spirit of the agency and fast track recalls, and expose manufacturers to extended risk.

Therefore, OPEI recommends that CPSC dedicate resources to study past fast track recall implementation issues and consider improvements to fast track recalls assuring timely, effective public outreach strategies. OPEI also believes that an updated fast track guidance document, including a variety of examples of outreach materials and common distribution models, would be helpful. Such an effort should be undertaken in collaboration with consumer product manufacturers. Also, annual symposiums where both CPSC staff and industry can engage may also improve fast track efficiency. OPEI would be happy to participate in such programs designed to review and improve the important fast track recall program.

OPEI also recommends that CPSC work with interested industries in developing a "trusted company" designation under the fast track recall program. Such a program could reward companies which consistently propose effective CAPs, which are approved by the CPSC. Most importantly, such a program would yield the shared industry / CPSC objective of timely and effective recall efforts.

These priorities have been expressed and reiterated in response to this request in each of the last three years. CPSC support and cooperation in necessary product recalls are among the highest priorities to OPEI member companies.

f. Guidance on agency compliance efforts

With respect to more general agency compliance efforts and protocol, OPEI recommends that the agency consider new guidance for compliance officers aimed at improved standardization of process, decision-making, and outcomes. Industry is adversely impacted when agency staff is inconsistent in their process, creating regulatory uncertainty for consumer product manufacturers. OPEI recommends consideration of an agency workshop to collect different stakeholder perspectives on this topic and important input on future guidance.

g. Contingency planning for future government shutdowns / furloughs

OPEI recommends that CPSC take all steps available for contingency planning to best manage any future government shutdowns which impact CPSC operations. The priority should be to have advanced designations in place for “essential” personnel to assure that the most critical functions are operational throughout future shutdowns. OPEI believes that uninterrupted fast track recall assistance and actions would rise to the level of such priorities. Other functions requiring essential personnel designations should be consistent with the agency’s strategic goal of prioritizing concerns based first on risks to the consumer. While it’s understood that such designations are subject to approval by the Office of Management & Budget, CPSC should plan for contingencies to minimize the highest risk impacts on U.S. businesses and the American consumer.

Additionally, CPSC should consider updated and clear guidance on what is required of and available to regulated entities in the absence of CPSC support resulting from furloughs / government shutdowns. This information will provide consumer product manufacturers with clear guidance and certainty about how to interact and communicate with the agency during future work stoppages. Such guidance and/or educational tools should be provided by direct notification of affected stakeholders in advance of future anticipated shutdowns and also posted on the CPSC website.

h. Consideration of safety impacts of “Right to Repair” movement

OPEI recommends that CPSC consider the potential safety impacts to consumer products if U.S. states are successful in requiring broader consumer access to manufacturer diagnostic and repair information for “digital electronic equipment”. Such “Right to Repair” model legislation is now under consideration in as many as 20 states (e.g. NH, NJ, OR), in response to consumer demand for greater flexibility to self-repair products. The impetus for the consumer movement originated with concerns over the repair limitations of consumer electronics (e.g. cell phones), but has translated into overly broad legislation which has included all “equipment” with digital functions, including all outdoor power equipment.

OPEI’s concern is that broader consumer access to information currently protected or licensed to technicians / service providers would enable improper repairs and product modifications which could impair or disable critical equipment safety controls which rely on electric code and functions. OPEI is working closely with all allied industries which manufacture equipment potentially affected by such laws, as well as equipment dealers and retailers – to educate lawmakers and consumers about the potential safety impacts and risks.

Currently, the Federal Trade Commission is collecting empirical research on this movement and related legislation to weigh all consumer interests. The FTC is accepting written input through September 16, 2019 and has scheduled a public workshop for July 16, 2019 in

Washington DC². Possibly CPSC could establish an inter-agency dialogue with FTC on this topic and/or provide written comments to this solicitation.

Minimally, we recommend that CPSC research this topic and provide input as appropriate.

i. Import surveillance focus on product counterfeiting

OPEI again commends CPSC inclusion of import surveillance in its core strategic principles, and in these efforts, we recommend that a priority be placed on stopping the import of counterfeit consumer products. With half of U.S. consumer products being imported through an ever-innovating retail market, CPSC should focus resources on stopping the import of counterfeit consumer products, which create economic and safety concerns for the consumer and financial and reputational impacts for legitimate manufacturers.

In this regard, import surveillance should also be complimented by agency consumer education about the risks and hazards associated with the purchase of counterfeit products.

2. What activities should the Commission consider deemphasizing in the fiscal year 2020 Operating Plan and/or the fiscal year 2021 Congressional Budget Request?

OPEI again recommends that the CPSC expeditiously vote to withdraw inactive and/or unsubstantiated rulemakings from the agency's agenda, as they continue to create regulatory uncertainty and detract from more important agency priorities.

a. Recreational Off-Highway Vehicles (ROVs) rulemaking

The FY 2020 budget request³ lists the subject rulemaking as Data Analysis and/or Technical Review (DA/TR). OPEI urges the CPSC to dedicate the necessary resources to withdraw the rulemaking since all safety concerns which prompted the effort have been addressed in the 2016 edition voluntary standard ANSI/OPEI B71.9, *American National Standard for Multipurpose Off-Highway Utility Vehicles*. Additionally, OPEI urges the CPSC to treat ROV analysis and/or technical review in the same manner as thousands of other products under the Commission's jurisdiction moving forward, without a special review or budget appropriations. This ANSI/OPEI B71.9-2016 standard was developed and publicly approved through close cooperation with the agency to assure that it addressed all noted concerns, and with the implicit understanding that if successful it would allow for the withdrawal of the subject rulemaking⁴. To this end, CPSC staff provided this very recommendation to the Commission in late 2016, and yet the issue remains as an active rulemaking⁵.

² Federal Trade Commission, Call for Empirical Research: Nixing the Fix: A workshop on repair restrictions (ftc.gov/nixingthefix)

³ U.S. CPSC Fiscal Year 2020 Performance Budget Request to Congress, March 18, 2019

⁴ Chairman Elliot Kaye February 25, 2016 testimony before US House of Representatives Committee on Appropriations, Subcommittee on Financial Services and General Government, "Our process is based on our statutes, that once (OPEI publishes the revised B71.9 standard), we will then have our staff make an assessment and send up a recommendation to the Commission, and then we'll vote accordingly. If it happens the way it seems to be happening, I know our staff has indicated, to date, that they've been pleased with the direction that the voluntary standards has taken, then I would imagine that we would proceed accordingly based on their recommendation."

⁵ CPSC Staff Report "Evaluation of Voluntary Standards for Recreational Off-Highway Vehicles (ROVs)", November 2016; "Conclusion: Staff believes that the revised voluntary standards are likely to (1) reduce the occurrence of ROV rollovers by increasing lateral stability and prohibiting divergent instability; and (2) reduce the occurrence of occupant ejection during rollover events by increasing seat belt use and improving side retention. Moreover, staff believes ROV compliance with the voluntary standards is trending toward increased compliance, a positive development that staff

Our industry's work with CPSC throughout this rulemaking and the resulting revision of ANSI/OPEI B71.9 serve as a principal example of the important partnership which exists between industry and government. This cooperative work was predicated on the understanding that if an appropriate voluntary standard could be adopted, the rulemaking to adopt a mandatory standard would be withdrawn. For these reasons, combined with CPSC staff's recommendation to the same effect, OPEI requests prioritization of this rulemaking for withdrawal.

b. CPSC Docket No. CPSC-2013-0040 (Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices)

OPEI recommends that the subject rulemaking which was opened in 2013 and remains listed as such on the CPSC website be withdrawn. In summary, OPEI provided the following as a basis for opposition to the proposal in our formal comment letter dated January 22, 2014.

OPEI is concerned that the proposed regulations would unnecessarily delay the voluntary recall process and create hurdles for industry participation and cooperation. OPEI believes that, currently, the voluntary recall process effectively accomplishes the Commission's goals of quickly removing recalled products from the distribution chain and consumer hands, and of communicating information to the public about the recalled product and remedy offered.⁶ In the event that a company or firm fails to report a potentially hazardous product, or to comply with staff requests, the Commission may take action against the noncompliant firm via other methods, such as a mandatory recall or consent order.

Furthermore, the proposed rule, and in particular the sections that would give the Commission discretion to impose legally-binding obligations on companies that choose to participate in the voluntary recall program, is not an "interpretive" rule, but creates new, legally-binding and enforceable obligations which are subject to notice and comment rulemaking under Section 553(b) of the Administrative Procedure Act ("APA"). Furthermore, because, in view of our reading of applicable case law, the proposed rule is subject to APA Section 553(b), the terms of the Regulatory Flexibility Act apply. OPEI, and we expect many other stakeholders, would have compelling grounds to assert that the CPSC is not complying with established procedural and analytical requirements designed to protect the regulated community and ensure reasoned decision-making.

For these reasons, OPEI opposes the proposed changes, and again recommends that this rulemaking be prioritized for withdrawal.

c. CPSC Docket No. CPSC-2014-0005 (Information Disclosure Under Section 6(b) of the Consumer Product Safety Act)

OPEI recommends that the subject rulemaking which was opened in 2014 and remains listed as such on the CPSC website be withdrawn. In summary, OPEI provided the following as a basis for opposition to the proposal in our formal comment letter dated April 28, 2014.

While OPEI appreciates the CPSC's goal of increasing the efficiency of the disclosure process under Section 6(b) of the Consumer Product Safety Act ("CPSA"),⁷ and along those lines,

expects will ultimately lead to an adequate reduction in the risk of ROV rollover and occupant ejection once the standards become effective. For these reasons, staff recommends that the Commission terminate rulemaking on ROVs."

⁶ 78 Fed. Reg. 69797

⁷ 15 U.S.C. 2055(b)

supports the use of electronic media in the notification process, OPEI has several concerns that the proposed amendments to 16 C.F.R. Part 1101 will result in the disclosure of inaccurate information. Specifically, OPEI notes that the CPSC has not provided any guidance on how the Commission would apply the sections proposing the disclosure of “publicly available” or “substantially similar” information. Because notification is not required if a product presents an imminent hazard or is in violation of a rule, there are no safety concerns with continuing to notify firms prior to disclosure of “publicly available” or “substantially similar” information.

Furthermore, the proposed amendments would remove the protections important to the cooperative relationship between industry and the CPSC. Requiring a statutory justification to withhold firm comments would weaken the channels of communication between the CPSC and industry and reduce Commission efficiency.

OPEI also believes that, through the NPRM, the CPSC would be abdicating its role to take reasonable steps to assure that disclosure under Section 6(b) is fair in the circumstances. Maximizing transparency and openness in the disclosure of information is not the goal of Section 6(b). Rather, that goal is to ensure that the disclosure of information from which the identity of a manufacturer or private labeler may be readily ascertained is accurate, fair in the circumstances, and reasonably related to the purposes of the Consumer Product Safety Act (“CPSA”).⁸ In the name of efficiency, the CPSC is ignoring its statutorily-mandated responsibilities and is inappropriately attempting to revise a Congressional statute through rulemaking.

For these reasons OPEI opposes the proposed changes, and again recommends that this rulemaking be prioritized for withdrawal.

3. What retrospective review of rules should the Commission consider in the fiscal year 2020 Operating Plan and/or the fiscal year 2021 Congressional Budget Request?

OPEI has no specific comments on the subject document but supports the CPSC’s continued efforts at reducing the regulatory burdens placed on consumer product manufacturers.

4. CPSC’s 2018-2022 Strategic Plan

(1) Focusing the agency’s resources on the highest-priority consumer product safety risks;

OPEI agrees that this should be the predominant criteria for the dedication of CPSC resources, in parallel with the Commission’s consideration of the following best practices:

- a. Reliance on existing voluntary standards and/or CPSC engagement with voluntary standards developers to propose new or revised standards suitable to the needs of the market and the identified safety risks;
- b. Early notification of affected consumer product manufacturers in advance of CPSC publication of findings, or the launch of rulemaking;
- c. Early engagement with affected consumer product manufacturers to review available data and strive to reach consensus findings;
- d. CPSC reliance on science-based findings.

⁸ See 15 U.S.C. 2055(6)(b)(1)

- (2) **continuing to support import surveillance by incrementally developing the Risk Assessment Methodology (RAM) system to identify and stop noncompliant imported products from entering the U.S. marketplace;**

OPEI supports this effort as a CPSC priority and urges the agency to efficiently use all resources available to address this problem.

- (3) **emphasizing outreach and education by engaging all stakeholders through forums and workshops; and**

OPEI supports CPSC's strategic priority to engage with the public through whatever means are efficient and cost-effective. OPEI and its members appreciate the access provided by-way of public meetings with both Commissioners and staff in pursuit of our shared goals.

- (4) **expanding the sources and types of data analysis used to identify and assess product safety risks and inform compliance decisions.**

OPEI urges the CPSC to continue its efforts at improving the data collected by the agency as the basis of its decision-making. We further urge CPSC to consult with industry when questions about collected data exist. Such dialogue will assure that public data is accurate and the best tool for assessing product hazards and standards-based remedies.

Conclusion

OPEI appreciates the opportunity to provide input to this important request, and recommends the following summary priorities, important to our members.

- a. Reliance on voluntary standards as spelled out in statute and the current CPSC strategic plan;
- b. Early engagement with consumer product manufacturers to discuss and resolve concerns, in advance of public action;
- c. Reliance on science and publicly available data to prioritize consumer product safety risks;
- d. Continuous improvement of data resources to instruct voluntary standards development first, and mandatory rulemaking as a last resort;
- e. Withdrawal of inactive rulemakings, as they create uncertainty in the market;
- f. Continued access and engagement between industry and stakeholders, by way of forums, workshops, and individual meetings.

Thank you for consideration of these comments, and please contact me if we can provide further information or answer any questions.

Best regards,



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**Comments of the Magnet Safety Association
Before the
U. S. Consumer Product Safety Commission
April 17, 2019**

The Magnet Safety Association (“MSA”) appreciates this opportunity to comment on the priorities of the U.S. Consumer Product Safety Commission (“CPSC”) for Fiscal Year 2020. MSA represents U.S.-based manufacturers and distributors of small high-powered magnets sold to consumers. The magnets sold by MSA members are intended for adult use, are not toys for children under the age of 14 and are not marketed as such. MSA’s mission, among other things, is to promote public awareness of the safe use of our products through responsible labeling, promotion, distribution and sales practices.

In 2018 MSA filed comments with the CPSC, during its priorities exercise, requesting that the agency collaborate with MSA to address our shared safety goals. A copy of those comments is attached. MSA again makes this same request of the agency. We continue to be concerned that small powerful magnets are being sold without warnings as to proper use and as playthings for children, especially in the on-line marketplace. If this continues, injuries are inevitable and will increase.

Our 2018 comments describe the background of this issue, the beneficial uses of our products to adult consumers, and the troubling state of the on-line marketplace. All of the comments we made in 2018 continue to be relevant today. We are especially concerned that, as an increasing amount of product without appropriate labeling and warnings and targeted to children is being sold, injuries will increase. We are also troubled that what enforcement efforts the agency has undertaken appear to be focused on U.S. companies with strong labels and marketing practices while those companies targeting children continue to sell with impunity. In short, there is the real potential for injuries to children to increase and the agency is looking in the wrong direction to

stop those injuries.

We are seeking the Commission's assistance in creating a regulatory environment where responsible companies can sell their products to adult users under rules that assure these products have the appropriate warnings, labels and packaging. Currently, a petition is pending that requests the Commission promulgate a consumer product safety rule that would be protective of safety while still allowing products with strong warnings and packaging to be sold. We urge the Commission to move forward with such a rule.

Alternatively, we urge the Commission to support an effort initiated by MSA to develop a voluntary standard addressing the ingestion hazard through the ASTM process. The ASTM standard development process is now well under way and we hope that a strong voluntary standard will be finalized soon. However, we recognize that developing a standard is only the first step in addressing the ingestion hazard about which we are all concerned. We must have wide-spread compliance with that standard. MSA will certainly undertake efforts to promote the safe labeling and marketing practices envisioned by the standard. However, we also will be seeking the Commission's assistance in assuring substantial compliance with any final voluntary standard.

As we told the Commission in 2018, MSA members are committed to work collaboratively with the CPSC to create a regulatory regime that allows consumers to enjoy the benefits of our products in a safe and productive manner. We hope that the CPSC is willing to work with us to accomplish this objective.



**Comments of the Magnet Safety Association
Before the
Consumer Product Safety Commission
2019 Regulatory Priorities
March 28, 2018**

The Magnet Safety Association (MSA) is an industry organization that represents United States-based manufacturers and distributors of high powered magnets sold to consumers. Our mission is to promote public awareness of the safe use of high powered magnets through responsible labeling, promotion, distribution and sales practices; foster magnet innovation and adoption in consumer technology in a safe and responsible manner; and provide expertise on proposed magnet safety regulations including voluntary industry standards for magnets and magnet technology. MSA members have all agreed to follow our Magnet Safety Guidelines, a copy of which is appended to these comments.

As discussed below, the actions of the CPSC since 2012 impeded the ability of the industry to proactively promote consumer awareness of the safe use and utility of magnets. Because those agency actions have now been judicially curtailed, we believe it is appropriate that the MSA, the CPSC, and other stakeholders concerned about magnet safety find ways to effectively collaborate to address our shared safety goal.

Overview

Emerging technology is making ever-increasing use of high-powered magnets, particularly in electronics and in a broad range of household and consumer products, including magnet sets often sold as adult desk toys or stress relievers. These magnets are small—usually 5mm or smaller in size—are high-powered and are often sold in sets, although individual magnets are also available. They are often referred to as small rare earth magnets, or SREMs.

Magnets are becoming smaller, more powerful, more accessible and less expensive. Therefore, a primary role of the MSA is to foster increased public awareness about safe magnet applications and use.

To encourage safe use of our products and to discourage irresponsible sales practices, in 2012, various magnet sellers initiated work with the ASTM to try to develop standards for the packaging, marketing and sale of high-powered magnets to consumers. The industry also proposed to the CPSC a joint campaign to educate the public and healthcare professionals about the safe use of magnets.

Unfortunately, these efforts were not successful because of the regulatory direction of the CPSC to ban small high-powered magnets that make up much of what MSA members sell. Through the CPSC's efforts, in 2012-2013, to recall many magnet sets and the subsequent 2014 ban of the product, the industry's efforts to create an environment for the safe use and enjoyment of our products were derailed. That the Commission's regulatory efforts could not withstand judicial scrutiny argues loudly against the approach taken by the agency.

The MSA is very concerned that the regulatory posture taken by the CPSC in recent years with respect to SREMs sold to consumers has resulted in those products with strong safety warnings and packaging being under attack from the agency while similar products sold with no concern for safety are readily available. This result creates disincentives for safe practices and a resulting unsafe marketplace—in large part, *because* of the regulatory actions of the CPSC. MSA believes that an established regulatory framework that requires strong warnings and secure packaging, augmented by an aggressive consumer education program, will accomplish more tangible safety results than the Commission's ill-advised efforts to ban the products we sell ever could.

The members of CMA urge the Commission to initiate rulemaking to promulgate a safety standard as outlined in the petition filed by Zen Magnets in 2017. If the agency determines that it does not have the authority or ability to issue such a rule, then we request that the agency proactively encourage voluntary standards developers such as ASTM to develop a voluntary consensus standard which we can then promote. MSA stands ready to help the CPSC accomplish either.

Beneficial Uses of SREMs

The CPSC justified its banning regulation on the fact that the product had low utility compared to the injuries associated with the product.¹ Partially, this is because the agency only saw the product as an adult desk toy or stress reliever and concluded that

¹ The reviewing court found that the agency did not fully consider the beneficial uses of the product and also found that the agency's analysis of the injury data was flawed.

such uses had little utility to consumers. If the agency were to fully examine the product today, MSA fully believes that it would come to a different conclusion.²

While its benefits as a stress reliever are important and should not be downplayed, the product has other beneficial uses that the CPSC has not considered. For example, the product has many applications for science, technology, engineering and math (**STEM education**). While the STEM application is not as widely appreciated in the U.S. classroom (in part, we believe, because of the CPSC's actions to restrict the product), magnets are being widely used in classrooms in other countries, especially Asia. For example, one MSA member has created an "education bundle" for STEM educators—lesson plans for using magnetic principles, as illustrated by SREMs, in teaching geometry, mathematics, and physics. SREMs are being used in other settings to encourage youth to learn about STEM principles. For example, a MSA member company has been invited by the Science Olympiad to create a workshop for young people, focusing on the principles of magnetism using SREMs. While Dr. Boyd Edwards, during the adjudicative proceeding against Zen Magnets, discussed in some detail how he uses magnets in his teaching, MSA can point to many other professors and educators who also use SREMs in the classroom. See, for example, the comment from a high school biology teacher who stated during the rulemaking comment period "I use magnets such as these [i.e. SREMs] as an invaluable teaching tool when discussing proteins structure and function." Use of SREMs in the classroom is not an isolated or one-off practice and its use is now growing.

Related to the STEM educational benefits of the product are the **artistic and creative benefits** to the user. The web sites of MSA members have many examples of sculptures and art works created by users. See for example, <https://zenmagnets.com/gallery/> and <https://www.dotpedia.com/> for two examples. The creative and educational uses of the product are increasingly being recognized by consumers. See for example, this recent Parade Magazine article extolling both the creative and educational experience for SREM users, <https://parade.com/627489/rachelweingarten/stem-and-science-toys-for-girls-and-boys/>.

SREMs have provided the foundational building blocks for new products based on the innovative and technical advances flowing from SREMs development and use. MSA is aware of new products that directly trace their development to SREMs and which are a direct result of the SREM product being developed, used and marketed. See for example: <https://nanoport.io/components/connector>. Also see

² The agency's utility analysis is curious since it allows for a great deal of agency "value judgment" about how consumers value products. It is especially interesting that button batteries account for exponentially higher injuries and deaths to children—with the same injury profile of young children swallowing the small shiny batteries. Yet the agency has agreed to work with the industry to beef up product packaging and educate consumers about the dangers of battery ingestion.

<https://www.kickstarter.com/projects/veritasium/snatoms-the-magnetic-molecular-modeling-kit>. By way of further example, the MacDiarmid Institute for Advanced Materials and Nanotechnology (New Zealand) is using SREMs to assist in its research and product development mission. The **technology advances** that SREMs are responsible for were never considered by the CPSC.

Finally, the **therapeutic and stress relief benefit** of the product should not be given short shrift, as MSA believes happened during the CPSC rule analysis. MSA is aware of a number of people who have experienced profound benefit from the product. As an example, a MSA member company reported being contacted by one individual (Mike) who reported that his son “had a severe injury to all the fingers on one hand. Mike relayed that [SREMs] were the only thing he would play with that helped him with getting his dexterity back.” And, as another example, the same company was contacted by David (24 years of age) who “suffers from severe depression and anxiety. He uses [SREMs] to refocus his energy and de-stress during particularly difficult social situations.” Mike and David are real people, among many others, who benefited from using SREMs and take no solace in the government discounting their experiences with the product.

The Changing Marketplace

The CPSC’s actions over the past five years have resulted in a marketplace that is less safe than that which could have been created through stakeholder collaboration. The CPSC has focused its regulatory firepower and taxpayer resources on U.S. companies, members of MSA, with strong safety warnings. To date those efforts have been unsuccessful. The agency has seen its banning regulation judicially overturned and its recall efforts aggressively challenged. While the CPSC’s recent focus has been directed largely at one company with no record of injury and very strong warnings, it has taken its eyes off the rest of the market.

Even a cursory internet search shows that small strong magnets, imported primarily from China, are being marketed on many sites. Imported magnets sold online are readily available, have inconsistent warnings and often have no safety warnings on the packaging. Here are just two examples of some of the many products now being sold without the appropriate safety warnings:

MSA is very concerned that the growing presence of such products will thwart our efforts to build an appreciation for the power and safe use of magnets among consumers of our products. We question the logic of allocating resources to try to shut down U.S.-based companies with strong safety practices while products with no warnings are being imported and sold by major online retailers without apparent concern from the agency. That this is happening illustrates the need for the agency to devote resources during Fiscal Year 2019 to the promulgation of a mandatory safety standard that allows for the sale of magnets with appropriate warnings and packaging or for the agency to work with voluntary standards groups to achieve this objective.

Elements of a Sensible Safety Regulation

The petition filed by Zen Magnets in August 2017 set out the elements of a regulation that would be protective of safety while still allowing for products with strong warnings and packaging to be sold.

MSA would support a regulation that includes the following elements:

- **Label warning requirements**
 - that comply with recognized warning terminology and graphical features, and
 - that make clear the ingestion hazard.
- **Instructions**
 - that describe how to use and account for magnets to avoid ingestion/aspiration hazards;
- **Packaging**
 - that deters child accessibility and that reinforces safety warnings, and
 - that includes warnings permanently affixed to package and that require user to actively break warning seal.
- **Marketing** that emphasizes the adult nature of the product including:
 - for retail sales, an agreement that the product will not be sold with children's products, or in a retail environment that is made up predominantly of children's products, and
 - for direct sales, age-gating or similar requirements to curtail sales to children under 14 years of age.
- A **consumer education** effort should augment the regulation.

If the agency determines that it does not have the authority or ability to promulgate such a regulation, the MSA is committed to either developing its own standard or working with an appropriate consensus standards-writing group, such as ASTM, to

develop and promote such a standard. CPSC's encouragement and assistance in these activities would facilitate such an effort.

Conclusion

MSA's member companies are keenly aware of the laudatory motives that drove the CPSC to recall and regulate SREMs. In some cases as parents of young children ourselves, we certainly do not want to see the products we sell involved in the injury or death of a child. However, we also understand that our products are valued and being used safely by millions of consumers and that the demand for and the beneficial uses of our products are growing. We have seen that the CPSC's efforts to ban SREMs have not resulted in removing the product from the marketplace but instead have harmed companies trying to do the right thing while creating incentives for less safety-minded companies to sell their products without restraint.

This result has turned the notion of sensible safety regulation on its head. We are committed to correcting this situation and resolve to work collaboratively with the CPSC to help bring about a regulatory regime that allows consumers to enjoy the benefits of our products in a safe and productive manner. We hope that the CPSC is willing to work with us to accomplish this objective.



April 18, 2019

Via Email - cpsc-os@cpsc.gov

Alberta Mills

Division of the Secretariat
U.S. Consumer Product Safety Commission
4330 East West Highway, Suite 720
Bethesda, MD 20814

Re: *Fiscal Year 2020 2021 Commission Agenda and Priorities and Fiscal Year 2019 Mid-Year Review*

Dear Acting Chairman Buerkle and Commissioners:

The ***American Home Furnishings Alliance*** (hereafter AHFA) is the largest and most influential trade association serving the U.S. home furnishings industry. AHFA's 400-member companies operate both domestic and overseas manufacturing facilities and comprise an extensive global supply chain that provides home furnishings in every price point and style category to American consumers. Member companies provide approximately 50,000 manufacturing jobs throughout the U.S. and contribute to a \$35 billion segment of the nation's economy. AHFA member companies have operations in 31 states and 7 foreign countries.

AHFA writes to CPSC in the spirit of collaboration and desire to continue the working partnership with the agency to continue raising the bar for furniture safety across the country. The Commission's ANPR addressing the ***'Risk of Injury Associated with Clothing Storage Units Tipping Over'*** (Docket No. CPSC-2017-0044) and the proposed NPR, impact one of the industry's largest product categories – bedroom furniture – and one of the most important segments within that category – clothing storage units (CSUs). AHFA's member companies are committed to manufacturing clothing storage units that are engineered and designed to be inherently stable by meeting the performance testing requirements detailed in

ASTM F2057-17. In addition, AHFA member companies are also committed to manufacturing residential upholstered furniture that meets the performance requirements of **California Technical Bulletin 117-2013** and are committed to demonstrating compliance to these performance test methods without the use of flame-retardant chemicals.

In response to the request for comments concerning the Commission's agenda and priorities for fiscal years 2020 and 2021 and in anticipation of the Commission's upcoming consideration of the 2019 Mid-Year Review, the AHFA offers the following.

1. ***The Commission Should Allocate Significant Resources for Compliance Activity for Noncompliant CSUs***

AHFA supports and welcomes the guidance provided to the industry regarding compliance with ASTM F2057-17 in the agency letter dated February 27, 2019.¹ The CPSC's letter confirms that AHFA and CPSC strongly agree that noncompliance with the standard is a serious issue that must be addressed and it is unacceptable for manufacturers and retailers in the US market to make or sell products that do not comply with the standard. The agency's designation of CSUs that do not meet ASTM 2057-17 as ***'having a defect which could present a substantial product hazard'*** and the agency's public commitment of opening investigations to seek appropriate corrective action for any such CSUs is welcome news that is supported and appreciated by AHFA and its members. An active and robust CPSC compliance effort is critical to reducing incidents, ***leveling the 'playing field'***, and significantly promoting compliance with ASTM F2057-17 for all manufacturers of CSUs.

To that end, AHFA strongly encourages the agency to allocate significant resources, through both the FY 2019 Mid-Year Review and the 2020 Operating Plan, to sweep the marketplace and open compliance investigations to seek appropriate corrective action for non-compliance. While CPSC's recent letter sends a clear message regarding the agency's stance on noncompliance, the furniture industry is so disparate

¹ CPSC Letter Dated February 27, 2019 from DeWane Ray - Deputy Executive Director for Safety Operations.

that the only meaningful way to make a substantial impact to reduce noncompliance is if the agency doesn't rely on self-reporting by the same companies who are selling noncompliant products. Instead, the agency must match its position regarding noncompliance with the significant resources needed for CPSC compliance staff to take decisive action to identify noncompliant products and seek appropriate corrective actions from the companies making or selling them. Opening investigations and seeking appropriate corrective actions from these companies will not only be an effective tool with respect to the CSUs under investigation but will also serve as an effective deterrent against those companies selling noncompliant products in the future.

The need for this type of effort is evidenced by the CPSC's 2016 briefing package on furniture stability, which stated that 50.8% (31/61) of samples that CPSC suspected might not comply with ASTM F2057 were, in fact, not in compliance with the standard. These results, even though not statistically significant and based on targeting of suspected noncompliant units, raise serious red flags with respect to the existence of noncompliant products in the marketplace. Without the agency's willingness to allocate resources to find and seek appropriate corrective action for non-compliant CSUs, both consumers and the companies diligently working to design and engineer compliant CSUs will continue to be disadvantaged by competitors who disregard the standard. By opening investigations and seeking corrective action for non-compliant CSUs in the marketplace, the agency will apply much needed pressure on manufacturers and retailers to ensure their CSUs meet the performance testing requirements of the standard, are properly labeled, and include a qualified anchoring device.

Finally, while AHFA understands ASTM F2057-17 is a voluntary consensus standard, it is critical for CPSC to update its enforcement guidance letter, after allowing for an appropriate implementation period, to reflect significant revisions to the standard. The agency should also allocate future resources necessary to conduct new market sweeps after allowing for an implementation period in the same manner as outlined above and on a prospective basis based on the date of manufacture of the CSU.

2. ***The Commission Should Continue Dedicating Significant Resources for Technical Work on Furniture Stability***

AHFA supports continued and significantly increased agency resources to support the diligent work of CPSC staff on the design of experiments/testing protocol for the new round of CSU testing and staff participation in 'tech-to-tech' meetings with many different groups of stakeholders. During the last meeting AHFA held with CPSC staff, it was agreed that information about the agency's testing protocol would be shared with stakeholders. AHFA greatly appreciates this transparency and believes it is essential that all testing be done in a transparent environment.

Even though the details for the design of experiments related to '***dynamic testing***' have not yet been outlined, AHFA was pleased to learn at the latest 'tech-to-tech' meeting that CPSC has plans to contract with a qualified third party to conduct a study with the goal of generating human factors and biomechanical data that would inform the answers to the litany of questions recently raised about how children interact with CSUs. In the absence of such information as a basis for the testing protocols currently under development, there is insufficient scientific rationale for any test methods produced that are meant to account for dynamic stability.

Generating the necessary data to inform how children interact with CSUs - both the magnitude and location of forces that are exerted on CSUs during their interaction - is possible with a well-designed study that includes sufficient testing to account for the varying geometries of both children and CSUs, for example, drawer extension distance, child height and weight, hand hold heights, etc. Such a study would require a significant allocation of agency funding for actual dynamic testing done in a safe environment using a testing protocol approved by an institutional review board and a statistical sampling of participants. Given the very high priority the Commission has placed on the issue of furniture stability and the essential role of government agencies like the CPSC in undertaking preventative public safety research, AHFA strongly urges the agency to match that level of priority by ensuring that sufficient funding is allocated for the

planned study as a part of its 2019 Mid-Year Review adjustments and 2020 Operating Plan.

It is critical that the dynamic stability portion of the agency's research be scientifically sound, properly funded, well designed, transparent, and allow for public input. The CPSC's Information Quality Guidelines state: "CPSC's staff and contractor technical reports related to engineering, health science, or hazard analysis issues potentially have impacts on important public policies and private sector decisions, such as changes in voluntary standards. Therefore, CPSC's information in these reports should be highly transparent and capable of being reproduced by qualified persons." The tech-to-tech meetings conducted with CPSC staff and CPSC's participation in development of the ASTM standard have helped to further this important goal. AHFA looks forward to continued meetings with CPSC staff in a similar collaborative manner as the design of experiments is further developed and the dynamic stability study is scoped and defined.

3. ***The Commission Should Allocate Sufficient Resources to Achieve an Expedited Mandatory Furniture Stability Rulemaking and Continue Related Consensus Standards Work***

The AHFA welcomes and supports the Commission's recent expediting of an NPR for a mandatory rule that would direct staff to develop a rule package to promulgate a furniture stability regulation under Sections 7 and 9 of the CPSA. AHFA believes enough resources should be expended on this effort during fiscal years 2019 and 2020 to ensure that this goal is met. A mandatory regulation will level the playing field for all manufacturers of CSUs and substantially reduce noncompliance. Active enforcement of such a standard, including at the ports of entry, will facilitate compliance and effectively work to reduce furniture tip-over incidents. As the rule making package is contemplated, it will be critical to include an adequate ***implementation time line*** for manufacturers to make the appropriate design/engineering changes to CSUs covered by the scope of the mandatory furniture stability standard.

AHFA supports the continued contributions of CPSC staff as a part of ASTM 2057. With respect to changes to the standard, AFHA supports a change in the minimum height to 27 inches and appreciates the work of staff to iron out complicated issues these types of changes produce, such as defining the exclusion for nightstands so that it does not create any confusion in the marketplace.

AHFA continues to disagree on a revision of the test weight prescribed in Section 7 of F2057-17 to 60 pounds. The agency has not demonstrated a data-driven correlation that testing to 60 pounds would be effective in reducing tip-over incidents or quantified the extent to which it would be more effective than testing to 50 pounds. The 50 pound test weight established for the performance test outlined in Section 7 of F2057-17, appropriately reflects the age and weight of the most at-risk children based on the CPSC's incident data. Further, without a data-driven correlation, AHFA believes the agency leaves open the possibility that a heavier unit could increase the risk of serious injury, while perhaps providing no measurable increase in protection.

4. ***The Commission Should Continue to Allocate Resources for Education Activities on Furniture Stability***

AHFA continues to believe in and support the agency's '***Anchor It!***' campaign. AHFA urges the agency to adequately fund the campaign in fiscal years 2020 and 2021. AHFA also urges the agency to work with and support educational outreach to retailers, because they are the primary means of interaction with the consumer. It is critical that retailers are aware of the standard and understand how to adequately communicate its requirements. It was with this important educational objective in mind that AHFA created its '***WE COMPLY***' campaign for the industry's largest trade events in High Point, N.C., and Las Vegas. The effort helps retailers identify showrooms where compliant clothing storage furniture is available and helps manufacturers educate uninformed retail buyers about the importance of ***ONLY*** offering compliant products in their retail establishments.

In addition to these efforts, AHFA has also discussed the ***UL Stability Verified*** program it endorses and compliance with the ASTM standard generally in meetings with the product safety committee of the Retail Industry Leaders Association (RILA), the National Retail Federation (NRF), and Home Furnishings Association (HFA specifically addresses issues facing furniture retailers) – all trade associations dedicated to the retail space. AHFA also continues to work with Amazon, Walmart, Target, Rooms to Go and other big box retailers in the furniture space on compliance with the ASTM standard.

AHFA believes it is critical to work with the retail community – providing education on the issues surrounding furniture safety and the risk of furniture tip-over. Retailers have direct contact with the consumer and can work with manufacturers to ensure the products offered meet the requirements outlined in the ASTM standard for CSUs. It is for this reason that AHFA supports and appreciates the Acting Chairman’s comments at ICPHSO about her office’s efforts to connect with retailers.

5. ***The Commission should adopt California’s Technical Bulletin 117-2013, regarding Residential Upholstered Furniture Flammability and Terminate the 2008 NPR***

The issue of upholstered furniture flammability has been a topic of discussion and debate at CPSC since it inherited the Flammable Fabrics Act from Congress in 1973. The issue of small-open flame and smolder ignition standards have been proposed and evaluated by the CPSC since 1981. For over 30 years, the CPSC has inherently understood that the focus on cigarette-smolder ignition remains the highest value effort in reducing the incidence and severity of residential upholstered furniture fires.

AHFA believes the Bureau of Household Goods and Services [formally the Bureau of Home Furnishings and Thermal Insulation] has done the ***‘heavy lift’*** and developed a standard that adequately addresses most fires associated with residential upholstered furniture, ***California Technical Bulletin 117-2013*** (hereafter CA TB 117-2013). The engineering strategies, e.g. barrier materials and flame-retardant chemicals required to demonstrate compliance to open flame test methods, i.e. BS-5852, and 16 CFR 1632/1633, are not applicable to the diverse universe of residential upholstered

furniture nor warranted to demonstrate compliance to CA TB 117-2013. Open flame standards for residential upholstered furniture limit fabric choice, negatively impact comfort and styling, have a significant cost impact, and require the use of flame-retardant chemistry.

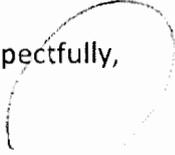
If the Commission determines, even considering the significant improvements to residential upholstered furniture safety in recent years, that a national residential upholstered furniture flammability standard is justified, adoption of CA TB 117-2013 by the agency provides the best opportunity to partner with industry, NGOs, and first responders to address safety in a manner that will attract consumers to the product, and therefore, maximize the impact and benefit of the rulemaking. Currently, CA TB 117-2013 incorporates both methods of compliance proposed by the Commission in the 2008 NPR and uses a performance test method that has been proven repeatable, reproducible, and correlates to full scale. The 2013 revision offers additional consumer choices without compromising on flammability performance.

The issue of upholstered furniture flammability today has broad stakeholder consensus concerning the use of flame-retardant chemicals and their potential risk to consumers. Since its promulgation in 2013, industry has been able to qualify fire safe fabrics and offer consumers upholstered furniture that is free of flame-retardant chemicals. The timing could not be better for the agency to move swiftly to adopt CA TB 117-2013 and continue working with stakeholders to address any emerging risks identified by staff.

Regardless of whether the agency adopts CA TB 117-2013, the Commission should formally terminate its upholstered furniture rulemaking to remove the cloud of uncertainty with respect to whether CPSC will propose a different upholstered furniture flammability regulation in the future

AHFA respectfully submits these recommendations to the Commission and looks forward to close collaboration with staff to work through the various details outlined above. AHFA strongly believes staff can play a critical role in addressing these principal issues.

Respectfully,



Andy S. Counts

Chief Executive Officer
American Home Furnishings Alliance

c.c: Acting Chairman Ann Marie Buerkle
Commissioner Bob Adler
Commissioner Elliot Kaye
Commissioner Dana Baiocco
Commissioner Peter Feldman
DeWane Ray, Deputy Executive Director Safety Operations
Michael Taylor, Directorate for Laboratory Sciences
Rick Rosati, Chairman ASTM F15.42



April 17, 2019

The Honorable Ann Marie Buerkle, Acting Chairman
The Honorable Robert Adler, Commissioner
The Honorable Dana Baiocco, Commissioner
The Honorable Peter Feldman, Commissioner
The Honorable Elliot Kaye, Commissioner

U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Dear Acting Chairman Buerkle and Commissioners Adler, Baiocco, Feldman and Kaye:

The American Academy of Pediatrics (AAP), Consumer Federation of America (CFA), Consumer Reports (CR), Kids In Danger (KID), North American Society for Pediatric Gastroenterology, Hepatology and Nutrition (NASPGHAN), and the U.S. Public Interest Research Group (PIRG) write to urge the U.S. Consumer Product Safety Commission (CPSC) to prioritize high-powered magnet sets for its Fiscal Year 2020 agenda. High-powered magnet sets represent a substantial product hazard to children and should be removed from the market.

To prevent the known harms associated with high-powered magnet sets, we urge the CPSC to establish a strong safety standard for small rare-earth magnet sets without delay. A strong, mandatory standard would prevent the widely recognized child harms from small magnets – up to and including death – *before* they occur. High-powered magnet sets are composed of tiny high-powered magnet balls or cubes, often with 200 or more magnets to a set. When two or more magnets are swallowed, their attractive force (flux) allows them to find each other across or between different segments of the digestive system. For example, connections (fistulas) can develop between the stomach and the small intestine or between the small intestine and the colon, putting any person who swallows them at high risk for an abdominal catastrophe.

Our groups applauded the 2013 recalls of these dangerous products by the CPSC¹ and Health Canada² as well as the CPSC's 2014 safety standard that effectively banned the sale of small rare-earth magnet sets after children suffered critical injuries and even died due to ingesting these magnets.

¹ <https://www.cpsc.gov/Recalls/2013/high-powered-magnet-balls>.

² <https://www.canada.ca/en/health-canada/services/consumer-product-safety/advisories-warningsrecalls/lettersnoticesinformation-industry/information-manufacturers-importers-distributors-retailers-products-containing-smallpowerfulmagnets.html>.

Recent research shows that government efforts to limit dangerous high-powered magnet sets in the marketplace were working to protect children. Researchers set out to study the impact of Canada's recall by comparing data on magnet ingestions during the two years before the recall (2011 and 2012) to the two years after the recall (2014 and 2015).³ In the two early years, there were 22 multiple magnet ingestions, six operations to repair bowel, and nine endoscopic procedures. In the two years after the recall, there were five ingestions, one operation and four endoscopic procedures. "Government regulations are one of the strongest instruments in the policy toolbox to effect change," the researchers wrote. "... Our study shows that in this particular case, the policy intervention appears to have quickly mitigated the threat of multiple magnet ingestions."⁴ It is unlikely that an education campaign alone could have had the same impact as a recall.

We were therefore deeply dismayed with decisions by the Tenth Circuit Court of Appeals and the Federal District Court of Colorado, which vacated the magnet sets rule and a recall order, respectively. We urge the CPSC to re-issue the recall order and work quickly to finalize a strong safety standard that addresses the court's concerns, as sufficient data exists demonstrating the safety hazard that high-powered magnet sets pose.

Unfortunately, these life-threatening magnets have found their way back into the hands of children. Anecdotally and via media reports, pediatric gastroenterologists and other physicians have expressed an increase in high-powered magnet ingestions following their re-entry into the U.S. market. On April 1, 2019, CBS News published a story about the significant harms these tiny high-powered magnets can cause when ingested⁵ – risks that are not intuitive or easily understood by the average consumer. A recently-published study in the journal *Pediatrics* found that the number of children who went to U.S. emergency rooms because they swallowed small objects, including high-powered magnets, nearly doubled from 1995 to 2015.⁶ Importantly, 71.1 percent of children who swallowed more than one magnet required hospitalization. Products like high-powered magnets pose a particular risk to children because of the level of injury that can result from their ingestion.

We urge the CPSC to move expeditiously to help prevent further injury and death from high-powered magnet sets by issuing a strong mandatory safety standard for them.

Sincerely,

American Academy of Pediatrics
Consumer Federation of America
Consumer Reports
Kids In Danger
North American Society for Pediatric Gastroenterology, Hepatology and Nutrition
U.S. Public Interest Research Group

³ [http://www.jpeds.com/article/S0022-3476\(17\)30187-7/fulltext](http://www.jpeds.com/article/S0022-3476(17)30187-7/fulltext).

⁴ <http://www.aappublications.org/news/2017/04/21/Magnets042117>.

⁵ <https://www.cbsnews.com/news/doctors-sound-the-alarm-on-the-dangers-of-kids-swallowing-magnets/>

⁶ Orsagh-Yentis D, McAdams RJ, Roberts KJ, McKenzie LB. Foreign-Body Ingestions of Young Children Treated in US Emergency Departments: 1995-2015. *Pediatrics*. 2019. Epub ahead of print.



CPSC Agenda and Priorities FY 2020 and/or 2021

Written Comments Submitted by Kimberly Amato
Founder Meghan's Hope and Founding member, Parents Against Tip-Overs

Fourteen years ago, on December 18th, 2004, I had planned to spend the day making holiday crafts, wrapping gifts, and making Christmas cookies with my 6-year old son and my 3-year old twin son and daughter.

Instead, I woke to every parent's nightmare. We found our beautiful 3-year old daughter Meghan lifeless beneath her dresser. It had fallen on her sometime in the night while the rest of the family was asleep. We did not hear it fall, as it fell on her tiny body on a carpeted floor. She was unable to cry, her airway crushed by a drawer under the weight of the dresser. I walked out of the hospital that day with a box that contained a lock of her blonde hair, a plaster heart with her hand and foot print and a tiny pink bow, and a brochure on grief, and I had to figure out how to tell her brothers she was gone forever and live my life without my precious little girl. My heart was shattered into a million pieces... and I buried my little girl three days before Christmas.

I vowed that day; no other child would die the way Meggie did. Surely, if parents just knew of the danger, they'd immediately take action to stop it. Surely, retailers would do everything in their power to help me share this message and save lives. Meghan's Hope was born the night she died in concept in an email blast and became reality just two weeks later as a simple Website. Social media did not yet exist. It was the best way I could think of to reach people. I was disheartened to learn it wouldn't be that easy and even more so to learn Meggie wasn't the only child to die this way and in fact, the number of children injured and killed by fallen furniture have risen since her death!

As an "overprotective" parent who was also a childbirth educator, my home was well childproofed. I even had taller more unstable pieces of furniture anchored to the wall (although I now know they were not anchored with a device strong enough to support the weight of the furniture, let alone of it loaded and with the weight and force of a child interacting with it). I had NO idea her dresser, made by a well-known juvenile furniture manufacturer and wider than it was tall, could have tipped over, let alone killed a small 3-year old child. Yet it did. It never crossed my mind that furniture sold in the U.S. (or any other products sold in the U.S., especially for children's use) might not be safe. Especially small and heavy pieces like her dresser.

I wrote to the then CPSC Commissioner, asking about this hazard. Why did I, someone who was not only a parent who prided herself on childproofing everything she could, but also someone who taught new parents about baby care and home safety, not know of this danger? It was not anywhere to be found in literature or on the internet. Parents were not being taught about this danger because those who were in a position to educate them simply didn't know, and clearly, it's a danger. I assumed this type of accident was rare and surely with some awareness and education, Meghan's death would be one of the last.

I soon learned that this type of accident was not rare. That tens of thousands of children were injured every year by furniture, TV, and appliance tip-overs, and approximately every 2 weeks a child died from their injuries. I then learned these numbers only included what was reported to the CPSC by parents, hospitals, and medical examiners. If a death certificate didn't state the cause of death due to a tip-over, it was missed. If an ER doctor or pediatrician didn't report an injury due to a tip-over, it wasn't counted.

If I didn't know how or why to report my daughter's death to the CPSC, how would other parents?! Do physicians, hospitals, and medical examiners all know? If not, why not?

I then learned that companies that made other childproofing products also made anchors specifically for securing furniture to the wall, but they were not sold in stores where their other childproofing supplies were? Why not?! My guess is it was because they were not in demand. In fact, they are still not sold as widely in stores today as other childproofing supplies are, though they are available online. Had I had seen them next to the outlet covers and toilet locks in a store, I'd have purchased them and used them! The same is true of parents today. \$5 and 15 minutes to anchor her dresser, and the knowledge of how and why to do it properly, *would have saved her life.*

The Katie Elise and Meghan Agnes Act was introduced into the U.S. House of Representatives in 2005 with 45 bi-partisan co-sponsors. It asked that the CPSC enact mandatory standards for safety of furniture and electronic devices that pose a hazard of tipping based on its design, height, weight, stability, or other features. It also asked for warning labels about tipping and the inclusion of anchoring devices. It was re-introduced in 2007. The bill did not get passed, but it did impact and inform the ASTM voluntary safety standard for clothing storage units going forward.

I wrote to the CEO's of local and national retail stores, furniture stores, and members of Congress, alerting them to this danger, sharing Meggie's story and the CPSC safety alert at the time, and asking that they sell furniture anchors and use my brochure, the current CPSC safety alert, or some other signage to alert consumers to the danger and how easy it is to prevent. I did not hear back from a single one of them. People took Meghan's picture and my story into big box stores asking for furniture anchors and no one knew what they were even asking for. I vowed to change that in any and every way I could.

Today, I am 100% in support of the STURDY Act just introduced to the U.S. House of Representatives, and it is my hope that Congress takes action to do what the CPSC and the ASTM furniture safety subcommittee has been unable and unwilling to do the past fourteen years. Adequately protect children from the danger of furniture tip-over by passing the STURDY act into law.

I have been advocating for furniture safety and the dangers of tip-over for fourteen long and painful years, and the harsh truth is, if there were a stronger and mandatory furniture safety standard in place, Meghan might have been the last child to die from this 100% preventable tragedy. Sadly, she was not, and many more families have lost children since, while the CPSC's hands were tied, and forward progress appears to be determined by political party affiliation rather than the safety of the American children on certain issues. And all the while, the ASTM furniture safety subcommittee stalls and stonewalls progress toward a standard that would substantially reduce the number of injuries and deaths from furniture tip-overs putting their bottom line over the safety of children. Until they, and the CPSC commissioners are willing to lay a small child they love in front of their dresser and apply the testing standards they think are strong enough to protect children from a tip-over, the standard is not strong or adequate enough.

For this reason, I am asking that furniture tip-over awareness and prevention be at the top of the Commission's priority list for the next fiscal year with actions including, but not limited to:

- The Commission needs to use its authority to recall furniture that is not compliant with the current voluntary standard immediately and use every tool at its disposal to not only get those items off the market and out of homes as soon as they know it's a danger, but to ensure the

American people hear about the hazard or recall and know what to do to remedy it. ONE death is too many.

- The Commission needs to be *actively involved* in the ASTM sub-committee on Furniture Safety and pro-actively advocate *in person* at the committee meetings and on the phone for task group meetings, to pressure the industry to create a stronger and adequate safety standard now, and once that standard exists, to make it mandatory. If it does not exist, then the Commission needs to write a standard that will adequately protect children and make it mandatory now. We cannot wait for the ASTM furniture safety sub-committee any longer nor can we wait for more injuries and deaths, what everyone likes to refer to as “data”. The data exists and has not changed significantly for the past 10+ years with regard to the number of injuries and deaths to children each year from tip-overs, which is surely enough to prove the current voluntary standard is not adequate to protect children from tip-overs.
- The CPSC should issue and enforce a mandatory furniture safety standard for CSU’s. At a minimum a **mandatory** furniture safety standard should:
 - Cover clothing storage units 27 inches in height and higher (and be immediately reduced if even one death is reported from a CSU of a height lower than 27 inches)
 - Define the test weight to the weight of a child at 72 months of age based on current anthropometric data, as the vast majority of injuries and deaths occur involve children 5 years of age and younger
 - Account for the dynamic forces of a child 72 months of age climbing in open drawers or pulling on open drawers to simulate real-life situations. They can do this by testing with all drawers open and developing a standardized test to simulate the dynamic force of a child climbing (perhaps using a weighted robot). Children do not slowly and gently gradually apply 50 lbs. of force to the top drawer of a dresser on a level floor with no carpet in real life, which is the current test method, and why it is inadequate and misleading to consumers. The Commission needs to have the funds available to conduct this testing in the next fiscal year.
 - Account for the effect of carpet on stability by determining an angle of testing that simulates the effect of the average pile of carpet, padding, and carpet tack as most tip-overs happen in rooms with carpeting.
- Commissioner Buerkle has publicly remarked that she supports these measures, and has put the manufactures, importers, distributors and retailers on alert telling them not to sell furniture that is not compliant with the current voluntary standard, and that the Commission would impose penalties to those who did not comply, *but the Commission must follow through with industry to hold them accountable to do the right thing and follow through on their statement and to recall non-compliant furniture immediately and pressure ASTM to strengthen the voluntary standard now*. Too many innocent lives have been lost to tip-overs while the ASTM has dragged their feet on making meaningful and effective changes to the standard, and the CPSC’s mandate is to serve the American consumers, not the furniture industry’s interests and desire for higher profits. Engineers have already proven safe, stable furniture that would comply with a height of 27 inches and a test weight of 60 pounds can be made and at an affordable price point.
- Section 6(b) of the Consumer Product Safety Act needs to be repealed immediately. It takes more lives than it saves and favors the companies and manufacturers, not the consumers. The Commission is charged with product safety and the American People, and the most vulnerable, our children, should be the priority. The “red tape” and delays that section 6(b) causes needs to go and go now. The CPSC needs to have the power to issue safety alerts, warnings, and recalls based on injury and death reports, without the company/manufacturer having to agree to it and then be allowed dictate the terms of these warnings and recalls, and without the expense and

time the legal challenges take. The current method is backward, time consuming, expensive, and directly responsible for countless injuries and deaths because of the time it takes to act to protect consumers and their children, and the “gag” that is placed on the Commission during the current process.

- Funding for the CPSC needs to be increased immediately by a significant amount, so the Commission has the budget and funds to be able to use toward educational campaigns like Anchor It!, recall initiatives, an improved system for reporting dangerous products, an improved and easy to navigate Web site and saferproducts.gov, and the tools it needs to carry out it’s directive to protect consumers, especially with regard to tip-overs.
- The Anchor It! Campaign needs to continue and with the support of the AAP, the furniture industry, and retailers in sharing the Anchor It! message must be actively pursued and encouraged by the Commission. As one of the CPSC Anchor It moms, I’ve advocated for the need to anchor furniture for fourteen years, and I was a lone voice for many of those years. The message is vitally important, and it needs to be publicized in a vast and comprehensive way. Parents need to hear this message from their childbirth educators, pediatrician, OB or midwife, maternity and newborn units of hospitals, at stores where they shop, in parenting magazines and apps, on TV, on social media, and online. Retailers should be strongly encouraged to sell and advertise anchoring devices and showcase furniture in showrooms properly secured to the walls with informational documentation as to why anchoring is necessary. It shouldn’t take a multimillion-dollar lawsuit over a child’s death to get a company to launch an informational and anchoring for safety campaign, yet right now, that’s the only thing that does. The anchoring message is vital but it’s not yet common knowledge.
- Improving the furniture safety standard and making it mandatory will make an impact with new furniture coming into the market but it won’t address the millions of pieces of at-risk furniture already in people’s homes, which is why this campaign is so vital. According to research conducted by Consumer Reports Advocacy
 - Only about one-quarter of Americans are anchoring any furniture
 - Only 27% of Americans have anchored furniture (Of those, 66% used the anchors that came with the furniture, which are not always adequate to actually hold the furniture when it’s fully loaded with the weight of a climbing 5-year old child on it)
 - 73% of Americans have NEVER anchored furniture
 - 54% without children under 6 in the home did not think anchoring was necessary
 - 7% with children under 6 in the home said that the children were not left alone

In conclusion, the issue of furniture tip-over remains a clear and present danger to citizens of the U.S., especially the most vulnerable, our children, and one that is literally in every single household in the U.S., not to mention schools, day cares, hotels, church halls and classrooms, retail stores where furniture is displayed, and other public spaces. It needs to be at the top of the Commission’s priority list for the coming fiscal year(s).

The CPSC must act now by creating and enforcing a comprehensive and mandatory furniture safety standard and put an end to these preventable injuries and deaths. In order to do this, the Commission needs the appropriate funding and authority to not only create and implement such a mandatory standard, but it also needs the ability to issue warnings and recalls freely, without having to get the consent of the company or manufacturer in violation of the current voluntary standard and any future standard. The Commission also needs the funding and support to improve their avenues of communication, including Website and recall resources, and broaden the Anchor It! campaign with their partners and advocates to reach every household in the U.S.

If these processes and standards were in place fourteen years ago, I'd still have my beautiful Meggie, and hundreds of thousands of children would not have suffered injuries or death from a furniture tip-over since. How many more children must suffer debilitating injuries and how many more parents must bury their children before the Commission uses the power and tools currently available to them to put an end to it?

I must believe the Commission wants to do the right thing, but they can't without unanimous agreement to do so, adequate funding, bi-partisan support and focus on the consumer instead of the pressure from industry. They must be willing and able to use all the avenues and tools available to them currently within their scope of power to protect consumers and their children from furniture tip-over, and the legal freedom to do so.

Thank you.

Kimberly Amato

Kimberly Amato

Founder, Meghan's Hope www.meghanshope.org

Founding member, Parents Against Tip-Overs www.stoptipovers.org





Shane's Foundation, NFP

3 Golf Center #295, Hoffman Estates, IL 60169
www.ShanesFoundation.org • 847-867-5978

AGENDA AND PRIORITIES FY 2020/2021

Thank you for allowing me to submit comments on the CPSC's agenda and priorities. I am Lisa Siefert, Founder and Executive Director of Shane's Foundation but more importantly I am a mom. My daughter is 12 and my son, Shane, is 2 forever.

"Love you," I said to my baby boy. "Love you," he said back from his bed as I closed the door to his bedroom for his afternoon nap. Later, I went to wake my baby from his nap as my husband came in from yard work. My husband heard a sound that was unrecognizable - my screams. I found Shane under his dresser.

I can tell you about the horrors of that day but no words can describe what our family has been through and will be living with the rest of our lives. I can tell you how we had to tell Shane's sister when she was only 4 1/2 that the doctors couldn't fix him and we had to leave the hospital without him. I can tell you how we were forced to let Shane be transported to a Chicago morgue for an autopsy. I can tell you about walking into the funeral home and seeing Shane, so tiny in his little white casket. But words will never describe the pain. Words can't describe waking up every morning to the shock realizing once again Shane isn't here. Trying to answer the questions my daughter asks when we don't understand it ourselves. I can't possibly describe the torment we will live out our lives with.

I founded Shane's Foundation in 2012, a mere year after Shane passed away. I felt the urgent need to warn parents of this hidden danger in their homes. No family should go through the death of their child, especially one that is so easily preventable and no child should pass away in such a horrific way as Shane did. Shane's Foundation is a child safety not-for-profit organization focusing on furniture, TV and appliance tip-over awareness and prevention - and I need your help.

ANCHORIT!

I am proud to be an AnchorIt! Mom. I believe AnchorIt! is crucial to the public's awareness of this hidden hazard. Much effort and funding has gone into this program and I urge you to continue this campaign and distribution of the materials. You already have a good foundation of partnerships dedicated to building the momentum on this program. I firmly believe AnchorIt! should be a priority to continue to use these resources. This message is especially important to families that need to anchor furniture already in their homes as well as the need to use the strap that comes with their new furniture.

While anchoring furniture is important, I think the CPSC should encourage manufacturers to look to design solutions to tipping furniture. I further urge you to recall furniture that does not meet the current standard. Your leadership will show a commitment to safer furniture with these recalls.

ASTM PRESENCE

Manufacturers need to hear your voice and support with your leadership in ASTM committees looking at a stronger ASTM standard. The standard should mimic real life use such as additional weight of 60 lbs. that matches a current 5 year olds weight according to recent data, carpet surface, loaded drawers and include all furniture, even those shorter than 30" such as KID and Shane's Foundation tested in our report. We urge CPSC to continue to prioritize this work, giving staff the time and resources they need to develop strong standards that will reduce injuries and deaths from dressers and clothing storage units.

EFFECTIVE RECALL

For products that do not meet the voluntary standard, they should be recalled. Recalls need to accelerate to take dangerous products off the market. Further, companies with a recall, such as IKEA, need to be helped with recall effectiveness. The public needs to be made aware of and steps to be taken on how to get that product fixed or out of their homes.

The CPSC needs to make tip-over prevention, education and recalls of dangerous furniture a priority. The list of children since I last sat in front of you has grown by over 200 more children dead.

Shane, Meghan, Charlie, Chance, Camden, Ted, Harper, Conner, Braydon, Nick, Katie, Jacob, Ellie, Maddie... These children are not just statistics. They are our sons and daughters, grandchildren and siblings. They are our babies, taken away from loving families.

LISA SIEFERT
SHANE'S FOUNDATION, NFP





**charlie's
house**

The Home Safety Site

6324 N. Chatham Avenue
Suite 223
Kansas City, MO 64151

www.charlieshouse.org

April 17, 2019

Alberta E. Mills
Division of the Secretariat
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

RE: CPSC Priorities FY2020 and FY2021

Commission-

As a parent of a child lost to furniture tip over accident, I urge the commission to exhaust all resources to address this unnecessary risk to US Consumers and children which is prevalent in the current furniture market. It's amazing how easily those words roll off my tongue and hundreds of other parents like me, because those words are NOT easy. It's NOT easy to have lost a child at 2 ½, it's NOT easy to think that his death could have been prevented, it's NOT easy to learn that there are ways to manufacture a common household dresser to be tip resistant and yet some manufacturers choose not to, it is NOT easy to learn how this process continues to stall and other kids continue to be injured and killed.

There is a lot of attention currently on the tip over issue with the CPSC, and I and other members of Parents Against Tip Overs (PAT) have been assured by each commissioner this is a top priority. As each commissioner has acknowledged this ASTM committee work has stalled, delayed, and reached a point of unproductivity. Far too many children have unnecessarily died as a result of inaction from this process and I urge the commission to continue taking proactive steps to raise the standard, resulting in reducing the risk to children from unstable furniture.

I request that with the 2020 Operating Plan and fiscal year 2021 Congressional Budget Request the Commission continue to fully fund current testing, and fund additional rounds of testing to fully address dynamic forces and surface (carpet) testing. Additionally, all excess mid-year funds should be allocated to furniture testing until this problem is resolved.

There is currently a lot of attention to this issue from the CPSC, which is a *welcome change*. Please ensure that this priority remains at the forefront until it results in a **meaningful change** which will save lives of innocent children who are simply normally interacting with their environment and items in their own home, like a dresser.

A solution may NOT be easy, but I assure you, it has to be easier than the alternative of continuing to do nothing and losing more children to this preventable tragedy.

Thank you for the current attention to this important issue, by keeping furniture tip over a priority of the CPSC and fully funding additional testing, I am hopeful the CPSC's leadership will result in hundreds of lives saved.

Brett Horn



National Fireworks Association

Executive Director

Nancy Blogin

8224 NW Bradford Court | Kansas City, MO 64151

Phone: 816-505-3589 | nlblogin@gmail.com

April 17, 2019

Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Re: Agenda and Priorities FY 2020 and/or 2021, 84 FR 10050

To the Commission:

The National Fireworks Association (“NFA”) respectfully submits these comments in response to the request for views about the Commission's agenda and priorities for fiscal years 2020-2021.

NFA appreciates the vital role that the Commission and CPSC staff perform in protecting American consumers from unreasonable risks of injury or death, and NFA shares in its goal of consumer safety. NFA also recognizes that with limited resources and thousands of products under its jurisdiction, CPSC must choose wisely where it will devote its efforts.

It is with this in mind that NFA strongly urges the Commission to halt all activity on the proposed “Metals Ban” in the proposed Amendments Fireworks Regulations, Docket No. CPSC-2006-0035. More than three years after being proposed as an “interpretative” rule, the Metals Ban still lacks any safety or scientific justification. And it threatens to limit consumers’ enjoyment of a cherished tradition while hurting small businesses across the country, as demonstrated by the thousands of commentators who have spoken up against it.

To the extent the Commission chooses to move forward on the proposed amendments, NFA urges the Commission to adopt a permissible metals allowance between 10% and 15% – far less than the 30% metals content of some devices that Staff has recognized are currently in the marketplace. Given the widespread changes to device composition, base attachment, and other components in the proposed amendments, a metals allowance of 10-15% would be a reasonable and prudent step forward.¹

¹ In its prior written comments, NFA has advocated for a permissible metals allowance of 15%. See pp. 10-12 of March 14, 2018 Comments and p. 14 of July 17, 2017 Comments. Testing results submitted by NFA demonstrate that non-metallic powders can have the same energetics as powders with 12.5% powdered aluminum. See September 24, 2018 Letter attaching *Burst Charge Powders Equivalency Testing*. Although this data supports a metals allowance of greater than 10%, NFA would be willing, as a compromise, to accept a final rule with an allowance of between 10% and 15% given that most aerial devices could function in a safe and proper manner with those amounts of powdered metals in their burst charges.

Consumer Product Safety Commission

April 17, 2019

Page 2

NFA does not oppose most other aspects of the proposed amendments, as set forth in its prior comments. NFA thus supports the Commission moving forward on the proposed amendments, with a reasonable metals allowance between 10% and 15%.

NFA supports reasonable guidelines on formulations of burst charges in aerial devices, and those guidelines should preserve market norms while targeting outliers. As NFA has stated time and time again, it is ready to roll up its sleeves and join with the CPSC, the APA and the AFSL, to reach a solution that makes sure aerial fireworks continue to be safe for consumers.

Sincerely,



Nancy Blogin
Executive Director



BEFORE
THE CONSUMER PRODUCT SAFETY COMMISSION
PRIORITIES HEARING
April 17, 2019

These comments are filed on behalf of Hövding Sweden AB (“Hövding”), a manufacturer of inflatable protective headgear for bicyclists. On December 15, 2017, Hövding filed a petition with the CPSC requesting a conditional exemption from the testing requirements of 16 C.F.R. §1203, the bicycle helmet standard. Because of the innovative technology used in the Hövding product, it is impossible for many of the testing requirements in the regulation to apply. However, as fully described in the petition and summarized below, an alternative safety standard has been developed that provides comparable (if not superior) protection to the CPSC standard and with which the Hövding product fully complies.

The Hövding has been thoroughly tested both in the laboratory and in the field. Its effectiveness in providing *significantly greater head protection*—both for skull fractures and for concussions—than do conventional shell-type helmets is well-documented.

While the Hövding is available and widely used in Europe and Japan, American consumers are being denied this greater level of safety because of a regulation that cannot accommodate new technology. Hövding respectfully requests that the CPSC expeditiously grant its petition. Hövding requests that this action take place during the current Fiscal Year, but in no account, no later than early FY 2020.

What is the safety issue addressed by the Hövding? In the past year and a half since the petition was filed, approximately 1200 bicyclists have been killed in fatal accidents. According to the Insurance Institute for Highway Safety, in 2016, there were 848 bicycle fatalities (up from 818 in the previous year). While helmet use can save lives, well over half of those killed in bicycle accidents were not wearing a helmet. Again, according to IIHS, the vast majority of these fatalities occurred in an urban setting. With the growth of bike share systems in many American cities, the number of bicyclists killed is expected to grow. Bike share is now gaining hold as an established

transportation option in cities across the U.S., but the vast majority of bike share riders do not wear helmets. The Hövding is compact and can easily fit in a backpack, briefcase or tote bag. It also provides far superior head protection than is afforded by a traditional shell-helmet. It is the perfect option for bike share users who cannot or will not wear a shell helmet but want the head protection afforded by a helmet.

Who is the Hövding for? The Hövding is for urban and rural cyclists who want head protection but also want an alternative to hard shell-type helmets. The product is not for mountain bikers and is not for children. It is ideal for urban commuters, recreational bikers or bike share users. A survey of Hövding customers showed that approximately *half of them did not use head protection before using the Hövding.*

How does it work? The Hövding is an airbag for the head and when inflated, protects nearly all of the head, while leaving the field of vision open. It is made with an ultra-strong nylon fabric that does not rip when scraped against the ground. The inflated airbag covers a much larger head area than a traditional cycle helmet. The airbag fixates the neck and provides extremely soft and gentle shock absorption. The pressure remains constant for several seconds, making it able to withstand multiple head impacts during the same accident. After that the airbag slowly starts to deflate. The gas inflator is a cold gas inflator that uses helium. It is placed in a holder in the collar on the cyclist's back.

How does it recognize an accident from normal cycling? Thousands of tests were done, re-enacting cycling accidents using stunt riders and crash-test dummies, to collect the specific movement patterns of cyclists in accidents. In parallel, an equal amount of normal cycling data has been collected using test cyclists wearing Hövding in everyday cycling. Also, data based on everyday movement, such as leaning over to pick up something, twisting or jumping up and down, was also collected. Based on this collected data, the company has developed an algorithm that can distinguish normal cycling from accidents. When activated, Hövding records the cyclist's movements 200 times a second. In the event of an accident, the cyclist's abnormal movement is detected, and the airbag inflates. In addition, the Hövding runs a *self-diagnostic test* every time it is activated and then continuously during operation to ensure that all critical hardware and software function as designed.

How is the Hövding activated? Hövding's battery is easily charged through a USB charger using the cable included with the product. At the front of the collar there are LEDs showing the battery level and whether the Hövding is activated or not. Activation is also indicated by a sound signal. A fully charged battery lasts for approximately 9 hours of active cycling. LEDs at the front of the collar show the battery level, and a low battery level is indicated by both light and sound. The user has both visual and audible signals that the Hövding is activated and when the battery charge is low.

What about the collar? The collar is made of waterproof, functional fabric that provides protection for the built-in airbag system. The collar is not washable (although any marks on the collar can be rubbed off with a damp cloth) but is protected from wear, sweat and dirt by the surrounding fabric shell cover. The enclosing fabric cover is easy to remove and wash, and also makes it possible for the rider to change the appearance of the Hövding. The collar is ergonomically designed with even weight distribution across the shoulders. It is slightly heavier at the back than at the front so that when cycling the weight is resting on the rider's back.

How is the Hövding regulated? Currently, the Hövding is sold in Europe and Japan. The Hövding airbag is CE-marked after undergoing an extensive testing and approval process by the Technical Research Institute of Sweden, a governmental body accredited by the EU to develop testing methods and to test for compliance. CE marking is required for a cycle helmet to be sold in Europe and certifies that the helmet complies with the requirements laid out in the EU Directive for Personal Protective Equipment (PPE). The test method for demonstrating compliance with the PPE for traditional shell helmets is EN 1078, which is substantially similar to the CPSC regulation. Because the Hövding, by definition, cannot be tested in the manner prescribed by EN 1078, the new test method was developed to assure that the Hövding provides the protection required for PPE. Regardless of the test method used, all types of helmets must provide protection for the head in the form of shock absorption and force distribution in an accident. Complete protection in the event of an accident and functioning during normal use are basic criteria for CE marking, regardless of the helmet type. In addition, the two test methods set out environmental tolerance criteria for helmets to assure that they are able to withstand moisture and work in heat and cold, and also when subjected to the sun's ultraviolet light. Finally, the test method applicable to the Hövding

includes tests to assure proper working of the trigger mechanism, the battery and other electronic components.

Does the Hövding provide effective head protection? The testing to date shows that the Hövding provides a significantly higher level of safety from head injuries and concussions than do conventional shell helmets. This testing data is detailed in the petition, but to summarize, a test done by Stanford University found that "peak accelerations obtained from these experiments with airbag helmets achieve up to an 8- fold reduction in the risk of concussion compared to standard EPS helmets." Stanford also reported that "results for Hövding...demonstrate that such designs can significantly curtail risk of concussion and severe injuries, reducing HIC scores five-fold compared to standard EPS helmets (181 g vs 1250 g respectively)." Similar testing done in Europe found similar results: "The Hövding 2.0 helmet performed almost three times better than all the other conventional helmets (48 g vs. other helmets that were around 175 g)."

Does real-world experience show that Hövding works? The Hövding has proved to be quite popular in both Europe and Japan and sales are increasing at a rapid growth. There are now approximately 150,000 Hövdings in use throughout Europe and in Japan. There have been approximately 4000 deployments in accidents of which the company is aware. *There have been no skull fractures, concussions or other serious head injuries in any of those reported accident deployments.* There have been approximately the same number of instances where the Hövding deployed but the rider did not believe that an accident was imminent. However, this number is not a "hard" number for several reasons. First, the algorithm has a "better safe than sorry" factor build in so that it deploys if the circumstances suggest an accident is imminent even though the rider may not believe that to be true. Second, in certain European countries, home owners' insurance will only partially cover the cost of a Hövding replacement in case of an accident. However, the company has a generous replacement policy for any Hövding that deploys without cause. Consequently, it is suspected that the number of accident deployments is probably higher than reported and the number of possibly unneeded deployments is lower.

Why aren't Hövdings available to American consumers? The CPSC bike helmet regulation prevents the Hövding from being sold in the U.S. market. This is because cyclist head protection must comply with the regulation, but that regulation only covers shell-type helmets and includes requirements that

do not and cannot apply to the Hövding. The test method that has been developed in Europe and subsequent testing to that method shows that the Hövding fully complies with its safety requirements and provides a greater level of safety than that afforded to bicyclists from traditional shell-type helmets.

In addition to the information in the petition, Hövding executives have met with CPSC representatives both here in the U.S. and in Sweden, and the engineers who developed the test method have answered extensive questions about the product and the safety testing being performed. Therefore, Hövding again respectfully requests that the CPSC expeditiously grant its petition to exempt its airbag head protector from the bicycle helmet testing requirements as long as it meets the requirements of the applicable European safety standard. It has been shown that the Hövding saves lives. Unless this petition is granted, American bicyclists will be deprived of the life-saving protection afforded by this product. This would be a truly ironic result from an agency charged with protecting consumers.

May 9, 2019

Ms. Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission

Ref: "Agenda and Priorities FY 2020 and/or 2021"

Dear Ms. Mills,

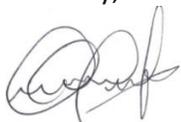
On May 1, 2019, the International Federation of Inspection Agencies presented oral testimony to the CPSC on priorities for the fiscal year 2020 and 2021. During that testimony, IFIA recommended changes to the incidence reporting system to address the increasing use of IoT devices. It is expected that advancement such as 5G will lead to explosive growth in IoT devices. 5G – a global network evolution promising ultra-fast data speeds, massive connectivity, high reliability and innovative coverage options. That means, the hazardization risk of IoT can grow on an exponential level without the policy and regulations that are just beginning to be discussed.

In response to a request made by Commissioner Kaye for additional information on specific changes that could be made to the incident reporting system, IFIA kindly submits the attached additional information for review by the CPSC.

We appreciate the opportunity to present at the hearing. Should you have any questions, please don't hesitate to contact Roberta Telles at +1 240 507-3392 / rtelles@ifia-federation.org.

Sincerely,

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IFIA Recommendations – CPSC Incident Reporting System

IFIA recommends that CPSC establish a tagging process to allow products that are connected and/or when the connection contributed to the hazardization is identified.

According to the CPSC Recalls Retrieval Web Services Programmers Guide, the following fields are available under 'Products'

- Product
- Name
- Description
- Model
- Type
- Category ID
- Number of Units

IFIA recommends the addition of a new category ID that is assigned if the product is connected, networked, or similar.

Alternatively, IFIA recommends that the tagging be applied if CPSC determines that the hazardization was created by the device's connection functionality – as an example, due to connection, software update, or similar.