



## UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION

### MINUTES OF COMMISSION MEETING

October 11, 2023

**Decisional Matter: Notice of Proposed Rulemaking (NPR): Safety Standard for Infant Rockers and Infant/Toddler Rockers**

(Briefing package dated September 13, 2023, OS# 0247)

**Decisional Matter: Notice of Proposed Rulemaking (NPR): Safety Standard for Residential Gas Furnaces and Boilers**

(Briefing package dated September 20, 2023, OS# 0248)

Chair Alex Hoehn-Saric convened the October 11, 2023, meeting of the U.S. Consumer Product Safety Commission in open session at 10:05 a.m. The Chair made welcoming remarks and summarized the three agenda items for the meeting, which included the two decisional matters noted above and one briefing matter. Commissioners Peter A. Feldman, Richard Trumka Jr., and Mary T. Boyle were in attendance.

Chair Hoehn-Saric introduced the first decisional matter; the Notice of Proposed Rulemaking for a Safety Standard for Infant Rockers and Infant/Toddler Rockers. He introduced staff who were present to address questions from the Commission: Zachary Foster, Project Manager, Directorate for Engineering Sciences, and Daniel Vice, Assistant General Counsel, Office of the General Counsel. Also in attendance were Jason Levine, Executive Director; DeWane Ray, Deputy Executive Director; and Austin Schlick, General Counsel.

Chair Hoehn-Saric advised that each Commissioner would have five minutes to ask questions of staff, with multiple rounds as necessary, followed by consideration of amendments. Before the first round of questions, the Chair stated that legal advice or legal questions concerning agency authority should not be discussed in open session.

Chair Hoehn-Saric called for questions for staff. The Commissioners did not have questions for staff. The Chair excused staff and commenced consideration of the draft proposed rule for a safety standard for infant rockers and infant/toddler rockers, as well as any amendments or motions to the proposed rule.

Chair Hoehn-Saric did not have any amendments and recognized each Commissioner by order of seniority for amendments. Commissioner Feldman did not have any amendments. The Chair recognized Commissioner Trumka for a motion (Trumka Motion 1). Commissioner Trumka moved to return the draft NPR to staff with instructions to incorporate five additional requirements to the proposed rule and resubmit an updated proposed rule for Commission consideration within 30 calendar days (See attachment 1 for complete text of Trumka Motion 1).

Chair Hoehn-Saric called for a second and Commissioner Boyle seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions or comments. The Commissioners discussed their respective positions and lack of support for the motion, and Commissioner Trumka was provided an opportunity to respond. After the first round, the Chair called for additional questions or comments and, hearing none, moved for a vote on the motion. The Commission voted (3-1) to not adopt the motion. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to not adopt the motion. Commissioner Trumka voted to adopt the motion.

Chair Hoehn-Saric then asked Commissioner Trumka if he had additional amendments, and he proposed an amendment he designated Trumka Amendment 3. Commissioner Trumka described his amendment to incorporate eight additional questions into the NPR to seek public comment on specific topics. (See attachment 2 for the complete text of Trumka Amendment 3).

Chair Hoehn-Saric called for a second and Commissioner Boyle seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions or comments. The Chair moved for a vote on Commissioner Trumka's amendment. The Commission voted unanimously (4-0) to adopt the amendment.

Chair Hoehn-Saric then called for additional amendments and recognized Commissioner Boyle for an amendment (Boyle Amendment 1). Commissioner Boyle described her amendment which would incorporate additional questions focusing on younger infants, for public comment. (See attachment 3 for the complete text of Boyle Amendment 1).

Chair Hoehn-Saric called for a second and Commissioner Trumka seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions or comments. The Chair moved for a vote on Commissioner Boyle's amendment. The Commission voted unanimously (4-0) to adopt the amendment.

The Chair called for any other amendments and, hearing none, moved for approval of the draft NPR for a safety standard for infant rockers and infant/toddler rockers, as amended, and publication of the same in the *Federal Register*. The Chair called for a second and Commissioner Boyle seconded the motion. The Commission voted unanimously (4-0) to approve the draft NPR as amended, and to publish the same in the *Federal Register*.

Chair Hoehn-Saric stated that each Commissioner would have up to 10 minutes for closing remarks on the NPR for a safety standard for infant rockers and infant/toddler rockers. The Chair provided his closing remarks and then recognized each Commissioner for closing remarks.

The Chair then introduced the second decisional matter: the Notice of Proposed Rulemaking for a Safety Standard for Residential Gas Furnaces and Boilers. He introduced staff who were present to address questions from the Commission: Ronald Jordan, Project Manager, Directorate for Engineering Sciences, and David DiMatteo, Attorney, Office of the General Counsel. Also in attendance were Jason Levine, Executive Director; DeWane Ray, Deputy Executive Director; and Austin Schlick, General Counsel.

Chair Hoehn-Saric advised that each Commissioner would have five minutes to ask questions of staff, with multiple rounds as necessary, followed by consideration of amendments. Before the first round of questions, the Chair reiterated that legal advice or legal questions concerning agency authority should not be discussed in open session.

Chair Hoehn-Saric called for questions for staff. The Chair and Commissioners Feldman and Boyle did not have any questions for staff. Commissioner Trumka asked Mr. Jordan whether he would support the goal of a final rule on the residential gas furnaces and boilers by the end of fiscal year 2024, to which Mr. Jordan responded in the affirmative.

Hearing no further questions, the Chair excused staff and commenced consideration of the draft proposed rule for a safety standard for residential gas furnaces and boilers, as well as any amendments to the proposed rule. The Commissioners did not have any amendments. The Chair then moved to approve the draft NPR for a safety standard for residential gas furnaces and boilers as drafted, and publication of the same in the *Federal Register*. The Chair called for a second and Commissioner Boyle seconded the motion. The Commission voted unanimously (4-0) to approve the draft NPR, and to publish the same in the *Federal Register*.

Chair Hoehn-Saric stated that each Commissioner would have up to 10 minutes for closing remarks on the NPR for a safety standard for residential gas furnaces and boilers. The Chair provided his closing remarks and then recognized each Commissioner for closing remarks.<sup>1</sup>

After the closing remarks, the Chair introduced the third and final agenda item, which was a briefing matter. Staff briefed the Commission on the FY 2024 Operating Plan.

There being no other business, Chair Hoehn-Saric adjourned the meeting at 12:07 p.m.

For the Commission:

Alberta E. Mills

Attachments:

1. Motion proposed by Commission Trumka - not adopted by the Commission (Trumka Motion 1)
2. Commission Adopted Amendment proposed by Commissioner Trumka (Trumka Amendment 3)
3. Commission Adopted Amendment proposed by Commissioner Boyle (Boyle Amendment 1)
4. Statement by Commissioner Feldman for the Residential Gas Furnaces and Boilers NPR

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<sup>1</sup> Commissioner Feldman issued a written statement regarding the NPR for Residential Gas Furnaces and Boilers (See attachment 4).

Trumka Motions and Amendments for Rockers NPR Decisional

**Motion 1 (Remand to Staff with Instructions for Additional Requirements):**

I move to adopt the following proposal:

The draft NPR is returned to staff with instructions to establish:

- an age restriction that prevents the rockers from being marketed, intended, or designed for children less than 6 months of age;
- a requirement that rockers include prominent warnings, on the products and their packaging, not to use for children less than 6 months of age;
- a prohibition on the inclusion of soothing features, such as vibrations or calming sounds;
- a third firmness test point at the point in the head area that is most likely to fail; and
- an anti-stockpiling provision.

Staff is instructed to establish these additions and resubmit to the Commission an updated NPR within 30 calendar days.

Trumka Motions and Amendments for Rockers NPR Decisional

**Amendment 1 (Add an Anti-Stockpiling Provision):**

On page OS-27, insert a new section above “**VI. Incorporation by Reference**” as follows:

*D. Prohibited Stockpiling*

Pursuant to section 9(g)(2) of the CPSA, 15 U.S.C. 2058(g)(2), the proposed rule would prohibit a manufacturer from “stockpiling” or substantially increasing the manufacture or importation of noncompliant rockers between the promulgation of the final rule and the effective date. The provision would prohibit the manufacture or importation of noncompliant products at a rate that is greater than 105 percent of the rate at which the firm manufactured and/or imported rockers during the base period. The base period is the calendar month with the median manufacturing or import volume within the last 13 months immediately preceding the month of promulgation of the final rule.

On page OS-40, insert “1240.3 Prohibited Stockpiling.” immediately below “1240.2 Requirements for infant and infant/toddler rockers.”

On page OS-57, insert a new section above the Secretary’s signature line as follows:

**§ 1240.3 Prohibited stockpiling.**

(a) *Prohibited acts.* Manufacturers and importers of rockers shall not manufacture or import rockers that do not comply with the requirements of this part in any 1-month period between [DATE OF PUBLICATION OF FINAL RULE] and [EFFECTIVE DATE OF FINAL RULE] at a rate that is greater than 105 percent of the rate at which they manufactured or imported rockers during the base period for the manufacturer or importer.

(b) *Base period.* The base period for rockers is the calendar month with the median manufacturing or import volume within the last 13 months immediately preceding the month of promulgation of the final rule.

Trumka Motions and Amendments for Rockers NPR Decisional

**Amendment 2 (Add a Third Firmness Test Point):**

On page OS 51:

Delete “7.14.5 Repeat the test on the remaining location” and replace with “7.14.5 Repeat the test on the second indicated location.”

Insert immediately below “7.14.5 Repeat the test on the second indicated location.” the following new subsection:

“(xviii) 7.14.6 Repeat the test a third time on a third location in the head area of the product that is most likely to fail.”

Renumber the subsections below accordingly.

Trumka Motions and Amendments for Rockers NPR Decisional

**Amendment 3 (Add Questions for Comment):**

On OS-38, insert requests for public comment as follows above the instructions for submitting comments:

In addition to the areas identified above, the Commission seeks comment on the following matters:

1. What physical design characteristics, not already addressed in this package, would best signal to adults that rockers are unsafe for infant sleep? Should any such characteristics be required for rockers?
2. Should rockers be allowed to be marketed, intended, or designed to accommodate babies that are too young to gain any physical developmental benefit from using them?
3. Would any additional warnings be useful? If so, what messages should be included?
4. Should soothing features, like vibration or calming sounds, be permitted on rockers?
5. Whether the NPR has identified the appropriate firmness test points, or whether any other test points should be included, for example, a third firmness test point in an area of the head space of the product that is most likely to fail the test, comparable to the additional test points proposed in the recent NPR for nursing pillows at 88 Fed. Reg. 65,865, 65,883 (Sept. 26, 2023).
6. Whether an anti-stockpiling provision should be included and, if so, whether the Commission should include an anti-stockpiling provision comparable to the one proposed in the recent SNPR for portable generators at 88 Fed. Reg. 24,346, 24,372 (Apr. 20, 2023).
7. Should torso angle restrictions be included? If so:
  - a. Should those restrictions set a maximum angle, under which sleep is appropriately safe?;
  - b. Should those restrictions set a minimum angle, above which a baby is sitting upright and unlikely to sleep?; or
  - c. Should those restrictions do both of the above (i.e., should products be permitted to be below X degrees or above Y degrees, but not any of the angles in between X and Y)?
8. The Commission requests comment on whether any rocker (with an incline “greater than 10 degrees”) in which infants are likely to fall asleep is safe for infants under 5 months, or for infants under 6 months. And, if such products are not safe, what modifications to the proposed rule—such as, for example, age grading—should be made to ensure that those products are not available for children in that age range.

## BOYLE AMENDMENT 1

## NPR: Safety Standard for Infant Rockers and Infant/Toddler Rockers

Insert additional requests for public comments as follows:

1. The Commission invites comments on the proposed definitions of infant rocker and infant/toddler rocker.
  - In addition to the staff's recommendation that the definitions include a weight limit, should a minimum age be specified?
  - With respect to product angle, is the specification of "greater than 10 degrees" in the proposed definition adequate to address positional asphyxia risks?
2. According to the June 2023 report from Boise State University, *Seated Products Characterization and Testing*, "Future studies should focus more on the biomechanical differences between younger and older infants within infant products." (p.173) The Commission requests comments on the biomechanical differences that impact the risks of injury and death associated with infant and infant/toddler rockers, particularly for premature infants and infants under 4 months.
3. The Commission invites comments on staff's recommendation that the warning label specifically address premature infants: "For babies born prematurely, consult a doctor before use." (See discussion at OS-125). Is a warning appropriate for any other groups of infants, for instance, infants under four months of age?
4. The Commission requests comments on the following question: What benefits, if any, do younger infants (under 4 months) derive from rockers in terms of motor development and visual stimulation? Do the benefits change and/or increase as an infant progresses from early infancy?





UNITED STATES  
**CONSUMER PRODUCT SAFETY COMMISSION**  
4330 EAST WEST HIGHWAY  
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COMMISSIONER PETER A. FELDMAN

**STATEMENT OF COMMISSIONER PETER A. FELDMAN REQUESTING  
COMMENTS ON PROPOSED SAFETY STANDARD FOR GAS FURNACES**

**OCTOBER 11, 2023**

Today, the U.S. Consumer Product Safety Commission (CPSC) voted to publish a proposed safety standard to reduce carbon monoxide (CO) injuries and deaths caused by residential gas furnaces and boilers. I voted to advance this rulemaking because of the deadly hazard CO presents, and to seek public input to strengthen it.

There are aspects of this rulemaking that merit further discussion. First, the cost-benefit analysis is lopsided, with costs outweighing benefits. The Consumer Product Safety Act requires that a rule's benefits "bear a reasonable relationship to its costs." The word "reasonable" is undefined. In this proposed rulemaking, our staff found that there are 59 cents of benefit for every dollar of cost. Staff conducted alternative cost-benefit analyses, and in none of those did quantifiable benefits exceed the quantifiable costs.

I am concerned that, however we calculate it, the difference between cost and benefit is large and may subject this rulemaking to legal challenge. I would be particularly interested in hearing from stakeholders regarding two questions: What factors should the Commission use to determine when a cost-benefit relationship is "reasonable?" And how should the Commission apply such factors in this specific rulemaking?

Second, our staff discussed European and Japanese standards for similar products to establish the technical validity of a standard based on CO shutoff technology. Staff conceded that adopting those standards would be inappropriate due to design differences among the markets. This raises technological feasibility concerns that I'm confident stakeholders will address. I am also interested in comments regarding the appropriate use of foreign standards in the promulgation of this rule, particularly in light of the D.C. Circuit's recent opinion in *WCMA v. CPSC*.

Finally, CPSC must find that any rule we write "imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated." Given the cost-benefit and feasibility issues I have discussed, I am interested to hear from stakeholders how this rulemaking meets the least burdensome requirement. In particular, I look forward to comments regarding other options that might be less burdensome for consumers, while still providing the requisite reduction in the risk of injury or death.