



U.S. CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, Maryland

Public Hearing: Commission Agenda and Priorities for FY 2022

Wednesday, April 7, 2021 – 10:00 AM

All attendees should pre-register for the Webinar. To pre-register for the Webinar, please visit <https://attendee.gotowebinar.com/register/2395411838620426511> and fill in the information. After registering you will receive a confirmation email containing information about joining the webinar.

EDT		Presenter	Affiliation
10:00 AM	Opening	Acting Chairman Adler	
10:05 AM	Panel 1	1 Benjamin Hoffman, MD, CPST-1, FAAP	American Academy of Pediatrics
		2 Nancy Cowles	Kids In Danger
		3 Rachel Weintraub	Consumer Federation of America
		4 Brett Horn	Charlie's House
		5 Crystal Ellis	Member of Parents Against Tip-Overs
10:30 AM	Panel 1 Questions	Commission	
10:55 PM	Panel 2	6 Oriene Shin	Consumer Reports
		7 Trista Hamsmith	Reese's Purpose
		8 Remington Gregg	Public Citizen
		9 Keisha Bowles	Another Day, Another Chance
		10 Kristen Kern	American Apparel & Footwear Association
11:20 AM	Panel 2 Questions	Commission	
11:45 AM – 12:45 PM	----- Lunch Break -----		
12:50 PM	Panel 3	11 Charles A. Samuels	Association of Home Appliance Manufacturers
		12 Karin Athenas	TIC Council of Americas
		13 Margaret P. Lewis	Survivors for Good
		14 Janet McGee	The LifTed, LLC
		15 Meghan DeLong	Conner's Legacy Foundation, Inc.
		16 Linda Kaiser	Parents for Window Blind Safety
1:20 PM	Panel 3 Questions	Commission	
1:50 PM	Adjourn	Acting Chairman Adler	

CPSC Agenda and Priorities for FY 2022
Public Hearing – April 7, 2021 @10am
Written Comments / Oral Presentations

1. Nils Behrndt, Acting Deputy Director-General for Justice and Consumers
European Commission
2. Karen Athanas, Executive Director **(ORAL TESTIMONY)**
TIC Council Americas
3. Kimberly Amato, Founder and President, Meghan's Hope
Founding Member, Parents Against Tip-Overs
4. Brett Horn, Charlie's House **(ORAL TESTIMONY)**
5. Léa Auffret, Senior Trade Policy Officer, Team Leader
BEUC – The European Consumer Organization
6. Nancy Cowles, **(ORAL TESTIMONY)**
Kids in Danger
7. Nicholas Georges, Vice President, Scientific & International Affairs
Household & Commercial Products Association
8. Keisha Bowles **(ORAL TESTIMONY)**
9. Meghan DeLong, Founder and President **(ORAL TESTIMONY)**
Conner's Legacy Foundation, Inc.
10. Janet McGee, MBA **(ORAL TESTIMONY)**
Founder & President of The LifTed, LLC / Co-Founder Parents Against Tip-Overs
11. Jennifer Cleary, Vice President, Regulatory Affairs
Charles Samuels, General Counsel **(ORAL TESTIMONY)**
Association of Home Appliance Manufacturers (AHAM)
12. Rachel Weintraub, Legislative Director and General Counsel **(ORAL TESTIMONY)**
Consumer Federation of America
13. Remington A. Gregg, Counsel **(ORAL TESTIMONY)**
Public Citizen
14. Crystal Ellis **(ORAL TESTIMONY)**
Member of Parents Against Tip-Overs
15. Trista Hamsmith, Mother/Founder **(ORAL TESTIMONY)**
Reese's Purpose

CPSC Agenda and Priorities for FY 2022
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16. Lee Savio Beers, MD, FAAP, President
Benjamin Hoffman, MD, CPST-I, FAAP **(ORAL TESTIMONY)**
President, American Academy of Pediatrics
17. Linda Kaiser, President **(ORAL TESTIMONY)**
Parents for Window Blind Safety
18. Oriene Shin, Policy Counsel **(ORAL TESTIMONY)**
Consumer Reports (CR)
19. Steve Lamar, President, CEO
Kristen Kern Manager, Supply Chain & Sustainability Initiatives **(ORAL TESTIMONY)**
American Apparel and Footwear Association (AAFA)
20. Margaret P. Lewis, Board President **(ORAL TESTIMONY)**
Survivors for Good
21. Ruth McDonough, Applied Textiles

1. Nils Behrndt, Acting Deputy Director-General for Justice and Consumers European Commission

**U.S. CONSUMER PRODUCT SAFETY COMMISSION PUBLIC HEARING ON
CPSC FISCAL YEAR 2022 AGENDA AND PRIORITIES**

SUBMISSION BY NILS BEHRNDT

**ACTING DEPUTY DIRECTOR-GENERAL FOR JUSTICE AND CONSUMERS,
EUROPEAN COMMISSION**

Thank you for this opportunity to contribute to the CPSC public hearing.

With increasingly global supply chains, the growth of e-commerce and the expansion of new technologies, the challenges to product safety extend beyond borders. Cooperation across jurisdictions is therefore key to protecting consumers on both sides of the Atlantic and globally.

We have a long-standing excellent cooperation with the US Consumer Product Safety Commission in the area of non-food consumer product safety. I am particularly pleased by our fruitful dialogue in multilateral fora, such as the Organisation for Economic Co-operation and Development, the United Nations Conference on Trade and Development and the International Consumer Product Health and Safety Organisation. In addition, we have a long history of high-level trilateral cooperation with the Chinese authorities. Biennial summits provide a useful setting for discussing and coordinating our product safety agendas.

As for the avenues for advancing our cooperation even further, we believe it would be useful to take up the talks on possible arrangements to exchange information on dangerous products found in our respective jurisdictions. Given the EU-US strong trade relationship and the similarities between our markets, this would greatly help authorities on both sides of the Atlantic to better target their enforcement activities as well as identify new and emerging risks. Discussions on a possible information sharing agreement started back in 2009 but have been on hold. For us, it would be essential to have reciprocal rights for the parties to use and share exchanged information. We would therefore invite the CPSC to encourage an appropriate legislative solution that would allow us to continue the negotiations.

I wish you all the best in your upcoming activities and look forward to further strengthening our cooperation.

2. Karen Athanas, Executive Director
TIC Council Americas

(Oral Testimony)

16 March 2020

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

Ref: "Agenda and Priorities FY 2022" – 86 FR 11509

Dear Alberta E. Mills,

The TIC Council Americas is pleased to provide the attached comments and to provide an oral presentation at the hearing on April 7, 2021 on the CPSC "Agenda and Priorities FY 2022," 86 FR 11509.

TIC Council is the global trade federation representing the independent third-party Testing, Inspection and Certification (TIC) industry which brings together more than 90-member companies and organizations from around the world to speak with one voice. Its members provide services across a wide range of sectors: consumer products, medical devices, petroleum, mining and metals, food, and agriculture among others. Through provision of these services, TIC Council members assure that not only regulatory requirements are met, but also that reliability, economic value, and sustainability are enhanced. TIC Council's members are present in more than 160 countries and employ more than 300,000 people across the globe.

We appreciate the opportunity to present at the hearing and to provide the attached comments. Should you have any questions, please don't hesitate to contact Karin Athanas at +1 240 762 8069 / kathanas@tic-council.org.

Sincerely,



Hanane Taidi
Director General
TIC Council



Karin Athanas
Executive Director
TIC Council Americas
kathanas@TIC-Council.org

Oral Testimony

Karin Athanas, Executive Director, TIC Council Americas
“Agenda and Priorities FY 2022”

Thank you, Commissioners, for inviting me to speak today. The TIC Council has long supported the work of the Consumer Product Safety Commission and we look forward to engaging with you and our fellow stakeholders on these important issues.

General Comments

The TIC Council supports and welcomes CPSC’s outreach to stakeholders in requesting inputs for the Commissions’ Agenda and priorities for FY 2022. TIC Council recently spoke at the CPSC workshop on Artificial Intelligence held on March 2nd of this year and we are thankful for the many opportunities that the CPSC provides its stakeholders to share our insights and feedback. The safety of consumers is paramount in all our minds and through that shared understanding, we as a community can work collaboratively to seek solutions.

TIC Council members have a global footprint with facilities in over 160 countries and have the technical expertise and capabilities in all aspects of product safety. They provide services to confirm the safety and compliance of products across all stages of the supply chain. From the design stages to post-retail and manufacturers, retailers, and importers of all sizes rely on TIC industry as a cost-effective solution to meet their legal obligations and demonstrate compliance with safety standards and regulations around the world.

To further support the CPSC’s work, TIC Council recommends that CPSC consider:

Counterfeits, A Risk to Safety

In 2020, the TIC Council hosted a third-part virtual panel on the affect that counterfeit products are having on consumers and industry and explored the work underway at agencies to address this growing issue. We were honoured to have CPSC Commissioner Baiocco participate as a part of those virtual events and encourage continued collaboration with the CPSC to address this issue. Through virtual events, workshops, round tables and more.

During the pandemic, the purchase of products online has sky-rocketed and reports from fellow stakeholders have identified a proliferation in fake websites, fake products, and on behalf of the TIC industry, fake reports, certificates, and marks. The labelling found on products as an easy and convenient way for consumers to confirm that products are energy efficient, meet safety standards, and have been tested, inspected, and certified. But bad actors continue to degrade consumer confidence when they counterfeit TIC Marks so as to pass off fake products as trustworthy.

We ask the CPSC to work with TIC Council and our industry partners to look for common sense solutions and raise the visibility of this issue with consumers.

Digitalization, Innovating for Safety

During the recent CPSC workshop on Artificial Intelligence, a theme carried throughout the event was innovating for safety. How can the industry as a whole work collaboratively to develop, design, and evaluate digital-capable devices such as those with Internet of Things (IoT) or Artificial Intelligence capability with safety as an integrated feature.

The TIC Council encourages the CPSC to continue robust discussions with the TIC industry and our industry partners and consumers to explore these concepts and to build a framework for measurement, evaluation, and confirmation. Establishing standards for data sets and new approaches for evaluating IoT and AI-capable designs and how best

to manage the compliance of the devices over time when software and other changes can dramatically affect the function of the devices.

The TIC Council looks forward to exploring these issues and seeking solutions with the CPSC and our industry and consumer partners.

Training and Education, Preparing for Tomorrow

During the pandemic, supply chains were disrupted, businesses were forced to modify their work schedules, implement new policies for safe business practices, and some unfortunately were forced to shut their doors. The TIC Council looks forward to 2022 as a year for regrowth, but with that will come the need to retrain new staff who have long been on furlough or have faced a job change and to support new organizations entering the market.

Training early and often builds safety into the earliest stages of the supply chain, and it is a preventive and cost-effective approach will support industry as it rebuilds. TIC Council looks forward to continuing our efforts to support industry in traversing such requirements by offering training and advising manufacturers and designers on best practices across the globe and better preparing them to meet the requirements of the CPSC and others.

TIC Council would welcome future partnership opportunities between CPSC and the private sector to make use of TIC member technical expertise and capabilities to help fulfil its mission.

Confirming Safety, Leveraging the Private Sector

In this turbulent time, the TIC Council members have supported industry and government by confirming the compliance of personal protective equipment and made use of remote options to conformity assessment to support the continued operation of businesses and we look forward to continuing our efforts in partnership with the CPSC in 2022.

Conformity assessment is an effective strategy to reduce cost over time. Identifying and addressing nonconforming products can protect consumers and prevent costly recalls. Manufacturers can shop for services based on price, speed, or location, and not be restricted to a single organization to review products.

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. And we look forward to continuing to support industry and the CPSC's mission through our conformity assessment work.

In closing, the TIC Council will publish this year our study on the Value of TIC, an evaluation of the unique and powerful role that Testing, Inspection, Certification and other forms of conformity assessment bodies play in supporting governments and industry by acting to evaluate products, services, and more to confirm their safety and reliability. It highlights that the work ahead requires collaboration and open dialogue and when we work together, beneficial change is possible. The TIC Council looks forward to sharing the study with you upon its publication and to continue our engagement with you the Commissioners, our fellow stakeholders, and others to continue the important work of confirming the safety of consumers.

3. Kimberly Amato, Founder and President,
Meghan's Hope
Founding Member, Parents Against Tip-Overs

Agenda and Priorities FY 2022

Submitted by Kimberly Amato and Meghan's Hope

As the Commission prepares its agenda and priorities for FY 2022, I thank the Commission for its dedication to furniture safety and ask that you continue to make it a top priority by:

1. Aggressively pursuing rulemaking for a robust, effective, and comprehensive mandatory furniture safety standard, with the goal of a final rule by the end of 2022.

The Commission needs to issue an NPR ASAP and make it an urgent priority. Put swift action to your words if this is truly the top priority of the agency and move through the process toward a final and mandatory rule as outlined in the STURDY Act as quickly and efficiently as possible.

It has been more than 5 years since the Commission first received a briefing package on furniture tip-over, more than 3 years since the ANPR was issued, and the *potential* of an NPR by the end of this year. The Commission has said repeatedly that tip-overs are a top priority of the agency. It boggles my mind that it takes more than a year, let alone four years, to move forward from the announcement of the intention to work towards a proposed rule (ANPR) to a *potentially* forthcoming NPR, a step that is not even required! Had the Commission issued an NPR four years ago, instead of an ANPR, we would certainly be closer to preventing injuries and deaths to children from furniture tip-overs than we are now.

History tells us that it can take upwards of 10-15+ years for the Commission to reach a final rule if safety priorities even get that far. We do not have one more minute, let alone another 10+ years to wait for an effective and mandatory furniture safety rule. The barriers to this process are cumbersome and unnecessary and the Commissioners should do absolutely everything in their power to expedite this final rule while also ensuring it addresses the key parameters lacking in the current voluntary CSU safety standard and as outlined in the STURDY Act.

The STURDY Act, the ASTM voluntary standards process, and progress on an NPR and swift progress toward a final rule can, and should, all happen concurrently, and they should all be aggressively pursued. We cannot wait any longer for "someone else" to gather data and create the desperately needed and long overdue comprehensive mandatory standard. Make no mistake, many of the ASTM F15.42 subcommittee members are waiting for the CPSC's data and the CPSC is waiting for the ASTM furniture safety committee to come up with a voluntary standard that is effective. The voluntary standards process for furniture safety is not working! More than enough time has passed, and hundreds of children have died, because of the resistance of the Commission to aggressively work towards a final rule addressing furniture safety. That is irresponsible to put it politely.

The STURDY Act would require the mandatory rule to be written within a year of its enactment, so why not take steps now to have that become a reality by the end of 2022? Time is of the essence!

This comprehensive, robust, effective, and mandatory clothing storage furniture safety standard needs to include testing for static and dynamic load accounting for the 95th percentile of the weight of a 72-month-old, multiple open and loaded drawers, and a test angle that accounts for the effect of carpet. The standard *must* apply to ALL clothing storage furniture regardless of size or height, and regardless of how it is described and marketed by the manufacturer or retailer. For example, "nightstands" of any size, need to be included in the final rule. This final mandatory rule is the best and fastest way to stop

tip-overs and the only way to ensure and hold all manufacturers accountable to comply with the standard.

ASTM has had 20 years to create a voluntary standard and has made very little meaningful progress toward change as the Commission is well-aware. The fact that furniture and CSU tip-over injury and death statistics have not significantly decreased in 20 years (and more importantly in the past several years) is more than enough evidence this process is not fast enough nor effective for the issue of furniture tip-over. And each day that passes without this robust mandatory furniture safety standard, children continue to be injured and killed by unstable furniture. Every. Single. Day. As I write this, two more children have died in just the past few weeks alone from dresser tip-overs!

2. Tip-over awareness Education

In addition to rulemaking, the agency must do more to educate the public about the danger of furniture tip-over in a broad and national way, through safety campaigns that are aimed not only at parents, but at caregivers, early childhood educators and pre and after school programs, teachers, childbirth educators, OB/Gyn's and midwives, social workers and department of children and family services workers, pediatricians, and grandparents.

This can be done through the Anchor It! Website, through infographics available for download, and partnering with the AAP, Safe Kids, and other child safety and advocacy organizations to reach these populations.

3. Safety Alerts and Recalls

The Commission needs to issue timely warnings and safety alerts, and use its full authority, and every tool at its disposal, to recall furniture that is not compliant with the current standard, issue unilateral recalls if necessary, and impose civil penalties where appropriate, to get dangerous furniture off the market, and adequately inform the American public about a hazard or recall, so they know what to do to protect their family. Recall information and safety campaigns do not save lives if parents and the public do not know about them!

4. Increase the scope, reach, and public awareness of saferproducts.gov to get more accurate and timely data, and by expanding who is required to report product hazards, injuries, and deaths beyond the NEISS hospital system.

To get better and more comprehensive data and capture more of the minor injuries and near-misses that often go unreported (and potentially save lives by identifying a tip-over hazard and issuing a recall) the agency must expand how data is obtained. That requires improving the awareness of saferproducts.gov, and more specifically, what to report and who should be reporting.

I also think one aspect that is missing and is a tremendously important aspect regarding potential for injury is that the *agency is only looking for sources to get injury and fatality statistics as evidenced using primarily the NEISS system*. I can tell you without a doubt there are hundreds, if not thousands of tip-over incidents that have happened just in the past several years that the Commission has no idea about. I and other tip-over parents hear about them, but you do not, nor do the manufacturers. People do not know they should report these incidents, nor do they know why or where to report them to. They are also often fearful because they are so deeply traumatized by the experience.

These are many near misses or tip-overs where there was only a minor injury that did not require an ER visit that are not being captured. Those children might never have needed to see a doctor or maybe went to their pediatrician or an urgent care center.

Every single one of those incidents involved a piece of furniture, often a CSU, and *every single one of them *could* have resulted in a serious injury or death*. Just like every single one of the incidents that killed our children, could have been a near miss or resulted in only a minor injury had the physics been different at that moment. Therefore, these doctors, physician assistants, nurses, and nurse practitioners all need to know what to ask, what to report, and the why and how of doing so.

A big problem with saferproducts.gov is that the average person does not know it exists. Nor do they know its purpose and what should be reported and why. There is a tremendous amount of valuable and important data out there on tip-overs alone that could inform the agency and the standards process that is not being captured, because people in a position to be able to provide this data have no idea they should, or how, where, and why to do so.

The agency needs to increase its social media presence with regards to furniture tip-over and saferproducts.gov, partner with all pediatricians (via the AAP) and family practice physicians, physician assistants, and nurses and nurse practitioners in all settings where they interact with families of children to educate them about saferproducts.gov, questions to ask about injuries to identify if a product was involved, and the how and why of reporting.

Pediatricians and E.R. and urgent care centers see far more children who have been injured by a product hazard or had a near miss than hospitals do, and that the agency never hears about. *Each and every one of those is a valuable data point that is currently being missed and that is not captured anywhere else*. This data is important to identify what products pose a significant hazard such that the public should be informed of the tip-over hazard.

Requiring medical examiners/coroners and detectives who investigate child injuries and deaths to include a product if it was involved in a death in their reports and on death certificates is also another missed opportunity in gathering data. While I realize this information is not always included or available to them, when it is (either from the ER/hospital or place of death), it needs to be documented when it is. My daughter's death certificate stated her death was due to asphyxiation from a fallen dresser, but many other tip-over parents report their child's death certificate did not include the furniture or TV that caused their death on their death certificate even when the ER clearly knew it did. It is a paperwork issue that can be easily changed with education and a systemic reporting change. It could literally be a check off box. Was this death caused by a household product? If so, what product?

Educating childcare providers, day care providers, and department of child and family services in each state are also groups that are ideally suited to identify and report incident data or assist families in doing so, but again, education to these groups is vitally important as well.

I can tell you that all of the parent advocates who present locally to all of these groups have been shocked by the fact that the vast majority of these groups do not know about or understand the scope and statistics on furniture tip-over nor do they currently educate parents/families about risk and prevention or know the who, what, when, where, how, and why of reporting incidents involving furniture tip-over to the CPSC.

I can also tell you that these groups are incredibly thankful for the knowledge and resources we provide and until we told them, had no idea the anchorit.gov or saferproducts.gov exists. A handful of parent advocates has done an amazing job of reaching other families, but it is a small blip on the screen compared to what the CPSC can and should do to educate and engage these groups and agencies.

5. The direction of the Anchor It Campaign and the importance of recognizing anchoring is not the long-term solution for tip-over prevention.

Anchoring is vitally important because right now, until there is a robust mandatory standard, it is the only way to reduce injuries and deaths to children from furniture tip-overs. However, there are many barriers to anchoring being a long-term solution to furniture instability that illustrate why it is not the answer. The Anchor It effectiveness survey pointed out many of these barriers and the Commission should work to address them through information campaigns. These are some of the many reasons why anchoring is a temporary solution and not a substitute for a robust and mandatory testing and safety standard.

- We know through the CPSC's own survey and one done by Consumer Reports that about a third of American's anchor even just one piece of furniture in their homes, even when they know the dangers of tip-over and why anchoring is important.
- We know many parents simply do not think it will happen to them or since they are always with their children, they are not at risk.
- There remains a persistent belief that only heavy or IKEA furniture needs to be anchored and this is perpetuated in the media. The Commission needs to be clear *all* furniture needs to be anchored, especially furniture with drawers, doors, or shelving.
- The Commission needs to include messaging that it does not matter how tall or short, heavy or light, expensive or cheap furniture is, nor does it matter what room of the house it is in, where it was purchased, or who the manufacturer is. You simply cannot tell by looking at any piece of furniture whether or not it's stable when drawers are opened, and dynamic forces are applied.
- We know many people do not have the tools or know-how to properly anchor furniture or are afraid to put holes in their walls or furniture due to financial penalty if they rent or have borrowed furniture.
- We know that many manufacturers use particle board instead of actual wood, and particle board is far more likely to result in an anchor failure by its very nature.
- There are so many types of anchors out there that the consumer is unsure which one is best, and they typically choose the least expensive ones.
- We know anchors are not standardized and most anchors are not tested for safety, especially in situ, and we also know anchors can and have failed, resulting in tip-overs. Either because they were inadequate to withstand the forces applied in real life, they were not well made or were counterfeit and the consumer didn't know it, they deteriorated over time (as plastic and nylon webbing often does), the furniture did not have any or enough available wood on the back of it to allow for the anchor to be installed properly, the provided screws or those used were not long enough, or they were installed incorrectly.
- Even when anchors are professionally installed, there is no guarantee they will not fail, especially since there are no mandatory testing standards for anchors, either.

These points illustrate there are just too many variables for anchoring to be a viable solution. Tip-over advocates have said repeatedly that requiring the consumer to take the last step to make a product “safe” is irresponsible. Furniture should be sold safe, as should any other product. The consumer should not have to be required to anchor their furniture to the wall to prevent a tip-over.

The Anchor It website is a good source of anchoring information, but the Website needs to be more robust and include:

- Information on the types of anchors available and pros/cons (price, plastic can become brittle over time, best for a particular type of material, adjustable straps, how to tell a counterfeit from a brand name, etc.)
- Information on anchoring into different types of materials and videos and infographics showing how to properly anchor and including tools and where to place anchors on the furniture and what not to anchor into (pressboard, drywall, etc.)
- Information on how and why to report a tip-over or near miss (saferproducts.gov)

Dedicated funding for the campaign to continue creating PSA’s like “Even While You’re Watching” and social media posts that not only get the attention of the target audience but also get engagement and follow through to action is necessary to continue.

The Commission should also partner with retailers and their Anchor It! advocates and collaborators and they should be encouraged to display tip-over information on their websites, at checkout registers, and display furniture in their showrooms and stores that is properly anchored with Anchor It Table tents on each unit. Retailers who sell anchoring devices should also be encouraged to display tip-over incidence and prevention information and retailers who sell furniture should be encouraged to also sell tip-restraints.

A free power-point presentation and infographic could be created for medical providers, childcare providers and DCF agencies to help them identify risk and have the conversation with families about anchoring and furniture safety. This, along with PSAs and the tip-sheets and posters are valuable resources that need to get into the hands of these agencies or businesses in every state. Presenting at their annual conferences or speaking at a formal meeting would be easy ways to introduce the idea. In my experience in speaking to these groups, even if they are aware of the risk of furniture tip-over, and many are not, they do not *get* how serious it is until they see with their own eyes how quickly it happens and learn what the current statistics are, and do not know what resources exist until I tell them.

6. Sensitivity training when interacting with parents and families.

Anyone who is doing follow up phone calls after an incident is reported, especially with parents or grandparents, needs to have training on how to have these conversations with bereaved or traumatized parents. Many of whom have been investigated for child abuse because authorities do not know the scope of the tip-over problem and possibly had other children taken away temporarily until the cause of death was ruled an accident. Many also had negative and inaccurate press about their child’s death. This is all incredibly traumatic to endure and understandably makes them very leery of any government agency who wants to talk to them about their child’s death.

Even where that is not the case, the nature of grief and child loss, or the potential of their child possibly dying, even if they survived, is such that many parents cannot or will not talk about their child's death, or even an injury or near miss, to anyone. Some are afraid if they do, they will somehow get in "trouble". Vocal parents who advocate are a rare breed, and we speak for all parents to be their voice as well. We are more than willing to assist in developing or providing this training, as this is something we are all intimately familiar with and some of us have specialized training in bereavement support or social work as well.

I certainly understand the CPSC is limited in part because of their budget, but many of these things could save the agency money in the long run while also honoring its mission and making the data collection easier and the process more streamlined.

7. Work with advocates and parent advocates more. It's free!

Involving and partnering with advocates to provide ideas for solutions, training, and implementation is free to the agency and a resource that is not used as much as it could be. Parent advocates have a wealth of real-world knowledge as well as connections to the demographic you need information from and want to get information to. Help us help you. As someone who has been involved in the Anchor It campaign from its inception, I can tell you that I think the successes of that program are in large part, because the agency did partner with and listen to what the parent advocates advised regarding how to educate the public and has seen the fruits of that collaboration as well.

Tip-over parents also have a perspective the "average parent" does not have, yet we are connected to thousands of those average parents. This perspective is vitally important to furniture safety and tip-over prevention. Especially in light of the fact children are still being injured and killed at alarming rates by dressers, two in just the past few weeks alone!

I beg of each of the Commissioners to vow to fast track the NPR for furniture safety and do everything in your power to reach a final mandatory rule that includes the parameters outlined in the STURDY Act as introduced in February of 2021 to the House and Senate and have the final rule by the end of 2022. There is no reason why this cannot happen if you collectively dedicate efforts and make it a priority to do so. My child's death and hundreds more could have been prevented, had the testing requirements outlined in the STURDY Act been mandatory then.

Thank you for your continued attention and dedication to putting an end to furniture/dresser tip-overs and preventing any more children from needlessly suffering injuries and dying from fallen furniture.

Sincerely,

Kimberly Amato

Kimberly Amato
Meghan's Hope
Parents Against Tip-Overs

4. Brett Horn, Charlie's House

(Oral Testimony)

Testimony from BRETT HORN for CPSC FY2022 - Priorities Hearing

Thank you Acting Commissioner Adler, Commissioner Kaye, Commissioner Baiocco, and Commissioner Feldman for allowing me to present today. To re-introduce myself to you, my name is Brett Horn, and I am joining you today from the nation's first safety demonstration home...Charlie's House in Kansas City, MO.

I am the founder and Chair of Charlie's House, I am a member of the ASTM F15.90 Executive Subcommittee on Consumer Products, and I am testifying to you today as a tip over dad.

This may come as a "shock" to you, but before my son was killed from a dangerous dresser I did not know what the CPSC did. HOWEVER, after meeting with each of you individually over the past several years, I can tell you I have a great appreciation for the mountains of work that your staff oversees, and the enormous number of products within your scope. ALL Americans are consumers, and we are indebted to your predecessors, your staff, and yourselves for continually working with manufacturers to provide safe products.

As consumers we assume that most products we purchase today are inherently safe. That they are made with a certain level of care in mind. Unfortunately, this is not always true.

Next month, my son Charlie should be turning 16, he should be learning to drive, playing sports, going to school (virtually or otherwise), he should be dating, learning, making mistakes, and pissing off his mother and father with his teenager attitude. But Charlie can't do any of these things, his future and my world were robbed. When he was only 2 ½ years old, Charlie had awoken from a nap, we didn't hear him on the audio baby monitor (which was the only kind of monitor offered at the time) but without obvious sound, Charlie was interacting with his dresser...a very short 30" dresser. Perhaps he was opening drawers or attempting to reach a decorative statue on top. We simply don't know...what we do know is the nanny found him trapped beneath the dresser after it had tipped over on top of him, his triplet sibling brother was still asleep in the bed next to his lifeless body. Charlie died that day...his bright smile forever gone from our lives. He died...because he was a normal kid who was inquisitive about his surroundings...he died perhaps because he was mimicking our daily actions of opening a dresser drawer...he died, because I didn't know about the importance of anchoring at the time...Ultimately - I believe Charlie died, because the furniture manufacturing industry had failed

to produce a tip over standard, which addressed the real world uses of dressers. And 14 years later - they have failed to produce a standard which addresses the real reasons dressers tip.

The tipover problem is obviously not new to the CPSC. To quote your own 2021 TipOver report, between 2000 & 2019 tipover incidents have been linked to 469 child fatalities, and TV & Furniture tip-over incidents injure 11,300 people each year. These statistics often get thrown out without much attention...but they are shocking! That is an estimated total of 226,000 tip-over injuries in 20 years. HOW HAVE WE NOT FIXED THIS PROBLEM YET?

I want to thank the current commission for making Tipovers a priority, you've made it a priority for several years and I am aware of your intent to issue a rule in 2021.

It is imperative that your proposed rule, accomplish the tasks which industry and the voluntary standards committee has not. Any rule which does NOT consider the real world usage and a child's normal interaction with dressers, will be insufficient. A new rule MUST address the four primary reasons furniture is killing kids.

- 1) Dressers are designed to hold clothes in them, yet they are not tested this way.
- 2) Most clothing dressers allow for multiple drawers & doors to be open simultaneously, yet the current voluntary does NOT apply the weighted test to units with multiple drawers open.
- 3) Dressers are often placed on carpeted surfaces. Manufacturers know this, they know that carpeting negatively affects the stability of the unit...yet we don't test dressers on carpeted surfaces.
- 4) Dynamic Force is the force a child can apply upon a dresser beyond their body weight. They do this by normally interacting with their dressers, by peeking inside a drawer, pulling, climbing, and more. We know accidents occur because of dynamic force, yet the current standard does not test for this.

If a new rule doesn't account for these issues, we are not fully addressing the problem and will be sitting here a decade from now still trying to fix it.

As this hearing is to discuss FY2022, the CPSC should continue to keep Tip overs as a priority. If we have learned anything from the Bunk Beds standard, manufacturers will likely pursue every opportunity to delay the Final Rule. The CPSC has invested too much time and money on Tip Overs to settle for an insufficient rule which doesn't actually prevent tip-overs. We MUST finish the job!

This action IS URGENTLY needed, as we have seen three additional DEATHS in the last 2 months from dangerous dressers.

The problem is real, kids continue to die, testing must continue. Unfortunately, my Charlie is gone, killed from a dangerous dresser. I urge you to keep Furniture tip-overs as a priority until the problem is solved. Don't do it for my Charlie...do it for the Charlie in your life...do it for your loved ones.

Please FINISH THE JOB.

5. Léa Auffret, Senior Trade Policy Officer,
Team Leader
BEUC – The European Consumer
Organization



The Consumer Voice in Europe

BEUC WRITTEN INPUT TO THE US CPSD

Public hearing on the 2022 priorities



Contact: Florence Punzano & Léa Auffret – safety@beuc.eu trade@beuc.eu

BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND

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About BEUC

BEUC, the European Consumer Organisation, is the umbrella group for 45 independent consumer organisations from 32 European countries. Our main role is to represent them to the EU institutions and defend the interests of European consumers by covering a range of topics including product safety, sustainability and trade policy.

BEUC is a proud member of TACD, the Transatlantic Consumer Dialogue¹ through which we regularly exchange information and best practices with US consumer groups, notably related to product safety.

1. The rise of new safety risks in the global market

Consumers around the world are now more and more buying online and directly importing products with a simple click. While online shopping is convenient, increases choice and can financially be attractive, it also comes with new risks. Consumers are more often receiving products at home that do not necessarily undergo traditional checks and that are not compliant for instance with EU law. They can even sometimes receive products that can harm them and their families. In 2020, six consumer groups from the BEUC and ICRT² networks tested 250 electrical goods, toys, cosmetics and other products bought from online marketplaces such as Amazon, AliExpress, eBay and Wish³. Our members selected the products based on possible risks and found that 66% of them fail EU safety laws with possible consequences such as electric shock, fire or suffocation.

These findings from consumer research and testing are mirrored by other figures such as the ones of the Safety Gate⁴, the rapid alert system used by EU Member States to exchange information about unsafe products in the internal market. The latter shows that a large proportion of non-compliant products are imports, especially from Asia.

Our colleagues in the United States such as Consumer Reports⁵ and Public Citizen⁶ report similar issues on the US market. This problem, as well as other common challenges related for instance to improving the effectiveness of products recalls or addressing the safety risks posed by IoT/Connected products deserve a common transatlantic cooperation and reply. This is the reason why we are sending written input for the CPSC hearing.

¹ <https://tacd.org/>

² <http://www.international-testing.org>

³ <https://www.beuc.eu/publications/two-thirds-250-products-bought-online-marketplaces-fail-safety-tests-consumer-groups/html> and <https://www.beuc.eu/publications/beuc-x-2021-004-is-it-safe-to-shop-on-online-marketplaces.pdf>

⁴ <https://ec.europa.eu/safety-gate/#/screen/home>

⁵ <https://advocacy.consumerreports.org/research/testimony-of-david-friedman-vice-president-advocacy-consumer-reports-for-u-s-house-hearing-on-fake-and-unsafe-products-on-online-marketplaces/>

⁶ <https://www.citizen.org/article/lori-wallach-testifies-before-the-subcommittee-on-consumer-protection-and-commerce-of-the-committee-on-energy-and-commerce/>

2. The importance of the transatlantic cooperation on product safety

EU and US regulators should find a way to overcome the technical and procedural difficulties that are preventing them to exchange data on dangerous products. Some of these harmful products could be taken off the market more rapidly.

The new EU market surveillance regulation enables EU authorities to cooperate with third countries. We call on the EU and the US to build on this new approach and make the necessary changes to be able to alert each other and better protect consumers.

The EU and Canada recently managed to find a solution to do so and signed an administrative arrangement⁷. They are now exchanging rapid alerts on dangerous products, even planning to focus on harmful products sold online, and to conduct joint actions. This is the type of positive cooperation we would like to see happening between the EU and the US. This should be a key objective of the new transatlantic cooperation agenda⁸.

3. The value of international cooperation

The US, the EU and more than 50 other members of the World Trade Organization (WTO) launched trade negotiations on 'e-commerce' in 2019⁹. This term has come to encompass a wide range of digital trade themes including enhancing online consumer trust. Our research shows that very often, consumers do not realise that the trader they are buying from is located outside of their country or region. It also found that when consumers buy online from traders located outside their jurisdiction, they can encounter various problems. For instance, it tends to be complicated to contact traders and get easy access to redress if something goes wrong.

The WTO e-commerce negotiations should be used as an opportunity to address these challenges in an international framework. But trade rules alone will not solve the problem. Therefore, the WTO e-commerce outcome should encourage an improvement of the cooperation between regulators across the globe to better protect consumers. They should cooperate on consumer protection, market surveillance and product traceability, enforcement, customs, competition, redress and dispute resolution.

International cooperation also happens with international organisations active in product safety (ex. the International Consumer Policy Health & Safety Organization - ICPHSO, the International Organization for Standardization - ISO) and in the context of other fora. These include ICPEN, UNCTAD and the OECD¹⁰. We strongly encourage the CPSC to use these channels actively to discuss with the EU and other countries in order to improve product safety for consumers in globalised markets. An important element to improve the efficiency of international cooperation would be to ensure that authorities are empowered to act at cross border level.

END

⁷ https://ec.europa.eu/info/sites/info/files/aa_final_en-eu_version.pdf

⁸ https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_20_2279/IP_20_2279_EN.pdf

⁹ BEUC factsheet on WTO e-commerce: https://www.beuc.eu/publications/beuc-x-2019-015_international_negotiations_on_e-commerce_digital_trade_at_the_wto.pdf

¹⁰ See in particular the Global recalls portal <https://globalrecalls.oecd.org/>



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6. Nancy Cowles, Executive Director
Kids In Danger (Oral Testimony)



April 7, 2021
Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, Maryland 20814

**Comments of Nancy A. Cowles, Executive Director, Kids In Danger
To the U.S. Consumer Product Safety Commission on Agenda and Priorities for FY 2022**

Thank you for the opportunity to submit comments on the U.S. Consumer Product Safety Commission's (CPSC) agenda and priorities for Fiscal Year 2022. 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 would like to present KID's recommendations for the coming fiscal year agenda and priorities in three groupings: Ensuring **safer products, accountability** for products already in the marketplace and **transparency** to provide all possible information to consumers, the regulated industry, and groups such as standard setting bodies, working for the same goal as the CPSC: safer products.

But first, the overwhelming issue for the CPSC is responding to COVID-19 and assuring that Americans are safe from dangerous products, both those unique to the pandemic, and those everyday items that may pose new dangers now or be overlooked during such a stressful time. We urge the CPSC to continue to find ways to assess and evaluate injury patterns, such as the recent report on COVID-19, *Effect of the Novel Coronavirus Pandemic on Preliminary NEISS Estimates*.

In addition, with the support from the one-time appropriation of \$50,000,000, the CPSC should develop an effective response for increasing coverage of the ports, and the needed updates in compliance and laboratories to respond to those increased findings. I have also included throughout this testimony other related projects that would improve the CPSC's ability to keep children and all consumers safe – in the pandemic and afterwards too.

Ensuring Safe Products in the Marketplace

First, we must work to improve the safety of products as they enter the marketplace and our homes. This includes standards development, resources for industry who want to comply with requirements, data and analysis to spot emerging hazards, and a robust engagement with consumers and industry to address new areas including connected products, AI and machine learning integrated into products, as well as products that might meet current standards, but have potentially hazardous features that have yet to be addressed.

Since 2010, 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 25 types of durable infant and toddler products. That is a little behind the goal in the legislation of two standards every six months, but far ahead of any previous attempt by the agency to create strong safety standards. We applaud the CPSC for the commitment to this process and the amount of time, energy, research, and knowledge that CPSC staff dedicates 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 children's products. This includes the two vital standards currently in development, **Crib Bumpers/Liners, and Infant Sleep Products** as well as continuing to monitor the market as new products, not covered by standards, enter the field. Because the CPSC chose to develop standards rather than ban products known to be unsafe such as padded crib bumper pads and infant inclined sleepers, it is imperative that the resulting standards keep these products out of homes and off store shelves. A standard that doesn't fully address the risk and gives a false sense of safety to parents is more dangerous than no standard.

The Notice of Proposed Rulemaking (NPR) on **Infant Sleep Products**, published in 2019, when finalized, will expand protection for infants by covering all products intended for infant sleep that are not covered by an existing rule. Parents already believe that all infant products are tested to a strong standard and yet new sleep products enter the market continuously without any standard. Having a standard in place that eliminates hazards such as inclines over 10° is a great step forward for safety. We hope that in FY 2022, with the new standard in place, the CPSC will prioritize eliminating remaining inclined sleep products. The CPSC should recall any that remain in homes or on the market. In addition, guidance should be added to the CPSC's Small Business Guidance webpage to discourage small companies from entering this market, unaware of the research that has found this type of product unsafe. Despite suggesting correcting this this last year, when a user selects "infant inclined sleep product" today as the type of product in the Regulatory Robot, the information shares the proposed rule for infant inclined sleep product from 2017 rather than the 2019 proposed rule for infant sleep products that prohibits inclines.

We urge the CPSC to continue add new products and draft standards under the Section 104 rulemaking process. This will require the CPSC to evaluate new products as they enter the marketplace or preferably, develop standards that would apply before new untested products could be sold.

The CPSC is also at work on a standard to **prevent furniture tip-overs**. You have heard today from parents who have lost children to this hazard and now tragically, have new parents joining their ranks. It is heartbreaking and inexcusable that delays from industry have avoided major needed changes to the standard for over 20 years. We urge CPSC to prioritize their work on a strong standard to be enacted as soon as possible.

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. The CPSC should encourage manufacturers to use technologies that eliminate or further ameliorate the ingestion risk of these hazards.

The week I was introduced to Krista Hamsmith and heard Reese's story; I knew action was needed now to prevent button batteries from killing more children. I had heard just the week before from a colleague of our founder Linda Ginzler whose toddler daughter had similarly swallowed a battery that fell out when a cheap party favor her older daughter had gotten at a birthday party fell apart. Unfortunately, these finger lights, despite their popularity with children, are not considered toys so didn't have to meet the toy standard. And another parent called KID and the CPSC Consumer Ombudsman to report a little girl's tutu filled with tiny sparkling lights – and a battery case that fell apart and released a battery. Both of these children are ok, but not because the batteries were safe.

One other topic I would like to raise as a new priority for CPSC involves drowning prevention. The CPSC has been a leader in this area addressing pool and spa drain hazards and other drowning issues through Pool Safely. I have recently become aware of another drowning hazard that I would like to raise with you today. That is the proliferation of 'learn to swim' devices that might have the opposite effect. KID met Nicole Hughes in 2019. Her son Levi drowned in June 2018, the same day that Bode Miller's daughter Emmy drowned. The two families work together to reduce the risk of drowning. Nicole began to notice that the children who had drowned in pools, outside of times when they were expected to be near water, had almost always been wearing a device such as a Puddle Jumper in the hours or days before. When worn in water, it positions children upright. Parents may use it for extra security when at the pool. But it has two properties that may cause it to lead to drowning – it holds the child upright in the water and gives a false sense of security. For toddlers who have no concept of floatation or drowning, it encourages them to see the water as safe and removes a healthy fear of water that might keep them from jumping in when they are unattended. This product is certified as a floatation device but is being marketed as a learn to swim device, which it is not. We know that safety devices sometimes have unintended consequences and I believe that might be the case here. I know it is hard to address a product as a hazard when it is not present at the injury or death, but I urge CPSC to look into the use and labeling of this product and other 'learn to swim' devices. Your own Consumer Ombudsman Jonathan Midgett has spoken with Nicole and others addressing this issue and can be an asset to CPSC's understanding and action on the issue.

The CPSC's report on injuries during COVID-19, *Effect of the Novel Coronavirus Pandemic on Preliminary NEISS Estimates* showed that ingestion injuries from these batteries rose 93% for young children from the same period in 2019. Australia recently adopted a national standard, similar to the requirements in ASTM F963 Toy Standard, that all casings for button batteries require a tool to open. The CPSC could expand that protective requirement to all children's products under Section 104 and should work with industry to take similar action for any products containing these batteries.

Like COVID-19, new challenges to product safety can arise seemingly out of nowhere. But the CPSC needs to be ready and nimble to respond. The CPSC should continue to build their capacity for addressing hazards with connected products, including those with AI and machine learning capabilities. The Regulatory Robot, which can be a great tool for small companies should continue to be prioritized with updates and improvements. And while meeting the CPSC's regulations is critical, additional focus

on hazard analysis, human factors and end user focused design should be provided to avoid new hazards or well-known hazards appearing in new products.

Accountability for Product Safety

Once products are on the market, the CPSC has the tools to hold companies accountable to keep consumers safe. This includes the ability to conduct mandatory recalls when necessary and assessing civil penalties when companies fail to comply with the agency's regulations. While there are barriers in this area, such as Section 6(b) of the Consumer Product Safety Act, more often it appears the agency holds back the use of these tools while waiting for the company to agree to a voluntary recall. We urge the CPSC to make greater use of the tools it has today. Relying on education campaigns or vague warnings of hazards while waiting for companies to voluntarily do what is right has led to unnecessary injuries and deaths. We applaud actions the CPSC has begun to take such as beginning action on mandatory recalls when needed and using civil penalties. We hope to see that continue into FY 22.

Since 2001, KID has been reporting on **children's product recalls**. Last month, we released our report on 2020 recalls. We found that children's product recalls have seen a downward trend over the past eleven years. The last three years – 2018 to 2020? are the lowest number of recalls since at least 2001. Our research found a rise in recalls of unstable dressers and other furniture in 2020. Fourteen out of 63 recalled children's products (22%) were furniture items. Eleven products of the furniture category were recalled due to tip-over hazard. We also found a spike in the number of lead recalls – nine in 2020 compared to one in 2019.

The CPSC only posted 49% of children's product recalls on its Facebook page, 49% on Twitter, and 10% on Instagram. Although the 10% rate for Instagram is higher than the previous year which was a mere 5%, the rates for Facebook and Instagram decreased slightly since 2019, which were 52% and 59%, respectively. KID recommends that the CPSC post all recalls on social media in order to increase recall effectiveness.

The goal of a recall is to remove unsafe products from consumer use.

Innovation is needed in the area of recall effectiveness. Right now, 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. The CPSC should work with stakeholders to build on past efforts and keep moving the needle towards effective recalls.

Some Monthly Corrective Action Plan Reports are aggregated and posted on the CPSC website but posting is voluntary and most recalls are not included. It provides little insight into recall effectiveness.

The CPSC should use all the tools available to remove dangerous products from the market through recalls and require companies to use stronger efforts to reach consumers with the news of the recall and adequate incentives to participate and remove the dangerous products from homes.

Transparency to improve product safety

One of the most innovative tools required by the CPSIA is a product database for consumers' incident reporting. **SaferProducts.gov** has great potential to educate consumers on hazards and recalls as well as provide vital information to the CPSC and manufacturers about product hazards. Unfortunately, we have seen the number of reports drop precipitously since its launch in 2011. Reports published on the site have dropped 55% from 2012 to 2019 – the first and last full years KID has reviewed. Our recent analysis for instance showed 3,058 reports of incidents with nursery products. Yet in 2019, CPSC reported through its annual nursery product report that there were 60,600 emergency room visits involving nursery products that year alone. That is a huge gap and just one potential source of reports. In addition, while many reports are processed in a timely matter, others take more than a year to be published. And, because of transparency limitations, we don't have the exact number, we do know that as many as half of the reports made to SaferProducts.gov never get published. The CPSC should prioritize this database, meet the obligations of the underlying legislation, and make all efforts to increase consumer awareness and use of the site. The agency should also use the data to provide reports and postings on social media for consumers, both to increase awareness and to educate the public on the hazards posed by the particular products.

Perhaps the biggest barrier to transparency is Section 6(b) of the Consumer Product Safety Act. Section 6(b) restricts the 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.

The shadow of the provision, amplified by the 2019 report of a data breach, 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 the 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 can weaken its negative impact on public safety.

Adequate Funding to Fulfill Mandate

This is a very full list of priorities and I know the CPSC has also been aggressive in planning to bolster the agency's budget to better meet its mission. All stakeholders agree -- the CPSC does not have adequate resources to fulfill its mandate of protecting consumers from unreasonable risk of harm. To oversee imports at our ports, follow up on reports of harm, develop and enforce strong standards, conduct robust recall activities, and reach consumers with important safety information, we would urge the CPSC to request and Congress to grant a budget of no less than \$350 million. We believe that for too long this agency has been forced to compromise on the safety of consumers, especially children, based on funding. For too long, presenters at this hearing have listed the many areas that should be priorities. A fully funded CPSC can act on those that meet its mission and strengthen the safety of children and consumers in the United States.

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.

Nancy A. Cowles
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8. Keisha Bowles, Founder,
Another Day, Another Chance
(Oral Testimony)

U.S. Consumer Product Safety Commission

Attn: Alberta E. Mills, Secretary

4330 East-West Highway

Bethesda, MD 20814

TOPIC: Agenda and Priorities FY 2022

March 15, 2021

Dear CPSC:

My name is Keisha Bowles, I live in Arkansas, and I am the mother of a beautiful 2-year-old girl, Sydney "Chance" Bowles. On the evening of April 3, 2012, I was preparing for bed in the restroom as Chance and her brother, Brandon watched TV in Brandon's room. This was their regular nightly routine. Just a few minutes into our routine, Brandon ran to me in the restroom crying out, "The TV fell!" My motherly instinct and the look on his face told me that something was not right. I immediately ran into his room and saw something that will haunt me forever. I saw my Chance, my perfect baby girl, underneath the dresser, and she was unconscious.

After hours of praying, waiting, meeting with doctors, several tests, and more praying, the night turned into the next day. I had to make the hardest decision I'll ever have to make in my life; I made the decision to remove my baby girl from life support. At 4:44 pm on April 4, 2012, my baby girl lost her life to a TV/furniture tip-over incident. This was something I had never heard of happening before.

Chance is not the first child to die from a TV/furniture tip-over, and sadly, she is also not the last. Since her death, so many other children have lost their lives to the reality of unstable furniture in homes across the nation. In just the last 2 months, I've spoken with two additional families who have both lost their children to dresser tip-overs; one family is in Atlanta, the other is in Maryland. When does this end? I have been speaking out about tip-overs for almost a decade now, yet the statistics don't appear to change much. Not only have many of us tip-over parents formed our own organizations to spread awareness locally, but we also formed Parents Against Tip-overs about 3 years ago. Still, the safety standard has not changed barely at all, and it's still a voluntary standard. We need the Consumer Product Safety Commission to continue making tip-overs their highest priority and to move quickly to make this standard stronger and mandatory in your NPR.

Back in 2018 when Parents Against Tip-overs met with each of the CPSC Commissioners to discuss tip-overs, we said we aren't going away and that next time you see us, there will be

more of us. Fast forward 3 years, we still aren't going away and, unfortunately, there are more of us. It breaks my heart, but this will continue to be the case each month that passes until the standard for clothing storage units can be made mandatory and stronger by addressing dynamic force, carpeted flooring, loaded dressers, and multiple drawers opened at once. Several of these factors played a role in Chance's death and still have not been addressed by the furniture industry.

Signed,

Keisha Bowles, Bereaved Mother

Founder of Another Day, Another Chance

keisha@anotherdayanotherchance.org

jmcgee652@outlook.com

9. Meghan DeLong, Founder and President
Conner's Legacy Foundation, Inc.

(Oral Testimony)



U.S. Consumer Product Safety Commission

Attn: Alberta E. Mills, Secretary

4330 East-West Highway

Bethesda, MD 20814

TOPIC: Agenda and Priorities FY 2022

March 17, 2021

Dear CPSC:

Meghan. Charlie. Shane. Camden. Ted. Chance. Harper. Maddie. Allie. Conner. Jozef. JR. Kaesyn. Natalie.

These are names that I want you to hear and really understand that they died senselessly, unnecessarily. These are a mere snippet of the names of 286 *confirmed* children between 2000 and 2019 that have died at the hands of this broken system and the inadequate voluntary standards that stifle forward progress which would address real world scenarios. We know that an updated analysis would include more recorded deaths, and I strongly feel that there are many more that have gone unreported or uninvestigated.

As I write this testimony, I have spent countless hours over the last week comforting the grieving family of a beautiful little 3 year old girl who was killed by a falling dresser while her parents slept. Her name is Natalie. Like so many members of Parents Against Tip-Overs, the guilt and shame that they feel is heavy, and at this time, almost immobilizing. Can you imagine walking into your child's room to start their day only to find their tiny



body lifeless; crushed or trapped beneath the weight of a dresser? This is what happened to me on Mother's Day morning in 2017 when I found my son Conner. This is a nightmare that you never wake up from and with each new incident, I pray that it will be the last. I truly believed that I had failed my son as a parent when I realized the reality of what was happening to my family. We all want to believe that our child will be the last, but as you know, the incidents continue to happen, more children die, and yet forward progress continues to be stalled. What I have come to understand is that I may have failed Conner, but this flawed system is failing consumers at every turn.

We know that there is a solution to this problem, today. We know that the current voluntary standard is inadequate. I should mention that, not only does the dresser that killed my son meet the current voluntary standard, but it is also a "go to" item for new parents as they try to replicate a beautiful nursery that they have seen marketed on the internet. I cannot single handedly reach every person that owns this dresser, not for lack of trying, which is why I am here today asking for your help. We need a mandatory standard that will require that ALL CSU's be tested to simulate children up to 72 months old and that accounts for real world scenarios such as the dynamic force of a climbing child, loaded drawers, and carpeting. We need items pulled from the market that do not meet the standard, or have been involved in a fatality. We need this done now. We simply cannot wait for more children to die. I do not want anyone else to have to be data, we don't need more data, we need action, and we need it yesterday. I do not want more families to have to testify in front of you, but, in just the last two months, two more children have died.

I am asking you today to put human life over profit margin and not just continue to make furniture tip overs a priority, but to make them your top priority for fiscal year 2022. I know that the last year has put the world in a bit of a holding pattern, but that is why this



is even more important than ever. Children are home, parents are working from home, and our attention is pulled in a multitude of different directions. We should be able to feel confident that the items we purchase have been adequately tested for safety and will not kill our children while we sleep. We need your help. When we know better, we do better. Let's do better.

Thank you for your time!

Sincerely,

Meghan DeLong, Conner's Mom
Conner's Legacy Foundation, Founder & President
Parent Advocate



meghan@connerslegacy.org



Conner Charles DeLong
02/04/2015-05/15/2017

10. Janet McGee, MBA
Founder & President of The LifTed, LLC /
Co-Founder Parents Against Tip-Overs
(Oral Testimony)

U.S. Consumer Product Safety Commission

Attn: Alberta E. Mills, Secretary

4330 East-West Highway

Bethesda, MD 20814

TOPIC: Agenda and Priorities FY 2022

March 17, 2021

Dear CPSC:

I am writing to you to urge you to keep furniture tip-overs at the top of your priority list for the upcoming fiscal year. With two new child fatalities (that we know of) in the last few weeks furniture tip-overs are still very real and happening in homes, even despite anchoring education and the current testing process. We are on a race against the clock. I fully support due diligence, but we cannot let time pass by without further action.

As you are all aware, my 22-month-old son, Ted, died in 2016 from a dresser tip-over. For the last five years, I've dedicated my time to learning more about the furniture tip-over issue, spreading awareness for anchoring furniture, and advocating for stronger and mandatory furniture safety standards. I have participated in many ASTM furniture sub-committee meetings, co-founded and am an active member of Parents Against Tip-overs, and sell anchor kits through my company. There is nothing in my home that is freestanding anymore; everything is either built in or anchored to the wall. When my two youngest kids started to climb on furniture, we obviously took that very seriously and are diligently teaching them not to climb. We have not told them their brother died this way, although they will learn that in time. Climbing on furniture dangerous, period. I'd like to think I'm somewhat immune from a tip-over ever happening again; I know much more than the average consumer on this subject.

However, just recently, my 3.5 year old son experienced a near miss with a nightstand, a type of furniture endlessly debated in ASTM meetings about the characteristics necessary to include in the standard for CSUs. We moved it temporarily into our living room to hold some toys, until I find the furniture I want to put on that wall long-term. And even though many manufacturers in our ASTM meetings insist a nightstand shouldn't be covered by the CSU safety standard, this nightstand did come with an anchor kit. I chose not to use it because it seemed cheap and inadequate. Several parents have shared near-miss stories with me when they've used the anchor kit that came with the piece of furniture. I opted to use a metal Hangman anchor kit that I sell through my company, believing it would be more reliable. I attached it to the back of the top piece of the nightstand. While I was working one night recently, my husband said our son opened the top drawer of the nightstand and pushed down on

it, like he was trying to jump up on it. My husband immediately got up to stop him from doing this, but the entire unit ripped away from the anchor kit, causing it to crash to the ground. My son, fortunately, jumped out of the way. The next day, I contacted the furniture company to explain what happened, provide the unit's dimensions, when and where I bought it, and the size of my son, so we could all learn from this. Their response? I didn't use the correct anchor kit they provided and I installed the Hangman kit incorrectly. So, the blame remains shifted to consumers, to finish making their furniture product safe. And, even with anchor kits, I can't install any correctly, because apparently there is not a safe place to even attach the anchor kit to the unit, since it is made of pressed wood. In addition, there is no approved ASTM standard for testing anchor kits.

So, I sit here today as a consumer, as a regular mom, and as a tip-over mom. What am I supposed to do? What furniture is safe to buy? What furniture is safe to put in my home? What anchor kits will keep my living children safe? And most importantly, when is enough, enough?

Kids across the nation are exposed to this hidden hazard every day, including my own. Partnering with furniture manufacturers has proven to be unsuccessful. Working with the CPSC is a slow and bureaucratic process. And here we sit in 2021, another year has passed and more children have died or suffered injuries. Luckily, mine wasn't one of them this time.

Signed,

Janet D. McGee, Bereaved Mother

Founder & President of The LifTed, LLC

www.janetmcgee.com



jmcgee652@outlook.com

11. Jennifer Cleary, Vice President, Regulatory
Affairs

Charles Samuels, General Counsel (Oral Testimony)
Association of Home Appliance Manufacturers
(AHAM)



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March 17, 2021

Via Email

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

cpsc-os@cpsc.gov

Re: Agenda and Priorities FY 2021 and/or 2022

Dear Ms. Mills:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the Consumer Product Safety Commission's (CPSC or Commission) on its agenda and priorities for fiscal years 2021 and 2022. These comments are filed in response to the Commission's Notice of Public Hearing on its Agenda and Priorities, 86 Fed. Reg. 11509 (February 25, 2021). AHAM requests the opportunity to make oral comments at the hearing on April 7, 2021, represented by AHAM General Counsel Charles A. Samuels.

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. All of these products are under CPSC jurisdiction. AHAM's membership includes over 150 companies throughout the world. In the U.S., AHAM members employ tens of thousands of people and produce more than 95% of the household appliances shipped for sale. The factory shipment value of these products is more than \$30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

AHAM is committed to product safety and its vital CPSC relationship. AHAM's consumer safety education programs have educated millions of consumers on ways to properly and safely use appliances such as portable heaters, clothes dryers, and cooking products.

Voluntary Safety Standards

AHAM is a standards development organization, accredited by the American National Standards Institute (ANSI). We author numerous appliance performance testing standards used by manufacturers, consumer organizations and governmental bodies to rate and compare appliances. Our safety standards activities, however, are aimed at developing, evaluating, and commenting on proposals before standards development organizations such as UL and CSA. In that regard, AHAM has developed and supported dozens of major safety standards proposals — more than 100 for major and/or portable appliances in the past nine years.

AHAM strongly supports the CPSC's, and indeed the product safety ecosystem's, engagement, development and reliance on sound, periodically updated, consensus safety standards. AHAM members' top priority is and must be to design appliances that are as safe as they are useful. In addition to building safety evaluation into every phase of the design process to ensure potential hazards are assessed and designed out of the product and/or warned against, manufacturers test their products to ensure they meet or exceed safety standards. Further, the home appliance industry continually works proactively and cooperatively with CPSC staff and others, to improve standards based on innovations to reduce potential risks and further improve consumer safety.

AHAM supports CPSC's ongoing pro-active participation in standards development work, supported by sufficient funding for such participation. CPSC staff, SDO's, industry and all other participants learn and benefit from the type of factual discussions and analyses at the granular, technical level which occur during consensus standards work that rarely occurs in a traditional government regulatory framework.

CPSC staff have been key participants in reviewing the adequacy of consensus standards in the transition to more climate friendly but flammable refrigerants. The key is to enable the transition while ensuring no diminution of consumer safety. One recent example of why this work is critical is that our room air conditioners must meet California Air Resources Board (CARB) requirements on refrigerant usage and the only present way to achieve the CARB requirements is to use a flammable refrigerant. Therefore, there are critical deliberations being driven inside UL 60335-2-40, the safety standard for air conditioning equipment. That Task Force recently approved the expanded use of flammable refrigerants in these products but only after thorough analysis and thoughtful participation by CPSC staff.

This is just one example of the value of the work to develop and maintain consensus standards. We strongly encourage CPSC to continue to rely on and participate in the development of these critical voluntary safety standards.

Counterfeit Products

For years, our industry has worked to shed light on the health and safety issues posed by counterfeit and gray market goods. In some instances, counterfeits create health and safety risks for consumers that can go undetected. Despite efforts to mitigate the proliferation of counterfeit products, counterfeit appliances and replacement parts such as counterfeit refrigerator water filters, air filters for air purifiers, replacement batteries, replacement toothbrush heads, and

vacuum bags, and other service parts are widely available on e-commerce platforms. Private sellers using e-commerce platforms have successfully disseminated these harmful counterfeit products for years. These products not only constitute theft, they represent danger to Americans if safety standards are not met. Some of these products not only do not filter out contaminants, they add them to the water we drink or air we breathe.

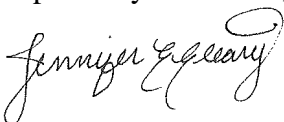
Addressing the problem of counterfeit products requires a multi-pronged approach. Consumer education, such as AHAM's Filter It Out campaign; training at the ports to assist border agents to better identify and seize counterfeits; and manufacturer and online retailer coordination with government agencies is all important to protect consumers. These efforts are ongoing, yet more coordinated and strategic attention is needed. We would encourage the Commission to make a greater commitment to work with CBP, the IPR Center, USPTO, and other relevant government agencies, to undertake comprehensive and coordinated actions on this important issue to mitigate the influx of counterfeits at the border and through communications to consumers.

The Commission is in a unique position to leverage its connection with consumers to educate them about the existence of counterfeit products and the potential health and safety risks they pose. This is especially necessary as consumers are using their home appliances and other products more than ever during the pandemic and are relying more on online purchases of those products than ever before.

This approach would also benefit from regular engagement with stakeholders. This would substantially increase the reach and impact of consumer messaging. We include, at Appendix A, our recent comments to the U.S. Patent and Trademark Office that further highlight this request. We believe the recent new monies Congress has approved for import surveillance should enhance the Commission's capabilities in this area.

AHAM appreciates the opportunity to make an oral presentation during the on the Commission's agenda and priorities for fiscal year 2022, and would be glad to further discuss these matters with you should you so request.

Respectfully submitted,



Jennifer Cleary
Vice President, Regulatory Affairs

Appendix A



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March 12, 2021

Via Regulations.gov

Charisma Hampton
United States Patent and Trademark Office
Mail Stop OPIA
P.O. Box 1450
Alexandria, Virginia 22314

Re: AHAM Comments on the United States Patent and Trademark Office, Office of Policy and International Affairs Comment Request; Development of a National Consumer Awareness Campaign on Combating the Trafficking in Counterfeit and Pirated Products; Docket No. PTO-C-2020-0044

Dear Ms. Hampton:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the United States Patent and Trademark Office (USPTO or the Department) on its Comment Request regarding Development of a National Consumer Awareness Campaign on Combating the Trafficking in Counterfeit and Pirated Products; Docket No. PTO-C-2020-0044, 86 Fed. Reg. 8894 (February 10, 2021).

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's more than 150 members employ tens of thousands of people in the U.S. and produce more than 95% of the household appliances shipped for sale within the U.S. The factory shipment value of these products is nearly \$50 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. AHAM members also endeavor to ensure the adequate availability of genuine service parts and components that are safe and reliable for consumer use. The supply of counterfeit goods threaten this goal.

AHAM applauds the USPTO for joining other federal agency efforts to protect consumers, businesses, and intellectual property rights holders from the harm counterfeit goods cause. We hope these comments will help advance the Federal Government's efforts to develop an effective consumer awareness campaign. The home appliance industry, and consumers that trust and rely on the safety of their home appliances—especially during the global pandemic--have been harmed by counterfeit goods such as but not limited to, counterfeit replacement water filters for refrigerators, room air cleaners, appliance service parts, batteries, toothbrush heads, and vacuum bags. For years, AHAM and its members have worked to educate consumers and Federal Officials about the dangers counterfeit products pose, focusing on counterfeits that pose a health

and safety risk to consumers. AHAM strongly believes that a coordinated Federal consumer awareness campaign can amplify and add credibility to these and other similar messages.

I. Counterfeit Appliance Goods and Replacement Parts Are a Growing Problem.

For years, our industry has worked tirelessly to shed light on the health and safety issues posed by counterfeit and gray market goods. In some instances, counterfeits create chronic health risks for consumers that can go undetected. In our industry, counterfeit appliances and replacement parts such as counterfeit refrigerator water filters, air filters for dehumidifiers and air purifiers, replacement batteries, replacement toothbrush heads, and vacuum bags, belts and other service parts are widely available on e-commerce platforms. Private sellers using these e-commerce platforms have successfully disseminated these harmful counterfeit products for years.

Counterfeit replacement refrigerator water filters remains a top priority. We have coordinated for years with Federal agencies to attempt to combat the import of these harmful products. These “lessons learned” are broadly applicable to other counterfeit products.

In late 2016, several manufacturers of residential refrigerators in the U.S. contacted AHAM to report surging online sales of counterfeit refrigerator water filters. In response, the industry mobilized to identify the scope and magnitude of the problem of counterfeit sales online. After a year’s investigation, AHAM and its member companies determined that roughly two million counterfeit replacement refrigerator water filters were sold online annually and that these counterfeit products posed a serious health and safety risk to consumers.

Although counterfeit filters may resemble genuine filters in their appearance, they often contain inferior and harmful materials. For example, counterfeit water filters can contain newspaper, cheap carbon, and are rarely made with food-safe plastics. We know this from third-party examination of counterfeit water filters obtained from third-party sellers. AHAM’s data also show that counterfeit filters often do not properly fit in the refrigerator, which risks leaks and resulting water damage.

Counterfeit filters are most harmful in areas where the U.S. water supply contains impurities, including lead, arsenic, pesticides, and insecticides. Genuine filters are tested and certified to third-party standards to reduce harmful contaminants. However, counterfeit and deceptively labeled products include no similar assurances. Consumers expect water filters to remove impurities in their drinking water. Counterfeit water filters fail to perform like genuine products and, in fact, are known to introduce harmful chemical contaminants into drinking water.

In May 2018, AHAM released a comprehensive testing evaluation of counterfeit water filters for household refrigerators demonstrating that counterfeit filters posed a serious chronic health and safety risk to consumers.¹ The tested filters contained the trademark of various brands, as well as a third-party safety certification mark intended to show a filter’s compliance with certain

¹ AHAM, The Danger of Counterfeit Filters: Fake Filters, Real Problems (May 2018), *available at* <https://filteritout.org/see-the-proof>.

third-party water safety standards. AHAM's testing demonstrated that these fake filters failed to perform in accordance with such standards.

The study, conducted at three independent laboratories, sought to determine if counterfeit filters met industry standards for health and safety related claims. The study revealed an overwhelming failure to reduce harmful contaminants from water and, worse, showed that some counterfeit filters add contaminants to the water, including carcinogens.

The harm from counterfeit water filters is substantial. Over time, such counterfeit filters pose chronic health risks to all users, particularly vulnerable populations, such as children, the elderly, and nursing and pregnant women. Other counterfeit goods pose similar risks. For consumers who purchase counterfeit that pose a consumer health and safety risk, not only are they not getting the claimed benefit, but they are unknowingly exposed to additional health risks that can go undetected

Armed with data proving that these counterfeits posed a serious health and safety risk to consumers, AHAM developed an awareness campaign to educate consumers on the harmful effects of counterfeits. In this campaign, we hoped to stem counterfeit imports into the United States. AHAM's Filter It Out campaign was born out of the industry's investigation of this counterfeit problem.²

"Filter It Out" is a home appliance industry awareness campaign to educate consumers on how to identify counterfeit refrigerator water filters and stop the sale of these counterfeit filters online. AHAM has invested almost \$1 million in its "Filter-It-Out" campaign that provides information and resources to help consumers searching for replacement filters online and directs them to trusted sources. The campaign is in partnership with 17 home appliance brands with support from water treatment certifiers IAPMO R&T, NSF International, and the Water Quality Association. This is primarily a web-based digital campaign and includes video content, case studies that demonstrate the kinds of impacts felt by individual consumers, and the scientific study demonstrating the kinds of risks created by these counterfeit products.

AHAM has also produced a substantial amount of social media material to support the Filter It Out campaign posted to consumer-oriented platforms such as Facebook and Twitter. Some examples of our social media materials, which we readily make available to government agencies and others wishing to educate consumers about the dangers of counterfeit replacement water filters for refrigerators, are attached at Exhibit A. We note that we have experienced significant expansion of the reach of our social media messages when government agencies have engaged with or repeated them using their own social media accounts. AHAM has sought out partnerships for its counterfeit campaign, and most recently engaged with UL on the "Buy Real, Be Safe" campaign, which resulted in thousands of views of our content in a short one-week period. This is just one example of a partnership and online content sharing that can reach consumers where they are spending the bulk of their time—shopping and researching products online. Additionally, some agencies, such as the Consumer Product Safety Commission, have

² See www.filteritout.org.

sometimes engaged with AHAM's Filter It Out messaging through Twitter. When an agency with a high level of consumer trust and an extensive audience reach reposts AHAM's content, it adds credibility, urgency and reach to our campaign. This is all "free" no cost consumer education that can be leveraged easily across federal agencies with similar interests

In addition to this consumer awareness campaign, AHAM has engaged with several Federal agencies with the goal of stopping counterfeit water filters for refrigerators at the ports and in identified warehousing locations. Although each government agency with which we have met has agreed that there is a serious problem and that refrigerator counterfeit water filters pose serious health and safety concerns, agency action has in some instances been slow. That is why AHAM urges a more transparent, centralized, and coordinated Federal enforcement approach on counterfeits broadly, especially those that pose health and safety risks to consumers. We especially support USPTO's plan to engage in a consumer-facing campaign and would be glad to work with the Office to communicate to consumers about the risks of counterfeit home appliances.

II. Combating the Counterfeit Epidemic Involves Numerous Challenges.

Consumers unwittingly purchase counterfeit water filters, and other counterfeit consumer products, believing they are buying genuine products because they often appear identical to brand-name genuine products. In the case of water filters, some of the filters are difficult for even the experts within companies and at U.S. Customs and Border Protection (CBP) to differentiate. Counterfeit products often include deceptive or faulty claims about filter fit and performance and do not offer the same level of quality or assurance as products provided by the actual manufacturer.

During the pandemic, U.S. consumers are relying more than ever on genuine products to create a healthy home environment. Whether they are relying on room air cleaners, water filters, products with sanitization cycles, floor care products, or other home appliances, they expect that in purchasing these products they are doing what they can to keep their families and themselves safe. But because of the proliferation of counterfeit products—many of which prey on consumers' desire to buy products that contribute to a healthy home—consumers may have no idea that the product they have purchased is a counterfeit product that poses a risk to their health and safety. This is especially true given that, as discussed below, many products do not meet the threshold to be monitored at the ports and are shipped directly to consumers from counterfeiters without inspection.

There are numerous challenges that make it difficult to stop counterfeits from reaching consumers and make it nearly impossible for consumers to know if they have purchased a counterfeit product:

- **It is difficult to detect counterfeit products.** As discussed above, it is incredibly difficult for consumers and even experts at CBP and manufacturers to spot counterfeit goods. The use of fraudulently copied trademarks (both manufacturer and certification body marks), branding, and misleading claims make counterfeits look legitimate.

- **Counterfeiters are sophisticated and they know how to evade U.S. laws, exploit legal loopholes, and avoid enforcement.** For example, we have seen that some counterfeit replacement water filters for refrigerators are sold online without labels and the labels are provided separately and applied after import. This allows the counterfeits to be imported without being stopped at the border and the importer to evade enforcement.

Another example that is common across products is that counterfeits are often distributed in ways that are carefully designed to avoid detection and legal responsibility and get counterfeits in consumers' hands. For example, counterfeiters often ship directly to consumers or in small quantities and are, thus, not subject to the importation process. They also frequently use third-party warehousing and fulfillment services to store and ship their counterfeits to consumers.

- **Consumers do not have the information they need to understand the counterfeiting problem and make informed shopping decisions.** Counterfeits can pose risks to consumers' health, safety, and property, but online marketplace and fulfillment centers reject brand owners' requests for contact information of consumers who have been sold counterfeit products. Our members' experience is that it is also very rare for the marketplaces or fulfillment centers to notify their customers themselves. In addition to giving consumers necessary information to protect themselves from potentially unsafe products, requiring notification would also educate consumers about the extent of the problem and create an incentive for online marketplaces and fulfillment centers to avoid facilitating the sale of counterfeits.
- **There are too many agencies with jurisdiction and responsibility and they do not all have sufficient resources and are not coordinating as effectively as possible.** Our experience has been that relevant agencies are all interested in working to protect consumers from counterfeit goods that pose a serious health or safety risk. However, they may not have sufficient resources to prioritize an effort to combat counterfeits. For example, the U.S. Consumer Product Safety Commission (CPSC) has limited resources to address consumer product safety and they do not believe that they are able to help prevent counterfeit replacement water filters for refrigerators from entering consumer hands because those resources had to be applied to other priorities that only the Commission can address. Without adequate resources, the agencies with jurisdiction over the product at issue must pass the issue to other agencies who may have more resources rather than working together effectively.

Despite the existence of coordinating bodies such as the Commercial Targeting and Analysis Center (CTAC) and the National Intellectual Property Rights Coordination Center (IPR Center), the partner agencies are not able to adequately share data or address particular counterfeit products through a single, coordinated effort. For example, AHAM had to meet with each interested agency separately to share data and information with the agencies interested in counterfeit replacement water filters for refrigerators—we met

separately with the U.S. Consumer Product Safety Commission, the Environmental Protection Agency, and the IPR Center.

III. The Federal Government Needs a Coordinated, Proactive Approach to Addressing Counterfeits, Including Communicating with Consumers and Raising Public Awareness.

Addressing the problem of counterfeit products requires a multi-pronged approach. Consumer education, such as AHAM's Filter It Out campaign; training at the ports to assist border agents to better identify and seize counterfeits; and manufacturer and online retailer coordination with government agencies is all important to protect consumers. These efforts are ongoing, yet more coordinated and strategic attention is needed on anti-counterfeiting efforts, including public awareness campaigns. Accordingly, we are pleased that the USPTO is investigating a public awareness campaign and we urge it to coordinate with other government agencies that can play a role in educating consumers about the dangers of counterfeit products and in stopping those products from entering the United States.

Enforcement and communications efforts should prioritize counterfeit consumer goods that pose a consumer health and safety risk, such as counterfeit filtration products for air and water, service parts, and replacement batteries. Agencies must have adequate resources to be able to prioritize activity related to these products, and inter-agency coordination is essential if significant impact is to be achieved.

We would encourage the USPTO to work with CPSC, CBP, the IPR Center, and any other relevant government agencies, to create a comprehensive and coordinated approach to building consumer awareness of this important issue. This approach would also benefit from regular engagement with stakeholders. This would substantially increase the reach and impact of consumer messaging.

AHAM appreciates the opportunity to submit these comments on the Department's Comment Request and we look forward to continued engagement on this important matter. Specifically, we would welcome the opportunity to work with USPTO in the development and execution of the public awareness campaign generally and specifically regarding messages that relate to home appliances.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Keith McIntosh', written in a cursive style.

Keith McIntosh
Director, Regulatory Affairs & Standards

Cc: Jennifer Cleary, Vice President, Regulatory Affairs

EXHIBIT A



AHAM Policy
@AHAM_policy

...

Counterfeit water filters are a growing problem. Unlike counterfeit DVDs or knock-off handbags that pop up on street corners, fake filters can make people sick.

bit.ly/2JPmuS4

Learn more with our #FilterItOut Campaign
filteritout.org @SenGaryPeters @SenStabenow



How Safe is Your Water? - AHAM Consumer Blog

As you know, counterfeit water filters are rampant online, disguised as certified filters with trademark violations, fraudulent and misleading labels and ...

blog.aham.org



AHAM Policy
@AHAM_policy

...

Counterfeit and deceptively labeled water filters are flooding into U.S. markets and sold online every day.

Installing a counterfeit or deceptively labeled water filter into a refrigerator can result in health and safety issues. #Filteritout #FightingOnlineFakes



AHAM Policy
@AHAM_policy

...

The Hidden Dangers of Counterfeit Water Filters
#FilterItOut



The Hidden Dangers of Counterfeit Water Filters - AHAM Consumer Blog

Online shopping makes it easier to run errands, saving us time and often money, too. As a savvy shopper, you know that a too-good-to-be-true price ...

blog.aham.org



AHAM
@AHAM_Voice

...

Want to read more on #water quality? Our collection of resources at FilterItOut has you covered. filteritout.org/see-the-proof



AHAM
@AHAM_Voice

...

What's in your #water? #FilterItOut



Counterfeit Filters - What's in Your Water?

youtube.com

12. Rachel Weintraub, Legislative Director and General Counsel
Consumer Federation of America



Consumer Federation of America

April 7, 2021

Testimony of Rachel Weintraub,

Legislative Director and General Counsel,

Consumer Federation of America

Before the

U.S. Consumer Product Safety Commission

Hearing on

“Agenda and Priorities FY 2022”

Acting Chair Adler, Commissioners Baiocco, Feldman and Kaye, I appreciate the opportunity to provide testimony about the Consumer Product Safety Commission’s (CPSC’s) agenda and priorities for Fiscal Year (FY) 2022. 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, collect death and injury data, and educate consumers. The CPSC must prioritize the efficacy of its data collection efforts through NEISS and other sources and methods. The use of all of these tools to ensure that products coming into the country at ports and then sold in the marketplace, online and in stores, do not pose hazards to consumers has led to the most effective consumer protections. To effectively use these tools, the agency must have adequate funds appropriated to it by Congress. We applaud that Congress provided \$50 million to the CPSC in the Covid-19 Stimulus package and see it as a first step. We urge the CPSC to use the money in ways that will significantly improve its ability to respond to the COVID-19 pandemic and future challenges to improve data collection and enforcement efforts described above. The CPSC’s mission is so fundamentally critical to the health and safety of Americans who interact with products under the CPSC’s jurisdiction throughout their day. We believe that the CPSC’s budget should be vastly larger and have been urging that the CPSC’s budget reach \$350 million.

We are glad to see the agency focusing on mandatory standards. For example, the FY 2021 Budget Request¹ included 5 active rulemakings, while the 2021 Operating Plan includes 10 such rulemakings.²

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

A. Product Safety Issues

I. Window Coverings

In December of 2019, 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 are being sold online and that hazardous corded stock inventory will be liquidated throughout 2020 and 2021. 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. We appreciate that the F Y 2021 Operating Plan includes a Notice of Proposed Rulemaking for window coverings and hope the agency works in 2022 to expeditiously to write an effective standard that will protect consumers from the strangulation hazards posed by accessible window covering cords.

II. Crib Bumper Pads and Infant Sleep Products

After over a decade of inaction by the CPSC on the hazards posed to babies by crib bumpers and other infant sleep products, we applaud that the agency will be issuing final rules for crib bumpers, crib mattresses and infant sleep products in FY 2021.

CFA strongly supports the language of the Commissions’ Supplemental Proposed Rule (Supplemental NPR) of infant sleep products. We applaud that the scope is now “infant sleep products” and not

¹ https://www.cpsc.gov/s3fs-public/FY-2021-Congressional-Justification.pdf?F.cUrwpaAwaSax3bpUnkeNvhhUC_A5mXz

² <https://www.cpsc.gov/s3fs-public/Fiscal-Year-2021-Operating-Plan.pdf?CKb6Hx.as1gLs3MDCecBUq3Daqo1f5nt>

“inclined sleep products.” We further support the definition of infant sleep products as included in the Supplemental NPR defined as “products that provide sleeping accommodations for infants and are not currently covered by bassinets/cradles, cribs (full-size and non-full size), play yards, and bedside sleepers, as a durable infant or toddler product under section 104(f) of the CPSIA.”³ The term “inclined sleep product” was inherently confusing and misleading to parents since babies should sleep on a flat surface. The American Academy of Pediatrics’ (AAP) Safe Sleep Guidelines state, “Recommendations for a safe sleep environment include supine positioning, the use of a firm sleep surface, room-sharing without bed-sharing, and the avoidance of soft bedding and overheating.”⁴ Since babies should only sleep on a flat surface, the category of infant products that contradicted that message by their existence in the marketplace proved problematic and unsafe.

Crib bumpers and infant inclined sleep products have posed serious hazards to babies in the United States for far too long and we look forward to strong mandatory rules that will eliminate these hazards.

III. 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. We urge the Commission to take significant steps to reduce the risks posed by these chemicals.

³ U.S. Consumer Product Safety Commission, Safety Standards for Infant Sleep Products, Federal Register, Vol. 84, No. 218, Tuesday, November 12, 2019, at 60950.

⁴ American Academy of Pediatrics, Task Force On Sudden Infant Death Syndrome. (November 2016). SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment. Retrieved from: <https://pediatrics.aappublications.org/content/138/5/e20162938>

IV. Internet of Things- Connected Products and Artificial Intelligence

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.⁵ 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) and artificial intelligence (AI) 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 held a hearing in May 2018 on IOT 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.⁶ Finally, and unfortunately, we know of reports⁷ that an electronic 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.

We applaud that the CPSC held a forum on Artificial Intelligence on March 2, 2021. We look forward to continued prioritization of AI and product safety in 2022.

V. Liquid Nicotine

According to a 2018 article in *Pediatrics*,⁸ 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

⁵ Press release February 7, 2017, available at <https://www.gartner.com/newsroom/id/3598917>.

⁶ <https://www.cpsc.gov/about-cpsc/commissioner/elliott-f-kaye/statements/statement-of-commissioner-elliott-f-kaye-regarding-a>

⁷ <https://www.wired.com/story/xiaomi-scooter-hack/>

⁸ Govindarajan P, Spiller HA, Casavant MJ, et al. E-Cigarette and Liquid Nicotine Exposures Among Young Children. *Pediatrics*. 2018;141(5):e20173361

2017. According to the American Association of Poison Control Centers, in 2019, there were 5,356 human exposures to e-cigarettes and liquid nicotine reported to poison centers, 3,829 reports in 2020, and 762 exposure cases as of February 28, 2021.⁹ 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. While, the CPSC has struggled to effectively enforce this law, the CPSC has recently increased communication and enforcement activities. 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. In 2022, 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.

VI. 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. According to a January 2020 Journal of the American Medical Association Article,¹⁰ “more than 39,000 electric scooter injuries were treated in emergency rooms across the US between 2014 and 2018, an increase of 222% over the period. . . Nearly a third of patients suffered head trauma . . . with the most common injuries being fractures (27%), contusions and abrasions (23%) and lacerations (14%).”^{11 12}

The CDC and the Austin Public Health Department conducted an epidemiological investigation of these incidents that was published in April of 2019¹³ and found that “of the 190 injured riders identified, nearly half (48%) had injuries (e.g., fractures, lacerations, abrasions) to the head. In addition, 70% sustained injuries to the upper limbs (hands/wrist/arm/shoulder), 55% to the lower limbs (leg/knee/ankle/foot), and 18% to the chest/abdomen; multiple injuries across body regions were possible. Many individuals sustained injuries on their arms (43%), knees (42%), face (40%), and hands (37%).”¹⁴ “Almost half (80) of the injured riders had a severe injury.”¹⁵ The study also determined “that there were 20 individuals injured per 100,000 e-scooter trips taken during the study period.”¹⁶ The study determined that, “[t]hese injuries may have been preventable. Only one of 190 injured scooter riders was wearing a helmet.”¹⁷

⁹ <https://aapcc.org/track/ecigarettes-liquid-nicotine>

¹⁰ Namiri NK, Lui H, Tangney T, Allen IE, Cohen AJ, Breyer BN. Electric Scooter Injuries and Hospital Admissions in the United States, 2014-2018. *JAMA Surg*. Published online January 08, 2020. doi:10.1001/jamasurg.2019.5423

¹¹ <https://www.cnet.com/news/electric-scooter-injuries-are-sending-more-and-more-people-to-the-hospital/>

¹² <https://www.cnet.com/news/electric-scooter-injuries-are-sending-more-and-more-people-to-the-hospital/> citing the JAMA study mentioned above.

¹³ https://austintexas.gov/sites/default/files/files/Health/Web_Dockless_Electric_Scooter-Related_Injury_Study_final_version_EDSU_5.14.19.pdf

¹⁴ Ibid at p. 5.

¹⁵ Ibid at p. 6.

¹⁶ Ibid at p. 10.

¹⁷ Ibid at p, 11.

In a report issued in 2020,¹⁸ the CPSC found that there were an estimated total of 50,000 emergency room visits from 2017 through 2019; annual estimated emergency room visits were 7,700, 14,500, and 27,700 in 2017, 2018, and 2019, respectively; and year-over-year increases were statistically significant for e-scooters from 2017 through 2018, as well as from 2018 through 2019.¹⁹ The CPSC staff documented 27 fatalities associated with e scooters from 2017 through 2019.²⁰ Further, the CPSC found that 32 of the 37 incidents involving e scooters involved dockless/rental e-scooters) and brake problems were associated with more of the reported incidents (16 out of 37) than any other category.²¹

We appreciate that the CPSC held a forum on micromobility devices on September 15, 2020, and in 2022, we urge the agency to continue its work documenting death and injuries associated with these products, lead efforts to enforce reporting obligations, recall unsafe products, support policies that reduce the severity and incidence of injury and death, and educate consumers about safe operation of these vehicles. We also appreciate the CPSC staff's participation in the voluntary standards process for e-scooters.

VII. 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 about 70 deaths and several thousand non-fatal injuries every year associated with CO poisoning from portable generators.²²

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.²³ 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.

VIII. 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.

¹⁸ <https://www.cpsc.gov/s3fs-public/Micromobility-Products-Related-Deaths-Injuries-and-Hazard-Patterns-2017%E2%80%932019.pdf?90dOQxCOSzGvGRFGX6UF6Z6zvQhV9R1P>

¹⁹ <https://www.cpsc.gov/s3fs-public/Micromobility-Products-Related-Deaths-Injuries-and-Hazard-Patterns-2017%E2%80%932019.pdf?90dOQxCOSzGvGRFGX6UF6Z6zvQhV9R1P> at page 3.

²⁰ Thirty-seven of the investigated incidents involved an e-scooter (32 of the 37 were dockless/rental e-scooters); o Brake problems were associated with more of the reported incidents (16 out of 37) than any other category.

²¹ Thirty-seven of the investigated incidents involved an e-scooter (32 of the 37 were dockless/rental e-scooters); o Brake problems were associated with more of the reported incidents (16 out of 37) than any other category.

²² CPSC, Proposed Rule: Safety Standard for Portable Generators, 81 Fed. Reg. 83556-83615 (Nov. 21, 2016).

²³ <https://www.federalregister.gov/documents/2016/11/21/2016-2692/safety-standard-for-portable-generators>

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.²⁴ 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 2016.²⁵ CPSC’s recent report: *Effect of Novel Coronavirus Pandemic on Preliminary NEISS Estimates*²⁶ included information about the top 10 increases for Adults Older than 70 Years Old for March-September 2020 and identified that protection devices, chain saws, batteries, and bicycles, were the product categories with the top four percentage increase in incidents for this age group.²⁷ We urge the agency to continue to monitor and address these hazards. This data indicate that 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. In 2022, the CPSC should lead efforts, based on their own data collection efforts, to ensure that voluntary standard efforts, mandatory standard efforts, enforcement and other actions, contemplate senior use and injury and death patterns, and revive, update, and prioritize a new Senior Safety Initiative.

IX. 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. According to poison control centers in a January 2020 update, “Thus has led to six times more magnet ingestions in 2019- nearly 1,600 cases reported to U.S. Poison Control Centers- than in 2016.”²⁸ A recent article published in the *Journal of Pediatrics*,²⁹ *Magnet Injuries in Children: An Analysis of the National Poison Data System from 2008 to 2019*, found that, “significant increases in magnet injuries correspond to time periods in which high-powered magnet sets were sold, including a 444% increase since 2018.” Current voluntary standard efforts involve warnings and changes to packaging and we are concerned that these efforts are not sufficient to prevent the increase in magnet ingestions. We appreciate that the FY 2021 Operating Plan includes a Notice of Proposed Rulemaking for magnet sets and 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.

X. Furniture Tip-Overs

According to the CPSC’s most recent data,³⁰ “of the estimated annual average of 25,500 emergency department (ED)-treated injuries (2017–2019) and the 571 reported fatalities associated with tip-over incidents occurring between 2000 and 2019, CPSC documented that of the estimated annual average number of emergency room visits related to tip-overs, “11,300 (44%) involved children under age 18

²⁴ <https://www.cdc.gov/homeandrecreationalafety/falls/fallcost.html>

²⁵ <https://www.cdc.gov/homeandrecreationalafety/falls/adultfalls.html>

²⁶ https://cpsc.gov/s3fs-public/Effect%20of%20Novel%20Coronavirus%20Pandemic%20on%202020%20Preliminary%20NEISS%20Estimates%20%28March%20%20E2%80%93%20September%202020%29.pdf?eBqDdRMGIEQOtp.VG_9IdBCjIFk262hu

²⁷ Ibid at Table 14, page 13.

²⁸ <https://www.poison.org/articles/2012-oct/toy-magnets-are-dangerous-for-children>

²⁹ <https://doi.org/10.1016/j.jpeds.2021.01.052>

³⁰ https://www.cpsc.gov/s3fs-public/2020_Tip_Over_Report.pdf?nhwAgmMt9YXGhkqfsN75hMCNYgBT50J

years” and of the 571 reported fatalities, “469 (82%) involved children (under age 18 years), with victims ages ranging from 1 month to 14 years.”³¹ The CPSC report also found that “children younger than 10 years of age account for the largest proportion of product instability or tip-over injuries, with an estimated annual average of 10,000 injuries, which is 39 percent of all tip-over injuries. Children under 10 years old also had the most furniture-related injuries (7,800 injuries; 31 percent) and the most television-only injuries (2,000 injuries; 8 percent).”³²

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 applaud the furniture recalls that the CPSC has announced and we appreciate that the FY 2021 Operation Plan includes a Notice of Proposed Rulemaking for Clothing Storage Units. We urge the CPSC to move expeditiously on completing 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.

XI. Laundry Packets

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

“Some children who have put the product in their mouths have had excessive vomiting, wheezing and gasping. Some get very sleepy. Some have had breathing problems serious enough to need a ventilator to help them breathe. There have also been reports of corneal abrasions (scratches to the eyes) when the detergent gets into a child’s eyes.”³³

In 2021 thus far, as of February 28, 2021, “poison control centers have managed 1,569 cases related to laundry detergent packet exposure in children 5 and younger.”³⁴ In 2020, exposures increased to 10,572 from 10,021 in 2019.³⁵ In 2017, 10,576³⁶ children 5 and younger were exposed to laundry packets, in 2016, 11,545 children 5 and younger were exposed to laundry packets. In 2015, there were 12,607 exposures and in 2014 there were 11,712. In 2013, poison centers received reports of 10,145 exposures to highly

³¹ https://www.cpsc.gov/s3fs-public/2020_Tip_Over_Report.pdf?nhwAgmMt9YXGhkqfsN75hMCNYgBTte5OJ

³² https://www.cpsc.gov/s3fs-public/2020_Tip_Over_Report.pdf?nhwAgmMt9YXGhkqfsN75hMCNYgBTte5OJ at page 13.

³³ Laundry Detergent Packets, American Association of Poison Control Centers, <https://aapcc.org/track/laundry-detergent-packets>

³⁴ <https://aapcc.org/track/laundry-detergent-packets>

³⁵ <https://aapcc.org/track/laundry-detergent-packets>

³⁶ <https://aapcc.org/track/laundry-detergent-packets>

concentrated packets of laundry detergent by children 5 and younger.³⁷ We urge the CPSC to investigate why the number of ingestions increased from 2018 to 2020.

According to a Consumer Reports article from 2017,³⁸ 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.”³⁹

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 be 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. We know from the American Association of Poison Control Centers data that this is not the case. If the data indicate that the voluntary standard is not successfully addressing the hazard posed by laundry packets, we urge the CPSC to engage in the voluntary standard process to make the standard more effective and to move forward with an effective mandatory standard.

XII. Recreational Off Highway Vehicles and All-Terrain Vehicles

1. Recreational Off-Highway Vehicles

Recreational Off-Highway Vehicles (ROVs) pose hazards to consumers and the CPSC’s staff has documented 445 reported fatal incidents and 3,100 estimated number of injuries of utility vehicles which include ROVs in 2017.⁴⁰ The CPSC has documented fatal incidents associated with off-highway vehicles (OHVs) by vehicle and has found that ROV fatalities have increased from 115 deaths in 2015, to 141 deaths in 2016, to 168 deaths in 2017.⁴¹

³⁷ Ibid.

³⁸ <http://www.consumerreports.org/laundry-cleaning/liquid-laundry-detergent-pods-pose-lethal-risk/>

³⁹ Ibid.

⁴⁰ https://cpsc.gov/s3fs-public/2020-Report-of-Deathsand-Injuries-Invovling-Off-HighwayVehicles.pdf?czH_I.104OtVwPty_gQLdzWIp1SK51Sn

⁴¹ Ibid in Table 1, page 5.

CFA and its partners documented 1,061 ROV fatalities between January 1, 2013 and February 28, 2021. We have documented 18 deaths in 2021 alone, and 215 fatalities in 2020, the highest recorded annual fatality count. In 2019, we documented 156 fatalities for ROVs, and in 2018, we documented 171 fatalities. In 2017 we documented 147 deaths and in 2016 we documented 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.⁴²

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 does a periodic analysis⁴³ of off highway vehicle (OHV) recalls and found that over the past ten years, there have been 123 OHV recalls, and the number of recalls has increased from two recalls in 2010 to 17 recalls in 2018, and 16 in 2019. In 2020, there were 16 OHV recalls. OHVs 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 from January 1, 2016 to January 1, 2019.⁴⁴ In addition, CFA analysis of CPSC OHV recall reports from January 1, 2010 through December 31, 2020 found that 19 brands⁴⁵ were involved in the recalls, and the brand with the most recalls was Polaris.⁴⁶ CPSC reports identified at least 71 injuries and two deaths linked to OHVs that were subsequently recalled. Also, more than two million⁴⁷ 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, recalls should be conducted quickly and effectively, and further, we are concerned about a recent number of recalls engaged in by companies without viable CPSC engagement. 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.⁴⁸

⁴² Available at <https://consumerfed.org/off-highway-vehicle-safety/>

⁴³ https://consumerfed.org/recall_blog_2020/

⁴⁴ https://consumerfed.org/recall_blog_2020/

⁴⁵ 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.

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ <https://www.cpsc.gov/content/joint-statement-of-cpsc-and-polaris-on-polaris-rzr-900-and-1000-recreational-off-highway>

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 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. We are concerned that consumers could still unwittingly be 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.

We appreciate that the CPSC now includes ROV data in the Annual Report of Deaths and Injuries Involving Off-Highway Vehicles with More than Two Wheels. We also appreciate that the FY 2021 Operating Plan includes an Advanced Notice of Proposed Rulemaking for OHV Fire and Debris Penetration. In 2022, we urge the agency to continue to prioritize this issue and work to finalize the rule.

2. All-Terrain Vehicles

From 2015 through 2017, the CPSC has received 1,671 reports of fatal incidents associated with ATVs.⁴⁹ In 2019, there were an estimated 96,000 OHV-related, emergency department-treated injuries in the United States. An estimated 27 percent of these involved children younger than 16 years of age. The estimated number of ATV related fatalities was 521 in 2017 and 736 for ATVs, ROVs, and UTVs combined in 2017⁵⁰, though the 2017 data is not considered complete and the number of fatalities will almost certainly increase as more data is received.

In 2017, OHVs killed at least 115 children younger than 16, accounting for 15 percent of OHV fatalities. Forty-four percent of children killed were younger than 12 years old in 2017. Children

⁴⁹ https://cpsc.gov/s3fs-public/2020-Report-of-Deathsand-Injuries-Invovling-Off-HighwayVehicles.pdf?czH_I.104OtVwPty_gQLdzWIp1SK5lSn at page 5.

⁵⁰ Ibid.

under 16 suffered an estimated 25,800 serious injuries in 2019. This represents 27 percent of all injuries.

CFA and our partners have documented 4,910 ATV related deaths from 2013 through February 28, 2021. CFA has documented 50 ATV deaths thus far in 2021, and we documented 615 deaths in 2020.⁵¹ These numbers are likely underestimates as they are based solely on media reports and may grow as more data becomes available about additional deaths.

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 (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.

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 the reporting of OHV death data by including how many deaths occur on private versus public roads and should seek to reduce the significant time lags in releasing OHV death and injury data.

In addition, during the COVID-19 pandemic, the CPSC has documented that severe injuries for all-terrain vehicles (ATVs), mopeds and minibikes have increased 39%.⁵² Twelve states have

⁵¹ <https://consumerfed.org/off-highway-vehicle-safety/>

⁵² https://cpsc.gov/s3fs-public/Effect%20of%20Novel%20Coronavirus%20Pandemic%20on%202020%20Preliminary%20NEISS%20Estimates%20%28March%20%E2%80%93%20September%202020%29.pdf?eBqDdRMGIEQOtp.VG_9IdBCjIFk262hu at page 14.

documented increases in OHV incidents during the pandemic: Arkansas,⁵³ Colorado,⁵⁴ Florida,⁵⁵ Georgia,⁵⁶ Kentucky,⁵⁷ Louisiana,⁵⁸ Minnesota,⁵⁹ Missouri,⁶⁰ North Dakota,⁶¹ Tennessee,⁶² Vermont,⁶³ and West Virginia.⁶⁴

B. Consumer Product Safety Commission Authority and Enforcement

XIII. Racial and Economic Disparities in Child Product Safety

In 2013, CFA released a report demonstrating that children from low-income families are at greater risk for unintentional injuries and foodborne illnesses than children from higher-income families. Over two-fifths of children (44%) in the United States, according to the National Center for Children in Poverty, live in low-income families.

The report, *Child Poverty, Unintentional Injuries and Foodborne Illness: Are Low-Income Children at Greater Risk?*, which should be updated, was based on dozens of academic studies as well as the available (but incomplete) statistical data, also concluded that, to more fully understand these risks, it is essential to begin collecting better data on the relationship of family income and race to product related unintentional injuries and deaths as well as incidences of foodborne illness.

⁵³ <https://abcnews.go.com/Health/Healthday/story?id=4509521&page=1>; <https://www.thv11.com/article/sports/outdoors/atv-crash-cases-rise/91-fc72405f-2908-4d0a-a0f0-e88e5f0c90fc>

⁵⁴ <https://www.koaa.com/community/your-healthy-family/your-healthy-family-er-visits-up-at-childrens-in-colorado-springs>; <https://www.fox21news.com/digital-now/doctors-see-an-early-start-to-trauma-season-this-year/>

⁵⁵ <https://www.news4jax.com/news/local/2020/05/27/doctors-see-dramatic-increase-in-children-with-atv-injuries/>, <https://www.firstcoastnews.com/article/news/health/coronavirus/child-atv-accidents-are-on-the-rise-doctors-think-its-linked-to-coronavirus/77-5968ef60-d6b9-423d-923a-337d64bc178f>, <https://www.chaliklaw.com/news/atv-related-injuries-involving-children-has-climbed-over-the-years/>

⁵⁶ <https://www.gpb.org/news/2020/10/06/more-kids-treated-for-trauma-injuries-atvs-and-bikes-during-pandemic>, <https://www.wrbl.com/news/health/coronavirus/piedmont-columbus-regional-doctors-see-rise-in-bicycle-accidents-amid-covid-19/>, <https://www.fox5atlanta.com/news/injuries-increase-among-children-during-pandemic-from-accidents-related-to-atvs-dirt-bikes-and-more>, <https://www.wtvm.com/2020/12/08/chattahoochee-valley-seeing-spike-atv-accidents-motorsports-experts-offer-safety-tips/>, https://www.albanyherald.com/news/health-care-facilities-treat-more-injured-children-during-pandemic/article_92271d36-07f4-11eb-92ad-ef08c0c2605e.html

⁵⁷ <https://www.wsaz.com/2020/09/28/boyd-county-sees-increase-in-atv-related-accidents-first-responders-urge-caution/>

⁵⁸ <https://www.kplctv.com/2020/05/15/atv-accidents-juveniles-rising/>

⁵⁹ <https://hereforlife.blog/children-injured-in-atv-accidents-on-the-rise/>, <http://www.timberjay.com/stories/fatal-ohv-crashes-reach-decade-high.16825>, <https://www.albertleatribune.com/2020/09/fatal-ohv-accidents-reach-highest-level-in-over-a-decade/>, <https://www.kare11.com/article/news/atv-accidents-increase-pandemic-children/89-ab433032-bfac-43fe-bc89-085d9c733216>, <http://timberjay.com/stories/cos-face-challenge-from-increased-use-of-atvs.16339>, <https://www.duluthnewtribune.com/news/accidents/6590125-Essentia-and-St.-Louis-County-report-uptick-in-ATV-crashes-injuries>.

⁶⁰ <https://www.kmmo.com/2020/07/23/mshp-troop-b-reports-increase-in-fatal-motorcycle-and-off-road-vehicle-fatalities/>

⁶¹ <https://www.newsdakota.com/2020/09/22/atv-fatalities-up-in-north-dakota/>

⁶² <https://www.wmcactionnews5.com/2020/07/12/trauma-season-injuries-violence-coronavirus-keeping-hospitals-busy/>

⁶³ https://vtdigger.org/press_release/as-atv-injuries-climb-threefold-so-far-this-year-vermonters-are-advised-to-follow-safety-precautions-while-riding/, https://www.samesessenger.com/news/uvmmc-atv-injuries-on-the-rise/article_a3bc9de4-b634-11ea-9ee6-07b5b963bd6e.html, <https://www.benningtonbanner.com/stories/atv-injuries-climb-threefold-so-far-this-year.607926>, <https://www.wcax.com/content/news/UVM-Medical-Center-calls-number-of-ATV-injuries-this-year-alarming-571700541.html>, <https://www.burlingtonfreepress.com/story/news/2020/07/11/coronavirus-uvmmc-sees-rise-atv-related-injuries/5421692002/>

⁶⁴ <https://woay.com/atv-related-incidents-on-the-rise-in-southern-west-virginia/>

The report identified the following about unintentional injuries and racial and economic disparities suffered by children:

- Unintentional injuries represent the leading cause of death and injury for children between the ages of one and fourteen. Each year, such injuries are responsible for about 5,000 child deaths, about 5 million child emergency room visits, and millions more unreported injuries.
- These injuries are suffered disproportionately by children from low-income families. Several studies show that income is a better predictor of risk than either race or ethnicity, but that may not be true for all hazards.
- The death rates of several important types of unintentional injuries may be considerably higher for low-income children – at least double for deaths from motor-vehicle accidents, fires, and drownings – than for higher-income children, according to a study that reviewed child deaths reported in Maine.
- Non-fatal injury rates were also much higher for low-income children. One study found the highest rate among low-income children and the lowest rate among high-income children. Another study found that children receiving Medicaid had injury rates double those of the national average.
- Higher injury rates are related both to environmental factors – e.g., more hazardous streets, unsafe playgrounds, older and less safe houses and appliances – and to human factors – e.g., higher incidence of smoking, less income to afford safety precautions, less parental supervision in single-parent families, and less knowledge about product safety and prevention.

We urge the CPSC to consider including information indicating socio-economic status and race collected through the National Electronic Injury Surveillance System (NEISS) and other data sources. We look forward to working with the CPSC to explore how to better identify the correlation between unintentional injury and socioeconomic status and race as well as how to reduce deaths and injuries associated with consumer products that impact low-income children disproportionately.

XIV. 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 penalties⁶⁵ in fiscal year 2018 there was one civil penalty, in fiscal year 2019, there were two civil penalties, and in fiscal year 2020 there were not any civil penalties. We were glad to see one civil penalty in 2021 thus far, and hope this is an indication that assessing civil penalties will be a priority this year and in the years ahead.

- In FY 2021, the CPSC has collected 1 civil penalty for \$7,950,000; and no criminal penalties.
- In FY 2020, the CPSC has collected no civil penalties; and no criminal penalties.
- In FY 2019, 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.

⁶⁵ See <https://www.stericycleexpertsolutions.com/wp-content/uploads/2018/02/ExpertSolutions-RecallIndex-Q42017.pdf>

- 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.
- 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 March 2019 criminal indictment of two officials for failing to comply with the CPSC's rules.⁶⁶ 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.

XV. 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 2007.⁶⁷ Despite the fact that the CPSC found numerous home lead kits

⁶⁶ <https://www.justice.gov/opa/pr/two-corporate-executives-indicted-first-ever-criminal-prosecution-failure-report-under>

⁶⁷ <https://www.cpsc.gov/id/node/19866>

unreliable, it did not name them. Similarly, in a furniture stability study in 2016,⁶⁸ 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). Further, the recent infant inclined sleep deaths and the CPSC's slow and incomplete communication to the public have indicated the extent of the imbalance in the flow of necessary information that section 6(b) is causing. 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.

XVI. Recall Effectiveness

The vast majority of consumers who own a recalled product never find out about the recall. Most recall return rates, if publicized at all, hover around the 30% mark. While there are now requirements for recall registration cards and online mechanisms for a subset of infant 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 *2020 Children's Product Recalls* report,⁶⁹ that the agency and manufacturers have not been doing sufficiently.

XVII. CPSIA Implementation

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

Because of the rules promulgated by the CPSC, 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

⁶⁸ https://www.cpsc.gov/s3fs-public/Product%20Instability%20or%20Tip%20Over%20Report%20August%202016_1.pdf

⁶⁹ <https://kidsindanger.org/wp-content/uploads/2020/03/Seeking-Safety-2020.pdf>

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.

XVIII. SaferProducts.gov

We appreciate that the Commission held a hearing on SaferProducts.gov in March of 2019 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 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.

XVIX. Estimated Death and Injury Reports

A critical responsibility of the CPSC is to document and communicate death and injuries associated with products under the agency's jurisdiction. The CPSC issues numerous Annual Estimated Death and Injury Reports but some, such as Playground Estimated Death and Injuries, have not been updated since 2017. Annual estimated death and injury data is critical to the work of all CPSC stakeholders. We urge the Commission to add five additional annual Estimated Death and Injury Reports to its priorities each year.

XX. 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.

13. Remington A. Gregg, Counsel
Public Citizen

(Oral Testimony)



Written Testimony of
Remington A. Gregg
For the
U.S. Consumer Product Safety Commission
Submitted on March 17, 2020

Public Citizen appreciates the opportunity to submit testimony with our recommendations for priorities that the U.S. Consumer Product Safety Commission (CPSC or Commission) should add to its Fiscal Year 2022 agenda.¹ Public Citizen is a national non-profit organization with more than 500,000 members and supporters. Now in its fiftieth year, our organization represents 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.

I. Introduction

The CPSC, founded in 1972, was dubbed the “most powerful Federal regulatory agency ever created”² when it was established. It was designed to be a modern agency, and so “Congress wanted the agency to have strong regulatory authority, generous funding, broad participation (especially by consumers) in decision-making, widespread openness, and substantial independence from White House influence.”³ As the CPSC enters the fiscal year that represents its half century in existence, it is helpful to assess whether the CPSC has functioned as it was devised.

There is much to be done to ensure the CPSC functions as designed and lives up to its mission to robustly protect consumers as Congress envisioned. To that end, Public Citizen is eager to see the CPSC increase transparency through less reliance on Section 6(b) of the Consumer Product Safety Act, increase the use of technology to advance the agency’s mission, advocate strongly for more funding for the agency to carry out its important mission, center diversity and racial

¹ Notice of Public Hearing, Commission Agenda and Priorities, FR Doc. 2021-03888 (February 25, 2021).

² Robert S. Adler, *From “Model Agency” to Basket Case—Can the Consumer Product Safety Commission Be Redeemed?*, 41 Admin. L. Rev. 61, 62 (1989).

³ *Id.* at 68.

equity into its policymaking, and swiftly finalize rulemaking on important issues that have languished at the agency.

II. The Commission’s key priority should be transforming the agency to meet the challenges of the 21st century.

The Commission should begin documenting how Section 6(b) of the Consumer Product Safety Act contributes to the agency’s lack of transparency and places the public at risk.

Over time, the agency’s operations have become increasingly opaque to the public and Congress. One way to fix this problem is to repeal Section 6(b) of the Consumer Product Safety Act (herein 6(b)). 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 certain criteria are met. This often slows the flow of pertinent information from getting to the public. As a result, 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, including those that put harmful products on the market.

When the CPSC seeks to release information about product safety hazards in which the public can readily identify the product or manufacturer, it must first notify the company and allow it to agree to release the information. If the company objects, and the agency decides to overrule the company and release the information, Section 6(b) gives the manufacturer the right to go to federal court to stop the release, which forces the agency into lengthy and expensive litigation, and further delays the release of safety information to the public. The inevitable result: the CPSC often chooses to instead issue vague warnings that fail to prevent avoidable injuries and deaths or issue little helpful information for consumers.

Section 6(b) frustratingly ties the hands of the CPSC, which has had tragic real-world consequences. Consumer Reports found that the CPSC knew that the Fisher Price Rock ‘n Play and similar products were linked to infant deaths, but failed to inform the public about the risks of these specific products.⁴ If the agency had sought to “name names,” under existing law, it could have been pulled into protracted litigation, which could have further delayed the release of safety information to parents. Rather than risk these delays, in May 2018, the CPSC issued a “consumer alert”—essentially a press release—that cautioned parents against the hazards of allowing babies to sleep unrestrained in “inclined sleep products.”⁵ Normally, such a generic name would not provide enough information to a consumer to know that a specific product may be in their home, but that is especially true for busy, sleep-deprived parents.

⁴ Rachel Rabkin Peachment, *How a Product Tied to 73 Infant Deaths Came to Market and Stayed for a Decade, As Government and Industry Knew the Risks*, CONSUMER REPORTS (December 29, 2019), <https://bit.ly/3tAMuVX>.

⁵ Remington A. Gregg, *Delay and Secrecy: How Section 6(b) of the Consumer Product Safety Act Keeps Consumers in the Dark*, PUBLIC CITIZEN (June 24, 2019), <https://bit.ly/3rWRJyI>.

The 6(b) provision not only muzzles the CPSC from releasing specific safety information, it prevents journalists, consumer advocates, and government watchdogs from obtaining information about the agency's unfortunately all too frequent failures in getting dangerous products out of our homes in a timely manner. A Public Citizen report found that 6(b)'s restrictions are time consuming and waste money that could be better spent keeping consumers safe.⁶

While we will work with Congress to repeal or at the very least reform 6(b), the Commission can play a role in increasing transparency into how often companies invoke 6(b) to prevent the release of critical health and safety information. We urge the Commission to: better track the use of this provision through yearly detailed reports on the number of times 6(b) has been invoked by a company and if that prevented the agency from releasing information; how many times 6(b) litigation has occurred; and whether the same companies repeatedly invoke 6(b) to avoid information disclosures. We suggested in testimony from the last two priorities hearings that the Commission carry out these recommendations. No progress has been made.

The Commission must better use technology to more effectively carry out its responsibilities.

We are pleased that Congress required the Commission to create the Saferproducts.gov database. The database serves a dual purpose. It gives consumers more information to enable them to avoid buying or continuing to use dangerous products. The database also helps close the time gap between a manufacturer learning of a hazard and the information reaching consumers. While we continue to applaud the creation of the Saferproducts.gov, the website can become a more effective tool to avert death or injury to the public, as should the National Electronic Injury Surveillance System database, which collects data on consumer product-related injuries occurring in the United States. These two databases can, and should, be used in tandem to help the Commission understand which products may be more unsafe than others, where product-related injuries are occurring, and in what communities. This, however, would take more funding from Congress in order to create a more useful database.

Public Citizen has continuously urged the Commission to collaborate with technologists and innovators, including those who have experience in the private sector, to implement the recommendations that we have made to the Commission that include a non-exhaustive list of ideas we believe would make Saferproducts.gov more effective.⁷ We once again urge you to do so. Finally, we hope that Sen. Jerry Moran (R-KS) once again introduces the CPSC CIO Parity

⁶ *Id.* at 3.

⁷ Remington A. Gregg, *Comments on the Request for Information on Possible Improvements to Saferproducts.gov*, PUBLIC CITIZEN (March 5, 2020)(on file with author) (stating that we believe the CPSC's Twitter presence, for example, has shown the agency's ability to effectively reach the public).

Act,⁸ which would require the agency to hire a chief technologist who would help address the important issues discussed above—and hope that the Commission would support the legislation and its passage.

III. Commissioners should become stronger advocates for increased agency funding.

The CPSC has jurisdiction over more than 15,000 consumer products. Its staggeringly low budget—at less than \$130 million per fiscal year—makes it difficult for the agency’s dedicated staff to carry out its mission. According to Acting Chair Adler, “...every year CPSC deals with more deaths and injuries than NHTSA – or OSHA – or the Mine Safety and Health Administration (MSHA) — or almost any of the other federal health and safety regulatory agencies with bigger budgets than CPSC.”⁹ That staggering statistic should serve as a wakeup call to every commissioner to strongly advocate for more funding. Without substantially more funding, the agency will continue to struggle to meet all the statutory and regulatory demands the agency faces.

IV. The Commission should promote diversity in its ranks and in its policymaking focus.

A 2008 Government Accountability Office (GAO) report on data collection related to injuries of children of color and how to better assess how to protect them, it concluded that: “Some research suggests that there are racial and ethnic disparities in child death rates due to injuries related to particular consumer products; however, CPSC does not routinely assess whether such disparities exist, primarily because data limitations make it challenging to conduct such analyses.”¹⁰ Since that report has been released, it is unclear if the agency has accepted or implemented any of the recommended actions. Since that time, moreover, it has become even clearer that Black and Brown people have disproportionately lower health outcomes, life expectancies, incomes, and household wealth than whites¹¹—all damning indictments on how society treats Black and Brown people. The CPSC’s complicity in allowing these disparities to continue without addressing them is no better than the rest of society’s failures to do so. The Commission should

⁸ S. 1858, 116th Cong. (2019).

⁹ Robert Adler, *Keynote Address*, ICPHSO 2021 (Feb. 24, 2021), <https://bit.ly/2P5LSby>, at 2.

¹⁰ Report to Congressional Committees, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (Aug. 2009), <https://bit.ly/30PH1hB>, at 21.

¹¹ See, e.g., Jamila Taylor, *Racism, Inequality, and Health Care for African Americans*, THE CENTURY FOUNDATION (Dec. 19, 2019), <https://bit.ly/30Qg911> (noting that “African Americans still experience illness and infirmity at extremely high rates and have lower life expectancy than other racial and ethnic groups. They are also one of the most economically disadvantaged demographics in this country.”), Ariel Gelrud Shiro and Richard V. Reeves, *Latinos Often Lack Access to Healthcare and Have Poor Health Outcomes. Here’s How We Can Change That*, THE BROOKINGS INSTITUTION (Sept. 25, 2020), <https://brook.gs/3vvztPf> (noting often have less healthcare and lower health outcomes than whites), and John Creamer, *Poverty Rates for Blacks and Hispanics Reach Historic Lows in 2019*, U.S. CENSUS BUREAU (Sept. 15, 2019), <https://bit.ly/3trq7Cb> (detailing that while poverty rates for Black and Hispanic people is at historic lows, “even with these gains, Blacks and Hispanics continue to be over-represented in the population in poverty relative to their representation in the overall population.”).

take heed of the Biden-Harris administration’s commitment to centering racial equity into its policymaking.

This should be done in several ways. First, the Commission should show a genuine commitment to listening to impacted communities and creating policies that address those concerns. (That includes meeting people in their communities.) Second, the agency should do more to bring greater diversity in its ranks. Policymaking is informed by lived experiences, and the lived experiences of leadership in the agency is very far removed from the lived experienced of many Black and Brown people. Third, the Commission should urge President Biden to consider diversity in nominating members to the Commission—this should include racial diversity and a commitment to nominating consumer advocates.¹²

V. **The Commission should work with standard setting bodies to finalize long-standing voluntary standards and promulgate long-delayed mandatory standards.**

The Commission is well aware of the impediments placed on the agency requiring it to work with standard-setting bodies to create voluntary standards before it may draft mandatory standards—even though consumers are injured unnecessarily as voluntary standards take years to draft and are often too weak.¹³ While the Commission cannot unilaterally change this congressional mandate, it can urge voluntary standard-setting bodies to work more quickly to complete voluntary standards. And it can urge Congress to revert the law back to its original language so that the agency may engage in “less cumbersome rulemaking.”¹⁴ In addition, Public Citizen agrees with and echoes Acting Chair Robert Adler’s call for the agency to swiftly finalize “mandatory safety standards for infant sleep products, crib mattresses, crib bumpers, clothing storage units, Carbon Monoxide hazards, high-power magnets, as well as Organohalogen Flame Retardants (OFRs), table saws, and window coverings.”¹⁵

The below rules, which have the unanimous support of the entire Commission, should be speedily finalized to protect our nation’s infants.

Inclined Sleep Products and Gates and Enclosures

Section 104 of the Consumer Product Safety Improvement Act (CPSIA) required the Commission to promulgate standards for durable infant and toddler products. Public Citizen strongly supports the Commission quickly finalizing the remaining Section 104 standards for

¹² See Appendix A.

¹³ See Voluntary Standards Activities Fiscal Year 2020 Annual Report, U.S. CONSUMER PRODUCT SAFETY COMMISSION (Nov. 25, 2020), <https://bit.ly/2NqeAUB>.

¹⁴ Adler, *supra* note 9, at 3.

¹⁵ *Id.*

infant sleep products and gates and enclosures. While the infant sleep proposed rule was strengthened to limit the incline of infant sleep products to a maximum of 10 degrees for products that are not already addressed by another safety standard, yet it has not been finalized. We are troubled that so much time has passed between the posting of the initial proposed rule and the submission date for the revised proposed rule. During that timeframe, infants have been injured or have died.¹⁶

Moreover, we noted in comments submitted by Consumer Federation of America, Consumers Union (now Consumer Reports), Public Citizen, and U.S. PIRG (Consumer Groups) in response to the 2017 notice of proposed rulemaking that “Canada only allows up to a 7-degree angle in their sleep products.”¹⁷ While we are heartened that the Commission has accepted Dr. Erin Mannen’s recommendation to prohibit infant sleep products to an incline of no more than 10 degrees, we urge you to not consider your job complete once you swiftly act to finalize that revised proposed rule. We urge the Commission to add to its priorities studying the impact and efficacy of adopting Canada’s more protective standard in order to determine whether further rulemaking is warranted.

The proposed rule for gates and enclosures was primarily developed by ASTM International with input from consumer advocates, industry, and the public. This noncontroversial rule should be immediately finalized.

Crib Bumpers

In 2016, the Commission directed staff to initiate rulemaking for crib bumpers, which was not included in the definition of what is considered a durable infant or toddler product in the CPSIA. In March 2020, the Commission unanimously agreed to advance rulemaking for a final crib bumper safety standard. Public Citizen urges the Commission to quickly finalize this rule.

VI. Conclusion

In the mid-1960’s through the 1970’s, Congress passed monumental consumer protection laws including the Fair Credit Reporting Act, Occupational Safety and Health Act, and Consumer Product Safety Act (which established the Consumer Product Safety Commission). It is no surprise, then, that the era was dubbed the “consumer decade.” Over the past half century, Public Citizen has stood for the public interest in the face of well-resourced corporate opponents and are highly concerned that the ability of companies to stymie the work of the Commission—through

¹⁶ Rachel Rabkin Peachman, *Inclined Sleeper Deaths Rise to 50 as Industry Continues to Sell the Products*, CONSUMER REPORTS (June 20, 2019), <https://bit.ly/2QheHTd> (according to Consumer Reports, four families “filed a joint lawsuit, alleging that their infants suffocated while in the Rock ‘n Play Sleeper, with three of those deaths occurring between January and March 2019, just before Fisher-Price recalled the product.”).

¹⁷ Consumer Groups Comments, June 21, 2017, <https://bit.ly/30U8fU4>.

processes like voluntary industry-set standards or 6(b)'s secrecy requirements—have kept the agency from fully fulfilling its mission.

The Commission's work is very challenging at the best of times. Now, however, as the country fights a global pandemic that has kept so many of us home 24/7, keeping consumers safe has become an even more difficult task for the CPSC. While the Commission's staff work tirelessly to fulfill the agency's mission, unfortunately partisan politics, personality differences, anemic funding, and the occasional lack of interest from Congress or the executive branch about the agency's work makes all of the staff's work even more difficult. The Commission, however, can and must meet the moment by promulgating robust rules and standards to protect consumers, proactively working to get ahead of product safety hazards, and engaging with consumer advocates early and often on issues that they are seeing are problematic.

As Public Citizen—and soon the CPSC itself—mark five decades of work on behalf of keeping consumers safe, we urge the agency to truly assess what it will take for the CPSC to fulfil its mandate, protect consumers and their families from unsafe products, and be a visionary leader at home and abroad for product safety enforcement. We look forward to being a true partner in providing the Commission the tools it needs to more effectively carry out its mission.

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

APPENDIXES

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APPENDIX A

January 20, 2020

Honorable Joseph R. Biden, Jr.
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

Congratulations on your Inauguration. We look forward to working with you on a broad range of issues.

As organizations working on behalf of consumers, we urge you to choose consumer voices for high-ranking positions in federal agencies that impact consumers. The administration will tackle a range of pressing consumer issues, such as COVID-related price gouging, product safety, and discriminatory and predatory lending. Too often, however, agencies with a consumer focus are staffed with senior leadership from industry, defense-side firms, and corporate America. Robustly enforcing consumer and product safety laws means having people in key positions who have spent time fighting on behalf of consumers.

Few consumer advocates have served in high-ranking government position. Joan Claybrook served as administrator of the National Highway Transportation Safety Board (NHTSA) during the Carter administration. David Friedman served as acting NHTSA administrator for nine months during the Obama administration. Now is the time to fill your administration with diverse, independent consumer advocates who have spent their careers in the public interest. Several agencies that have a consumer focus include the Consumer Financial Protection Bureau (CFPB), Federal Trade Commission, Consumer Product Safety Commission, and the Department of Justice's Consumer Protection Branch. We urge you to fill those political positions with individuals who have the knowledge and experience working on behalf of consumers. We are heartened by the news that you intend to nominate Rohit Chopra to lead the CFPB, and hope that this is the first of many appointments of consumer advocates to top slots. If requested, we would be happy to provide a list of candidates whom we believe would be ideal for positions in these agencies.

Sincerely,
Consumer Federation of America
Kids In Danger
National Consumers League
Public Citizen

APPENDIX B



Product Safety Memorandum to the Biden Transition November 11, 2020

When Congress created the U.S. Consumer Product Safety Commission (CPSC or Commission) in 1972, it was dubbed the “most powerful Federal regulatory agency ever created.”¹⁸ The CPSC was envisioned to be a modern agency. “In order to make the CPSC a model of regulatory reform, Congress wanted the agency to have strong regulatory authority, generous funding, broad participation (especially by consumers) in decision-making, widespread openness, and substantial independence from White House influence.”¹⁹

In the intervening years, however, actions by Congress and by the CPSC itself have dramatically weakened the agency. As a result, corporations are often free from accountability for wrongdoing; the creation of mandatory safety standards has been replaced by voluntary standards that take years to draft; civil penalties are rare; some recalls are not sufficient to protect the public from hazardous products; and the agency’s operations have become increasingly opaque to the public and Congress.

It is time to articulate an agenda that prioritizes consumers by correcting laws and court decisions that have weakened product safety in America. Our organizations—members of a close-knit coalition dedicated to improving product safety—have varied priorities in our work, but we are unified in our belief that the following CPSC-related issues should be tackled immediately by the Biden Administration and Congress.

¹⁸ Robert S. Adler, *From “Model Agency” to Basket Case—Can the Consumer Product Safety Commission Be Redeemed?*, 41 Admin. L. Rev. 61, 62 (1989).

¹⁹ *Id.* at 68.

Administrative Actions

Greater Use of Compliance and Enforcement Authority

The Consumer Product Safety Act provides the CPSC with a number of compliance and enforcement tools to help keep consumers safe and hold companies accountable, including mandatory recalls and civil penalties. In general, however, the CPSC relies most heavily on negotiated voluntary recalls and rarely uses other compliance and enforcement tools. While Congress should take key steps to help the agency alert the public to hazardous products and force needed recalls more quickly—such as by increasing the agency’s funding and passing measures to make it easier for the CPSC to determine that a product presents an imminent hazard, a substantial product hazard, or an unreasonable risk to safety—it is also incumbent on the CPSC to make greater use of the tools it has today.

For example, the agency has broad authorities in its organic statute to hold wrongdoers accountable. It can make a preliminary determination that a product presents a substantial product hazard. It can sue companies that fail to conduct a needed recall. And it can use its market surveillance capabilities to take appropriate enforcement actions. Despite the fact that the CPSC possesses ample authorities to hold wrongdoers accountable, the agency rarely uses these powers.

In addition, even when Congress has given the CPSC authority in specific statutes to hold wrongdoers accountable, such as in the Congress in the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA) the CPSC has been slow to use its enforcement authority to remove dangerous products that do not meet the law’s clear requirement for flow restrictors on liquid nicotine containers.

Action: The Biden Administration should prioritize the CPSC making greater use of its authority to identify hazardous products and hold companies accountable for their obligations under the law by:

- **Among other things:**
 - **Making more frequent public, preliminary determinations that corrective action will be required;**
 - **Filing formal administrative or legal complaints to seek needed recalls;**
 - **Carrying out market surveillance with an emphasis on getting recalled, for-sale products off the market and deterring wrongdoing in the future.**

- **Where specific product safety laws already exist—such as the Child Nicotine Poisoning Prevention Act—the CPSC should place a significant emphasis on enforcing these laws to prevent injuries and deaths.**

Continue Using Authority to Impose Meaningful Penalties on Violations of Consumer Product Safety Law

When Congress passed the original Consumer Product Safety Act in 1972, that law not only created the CPSC, but also gave the agency authority to impose monetary penalties against product manufacturers for placing unsafe products into the marketplace. Civil penalties serve as an important tool to discourage companies from cutting corners when manufacturing products that could result in injury or death. They also create an incentive to ensure that manufacturers quickly report product defects. While the Consumer Product Safety Improvement Act (CPSIA) gave the CPSC discretion to increase penalties in the judgments imposed on companies, and for several years the agency had been making use of the higher penalty possibilities, that trend has slowed since 2017. According to a Public Citizen report, in President 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”²⁰—President Obama’s last year in office. For additional context, in 2019 and 2020, the CPSC has not issued any civil penalties.

In addition, the CPSC has the power to seek criminal penalties for knowing and willful violations of consumer product safety law. The agency has used this authority only rarely and has not used it at all since 2013.

Action: 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 civil penalties authority a decade ago. The agency should reverse the current trend and go back to imposing meaningful civil penalties on corporate violations of consumer product safety law in furtherance of its important mission to ensure that only safe products make into the marketplace.

Additionally, for the CPSC to properly incentivize product safety and hold executives accountable for knowing and willful wrongdoing, it must retain the credible use of criminal penalties and work with the Department of Justice to prosecute those who break the law.

²⁰ PUBLIC CITIZEN, CORPORATE IMPUNITY (2018), <https://www.citizen.org/wp-content/uploads/corporate-enforcement-public-citizen-report-july-2018.pdf>.

Promulgate Rules for Infant Sleep Products and Furniture Safety Without Delay

Infant Sleep Products

The substantial progress on reducing infant sleep-related deaths that began in the 1990s has plateaued, leaving significant need for public health interventions to protect infants from products that are incompatible with a safe sleep environment. Section 104 of the Consumer Product Safety Improvement Act (CPSIA) requires the Commission to promulgate standards for durable infant and toddler products. The proposed safety standard for infant sleep products would take significant action to protect against sleep-related infant deaths by ensuring that all such products meet a protective safety standard. Such a rule would have protected against the proliferation of dangerous inclined sleep products, such as the now-recalled Fisher-Price Rock ‘n Play Sleeper, as well as emerging hazards from other types of novel infant sleep products. Importantly, the proposed rule limits the back incline of infant sleep products to a maximum of 10 degrees because studies have shown that an incline greater than that increases the likelihood of death from suffocation, positional asphyxia, or entanglement. At least 92 infant deaths have been connected to inclined sleep products.²¹ Organizations including the American Academy of Pediatrics, Consumer Federation of America, Consumer Reports, Kids In Danger, Public Citizen, and U.S. PIRG submitted comments supporting the 2019 supplemental notice of proposed rulemaking for infant sleep products.²²

Action: While we are heartened that the Commission has proposed limiting infant sleep products to an incline of no more than ten degrees, we urge the agency to quickly finalize the strongest possible rule. In addition, we encourage the agency to work collaboratively with experts on infant sleep safety and biomechanics to learn more about the science behind Canada’s more stringent limit of a 7-degree back incline, to see whether further strengthening of CPSC’s Infant Sleep Product standard is warranted. In the meantime, this examination should not stop progress on this long overdue rule.

Crib Bumpers

Crib bumpers are dangerous products that have no place in a safe sleep environment. They are inconsistent with expert safe sleep recommendations, which advise placing babies alone, on their back, and on a flat, firm surface with no restraints or loose fabric nearby. Given current safety standards for crib slat distance, crib bumper products are not necessary to prevent head entrapment, and they can lead to suffocation when an infant’s face is pressed against the side of

²¹ Rachel Peachman, *New Evidence Shows More Infant Deaths Tied to Inclined Sleepers Than Previously Reported*, (Consumer Reports 2020), <https://www.consumerreports.org/child-safety/new-evidence-shows-more-infant-deaths-tied-to-inclined-sleepers-than-previously-reported/>.

²² Public Submission, Safety Standard for Infant Inclined Sleep Products, *available at* <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=CPSC-2017-0020>.

the crib. Padded crib bumpers have led to dozens of infant suffocation deaths and do not offer protection to babies. Several states and localities have taken action to ban these products in their jurisdictions.

Action: We urge the CPSC to finalize a strong mandatory standard that removes all padded crib bumpers from the market. The CPSC should conduct more research to determine whether infant safety concerns also warrant further action on mesh crib liners and other related products. Due to the unique vulnerabilities of infants, the CPSC has a crucial role in protecting families from the risk of an infant sleep-related fatality in dangerous products.

Furniture Tip-Overs

According to the CPSC, a child is sent to the emergency room because of tipping furniture or televisions every 42 minutes, and one child dies every two weeks from being crushed by falling furniture or TVs even though these sorts of tip-overs are entirely preventable. While a voluntary standard has been under development for years, time is wasted and lives are lost because of the time it takes to finalize voluntary standards. The Stop Tip-overs of Unstable, Risky Dressers on Youth Act of 2018 (STURDY Act) would require the CPSC to establish a strong mandatory safety standard to improve the stability of dressers and similar clothing storage furniture – which have been the most deadly to children – and help prevent deaths and injuries that result when they tip over onto children.

Action: We strongly support the CPSC quickly finalizing its mandatory furniture tip-over safety standard. In addition, we urge the next Administration to endorse Congress passing, and urge Congress to pass, the Stop Tip-overs of Unstable, Risky Dressers on Youth (STURDY) Act.

Filling Leadership Positions with Experts Dedicated to Consumer Safety

Too often, the CPSC is staffed with industry leaders, corporate lawyers, and anti-regulatory ideologues. Robustly enforcing product safety laws means having people in key positions who are committed to strong product safety laws, government transparency, and accountability.

Action: Senior leadership positions (including the chair and commissioners) should be filled by advocates who have worked on behalf of consumers or others who have spent the bulk of their careers in the public interest.

Legislative Actions

Pass a CPSC Reform Bill

Almost immediately upon taking office, officials in the Reagan Administration “sought to abolish the [CPSC]” or, at the very least, “dramatically” cut[] the agency’s budget and staff.²³ In 1981, Congress significantly amended Section 6(b) of the Consumer Product Safety Act to give manufacturers an effective veto over the CPSC’s release of company-related information to the public. The amended Section 6(b) delays the release of critical safety information in a variety of ways. At times, rather than undergo laborious negotiations with companies in order to release *any* information in which the company is mentioned or its identity could be readily ascertained, the agency instead releases no information at all – or, in some cases, releases generic information that can be confusing to consumers.

For example, when CPSC issued warnings about “inclined infant sleep products,” most consumers did not understand that these warnings were in fact primarily about the ubiquitous and dangerous Fisher-Price Rock ‘n Play Sleeper. Making the information released about a generic product diminishes the efficacy of the notification. In addition, it delays getting critical health and safety information to the public. Section 6(b) also hinders the release of information that should be accessible to the public consistent with the Freedom of Information Act (FOIA) and the agency’s other information disclosure requirements.

Congress also added requirements that force the CPSC to rely on voluntary standards to regulate products. For most types of products, the agency can develop a mandatory standard only if it can demonstrate that a voluntary standard is not adequate in addressing a hazard or there is not substantial industry compliance. In practice, this provision has frequently deterred the agency from developing mandatory standards even when such a standard would save lives.

Actions: Though there are many pieces of important product safety legislation that Congress should pass, Congress should prioritize passing a comprehensive reform bill that restores crucial original powers that the CPSC has lost and brings greater accountability and transparency back to the agency. This should be done by:

- **Repealing the provisions of Section 6(b) of the Consumer Product Safety Act (CPSA) that curb the CPSC’s ability to inform consumers about hazardous products they may be using in their homes.** On its face, Section 6(b)’s purpose is to ensure that information disclosed to the public about hazardous products is accurate, and to provide companies with the opportunity to inform the CPSC about potentially unsafe products without that information immediately becoming public. But in

²³ Adler, *supra* note 1, at 74.

practice, the provision slows the flow of vital information to consumers because it is used to insulate companies from scrutiny.

- **Clarifying that Section 6(b) of the CPSA does not extend to records released under the Freedom of Information Act (FOIA).** In *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*,²⁴ the U.S. Supreme Court held that Section 6(b) extends CPSC's responses to FOIA requests. As a result, so little product-specific information is released that it is difficult for journalists, watchdog groups, or the public to determine if the agency is effectively carrying out its mission of safeguarding the public against product safety hazards.
- **Repealing Section 7(b) of the Consumer Product Safety Act.** The law requires the agency to "rely" on voluntary standards "whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards."²⁵ Unfortunately, voluntary standards processes often progress slowly, if at all; are deferential to manufacturers and other regulated-industry interests to the detriment of public health and safety considerations; and rarely provide the level of product safety protection necessary to keep families safe. CPSC should instead have broad authority to regulate hazardous products without first waiting for a voluntary process while injuries and deaths continue to occur.
- **Streamlining regulatory process (and cost/benefit analysis).** At the same time Congress amended Section 6(b), it amended the statute to require the CPSC to engage in extensive cost-benefit analysis that makes CPSC rulemaking particularly onerous and rare. In relying on Sections 7 and 9 of the CPSA for rulemaking, the agency is required to, among other things, find that the rule it is promulgating "imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated," as opposed to the rule maximizing net benefits to the public.²⁶

Changing the CPSC's rulemaking to be consistent with the Administrative Procedure Act would enable the agency to better protect consumers through the issuance of mandatory regulations. Recognizing the significant limitations that its current requirements impose on the CPSC's ability to address product hazards, Congress has repeatedly included language in bills that directed rulemaking to require the use of APA rulemaking to ensure that the rule can be finalized in a reasonable time period.

²⁴ 447 U.S. 102 (1980).

²⁵ 15 U.S.C. §§ 2056(b)(1) (1990).

²⁶ 15 U.S.C. § 2058 (2012).

Increase Funding for the CPSC

The CPSC has jurisdiction over more than 15,000 types of consumer products. Its statutes give the agency the authority to: set mandatory safety standards, participate in the development of voluntary safety standards, require safety labeling, remove defective products from the shelves and order product recalls and other corrective actions when necessary, collect injury, death, and incident data, and educate the public about consumer product safety.

However, the CPSC's staggeringly low budget—at approximately \$130 million, providing for 539 full-time equivalent (FTE) staff—makes it difficult for the agency's dedicated experts to carry out its mission. In comparison, the Food and Drug Administration's Center for Veterinary Medicine's FY 2020 budget provided by federal appropriations is more than \$190 million.²⁷

Today's budget woes at the CPSC are not what Congress intended when it created the agency. In 1974, the first full year that the CPSC was operating, Congress appropriated the equivalent of more than \$180 million in today's dollars, accounting for inflation, and 786 FTEs. CPSC's staffing levels rose to a high of 978 employees in 1980 before facing severe and repeated cuts during the 1980s.

The consumer product marketplace has changed dramatically in the last forty years, and continues to change rapidly, and the CPSC must be able to keep pace. If the CPSC continues to be inadequately funded, it will be unable to protect consumers from either longstanding, well understood hazards, or new or emerging threats. Simply put, without substantially more funding, the CPSC will continue to struggle to meet all the demands that statutory requirements and the public place on it.

Action: Congress should at least double the current appropriations for the CPSC so that the agency can adequately fulfill its critical mandate.

In the nearly fifty years that the agency has been in existence, the CPSC has been largely unable to carry out its mission to its full potential. We look forward to working with the Biden Administration and Congress to unleash a modern consumer product safety agency that truly protects consumers through robust safety standards and enforcement of our laws.

American Academy of Pediatrics, Zach Laris, zlaris@aap.org

Consumer Federation of America, Rachel Weintraub, rweintraub@consumerfed.org

Consumer Reports, William Wallace, William.Wallace@consumer.org

²⁷ DEP'T OF HHS, JUSTIFICATION OF ESTIMATES FOR APPROPRIATIONS COMMITTEES, 26 (2020).

Cuneo Gilbert & LaDuca, Pamela Gilbert, pamelag@cuneolaw.com
Kids In Danger, Nancy Cowles, nancy@kidsindanger.org
Public Citizen, Remington A. Gregg, rgregg@citizen.org
U.S. PIRG, Grace Brombach, grace@pirg.org

14. Crystal Ellis
Member of Parents Against Tip-Overs
(Oral Testimony)

U.S. Consumer Product Safety Commission

Attn: Alberta E. Mills, Secretary

4330 East-West Highway

Bethesda, MD 20814

TOPIC: Agenda and Priorities FY 2022

March 16, 2021

Dear CPSC:

Kaysen, age 2. Natalie, age 3. These are the names of the two latest tip-over fatalities that we know about. I say, that we know about because, as you know, it can take years, if ever, for these cases to be brought to light. We know that these deaths are the tip of the iceberg and there are thousands of injuries, since the last priorities hearing. I am asking, again, for dresser tip-overs to be the number one priority for the agency, as the problem has not yet been addressed adequately.

Seven years. It is almost 7 years since my beautiful, kind, smart 2 year old boy, Camden, was killed by an unstable dresser, that should have never made it to the marketplace. This pain is still fresh, though. This wound is ripped open, every time I hear another family lost their child to a tip-over. How many more children have to die or suffer injuries, before we say enough is enough, and take action?

Our organization, Parents Against Tip-overs, warned this agency before that children will continue to die, until we get serious and use all of the tools available to us to stop this crisis. As consumers, we are doing our part to help draft and push legislation through the House and the Senate, with the STURDY Act. It has been reintroduced by both chambers and I hope it will make progress this year. However, as we've seen, politics can be challenging and messy and derailed by leaders with agendas tainted by powerful lobby money, not to mention a deadly pandemic.

I know there is tip-over testing happening at the CPSC, as the ANPR went to an NPR. This process has no timeline and no end in sight. We've been trying to get a tough, mandatory standard for two decades. We must do better. We, the consumers, deserve better. We deserve more mandatory standards and safe products in our marketplace. We deserve to be able to go and pick out a nursery set for the baby we are joyfully preparing for, and already love beyond measure, without fear that these products will take their lives. Now is the time for quick moving action. Now is the time for CSUs to be added to section 104 rulemaking. 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." And, as industry as pointed out, this rulemaking would send a ripple out to all CSU design, as there is a lot of overlap between children's dresser lines

and the others. This is exactly what needs to happen to cut through this deadly, bureaucratic tape that leaves unsuspecting families holding the bag, when their children are killed or maimed.

Since the failed vote brought by Kaye and Adler, on the proposal to include CSUs marketed for children's rooms in the section 104 rulemaking, two years have passed and many more families have been devastated by this tragedy. This vote would have made a difference to them.

I am happy to see that dressers are continuing to be recalled, even as the pandemic has slowed many parts of the agency, for safety reasons. I continue to personally advocate for a larger budget for the agency, to be able to adequately protect consumers. I also am continuing to speak out about the absolute danger in the power of 6(b) to allow industry to gag this agency. As Chairman Adler pointed out in his latest keynote for ICPHSO conference in February 2021, "Somehow, every other agency in the federal government manages to function fairly and fully without the restrictions in 6(b). And, it's the public that suffers from the limits on sharing safety information." The public. That is my son, Camden and every other family that the CONSUMER Product Safety Commission is charged to protect. Commissioner Kaye said it best, when he said, "People die because of 6B. It is as simple as that." 6(b) was a culpable party in Camden's death. 6(b) slowed the agency and held the CPSC hostage to the manufacturer's wishes, until it was too late for my family to save our son. We all deserve to know the products that are a hidden risk for death and injury, in our homes. Consumers deserve to be safe and protected. That is your mission. It's time to move to action.

Thank you,

Crystal Ellis

Bereaved mother of Camden Ellis

Parent Advocate



crystal@stoptipovers.org

15. Trista Hamsmith, Mother/Founder
Reese's Purpose
(Oral Testimony)



Comments by: Trista Hamsmith; mother and founder

I remember being on the floor begging God. 'Please don't take her. Not my baby. I just have to hold her again, it's been forty days.' This time she was lifeless, she was blue, and she was no longer with us. I can't begin to describe the feeling of losing a child or the pain we live with every day...

Reese Elizabeth Hamsmith, known affectionately to those closest to her as ReRe, was born into this world a spunky, sassy, full-of-life little girl on June 13, 2019. At only seventeen months old, Reese took the attention of an entire room the moment she walked in with her spirited demeanor and inquisitive attitude. She lived life in a way that most will never know. She loved hard, played hard, and fought harder. Reese swallowed a button battery in October 2020 and lost her fight on December 17, 2020, at just over eighteen months old. Reese was an example for us all. This is her story.

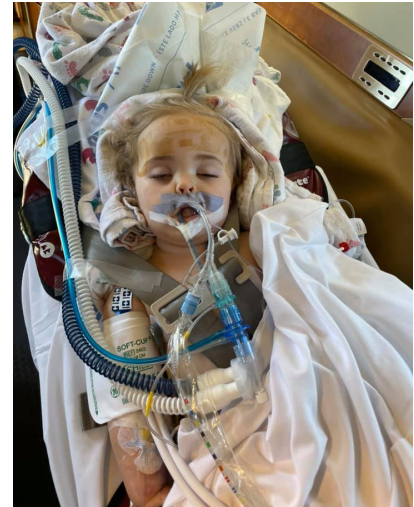


Reese seemed sick. Not her spunky self. We took her to the pediatrician, and she was diagnosed with croup. Croup is a common misdiagnosis for button battery ingestion, as the early symptoms can be similar. After returning home we noticed a button battery missing from a device. We tore the house apart but couldn't find it. A quick Google search had us rushing to the emergency room. An x-ray confirmed that she had ingested the battery and doctors performed

emergency surgery to remove the battery. We stayed in the PICU a few days, and doctors released Reese on a liquid-only diet.

At her next visit, the pediatrician diagnosed her with stridor and Reese was readmitted. A scan revealed a hole in both her esophagus and her trachea. The two holes created a passage, known as a fistula. The fistula acted like a tunnel between the esophagus and trachea, allowing air into her stomach and food and liquid into her lungs.

We learned that the fistula was only one centimeter above the carina, a ridge of cartilage where the trachea divides and heads toward the lungs. This location made it extremely difficult to place a breathing tube. Any movement she made could cause the tube to move too high and send air to her stomach through the fistula or too low and collapse a lung. The plan was to keep her sedated and let her rest for a week, that was the last time we saw our daughter as herself. Monday evening, Reese went into respiratory code and the decision was made to move Reese to another hospital with special equipment for treating children. For us, it was lots of waiting. Reese spent her time showing her spunky self by fighting the sedation. I think every doctor and nurse there learned her personality through her sedation battles.



On December 1, 2020, a few weeks after Reese swallowed the button battery, surgeons would attempt to close the holes in her esophagus and trachea. The surgery was an all-day event, and the doctors successfully repaired the fistula. A week passed, and they took Reese off the ventilator. I left the room to grab dinner, and when I returned, I walked into a nightmare. I remember hearing someone say, "Starting compressions!" I was then looking at my lifeless child as the nurses and doctors tried to save her. I had never prayed that hard in my life. Fortunately, we were able to get her back.

Reese was reintubated, the doctors wanted to give her some more time to heal before again removing the breathing tube. On December 14, we tried again. It was shortly after removing the breathing tube that the doctors and I decided she wasn't strong enough. The look in her eyes and face was heartbreaking, telling

me without words, “Mommy, do something.” We reintubated her again. Doctors began to discuss more seriously performing a tracheostomy.

I had been so terrified of the tracheostomy. After two unsuccessful attempts by Reese to breathe without intubation, I was welcoming it. Our path was getting harder, but she was still with us. Two long days went by before they performed the procedure. Around 6:30 pm, doctors inserted the tracheostomy tube. She would need another week on sedation for healing.

We were ready to move on to our new normal, and we were excited Reese hit that next mark in getting closer to going home. I went to sleep that night, excited that in one week I would see her awake again. Around 2:30 am I woke up to a full room. Our head ENT was there among the crowd, and I knew this was a bad sign. Reese’s numbers on the vent didn’t look right. They wanted to take her back to surgery to place a different tracheostomy tube that would be a better fit. After a couple of hours, Reese got back to the room with yet another surgery complete



At 8:30 am, the room was full of noise again. Her numbers were not looking right. Doctors wanted to do a bedside scope to determine what was going on. My real nightmare began here. They started the procedure. Shortly after beginning, the beeping started. I looked up at the screen and watched all of Reese’s numbers drop. The last number I saw was “six” before my head fell, and I began to pray. When I looked back up, I saw “zero”. They immediately started compressions. There I was again, watching them try to bring life back to my baby. It went on for thirty or forty minutes. They couldn’t get her back.

Early on, when Reese was still fighting her battle, I knew that I wanted to spread awareness about the danger of button batteries. At the time, I imagined it would be with Reese by my side. I guess my plan wasn’t *the* plan. In Reese’s hospital room sat a plaque that read, “He has a plan, and I have a purpose.” We always knew Reese would do big things in this world. Her Earthly battle may be over, but her true battle, her true plan, and her true purpose has just begun.



Button Battery ingestion is a growing threat to children:

- There were 4000 button battery ingestions reported in 2020¹
- However, it is estimated that only 11% of all cases are reported, meaning this is happening to 36,000 children annually and any one of these incidences could prove deadly²
- Your own recently released data on injuries during COVID shows a 93% increase in ER-treated injuries related to button batteries during the study period³

Button batteries are the fastest growing and highest margin segment in the battery market. With double-digit industry growth projected for production of and products using button batteries, these incidents will only continue to rise and pose a bigger threat for children as many more household items will use button batteries. Children often obtain loose or unsecure batteries and ingestions usually go unseen, making the critical window for survival absent by the time they are discovered.

In the wake of this rising threat I ask this commission to prioritize protecting our children from the danger of button batteries in the following ways:

- All consumer products, not just products for children, that contain button batteries need to have compartments which requires a tool to open. If this was the standard Reese would still be with us.
- Warning labels on all consumer products with button batteries and on the batteries themselves which clearly identify the hazard of ingestion, instruct consumers to keep new and used batteries out of the reach of children and to seek immediate medical attention if a battery is ingested. Current labels are vague and unclear. This product is deadly if swallowed that needs to be abundantly clear to all consumers.



¹ Texas Poison Control, 2020

² 32. K. Rhoades. Data driven change. Paper presented at: American College of Surgeons: Clinical Congress; October 2019; San Francisco, CA.

³ <https://cpsc.gov/Newsroom/News-Releases/2021/Hospital-Emergency-Room-Treatment-for-Some-Product-Related-Injuries-Rose-During-the-Pandemic-Even-as-Overall-ER-Visits-Dropped>

- A focus on education and outreach to parents, pediatricians, retailers and others to alert everyone to the dangers and how to prevent them is key to saving lives. So many parents tell me that they never knew the damage these batteries can do until they heard Reese's story. It should not take another tragedy to spread this awareness. Parents should be given this information as part of all of their well child visits starting at 6 months of age.

We know that there is support in the US for similar standards. Our [change.org petition](#) reached **23K signatures in under 2 weeks and is the top performing consumer safety petition in 2021**. Industry standards like this were [recently passed in Australia](#) after three children died and numerous others were injured on a consistent basis. From 1977, when the US began tracking button battery ingestion deaths, through mid-2018, 59 children have lost their lives and that doesn't even begin to count the near misses, injuries, both minor and severe and unrecorded cases. In 2020 there were at least two deaths in December alone, that we are aware of, Reese and another young boy, Johnathan Huff. That is over 60 families, like mine, that are left with devastating grief. Please don't make other families suffer before we address this issue. Enough is enough, the United States has to do better to protect our children and I am asking for your support. Make changes mandatory, make all products safer. If Australia can do it, why can't we?

To learn more about Reese's story please watch the linked video:
<https://vimeo.com/522470572?ref=em-share>

Below are the stories of just a few of the children who have been impacted by button battery ingestions. All of these families have reached out to Trista since hearing Reese's story. The families are from different areas of the country and different walks of life. Parents range from medical professionals, to engineers, to stay at home moms. Some were lucky enough to see their children swallow the battery and others only found out through that fateful x-ray. The symptoms differ and so does the impact. The one thing that all of these families have in common is that they love their children and their lives will never be the same all because of a tiny, deadly battery.

Ava Kate, 10 months old, Ohio

Ava Kate ingested a button/disk battery and was immediately rushed to the ER. Even with early detection, she endured over 40 surgeries to correct the damage. In July of 2017, she had a successful esophageal resection to remove the damaged section of the esophagus. From February 2016 to August 2017 she survived on a liquid diet of Pediasure, but is now finally able to enjoy solid food.

Delaney, 3 years old, Florida

Delaney swallowed a battery that lodged in her esophagus. She began coughing and drooling right away. Her family called an ambulance and within three hours doctors were able to remove it. She spent the following two weeks in the hospital.

James, 3 years old, West Virginia

James was originally diagnosed with a stomach virus and sent home with Zofran. The next day he had a fever that only got worse. Mom returned to the hospital and made certain they did every test possible as she knew something wasn't right. That was when they did the x-ray and found the battery. He was rushed by ambulance to Pittsburgh Children's Hospital. They had James prepped for surgery in 45 minutes. James spent the night in the PICU then was moved to a regular floor the next evening for the next ten days. After release, he wore a feeding machine at home for the next 2 weeks

Grayson, 17 months, Pennsylvania

Grayson became sick on a Thursday in August 2018. His crankiness was attributed to teething and the fever and vomiting to a GI bug. The following night he didn't sleep and was very uncomfortable and agitated. He was only comfortable if he was laying with his knees up in his stomach and even then, he cried. Mom knew something was off. Once at the ER they did a stomach x-ray to see if he was constipated. That x-ray showed a shadow, which prompted the doctor to do a chest x-ray showing the button battery in his esophagus. Life flight flew Grayson to Children's Hospital as time was of the essence. The button battery was removed from his esophagus but the damage was already done. The acid had burned all the tissue off his esophagus down to the muscle. Grayson seemed okay and was sent to recovery for the next day or two. A couple of hours after his surgery Grayson started contracting and wasn't

breathing right. He was rushed to the ICU because he was having a reaction and his throat was swelling causing cardiac arrhythmia. Grayson had toxic shock syndrome from the acid in his body from the button battery. His body was working hard to try to fight off the infection, which put too much pressure on his heart. He was put on oxygen from the infection and in ICU for three days as they weaned him off the oxygen. Once off the oxygen he was moved to the main floor and continued to have a feeding tube for the two and a half weeks. He was on a soft diet for six months after returning home. For a year, Grayson required follow up care with a G.I. specialist and the scar tissue may cause issues for the rest of his life.

Kian, 18 months old, Pennsylvania

Kian swallowed a button battery and it took 3 to 4 years of recovery but he is now a normal kid.

Logan, 16 months, Colorado

Logan swallowed a battery from a soundbar remote kids were playing with at his daycare. Nobody saw him swallow it. He was taken to the hospital around 6-8 hours after ingestion due to vomiting and sounding like he was having trouble breathing. Children's Hospital did not have the proper facilities, so Logan was taken by ambulance to the main campus. The battery was lodged in his esophagus and was successfully removed. He was in the PICU for close to two weeks. As Logan was improving, they tried to extubate him which failed two times and he had to be intubated again. They thought that there might have been a fistula between the esophagus and trachea, and if the next extubation did not go well they would look at a tracheostomy. The third extubation did better, but they were still concerned about his oxygen levels. Things started improving and he was transferred out of the PICU. They had to separate his esophagus to allow it to heal and put in a g-tube for feeding and a drain in his neck to remove saliva. He was able to go home after almost a month of being in the hospital. Home life was much different with g-tube feeds multiple times daily and overnight. It was several months before they did a surgery to reattach the esophagus. After that, he had to go in every other week to dilate the esophagus, and multiple times it was very tight. Eventually they did a second surgery to remove more of the esophagus as it just wasn't staying open. This did the trick, and the times between dilations got longer and longer until in a scheduled dilation and there was no change and it was not needed. The g-tube was removed as well. He still had a long road ahead, having to go back to the hospital when he did not chew a piece of apple and it got stuck temporarily. He spent a lot of time in feeding therapy since he went a long time without oral feeding during the time when kids will normally be starting to eat more and different kinds of foods. He still struggles with that today, but it has improved a lot. He may have at least one paralyzed vocal cord. Other than that, you couldn't really tell that this all happened to him thankfully. He is doing really well with no serious side effects.

Boy, 3 years old, New Mexico

He placed a battery up his nose from a toy train, burning out his septum and disfigured his nose. Family must wait until he turns 18 to have it all repaired. Very long journey.

Johnathan, 23 months, North Carolina

Johnathan Huff, affectionately called Nugget, tragically died on December 20, after ingesting a tiny battery on December 16, which burned his esophagus, intestines, and aorta resulting in catastrophic bleeding. Parents, both medical professionals, first thought a viral infection was responsible for the toddler's occasional nosebleeds and raised temperature. They became worried after Johnathan began throwing up vast amounts of blood, had fits, and fell unconscious at home.

Beau, 11 months, Illinois

Ingested a button battery and was fortunate enough to survive

Evie, 1 year, California

Evie ingested a lithium disc battery that became lodged in her esophagus. She was rushed to the hospital immediately yet even with quick intervention she suffered an esophageal perforation and spent a month in the hospital. Since then she has had an esophageal dilation because of stricture which will need to be repeated, likely several times. For the parents, it has been a nightmare and they are some of the "lucky" ones.

Victoria, 5 years, Florida

Victoria immediately told her mother she swallowed a battery. Mom looked up on CDC what to do. Parents took her to the ER but the ER was not equipped to handle this, so she was flown to Arnold Palmer, Orlando where she underwent an upper GI endoscopy. The battery was removed but not before causing severe damage to her lower esophagus. She is now in the healing process, with follow-ups and monitoring.

Ezra, 10 months, Wisconsin

Ezra swallowed a button battery that was not discovered for 24 hours. Mom assumed he had caught a cold from the doctor's office she had taken her older son to a few days earlier. After a sleepless night and him not eating very well, they went to the doctor. The doctor suspected the flu or something viral. His lungs sounded okay but they did a chest X-ray just to be sure and immediately saw something round and metallic lodged in his esophagus. Ezra was moved to the ER where they gave him honey to help neutralize it, and then he was driven an hour to the Children's Hospital to remove the battery. He only needed to stay in the hospital for a week. Mom suspects the battery was dead so it did less damage. A year later and he has made a full recovery.

Neil, 2 years, Colorado

Neil swallowed a battery from a finger light someone gave him. Parents did not know he could pry it apart with his bare hands. He was rushed to the ER and he thankfully passed it on his own the next day.

Boy, 2.5 years, Unknown

This little boy was around the age of 2.5 when he approached his mom clearly in distress. She looked up his nose and saw something lodged in there. He was taken straight to the ER and they tried unsuccessfully for 6 hours to take whatever it was out of his nose. The boy was about to be sent to a Children's Hospital but luckily he eventually cried so hard the force of his breathing pushed the object out. The object was a tiny battery that belonged to his ear picker. A specialist confirmed he would be okay. The worst-case scenario was developed nose cartilage which could require plastic surgery.

Salima, 1 year, Georgia

Salima swallowed two button batteries in late November. Her mother had thought the batteries were dead and threw them away in the trash. As of early February, she is still in ICU. She had a procedure to drain an abscess that formed around her chest surgical site. This infection is extremely difficult to treat because she is infected with antibiotic resistant bacteria. The following day, she began having violent respiratory distress, mechanically, for no apparent reason that the team could pinpoint (her X-ray was clear), but it was clear that she was working HARD to breathe. Her respiratory distress became respiratory failure and she was urgently taken to OR, where they found her trachea had almost narrowed to total obstruction. It was dilated but continues to re-narrow.

It was also found that her left vocal cord seems to have total paralysis from the battery acid damage.

Her whole body is struggling and working on coming back from the severity of being on ECMO and almost losing her life, being intubated and sedated for so long, and recovering from a major surgery etc.

Everlee, toddler, Texas

Everlee had been under the weather for a few days so her mom took her in for tests assuming she has strep. She was tested for strep, flu and covid, which all came back negative. The next day she spent all day crying and nothing soothed her. Her mom started googling and found the answer to why her mostly hyper, happy and active baby was all of a sudden having a hard time eating. Something was stuck in her esophagus and mom decided to get an x-ray. At the hospital, once x-rayed, Everlee was taken immediately into the emergency operation prep and surrounded by 10 people. What they saw was a button battery and those batteries kill babies. Mom had done a sweep of the house after hearing Reese's story and still it was a battery. It eroded in her esophagus and caused severe damage. Everlee was sedated with a breathing tube and feeding tube but eventually was well enough to be woken up. She remained in the hospital for days and eventually went home with a feeding tube for six weeks.

Kennedy, 3 years old, Texas

Kennedy is currently in Children's Hospital in Plano after swallowing 2 button batteries and multiple magnets. She underwent surgery on her intestines.

From: [Trista Hamsmith](#)
To: [CPSC-OS](#)
Subject: Oral Testimony Submission from Reese's Purpose
Date: Wednesday, March 17, 2021 4:38:41 PM
Attachments: [Oral testimony - Final \(2\) \(1\).pdf](#)
[Family Stories.docx \(1\) \(1\).pdf](#)

Thank you for the opportunity to speak to the commission on Button Battery Safety. My daughter, Reese swallowed a button battery in October 2020; she endured countless surgeries and scopes and was intubated under sedation for 40 days. Reese lost her fight on December 17, 2020, at just 18 months old. We miss her everyday. Since then I have been doing everything in my power to raise awareness and improve product safety so no family has to suffer this loss. I have also founded Reese's Purpose, a soon to be non-profit focused on child safety.

Attached are:

Oral Testimony: an overview of Reese's story, facts on button battery ingestions, and my asks of the commission

Family Stories: stories of all of the families that have reached out to me since Reese started her fight. This is a bigger problem than many understand and the list continues to grow.

Other relevant information:

[Today.com](#) wrote an article on Reese's story and it was the top story on the entire site the week it launched. [People.com](#) also picked it up. I started a [change.org](#) petition which has close to 25K signatures (over 10K this past weekend alone!) and is their top consumer products petition of 2021. People want change.

I have been told by representatives in Texas that they will be writing letters of support for my asks of the commission and I will send those on as soon as I receive them.

I look forward to speaking with the commission. Please let me know if any additional information is needed. Again thank you for this opportunity.

Best,
Trista Hamsmith



Email secured by Check Point

16. Lee Savio Beers, MD, FAAP, President
Benjamin Hoffman, MD, CPST-I, FAAP^(Oral Testimony)
American Academy of Pediatrics



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March 17, 2021

The Honorable Robert Adler, Acting Chairman
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, Maryland 20814

RE: Agenda and Priorities FY 2022

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

On behalf of the American Academy of Pediatrics (AAP), a non-profit professional organization of 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents, and young adults, I am writing to make recommendations to the U.S. Consumer Product Safety Commission (CPSC) on its agenda and priorities for the 2022 fiscal year. We appreciate the opportunity to comment and look forward to continuing to partner with you on the agency's critical work during this difficult time.

Children have been greatly affected by the COVID-19 pandemic, from the impact on their social and emotional well-being, to increased economic deprivation and food insecurity. The pandemic has also disrupted routines and exposed children to greater risks for injuries related to consumer products. As children and families spend more time at home due to necessary public health measures to prevent the transmission of COVID-19, the potential for injuries in the home may increase. During the pandemic, pediatricians have noticed increased calls and visits related to home hazards such as hazardous substance ingestions and falls. As the CPSC considers its agenda and priorities for the future, the current public health emergency and its multifaceted health impacts on children and families should reaffirm the Commission's urgency to promote public health and safety.

Unintentional injuries remain the number one cause of death in children ages 1-19, and the fifth leading preventable cause of death for newborns and infants under 1.¹ The AAP strongly supports efforts to reduce the incidence of child unintentional injury and related morbidity and mortality. The CPSC has a critical role to protect children from unintentional injuries, sleep-related fatalities, and long-term health risks from hazardous products. 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 household dangers as well as risks from long-term environmental exposures. Parents and caregivers trust that the products they can find on store shelves are safe for their children because CPSC monitors injuries and fatalities to proactively prevent harm to children through safety standards, which is a critical public health function.

The AAP is encouraged by the agency's recent progress on proposed safety standards for some child health priorities, but we remain significantly concerned with the widespread availability of dangerous products on the marketplace and in homes. We appreciate the CPSC's focus on directing agency resources to the highest-priority consumer product safety risks and strategic goals to prevent hazardous products from reaching consumers and to respond quickly to address hazardous consumer products in the marketplace. 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

The AAP appreciates the CPSC's work over the past two years to propose two crucial safety standards that could create safer sleep environments for children throughout the country and which CPSC must finalize expeditiously. We know that while much progress has been made to reduce sudden unexplained infant death (SUID) by promoting safe sleep practices and environments for infants, that progress has stalled in the last decade. The U.S. Centers for Disease Control and Prevention (CDC) estimate that there are about 3,600 SUID cases annually in the U.S.ⁱⁱ 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 urge the CPSC to prioritize this crucial work to protect infants from sleep-related products that are not safe for sleep, and to use its position to promote consistent safe sleep messages.

The safest sleep environments for infants are cribs, bassinets, portable cribs, or play yards that conform to CPSC mandatory safety standards. Infants should always sleep on their back, on a separate, flat and firm sleep surface without any crib bumpers or bedding. The AAP does not recommend the use of inclined sleep products, which are inherently unsafe and have no place in a safe sleep environment. Products that position infants at an incline pose a risk of asphyxia when the infant assumes a position where the airway is obstructed by fabric, bedding, or other materials. Infants are also at risk for positional asphyxia, which is when a non-neutral position of the head and neck obstructs the airway. While multiple inclined sleep products have been recalled, the continued sale of other inclined sleep products sends parents a confusing and dangerous message. The AAP strongly supports the CPSC Supplemental Notice of Proposed Rulemaking (NPRM) on Infant Sleep Products issued on November 12, 2019, and we urge you to finalize it without undue delay and with the soonest possible effective date.

Pediatricians continue to see new, unregulated infant sleep products on the market every month. We remain deeply concerned that parents are placing their infants in these products thinking they are safe because they are available for sale, when there is in fact no standard or testing done to make sure they will not suffocate a child before they enter the marketplace. Sleep positioning products that keep an infant on his or her side or back are not safe for infants, because the infant can roll over and suffocate against the mattress or the positioner. There is insufficient evidence to assure the safety of in-bed sleep products, and many of these products have soft sleep surfaces, and non-rigid sides that pose a suffocation risk.

The safest sleeping environment is one free of soft objects and loose bedding. The AAP supports subjecting to mandatory standards any infant sleep product that does not currently meet an existing mandatory safety standard, including in-bed sleeper products, baby boxes, inclined sleepers, and other alternative sleeping spaces. These products are not yet proven to be safe and effective and should also be required to meet existing safety standards. The Infant Sleep Products SNPRM would protect children by requiring all infant sleep products to meet requirements in the bassinet standard, which requires a flat surface without an incline above 10 degrees, no restraints, and adequate side height to safely contain an infant. These requirements should apply to all products intended or marketed for infant sleep that are not currently covered by a mandatory safety standard, including inclined sleep products and in-bed sleeper products.

The AAP also appreciates the Commission's April 3, 2020 NPRM on a safety standard for crib bumpers. **Crib bumpers have no place in a safe sleep environment and pose a substantial risk of infant death.** Given current safety standards for crib slat distance, padded crib bumper products are not necessary to prevent head entrapment, and they can lead to suffocation when an infant's face is pressed against the side of the crib.^{iii,iv} The proposed Safety Standard for Crib Bumpers/Liners is a long overdue and critical step to protect infants from padded crib bumpers. We urge the CPSC to continue to prioritize the creation of a robust mandatory safety standard that would prevent padded crib bumpers from being available on the marketplace. As stated previously, the AAP remains concerned about mesh liners due to the lack of peer-reviewed research supporting their safety. These purely aesthetic products are unnecessary from a safety standpoint, are not demonstrated to be safe in peer-reviewed research, and confuse messaging to parents and caregivers. A consistent "bare is best" message would reiterate that no accessory products on the sides of cribs are beneficial for 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 infants. 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. The AAP championed the *Scarlett Sunshine Act on Sudden Unexpected Death Act* and we were glad to see it passed and signed into law at the end of 2020. This law will strengthen efforts to better understand SUID, improve data collection and reporting, and standardize protocols for death scene investigations and autopsies to improve prevention efforts. We encourage the CPSC to work with the CDC as the implementation of this law moves forward and to utilize the improved data for the Commission's work. While education is important, the most effective prevention measures are regulatory actions that promote a safe sleep environment by removing dangerous products from the marketplace. These regulatory actions, investigation of optimal safe sleep messaging, and sustained public health communication will be central to CPSC efforts to address SUID.

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* (CNPPA), 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, but are heartened to see steps toward enforcement, including a guidance to industry and test for product compliance. Urgent enforcement action is needed, as calls to poison control centers regarding liquid nicotine exposures have increased in recent years.

According to the American Association of Poison Control Centers, calls related to liquid nicotine products increased from 3,139 in 2018 to 5,223 in 2019, a 66% increase. In 2020, calls decreased to 3,829 but remained substantially higher than they were in 2018. Incomplete federal action to confront the youth vaping epidemic could increase the prevalence of so-called open tank liquid nicotine products that pose a greater risk for toxic exposure. We are already seeing shifting demand to products that pose a greater risk for unintentional poisonings. We urge the Commission to place a significant emphasis on enforcing the CNPPA to get dangerous products off store shelves. Pediatricians stand ready to work with CPSC compliance staff to support your critical enforcement efforts.

Drowning Prevention

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 in educating families to prevent it, the AAP has released an updated policy statement on the prevention of drowning,^v and new resources for

parents, caregivers, and others on drowning prevention.^{vi} 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. The AAP also supports Congressional appropriations for the CDC to support a National Plan on Water Safety and to improve state and community drowning surveillance efforts.

Furniture Tip-Overs

The AAP supports a stronger mandatory standard for clothing storage units to help prevent furniture tip-overs. While educational efforts such as the "Anchor It" and "Secure It" campaigns provide some public health messaging, the best solution is simply to design a safer dresser that will not tip over and harm children. Families living in rental homes or apartments may be prohibited by their landlord or lease from installing anchoring kits into the walls, and should not face inequities in safety. The AAP endorsed the *Stop Tip-overs of Unstable, Risky Dressers on Youth (STURDY)* Act and we look forward to additional progress from the CPSC towards a robust mandatory safety standard to prevent this hazard. We also support strengthening stability performance requirements to prevent TV tip-overs.

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 CPSC^{vii} and Health Canada^{viii} 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. When two or more high-powered 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).^{ix} In the initial two years, there were 22 multiple magnet ingestions, six operations and nine endoscopic procedures. In the two years after the recall, there were five ingestions, one operation and four endoscopic procedures.

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. In addition, we are concerned that the current work underway at ASTM International is focused on marketing and packaging and will not address the underlying hazard these products pose. 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. 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. The AAP has also endorsed the *Magnet Injury Prevention Act*, which would reinstate the CPSC rule to protect children from these dangerous toys.

Button Batteries

A recent report from the CPSC showed an alarming 93% increase in emergency-room treated injuries related to button batteries among children ages 5-9 from March through September 2020. Unfortunately, these batteries are easily accessible to children via common household products, such as small remote controls, garage door

openers, bathroom scales, cell phones, flameless candles, watches, cameras, and digital thermometers. We urge the CPSC to continue its work to strengthen the relevant standards to include a provision to securely enclose all button cell batteries, and also to work in support of design changes that would eliminate this serious health hazard, even if ingested.

Flame Retardants and Long-Term Exposure Hazards

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. We are encouraged by the initial efforts of the CPSC to seek the expertise of the National Academies of Sciences, Engineering, and Medicine on how to assess the hazards of these chemicals, and we urge you to move forward. The CPSC has a crucial role, complimentary to that of the U.S. Environmental Protection Agency, in regulating chronic, long-term hazards associated with the use of consumer products.

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. Recent CPSC data from the National Electronic Injury Surveillance System show that in 2019, laundry packets remained one of the top 10 products associated with emergency department-treated unintentional pediatric poisonings.^x 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 remain concerned that the ASTM F3159-15 voluntary standard published in 2015 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. After three years of modest decreases in calls to poison control centers regarding laundry detergent packet exposure by children ages 5 and younger, cases increased in 2019.^{xi} Current packaging requirements and warnings are insufficient to fully address this issue. We urge the CPSC to stay engaged in the ASTM process, and to ensure that follow-up of the implementation of the standard continues to occur, with appropriate metrics to evaluate effectiveness and a focus on ensuring meaningful decreases in exposures and exposure rates.

Window Falls

Over 3,300 children are treated annually in U.S. hospital emergency departments for injuries related to falls from windows.^{xii} Public education alone is important but insufficient to mitigate this hazard. Windows more than 6 feet above exterior grade and with a sill height less than 42 inches above the interior floor should be incorporate passive fall-prevention technology to protect children. The AAP would welcome opportunities to work with the CPSC to address this important child injury hazard.

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 2017^{xiii} 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. 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.

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. In addition, CPSC should collect the same data on ROVs that it does for ATVs, so we can fully understand the pediatric morbidity and mortality associated with these products.

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 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.^{xiv}

There have been over 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 a critical 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 these child safety issues. We are grateful for the opportunity to comment and look forward to continuing to work with 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.

Sincerely,



Lee Savio Beers, MD, FAAP
President

LSB/zml

ⁱ See <https://www.cdc.gov/injury/wisqars/LeadingCauses.html>

ⁱⁱ U.S. Centers for Disease Control and Prevention. About SUID and SIDS. Accessed March 9, 2021. Retrieved from <http://www.cdc.gov/sids/aboutsuidandsids.htm>.

ⁱⁱⁱ Thach BT, Rutherford GW Jr, Harris K. Deaths and injuries attributed to infant crib bumper pads. *J Pediatr*. 2007;151(3):271–274, 274.e1–274.e3. pmid:17719936

^{iv} Scheers NJ, Woodard DW, Thach BT. Crib bumpers continue to cause infant deaths: a need for a new preventive approach. *J Pediatr*. 2016;169:93–97, e91. pmid:26621044

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

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

^{vii} <https://www.cpsc.gov/Recalls/2013/high-powered-magnet-balls>.

^{viii} <https://www.canada.ca/en/health-canada/services/consumer-product-safety/advisories-warnings-recalls/lettersnotices-information-industry/information-manufacturers-importers-distributors-retailers-products-containing-smallpowerful-magnets.html>

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

^x <https://www.cpsc.gov/s3fs-public/UnintentionalPediatricPoisonInjuryEstimatesfor2019.pdf?12KjzPPB5zAaxYAbCBNdLtMIOTnTj7rN>

^{xi} <https://aapcc.org/track/laundry-detergent-packets>

^{xii} <https://www.nationwidechildrens.org/research/areas-of-research/center-for-injury-research-and-policy/injury-topics/home-safety/window-falls>

^{xiii} 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>.

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

17. Linda Kaiser, President
Parents for Window Blind Safety

(Oral Testimony)

Written Testimony of Linda Kaiser, President, Parents for Window Blind Safety
To the U.S. Consumer Product Safety Commission
Agenda and Priorities FY 2022 and 2023

Today, Millions of hazardous cords hang in American homes that American consumers are completely unaware of. Manufactures continue to produce custom window coverings with hazardous cords known to kill children within minutes of manipulation.

Thank you. All of the parents I speak for today including myself, applaud the CPSC for including the Window Coverings Notice of Proposed Rulemaking in the fiscal year 2021 Operating Plan. Swift movement to finalize a strong mandatory standard is now necessary due to continued delays to open and expand the voluntary standard. We ask for funds and staff time to advance the Window Coverings mandatory standard for fiscal year 2022 and fiscal year 2023.. We also ask the CPSC to emphasize window covering safety and dedicate resources to create a strong impactful educational campaign to educate the public on hazardous cords associated with custom window coverings sold in today's market and older window coverings already installed in homes.

We ask for these actions for three reasons:

One, the CPSC, Parents for Window Blind Safety and the public were promised two years ago that the custom side of the ANSI/ WCMA A100,1-2018 safety standard would be opened immediately after passing an unsubstantiated safety standard that left long hazardous cords on custom products known to kill children in their sleep and play environments. This has not happened.

Two, the availability of non-compliant products on the market is widespread and the CPSC does not have the funding and ability to adequately monitor compliance online nor at the ports.

Three, millions of hazardous old and new custom products are in American homes that the public is unaware of due to the lack of an educational campaign and misleading influencers.

You might say to yourself, oh everyone knows about the hazards posed by window covering cords. It's a no brainer. This is wrong thinking. It's like believing everyone knows that squirrels are behind most power outages in the U.S .or assuming everyone knowing that parrots have the power to reason. Not everyone knows. Not everyone thinks like us safety geeks.

Zoe had no idea that MAY 23, 2020 would be the last day she would see her son alive. Julie didn't know anything about the hazards of cords when her son, Luka was found unresponsive last fall. This past December, Sharnise had no idea that the product in her home was so deadly that her son, Ethan would lose his life the day after his second birthday.

Cords are hazardous, period.

In our request about an educational campaign, we request that the CPSC give window covering safety the same attention and funding that the Tip-Overs and Pool Safety campaigns have been given. We are not done.

The data clearly shows that children are able to gain access to cords in several ways. Unsuspecting consumers who follow current safety tips¹ for custom products with cords continue to put children at risk when using cord cleats, tassels, and continuous loops.

The current WCMA standards leaves numerous risks unaddressed,² including:

- Long accessible operational cords on custom products such as horizontal blinds, roman shades, cellular shades, vertical blinds, roller shades etc.,
- Long accessible retractable cords and looped cords,
- Operating cords that form hazardous loops by way of cord connectors when 2 or more cords are joined together,
- Inner cords on bamboo roll up shades, and
- Faulty tension or tie down devices that can be pulled out of walls.

My plea to you as an advocate and a mother who has lost a child from hazardous cords is that the CPSC move swiftly and implement a mandatory standard due to the failure of the current voluntary standard to effectively address known foreseeable risks posed by custom window coverings and the lack of commitment from the Industry to address these risks. I have worked on this issue so long, it has turned my hair white. What will we see in the future if no action is taken? Custom corded faux window blinds will be the top product line killing kids in the next 10 years. This is due to faux corded blinds being the standard in new housing developments and rented housing.

It is time to finalize a strong mandatory standard, and create safer environments for children.

To summarize, we are asking the CPSC to prioritize window coverings by:

- Moving the NPR swiftly to finalize a mandatory standard in 2022 due to known hazardous cords being manufactured and the reneged commitment of the WCMA.
- Budgeting funds and staff time for the window covering safety mandatory standard to be finalized. Safety should be built into the product design.
- Budget funds toward creating an education campaign similar to Tip-Overs and Pool Safety in order to adequately inform and educate the public about hazards posed by window coverings.

Data proves that kids have strangled on cords that are out of reach.³

We have changed our safety message to: keep cords out of sight. Anyway a parent can keep cords out of sight, could have a better impact than keeping cords out of reach. Out

¹ "These loops are commonly created by knotted or tangled pull cords or cords tied to a stationary object, often in an attempt to keep them out of a child's reach." *Pediatrics* January 2018, 141 (1) e20172359; DOI: <https://doi.org/10.1542/peds.2017-2359>

² Table 3—Addressability of the Hazards With the 2014 ANSI/WCMA Standard
<https://www.federalregister.gov/documents/2015/01/16/2015-00566/corded-window-coverings-request-for-comments-and-information>

³ Examples of three Canadian cases for which Health Canada was able to obtain product details, which illustrate that even when a CWC meets the safety requirements of the CWCP, it can still pose a fatal strangulation hazard. <http://gazette.gc.ca/rp-pr/p2/2019/2019-05-01/html/sor-dors97-eng.html>

of sight includes taping cords to the window or to the back of the product so curious kids cannot see them. This message works best for tenants who have corded window coverings and no option to replace with a cordless product.

We recommend that the CPSC update their window covering safety messaging on their website and social media in the following ways:

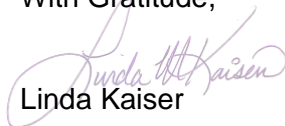
- Change "Out of Reach" to: "Keep cords out of sight, all children can access cords out of reach."
- Stating cords on custom products are hazardous.
- Define "Young Children" by giving this phrase an age span instead of having parents guess. Many consumers guess young children equals ages three and under.
- Urging the public to go cordless, regardless of whether they have children. CPSC data shows visiting children have died in homes.

Today, I am the voice of Julie, Sharnese, Zoe, and hundreds of other families in the past few decades who have suffered through the traumatic experience of finding a child hanging lifeless from a cord that was either labeled safe or considered no longer a threat due to following Industry or CPSC safety tips.

In the 19 years of advocating for window covering safety, the CPSC has never funded a major educational campaign for window coverings. It's time.

Thank you.

With Gratitude,


Linda Kaiser

Parents for Window Blind Safety

SLIDES

Cheyenne Rose Kaiser

May 25, 2001 - June 12, 2002





HELLO

**2021
PARENTS**

For

**WINDOW BLIND
SAFETY**

PRESENTED BY
LINDA KAISER

ONE: HAZARDOUS CORDS STILL BEING SOLD



TWO: NON-COMPLIANT PRODUCTS ON MARKET



THREE: MISLEADING MESSAGES

Qdos Safety @qdossafety

. @USCPSC announced as of 12/15/2018, consumers will no longer be able to buy corded blinds due to the risk of child strangulation. #CPSC is banning all window coverings sold with cords, both in-store & online. Via @FatherlyHQ.



New Industry-Wide Standards Are Taking Corded Blinds Off the Market ... They may seem harmless but they're one of the top hazards in your home. fatherly.com

10:33 AM · Dec 14, 2018

Copy link to Tweet

PARENTING / KIDS

Corded Blinds Have Been Banned Because of Child Strangulation Deaths



by CAITLIN FLYNN DECEMBER 17, 2018 AT 6:15PM PM EST



Scary Mommy READ CONFESS WATCH THRIVE SHOP Spotted

News

Corded Blinds Will No Longer Be Sold Due To Strangulation Risk For Children

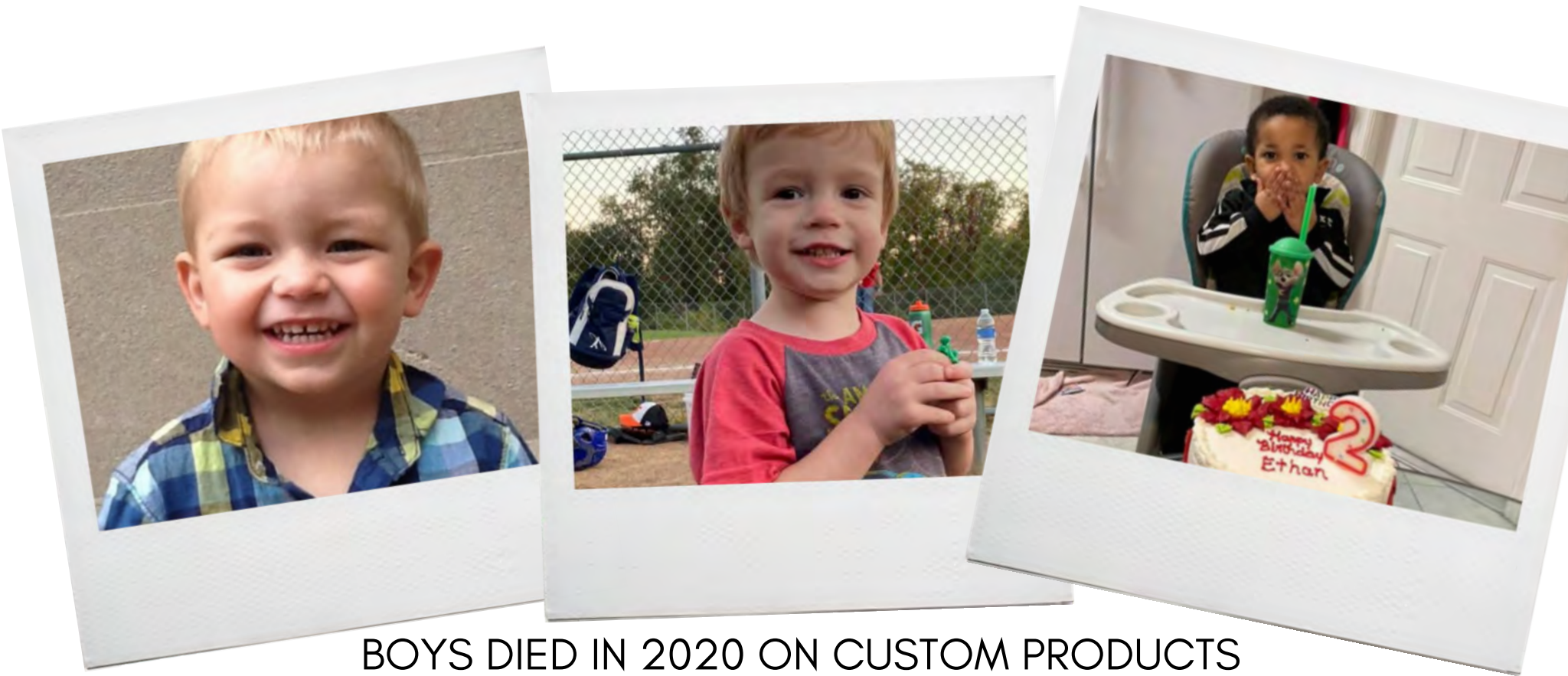
by Cassandra Stone December 15, 2018



AVOID INB
Get daily updates, ki
curated recor

What's yo

SIGN



BOYS DIED IN 2020 ON CUSTOM PRODUCTS

**NOT EVERY
PARENT KNOWS
ABOUT THE
HAZARDS**

LAB TESTED
MOM
APPROVED

CORDS ARE HAZARDOUS PIEROD

Consumers cannot tell which product is safe or not safe when *failed* "safety" devices are marketed as "child safe"



MAJOR EDUCATIONAL CAMPAIGN NEEDED



A woman with her hair in a bun, wearing a white dress, is looking out through window blinds. The blinds are partially open, and the woman's face is partially obscured by the slats. The background is a blurred outdoor scene with greenery and a building.

GO
CORDLESS

THANK YOU FOR
YOUR TIME!

FOR MORE INFO
CONTACT US AT 314-494-7890 OR
INFO@PFWBS.ORG

18. Oriene Shin, Policy Counsel Consumer Reports (CR)

(Oral Testimony)



**Written Comments of Consumer Reports to the
U.S. Consumer Product Safety Commission on:
“Agenda and Priorities FY 2022”
Presented by Oriene Shin, Policy Counsel**

Submitted to the Office of the Secretary via cpsc-os@cpsc.gov
March 17, 2021

Consumer Reports (CR), the independent, nonprofit, and nonpartisan organization,¹ welcomes the chance to submit comments on the agenda and priorities of the Consumer Product Safety Commission (CPSC) for fiscal year 2022.

For the last 85 years, improving product safety has been a central tenet of CR’s mission—and it is just as important to us today. 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 strong safety standards to protect consumers from the risk of injury, through both rulemakings at the CPSC and voluntary standards development. We support and defend the CPSC’s vital role in order to ensure a consumer-driven marketplace in which both people and companies can benefit from safer products and fewer product-related injuries and deaths.

The CPSC’s work is critical to keep the public safe from hazardous consumer products—especially as people continue to spend more time at home than usual during the pandemic. COVID-19 has presented enormous challenges over the last year for CPSC staff, personally, and for safety programs across the agency. Nevertheless, the CPSC has managed to move forward on many fronts, including through commendable product safety testing, compliance, and enforcement work. We urge the agency to continue protecting consumers from harm and holding companies accountable for following the law as we enter a new and hopefully brighter phase of the pandemic.

We applaud the Commission for its appropriately bold FY 2021 Operating Plan and urge the CPSC to continue setting a high bar for safety across the marketplace in FY 2022. Each Commissioner has a critical role to play in improving the vast and evolving product safety landscape, including through projects to address safety hazards tied to direct-to-consumer e-commerce shipments, crack down on counterfeits, and modernize the agency’s data collection

¹ Founded in 1936, CR has a mission to create a fair and just marketplace for all. Widely known for our rigorous research and testing of products and services, we also survey millions of consumers each year, report extensively on marketplace issues, and advocate for consumer rights and protections around safety as well as digital rights, financial fairness, and sustainability.

systems and best practices. It is also hard to overstate the importance of CPSC leadership working closely with career staff to request a substantial increase in the agency's annual funding. Far too often, the CPSC has not asked for the resources it truly needs to fully carry out its mission and meet the demands of today's complex, interconnected, and ever-changing marketplace. As we have communicated repeatedly to Congress and the public, the CPSC should receive at least double its current resources to better prevent consumer harm—and we are glad to see a request this year from within the agency that seeks at least this level of funding and staffing.

In line with its important ongoing programs and the recent budget request letters, we urge the agency to prioritize the following key principles and activities and once again lay out a bold vision for its fiscal year 2022 Operating Plan.

Foster a strong and inclusive safety culture at the CPSC

To build on recent progress and generate momentum for the work to come, we urge the CPSC to develop and lead a robust public initiative that clearly lays out the agency's vision and action plan for safety. The CPSC should bolster this public initiative with the use of every available tool to speed up agency action against serious and persistent product safety hazards in the marketplace. Clear, targeted action like this would help make the agency's essential work more readily understandable by the public and confirm for stakeholders throughout the product safety landscape that the CPSC will take forceful action when warranted. Where new authority from Congress would assist in this effort, the CPSC should request it immediately.

In addition, the CPSC needs to take critical steps to integrate into such an initiative, as well as its everyday work, ways to better identify, reach, and serve historically disadvantaged and underserved communities. An increasingly diverse country requires its public health and safety agencies to serve an array of needs, and reflect the reality that the physical and economic costs of product safety hazards and remedies are often borne disproportionately or differently by communities. The CPSC's decisions and communications with the public must be informed by people with various backgrounds and perspectives, and a drive for equity must be at the center of its work to inform consumers who may have been overlooked or underrepresented in the past.

Empower CPSC staff to put people first

It is critical for the Commission and CPSC staff to be vocal and persistent advocates for consumer safety in every arena. This leadership role includes clear communication of key messages on safety hazards, as well as informing the public about new potential product hazards as quickly and prominently as possible. The CPSC should continue to push resistant companies to take action in support of safety, and push for strong mandatory actions and requirements when companies do not act voluntarily.

For this to happen, the Commission must empower CPSC staff to demand strong safety practices and policies in the marketplace. Staff should continue to take leadership roles in voluntary standards development, and push for strong consumer-centric standards. They also should be encouraged to cast votes on ballot items on the basis of their safety expertise and their

independent assessment of the matter at hand. Staff 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. However, on occasion staff has been unable to fulfill the agency's mission due to abrupt shifts in priorities and focus areas. We are concerned that these changes contribute to unreasonable delays in the agency's capabilities, which ultimately place the public at risk year after year. We urge the CPSC to implement strong and lasting internal mechanisms to protect staff from external and internal pressures they may receive to deviate from their work to maximize consumers' safety. Solidifying an empowered working environment for CPSC staff would lead to greater public trust in consumer products, the marketplace, and the agency.

Hold companies accountable for wrongdoing

The CPSC should continue to expand the use of its compliance and enforcement tools to improve consumer safety and corporate accountability. Historically, the CPSC has over-relied on voluntary actions, which require company cooperation or drawn-out recall negotiations, and has inadequately used its compliance and enforcement authorities available under federal law. We urge the CPSC to utilize all of its tools and resources, including mandatory recalls, unilateral warnings, and civil and criminal penalties, in order to hold companies accountable and foster deep cultural changes in the product safety world that would help ensure companies put consumer health and safety before profits.

CR strongly urges the CPSC to continue to pursue its more aggressive approach to violations of laws and regulations under the agency's jurisdiction and to coordinate with the Department of Justice, as necessary, to make full use of the agency's civil and criminal penalties authority. CR urges the CPSC to continue to levy substantial civil penalties, which are essential to enforcing against unlawful conduct that could place consumers at risk, including failing to report potential defects in a timely manner or making misrepresentations to the CPSC. As warranted, the Commission should not hesitate to deter future violations by levying fines at the highest levels permitted under the law—and by making it clear to the public and Congress when the statutory civil penalties cap results in a lower penalty than otherwise would have been justified by a company's conduct. Furthermore, when criminal conduct has occurred, the agency should not hesitate to make use of its criminal penalties authority.

In addition, we urge the agency to continue to prioritize its investigations into potential hazards in order to stop preventable product-related tragedies. Although the CPSC's compliance activity is often taken for granted by the public, the CPSC should continue to embolden its compliance staff to address serious safety concerns and prevent any avoidable public exposure to hazardous products. In support of its work, the CPSC should also urge Congress to strengthen reporting requirements for companies as provided in Section 15 and 37 of the CPSA in order to ensure the agency receives the information necessary to fully investigate and address serious hazards.

Promote information accessibility and accountability to the public

Since the 1980s, the CPSC has operated under severe constraints on its ability to communicate clearly with the public about critical safety issues. Fundamentally, the CPSC should 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 (CPSA), including by implementing internal practices aimed at maximizing the public's access to critical safety information. At the same time, we want to be clear that the impact of Section 6(b) is anti-consumer and anti-safety, and we are urging Congress to repeal this provision.

While recognizing Section 6(b)'s significant effects on the agency's ability to communicate with the public, 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 make public the current status of all recalls and whether companies are meeting its obligations under a recall agreement and are successfully getting unsafe products off the market and out of homes. This effort should include greater public availability of terms that have been agreed to under a corrective action plan, and the routine posting of 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 commit to carrying out recalls as quickly, as completely, and as easy for consumers as possible.

Actively support and promulgate strong consumer-centric standards

Enrich and strengthen voluntary standards processes

Given that the CPSA 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 agency should promote each of the following ways to support this process: (1) use CPSC testing and other research to provide data and direction to voluntary standards development; (2) encourage informed, vocal, and influential CPSC staff participation in voluntary standard subcommittees and task groups; (3) push for open and balanced voluntary standards subcommittees and fair standards development processes; (4) promote ongoing progress for safety in voluntary standards development, including timely and robust updates to standards; and (5) retain the full use of mandatory standards to achieve safety goals through regulation.

We applaud the agency's expert participation and unwavering support for safety in several recent voluntary standard meetings. We urge the CPSC and its staff to remain vocal and active in future voluntary standards processes.

Identify future CPSIA Section 104 rulemaking needs

We commend the CPSC for continuing to work on finalizing its mandatory safety standards for infant sleep products and crib bumpers/liners. We look forward to seeing both of these rules finalized by the end of FY 2021. Final rules for these two product categories are essential steps to continue integrating the American Academy of Pediatrics' safe sleep recommendations—which include placing babies alone to sleep on a firm, flat surface in their own space, with no extra bedding—into CPSC rules and broader product safety culture, as well as to help these recommendations become second nature for consumers. We also urge the CPSC to continue moving forward on these standards in order to provide greater clarity for parents and caregivers and prevent entry to the marketplace of other infant products that do not align with AAP safe sleep recommendations.

We strongly support the agency's work to issue strong safety standards under Section 104 of the Consumer Product Safety Improvement Act (CPSIA). Since the CPSIA's enactment in 2008, numerous infant and children's products are now far safer than they once were. We urge the agency to remain vigilant and to address any potential safety hazards found in infant or toddler products, new or old, including those with weak or nonexistent voluntary standards. As Congress recognized with the CPSIA, children's products warrant greater scrutiny in order to protect one of our most vulnerable populations. We urge the Commission to continue using its Section 104 authorities in FY 2022; ultimately, only those durable infant and toddler products that meet strong safety standards should be for sale in the marketplace.

Explore future mandatory standards

The CPSC should not hesitate to pursue mandatory standards to address hazards that have not been adequately addressed in a voluntary standard. We recognize that promulgating mandatory standards under Section 7 and 9 of the CPSA can take several years without industry cooperation. However, it is critical to explore all avenues to address product hazards that put consumers at risk of injury or death.

CR especially urges the CPSC to continue its work to set a strong, mandatory safety standard for dressers and other clothing storage units, which would result in more stable furniture and protect children from injury or death due to a tip-over incident. Furniture tip-overs are responsible for hundreds of deaths since 2000 and thousands of emergency department-treated injuries every year. A mandatory standard would allow the agency to enforce rules for furniture stability and more easily gain industry cooperation for recalls, and should be finalized expeditiously. Concurrently, CR continues to advocate for the STURDY Act in Congress, which would enable the agency to finish its rulemaking process faster.

Address hidden home hazards

In keeping with the overarching recommendations we make, certain specific hazards around the home should be prioritized. In addition to infant sleep products and clothing storage units, we urge the CPSC to continue its work to address the following issues that may lead to hidden hazards in people's homes:

- *Carbon monoxide poisoning from portable generators*
- *Ingestion of high-powered magnet sets*
- *Exposure to liquid laundry detergent packets*
- *Home fires (including fire extinguisher safety) and the improper use of smoke detectors and carbon monoxide detectors*
- *Strangulation involving window covering cords*
- *Laceration hazard from table saws*
- *Pool safety and the risk of drowning*

Consumer Reports has repeatedly raised these issues, among others, as priorities for the CPSC, and we urge the agency to continue working toward stronger standards as well as all appropriate compliance and enforcement actions to protect the public.²

Conclusion

In conclusion, CR remains grateful for the agency’s continued efforts to address hazards associated with consumer products. We look forward to continuing to work with the agency to fulfill its mission in fiscal year 2022.

² See Consumer Reports, “Written Comments of Consumer Reports to the U.S. Consumer Product Safety Commission on: “Agenda and Priorities FY 2021 and/or 2022” (May 1, 2020) (online at: advocacy.consumerreports.org/wp-content/uploads/2020/05/CR-written-comments-on-CPSC-FY-21-22-priorities-5-1-2020.pdf); Consumer Reports, “Written Comments of Consumer Reports to the U.S. Consumer Product Safety Commission on: “Agenda and Priorities FY 2020 and/or 2021” (Apr. 17, 2019) (online at: advocacy.consumerreports.org/wp-content/uploads/2021/03/CR-written-comments-for-CPSC-FY-20-21-priorities-hrg-4-17-2019.pdf).

19. Steve Lamar, President, CEO
Kristen Kern Manager, Supply Chain &
Sustainability Initiatives (Oral Testimony)
American Apparel and Footwear Association
(AAFA)



Advocacy that fits.

740 6th Street, NW • Washington, DC 20001 | P: 202-853-9080 | www.aafaglobal.org

March 17, 2021

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 2022

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 the 2022 Fiscal Year. Please also consider this a request for Kristen Kern to testify at the priorities hearing.

The American Apparel & Footwear Association is the national trade association representing apparel, footwear and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands, we are 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 more than \$400 billion in annual U.S. retail sales.

We are proud of the open and collaborative relationship that we share with the Commission. 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. As such, in this time of uncertainty around a global pandemic, we are working to help the industry adjust to change- whether that is the changes that result from shut downs in the supply chain, supporting their employees through uncertain times, or transitioning their supply chains to make fabric face masks to protect their consumers. We also continue to work on improving day-to-day issues as that will ease the industry's work devoted to addressing the impacts of the COVID-19 pandemic on their employees, supply chains, and consumers.

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

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 is working 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.

Allow Garment Labels to Use Digital Information

We urge the CPSC to allow companies to use new technology to deliver required product safety information, such as tracking labels required on Children's products, to consumers. Complicated international apparel labeling regulations have resulted in pages long, uncomfortable labels in garments. Consumers often report to our brands that the labels are itchy and irritating as a result of all the information that is required to be permanently attached to the garment. The labels sewn into a garment can often go beyond discomfort to cause a product safety hazard, such as chafing and skin irritation, especially for children. Companies who make children's clothing, athletic apparel, undergarments, and other tight-fitting, performance apparel have been leading the industry in technology to print labeling information directly on the inside of garments to avoid an irritating label, but only a limited amount of information can be printed directly on a garment. Those same companies are now leading this effort to digitize labeling information.

The other side of irritating garment labels is that consumers often resort to removing the label from their garment, separating the garment from its legally mandated fiber identity, care, and origin information for the rest of its life. A missing label makes it difficult or impossible for a consumer to identify the product's manufacturer and identifying production information when necessary in the case of a recall. Since there is now technology to move product information that is currently present on physical labels to the internet, we would like to see the rules updated to permit easily accessible information online to satisfy labeling requirements. The result would be consumers having access to important garment information over the life of the garment, without having to sacrifice the comfort of the garment. The benefit also extends to solve issues with used and second hand products being separated from labeling information, as a small label with only a QR code or URL printed on it would be less likely to be removed. Additionally, this technology would allow companies to update the information in a label to include compliance with new labeling regulations, recall and safety information, and other necessary data.

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.

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 are hoping 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.

We appreciate the Commission’s willingness thus far to work together on reviewing the addition of Spandex to the exempt fibers list. We hope that the Commission will prioritize continuing this effort to reduce testing burden for companies without compromising product safety.

Improve Recalls Process

AAFA and other industry associations have brought up some challenges that companies have had throughout 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. Among these priorities are to focus on keeping the fast track program “fast” as intended to get information to consumers in a timely fashion, and maintain open stakeholder involvement in any updated draft rules. 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 continuing to work with the Commission on the safety issues created by counterfeit products, improving access to tracking label information through digital platforms, the allowance of fabric as a barrier to inaccessible parts, the exemption of Spandex from flammability testing requirements, and improving 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, appearing to read "Steve Lamar". The signature is written in a cursive style with a long horizontal flourish at the end.

Steve Lamar
President and CEO

20. Margaret P. Lewis, Board President
Survivors for Good

(Oral Testimony)



March 17, 2021

Ms. Alberta Mills
Office of the Secretary
US Consumer Products Safety Commission
4330 East West Highway
Bethesda, MD 20814

I am writing to request Survivors For Good Survivors 501(c)(3) be included in the CPSC Priorities meeting in April. Please confirm what time this is scheduled for April 7th?

I am requesting a budget be specified for the education portion of HR #806 – Portable Fuel Container Safety Act of 2019. I am willing to submit a budget for Public Safety and Education campaign to prevent severe burn injuries and deaths from tipping and pouring hazardous fuel containers without a safety guard on the opening- it's called a flame arrester.

Federal Register:

<https://www.congress.gov/116/crec/2019/09/17/CREC-2019-09-17-pt1-PgH7727.pdf>

I am including the CBO Cost Estimate, for your reference,

<https://www.cbo.gov/system/files/2019-09/hr806.pdf?fbclid=IwAR04XQWam7mkcXsFYOaWP8KwUTrIk9XAuTwzvKOhIAus9Q3J1HB9aule3o>

Also, will you be submitting a CPSC budget request in the President's Budget? I would like to discuss the legislative and budget process including timelines, and how SFG can work to assure that each milestone is being met?

Sincerely,

A handwritten signature in cursive script that reads "Margrett L".

Margrett P. Lewis
Board President
Survivors For Good
Margrett.lewis@gmail.com
707-266-3133

21. Ruth McDonough
Applied Textiles

From: rutharee@comcast.net
To: CPSC-OS
Cc: "[Schroeter, John](#)"; "[Schroeter, Julia](#)"; "[Martin, Micki](#)"
Subject: Agenda and Priorities FY 2022
Date: Tuesday, April 6, 2021 4:01:54 PM

Dear Alberta,

On 2/17/21, John Schroeter, founder of Applied Textiles and Applied Lab, had a meeting with Commissioner Feldman and Cecilia Bellet regarding the flammability compliancy code change for upholstered furniture that was approved in the Work from Home Safety Act on December of 2020. Cecilia had advised to monitor the Federal Register for hearing notices to allow for additional opportunity to present industry related concerns on the new federal mandate.

Due to an unforeseen medical surgery, Applied Textiles apologizes for missing the submission date for the oral presentations but are submitting the information with hopes that there may be an opportunity to address the topic in the hearing.

Note the following has also been shared with Commissioner Feldman and Cecilia Bellet:

Subject: Title XXI - COVID-19 Regulatory Relief and Work from Home Safety Act (section 2101)

Reference: Flammability compliancy requirements to pass California TB 117-2013 test for residential and commercial upholstered furniture by 6/25/21

Applied Textiles: John Schroeter, Founder Applied Textiles

Applied Textiles manages textile supply chains and compliance for domestic and international textile companies and furniture companies. Their services also include finishing & processing services, product development, and education as well as an accredited testing laboratory. Their customer relationships cross over into many industry channels, from design to manufacturing, for both residential and commercial applications.

<https://applied-textiles.com/>

e. jschroeter@applied-textiles.com

c. [REDACTED]

Applied Textiles and the Applied Lab have been actively educating and bringing awareness to markets who may be impacted by this legislation and the impending deadline of 6/25/21. The constituents related to these markets include interior designers, design firms, textile manufacturers/distributors, purchasing agents and furniture manufacturers for both the residential and commercial environments. The interest in this new federal mandate has been high and Applied Textiles has made many presentations upon request to trade organizations, design firms and fabric suppliers.

Below are the trade organizations that have received or have been scheduled to receive presentations:

Trade Organization	Industry
American Society of Interior Designers / ASID	Design
International Furnishings & Design Association / IFDA	Design & MFG
American Academy of Healthcare Interior Designers / AAHID	Healthcare & Senior Living

Interior Design Society / IDS	Design
International Textile Alliance / ITA	Mills & Distributors
National Upholstery Association/ NUA	Workroom & Design

The design community from both the residential and commercial industries are moving rapidly in order to understand and meet compliancy. They want to do what is right in order to provide safe environments for the consumer/end user and meet the June 25th 2021 requirement. This part of the market can be very helpful in moving the new law into the markets.

Throughout presentations and direct conversations the below are common concerns from this industry regarding the FR Code change for Cal TB 117-2013:

1. *Accredited Lab vs Non-Accredited Lab Test Results-*

Will test results from an accredited lab be required? This is the biggest issue for the CPSC and if non-accredited testing is allowed, there will be considerable workarounds as there are today.

If an accredited lab is required, will this requirement be specifically outlined in the parameters submitted by the CPSC?

How will they be able to find an accredited lab? Applied has identified at least 9 other certified labs and are even giving the names out upon request.

2. *Compliance Enforcement*

How and where will the code be enforced?

3. *Older stock*

Will there be a sell through period on older stock/inventory that does not have the new label?

Due to the impending effective date of 6/25/21, will there be any transition time and requirements outlined?

4. *Label Content*

What are the specific requirements for the label?

5. *NFPA 260 vs Cal TB 117-2013*

Need clarity that the two test results are not interchangeable for the Cal TB 117-2013 compliancy.

6. *Definition of upholstered furniture- Are the below required to be compliant and will these terms be clearly represented in the CPSC parameters?*

Reupholstered furniture

Outdoor upholstered Furniture

Upholstered Headboards and Footboards

7. *Definition of accessories*

Are throw pillows (not related to bedding) required to pass Cal TB 117-2013? It doesn't come across clearly in the Work from Home Safety Act.

8. *Responsibility of providing test results and record keeping*

Where does the responsibility lay in the supply chain?

Will there be recommendations on record keeping requirements and who will be required to keep the records?

9. *Need more specifics on Foam requirements with reference to this law*

Does the foam require a separate test?

Is only the fabric covered in the test results?

10. *Concerns for fabrics processed with FR chemicals to meet compliancy*

With safe environments being promoted in general, is there need for concern about FR Chemicals being used?

How do you identify which finishes or chemicals are safe? (Applied Textiles is completing a presentation on safe FR chemistry that is widely available in the market.)

Are there options such as a barrier fabric that can be used instead of an FR application?

Thank you in advance for your consideration to allow John Schroeter to present at the hearing and your acknowledgement of the above concerns. Applied Textiles has a very strong industry knowledge and access to its many levels and looks forward to working with the CPSC if they can be of help.

Regards,

Ruth McDonough



Virus-free. www.avg.com

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