



U.S. CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, Maryland

Public Hearing: Commission Agenda and Priorities for Fiscal Years 2023 and 2024

Wednesday, April 27, 2022 – 10:00a.m.

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EDT		Presenter	Affiliation
10:00 AM	Opening	Chair Alexander Hoehn-Saric	
10:05 AM	Panel 1	1 Benjamin Hoffman, MD, CPST-1, FAAP	American Academy of Pediatrics
		2 Nancy Cowles Executive Director	Kids in Danger (KIDs)
		3 Owen Caine, Vice President	Toy Association
		4 Karin Athanas Executive Director	TIC Council of Americas
		5 Rachel Weintraub, Legislative Director and General Counsel	Consumer Federation of America
10:55 AM	Panel 1 Questions	Commission	
11:35 PM	Panel 2	6 Lisa Siefert	Shane's Foundation, NPF
		7 Meghan DeLong	Parents Against Tip-Over
		8 Oriene Shin, Policy Counsel	Consumer Reports
		9 Jay Howell Executive Director	American Fireworks Standards Laboratory (AFSL)
		10 Ian Paul, MD, MSc Professor of Pediatrics and Public Health Sciences Chief, Division of Academic General Pediatrics Vice Chair of Faculty Affairs, Department of Pediatrics Penn State College of Medicine	Breastfeeding & Infant Development Support Alliance (BFDSA)
12:25 PM	Panel 2 Questions	Commission	
1:05 PM	Adjourn	Chair Hoehn-Saric	

CPSC FY 2023/2024 Agenda and Priorities Public Hearing

April 27, 2022

Oral Presenters

1. Benjamin Hoffman, MD, CPST-1, FAAP
American Academy of Pediatrics
2. Nancy Cowles, Executive Director
Kids in Danger
3. Owen Caine, Vice President
Association
4. Karin Athanas
TIC Council of Americas
5. Rachel Weintraub, Legislative Director and General Counsel
Consumer Federation of America
6. Lisa Siefert
Shane's Foundation
7. Meghan DeLong
Parents Against Tip-Overs (PAT)
8. Oriene Shin, Policy Counsel
Consumer Reports
9. Jay Howell, Executive Director
American Fireworks Standards Laboratory (AFSL)
10. Ian Paul, MD, MSs
Professor of Pediatrics and Public Health Sciences
Chief, Division of Academic General Pediatrics
Vice Chair of Faculty Affairs, Department of Pediatrics
Penn State College of Medicine

Representing: Breastfeeding & Infant Development Support
Alliance

1. Benjamin Hoffman, MD, CPST-1, FAAP
American Academy of Pediatrics

American Academy of Pediatrics



DEDICATED TO THE HEALTH OF ALL CHILDREN™

April 27, 2022

Comments of

Ben Hoffman, MD, FAAP, CPST-I

Chair, AAP Council on Injury, Violence and Poison Prevention Executive Committee

On behalf of the

American Academy of Pediatrics

Comments before the

U.S. Consumer Product Safety Commission

“Agenda and Priorities FY 2023 and/or 2024”

American Academy of Pediatrics • Department of Federal Affairs

601 13th Street NW, Suite 400 North • Washington, DC 20005

E-mail: kids1st@aap.org

Good morning Chair Hoehn-Saric, and Commissioners Baiocco (“Bee – YAWK – oh”), Feldman, and Trumka:

My name is Dr. Ben Hoffman and I’m here today on behalf of the American Academy of Pediatrics, or AAP, where I serve as Chair of the AAP Council on Injury, Violence, and Poison Prevention. The CPSC has a critical role to play in protecting children from unreasonable risks associated with consumer products, the AAP appreciates the opportunity to make recommendations to the Commission on its agenda and priorities for the next fiscal year.

Safe Sleep

The AAP appreciates the CPSC’s work to propose two crucial safety standards that will create safer sleep environments for children throughout the country. Finalizing and implementing these standards expeditiously should continue to be a top priority. 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 in their own space, on their back, on a flat and firm sleep surface without any crib bumpers, bedding, or other products. To be clear, flat in this context means

horizontal in a manner that does not cause the infant to bend or flex the neck, trunk or legs. The AAP strongly supports the CPSC's final Infant Sleep Products rule, and we look forward to its implementation this year to protect infants from unsafe sleep products. We urge the Commission to comprehensively monitor the marketplace, including online marketplaces, to effectively enforce this important safety standard. We hope that pediatricians can be partners to identify noncompliant products and work with the Commission to ensure that dangerous products are not marketed for infant sleep.

The AAP also appreciates the agency's progress on crib bumpers. Crib bumper products have no place in a safe sleep environment and pose a significant suffocation hazard. The continued presence of dangerous and unnecessary crib bumpers in the marketplace puts infants at unnecessary risk and jeopardizes the clarity of AAP and CPSC's public health messaging. The AAP has also strongly supported Congressional action to ban crib bumpers, and welcomes recent progress by the U.S. Senate in advancing bipartisan legislation to ban these dangerous products.

Comprehensive regulatory, education, and enforcement action is needed to address preventable and tragic infant sleep-related deaths. We welcome the

Commission's attention to products that are leading to infant sleep deaths even if not explicitly intended for sleep, such as nursing pillows and other pillow-like infant loungers. The Commission should remain committed to reducing sleep-related deaths, and specifically addressing disparities in sleep-related deaths, with the goal of ensuring infants are in safe sleep environments for every sleep. We encourage the CPSC to improve data collection and surveillance of infant sleep-related deaths associated with consumer products to inform this critical work.

Tip-Overs

The Academy supports a strong, mandatory standard to prevent furniture tip-overs. The best solution for this preventable and tragic problem is simply to require safer dressers that will not tip over. I personally care for a number of families whose landlords prohibit the installation of anti-tip furniture anchors, so I know that educational efforts can only go so far. The AAP supports the CPSC's proposed rule to establish a safety standard for Clothing Storage Units. We look forward to additional progress from the CPSC towards a robust mandatory safety standard to prevent this hazard.

High-Powered Magnet Sets

The AAP strongly supports the CPSC’s notice of proposed rulemaking to create a safety standard to address the unreasonable risk of injury and death associated with ingestion of loose or separable high-powered magnets. The AAP has long called for a safety standard to protect children from unsafe magnets that can lead to critical injuries or death. These products represent a constant danger to children who have access to them, and warning labels and other voluntary efforts are woefully insufficient to prevent the significant, and completely preventable suffering I and my colleagues see in our work. We appreciate the Commission’s work to propose this important safety standard, and we urge you to finalize it expeditiously.

Liquid Nicotine

Liquid nicotine is a highly toxic product that poses a serious risk of negative health effects and death for children. The American Association of Poison Control Centers reports that they managed over five thousand exposure cases about e-

cigarette devices and liquid nicotine in 2021, an increase over the previous year. It is all the more important for the CPSC to fully enforce the *Child Nicotine Poisoning Prevention Act of 2015* to prevent liquid nicotine poisoning and to place a significant emphasis on taking public action to enforce this law. CPSC enforcement on this issue was slow to proceed to implementation and these data indicate a continued need for vigorous CPSC enforcement to ensure the marketplace complies with this sensible and simple policy that can save the lives of young children.

Laundry Detergent Packets

Liquid laundry detergent packets are uniquely hazardous to children, and child exposures to them continue at an alarming rate. The AAP has participated in the ASTM process to improve the safety of these products, and while we appreciate the progress on a voluntary standard, our concerns remain that it does not include a number of key elements urged by pediatricians. We urge CPSC to stay engaged in the ASTM process, and to ensure that follow-up of the implementation of the standard occurs using appropriate metrics to assess its effectiveness.

Conclusion

Finally, the AAP would welcome opportunities to work with the CPSC to address hazards from window falls, window coverings, drownings, button batteries, long-term exposure hazards, and other persistent and emerging child injury hazards. We know that addressing these hazards and protecting children requires a fully-staffed, well-resourced Commission. The AAP supports efforts to improve recall effectiveness, increase the ease of reporting through SaferProducts.gov, and to collect quality data on injuries through the National Electronic Injury Surveillance System and other sources. We support the Commission's efforts through the Equity Action Plan to identify and prioritize actions to address racial and ethnic disparities in the risk of injury and death posed by particular hazards. The AAP has stated that racism is a social determinant of health that has a profound impact on the health status of children, adolescents, emerging adults, and their families. We encourage the Commission to continue to prioritize equity and proactively address injury risks that contribute to health inequities.

Thank you again for the chance to testify today, and I look forward to answering your questions.

2. Nancy Cowles, Executive Director
Kids in Danger



March 30, 2022

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 FY 2023 and 2024**

Thank you for the opportunity to submit comments on the U.S. Consumer Product Safety Commission's (CPSC) agenda and priorities for Fiscal Year 2023 and 2024. 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.

Safe Infant Sleep and Section 104 Rules

Through 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 dozens of types of durable infant and toddler products. We appreciate the amount of time, energy, research, and knowledge that CPSC staff dedicate to this task.

KID applauds the CPSC for finalizing the Infant Sleep Products Rule, which 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. With an effective date just a few months away, we hope the CPSC will vigorously enforce the rule and also recall any inclined sleep products that remain on the market and make a push to increase recall participation for the infant inclined sleep products that have been recalled. Consumer Reports has highlighted the deaths that continue since the recalls.

We urge the CPSC to finalize the rulemaking that will effectively ban padded crib bumper pads that are responsible for dozens of deaths and still being sold despite their history. We also ask that CPSC consider a review of pacifier standards and safety. Pacifiers must comply with *Section 4.20 Pacifiers* of ASTM F963-17 and 16 CFR part 1511¹. Reports of pacifiers breaking, becoming lodged in an infant's mouth and other potential hazards are found throughout SaferProducts.gov. Given the use in an

¹ <https://www.ecfr.gov/current/title-16/chapter-II/subchapter-C/part-1511?toc=1>

infant's mouth as well as a recommendation to use pacifiers during sleep time by the American Academy of Pediatrics, we believe a review of the current requirements should be undertaken to ensure that the combination of the CPSC Pacifier rule and the requirements in the toy standard are adequate for safety.

The CPSC should also continue to monitor the market as new products, not covered by standards, enter the field. 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.

Furniture Tip-overs and Window Blinds

KID also applauds the CPSC for moving forward with the clothing storage unit proposed rule to prevent furniture tip-overs. A tip-over can involve a piece of furniture, often a dresser or other type of clothing storage unit, falling onto a small child. These dangerous episodes can lead to a trip to the emergency room, or even death. According to the CPSC's data, a child is sent to the emergency department because of a tip-over incident every 60 minutes, and on average, one to two children die every month. Both KID and the CPSC hear from parents who have tragically lost their children due to furniture tip-overs. KID urges the CPSC to finalize the standard to prevent these tragedies.

We would also urge speedy adoption of the Rule for Custom Window Coverings and application of Section 15J rule for the voluntary standard for stock window coverings. Strong standards for both of these items – in most homes in America – have been left for too long in industry's hands and we have seen continued deaths because of it. We appreciate the action CPSC is taking to keep children safe from these everyday hazards.

Ingestion Hazards

Parents are usually aware of choking hazards. Ingestion hazards are less understood but present clear dangers. These include button cell batteries, laundry packets, small powerful magnets, liquid nicotine, and certain polymer balls that expand with fluid. Serious internal injuries, poisoning and death can be the result. In addition, as wearable technology, and smart products multiply, there could be emerging hazards we have yet to identify. The CPSC's report on injuries during COVID-19, *Effect of the Novel Coronavirus Pandemic on Preliminary NEISS Estimates* showed that ingestion injuries from button cell and coin batteries rose 93% for young children from the same period in 2019. The CPSC should encourage manufacturers to use technologies that eliminate or further ameliorate the ingestion risk of these hazards.

Recalls and Recall Effectiveness

Since 2001, KID has been reporting on children's product recalls. We released our report on 2021 recalls in March 2022.

The report found an alarmingly high number of deaths prior to recall (14) compared to zero deaths prior to recall in 2020. This was the second highest number of reported deaths in the past ten years. In

2021, 12 of the 14 total deaths prior to recall were associated with two nursery products. CPSC recalled both products due to suffocation hazard. Babies continue to die in products that appear to assist getting babies to sleep but can be deadly if babies do fall asleep in them. We appreciate the strong position CPSC is taking on sleep safety in public communications, recalls and at the ASTM International juvenile products meetings, but more must be done to remove unsafe products from the market and set strict standards for non-sleep products, so they won't be used for sleep. Simply putting a warning label that a product is not safe for sleep is not enough if it is marketed and intuitively used for sleep.

In addition to deaths, injuries and incidents reported prior to the recall has also increased tremendously since last year. In 2021, there were 136 injuries, and 6,058 incidents prior recall, compared to 2020 in which there were only nine injuries, and 704 incidents.

Social media usage by the CPSC to alert consumers about recalled products has remained low. In 2021, the CPSC posted 50% of children's product recalls on Facebook, 40% on Twitter, and only 5% on Instagram. KID reports Instagram usage through posts, not stories, so while the agency may use Instagram stories to alert consumers to recalls, the CPSC should also announce recalls through Instagram posts so that the announcement will stay on the CPSC's Instagram page for longer than 24 hours. The CPSC should post about all recalls on social media to increase the likelihood consumers will see the notice. If parents and caregivers do not hear about recalls, then unsafe products will continue to be in homes and childcare facilities.

KID uses the **Freedom of Information Act (FOIA)** process for this report and other purposes frequently. We request monthly progress reports on all children's product recalls, about one year after the recall. Most reports are heavily redacted, again even of publicly available information such as counting social media posts of a recall. Our ability to protect families is compromised by the CPSC's inability to fill a request for information efficiently and effectively. KID filed 63 FOIA requests for children's products recalled in 2020 and received very little data to analyze. Only six reports were fully completed and available to the public and even this data was incomplete and unreliable. We urge the CPSC to prioritize the FOIA Office for innovative updates.

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, and 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 posted² on the CPSC website but posting is voluntary, and most recalls are not included. A quick review showed of those posted, thirteen were children's products or dressers and on average about 15% of units with consumers were retrieved or repaired through the recall. Given the self-selection of the companies that participate, we know the actual participation rate is much lower. 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

² <https://www.cpsc.gov/Data>

dangerous products from homes. CPSC should set participation goals for companies and act if they are not met.

SaferProducts.gov Database

One of the most innovative tools required by the CPSIA was a database for product incident reports from the public. *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. But CPSC's recent staff memo on *SaferProducts.gov*³ shows that the database has never had as many reports annually as they did in the first full year (2015) and except for last year, when 39% of reports filed were published, fewer than a third of reports make it into the public dataset. Many of those missing reports come from Medical Examiners. This would be a rich source of data for CPSC as it investigates emerging hazards that is lost because of missing information. The CPSC should prioritize this database, meet the obligations of the underlying legislation, and make all efforts to increase ease of reporting and especially consider ways to increase information collected from medical examiners to make it publishable. 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.

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. 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.

Also important for agency information and safety education is the NEISS Database which should continue to be fully funded to provide the very useful data it collects and strengthen demographic information that is collected to better identify how product hazards impact specific populations. And we would ask that CPSC prioritize funding and staff time to improve the weak search function on the main CPSC site and build a strong API (Applications Programming Interface) for the recall database that can be used for others to spread information on recalls. Currently with either of those functions, it is hard to find searched-for items on the website and separate programming not using CPSC's API is needed to create a way for searching and finding recall information.

Adequate Funding to Fulfill Mandate

All stakeholders agree -- the CPSC does not have the resources to fulfill its mandate of protecting consumers from unreasonable risk of harm. We are disappointed in the flat budget line in the recently released budget from the White House. We do not believe it is adequate to oversee imports at our

³ <https://www.cpsc.gov/s3fs-public/Reviewing-Saferproducts-gov-patterns-and-trends-through-FY2021.pdf>

ports, follow up on reports of harm, develop and enforce strong standards, conduct robust recall activities, research, and publish data on injury patterns and consumer use, and reach consumers with important safety information. For too long this agency has been forced to compromise on the safety of consumers, especially children, based on funding. A fully funded CPSC can act on those that meet its mission and strengthen the safety of children and consumers in the United States and we will continue to press for those funds.

Conclusion

KID wishes to congratulate CPSC on your upcoming 50th Anniversary. The CPSC is vital to the safety of children and all consumers, and we thank you all for your commitment to protecting consumers from harm. 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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3. Owen Caine, Vice President
Toy Association



Inspiring Generations of Play

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t. 202.459.0354 • e. info@toyassociation.org

March 30, 2022

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

Re: Agenda and Priorities FY 2023, and/or 2024 – Oral testimony

I want to thank Chairman Hoehn-Saric and the other members of the CPSC for the chance to speak with you today on the agenda and priorities for the upcoming fiscal year. My name is Owen Caine and I am the Vice President of Government Affairs at the Toy Association.

The Toy Association represents more than 1,100 businesses – toy manufacturers, importers and retailers, as well as toy inventors, designers and testing labs – all involved in bringing safe, fun and educational toys and games for children to market. Our members account for approximately 90% of this market and over 80% of toy manufacturers, wholesalers, distributors in the United States are small businesses.

Given the products our members manufacture, toy safety is our number one priority. As such, we have a long history of working closely with the CPSC to ensure that every toy that a child receives is held to the highest safety standards and that parents can trust that they are providing their children with toys that are both safe and intellectually stimulating. In all, there are over 100 different safety standards and tests for toy safety, required of all toys sold in this country, and these standards have been used a model for other jurisdictions – and for other product categories.

I would first like to thank the CPSC for its continued efforts to work with all interested parties on the numerous issues that come before the Commission. Truly great work can be done when organizations can work together to use the best information and science to ensure that products are regulated in the safest way. I would also like to reiterate the Toy Association's perspective that the CPSC needs and deserves all the financial backing from Congress to effectively do the job that it is tasked with. A mission that is ever broadening, ever more complex and certainly not limited to children's products.

In planning for your future priorities, there are several areas where we hope you will be willing and able to seek additional funding to pursue more aggressively, and which we are eager to help you attain.

We encourage you to engage in dedicated oversight on counterfeit products coming into this country. These products mislead consumers, do not follow the requisite laws and standards, and pose a potential danger to children and families. They come into the United States primarily through third-party sellers and marketplaces on ecommerce, or online, platforms. While all toys are required to comply with safety standards – counterfeits, while also skirting intellectual property law, may not comply with the range of standards to which toys are subject, putting



Inspiring Generations of Play

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unsuspecting consumers – children – at risk. *Any business selling toys in the U.S must be held to the same high safety standards.* We highly encourage the CPSC to prioritize the enforcement of points of entry of such violative products, including port interdiction, as well as working with USPS, FedEx, UPS and other shipping organizations on ways to crack down on this potentially dangerous and largely unregulated practice.

In conjunction with that, we support any additional funding that is needed to overall improve and expedite port inspections. The flow of goods through our ports is the life blood of our nation's economy. We urge the CPSC to take measures to ensure that legitimate and compliant product is not held up unnecessarily and is, of course, processed efficiently. We also encourage the CPSC to engage additional lab resources to handle testing and reduce delays. We are eager to work with the CPSC on increasing current practices and explore new ideas with the CPSC on how to better streamline the international shipping and port system.

Once again, the Toy Association and our members consider ourselves partners with the CPSC and the work that you all do. It is always a privilege to work side-by-side with an organization whose mission is aligned with ours – *to keep children and families safe.* It remains our highest priority. We support a fully funded agency, and we offer our continued collaboration to ensure that the products given to every child are safe and fun. I am happy to take any questions you might have, or feel free to reach out to me at ocaine@toyassociation.org.

Thank you,

Owen Caine
Vice President, Government Affairs

4. Karin Athanas
TIC Council of Americas

30 March 2022

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

Ref: "Agenda and Priorities FY 2023 and/or 2024" - 87 FR 15209

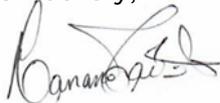
Dear Alberta E. Mills,

The TIC Council Americas is pleased to provide the attached oral testimony to be presented at the hearing on April 27, 2022, on the CPSC "Agenda and Priorities FY 2023 and/or 2024," 87 FR 15209.

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,

A handwritten signature in black ink, appearing to read 'Hanane Taidi'.

Hanane Taidi
Director General
TIC Council

A handwritten signature in black ink, appearing to read 'Karin Athanas'.

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

Oral Testimony

General Comments

On behalf of the TIC Council Americas, I encourage your continued engagement and outreach to stakeholders such as the TIC Council and its members, to further the mission of the organization and continue to seek out potential risks and solutions to protect the safety of consumers.

The safety of consumers is paramount and drives the work of the TIC industry 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. In our Value of TIC study, which was published last year, our research identified that over one million TIC employees support the independent third-party conformity assessment industry, many of those individuals serve in STEM roles and service industry around the globe.

By tapping into that technical expertise, we feel strongly that solutions to even the most challenging of problems can be found and we encourage the CPSC to take advantage of and to work with the TIC industry to support consumer safety.

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

Counterfeits, A Risk to Safety

First let me thank the commission for its thoughtful feedback and comments to date on addressing the counterfeiting crisis. Each day counterfeit products are sold online and shipped through the US Post directly to consumers. These products pretend to be from reputable companies, but the branding and the very marks on them meant to convey safety have been fraudulently duplicated. The products present a real risk to consumers because they haven't been tested, inspected, and certified as meeting US safety requirements and when those same consumers seek remedy for injuries they sustain, they find it difficult to identify and bring bad actors to justice.

We ask the CPSC to work with the TIC and other industries to promote data transparency to help the industry better identify, track, and report bad actors. We should not allow bad actors to hide in the shadows but work together to identify which countries they reside in, which companies are the big offenders, and which shipping methods they prefer to use and any other data points that will help us collaboratively combat this issue and reduce the number of unsafe products reaching consumers.

Battery Safety

Li-ion battery use is increasing, driven by their ability to store more energy than other batteries. They are available in a wide range of sizes and designs and while this is supporting the innovation and growth of a booming industry of consumer tech including wearables and smart devices, Li-ion batteries present real risks to safety that must be mitigated, removed, or clearly communicated to consumers.

Not only do these batteries need to be designed to prevent overheating which would cause fires and burns, electrical shock, and explosions, but product manufacturers must also consider the batteries' proximity to other components in a product which may cause the battery to overheat or have a structural failure.

While there are standards to address battery safety, these are not consistently applied and there are no mandatory requirements to ensure their use. And when the batteries reach their end of life, guidelines for their safe disposal and recycling are unavailable or unclear.

To address this growing issue, we ask the CPSC to work collaboratively with the TIC Council and its member and with industry to seek solutions and a path forward to protect the safety of consumers. Discussions and collaborations could be through a CPSC workshop, virtual meetings, and more and the TIC Council would be happy to support the CPSC and our industry partners in making that happen.

AI, IoT, and Cybersecurity

As reported in the recently published 'Value of TIC' Study, the size of the global IoT consumer market is expected to grow from \$53bn in 2019 to an estimated \$188bn in 2027. These products will revolutionize the lives of consumers, providing them with solutions to many of life's challenges including cooking, cleaning, scheduling, security and more. But they come with risks that must be explored and where possible eliminated or mitigated.

In May of 2018, the CPSC held a hearing to engage with stakeholders and explore the potential safety hazards and injuries that may be caused by connected devices. With collaboration from the TIC Council, this hearing ultimately led to the publication of a new ASTM standard for IoT safety in connected consumer products that research by the TIC Council estimates would result in a cost savings of \$27 million in injury related costs.

In 2021, the TIC Council was honoured to be a speaker at the CPSC workshop on Artificial Intelligence and we are thankful that the CPSC again held a workshop this year on AI. The TIC Council encourages the CPSC to continue to explore hazardization created by the digitalization of products and the potential risk to consumer safety this presents and to work with the TIC Industry to identify solutions for these unique challenges.

Sustainability

We would also ask the CPSC to work with our TIC Council members and stakeholders to engage the community in an exploration of the life of products to incorporate steps to make them eco-friendly and green, to ensure products can re-enter the market as new or resold products, and when they reach their end of life, can be safely discarded in ways that do not present new and unexpected risks to consumers. Protecting our environment is a long-term human health issue.

Today, many products that would now be considered toxic or unsafe are entering the secondary market. How do consumers identify and remove or recycle these products? How can the CPSC, in coordination with the EPA, encourage industry to use eco-friendly materials in the packaging of those products or in the products themselves? And how - as a community - can we do this while ensuring products continue to be safe for consumers?

As countries around the world pursue low-carbon, green, and circular approaches to products, we encourage the CPSC to be an advocate for future consumer health in these discussions and collaborate with stakeholders to identify common sense solutions.

In closing, the TIC Council thanks the CPSC, its commissioners, and staff for being a force for good in protecting the safety of consumers, for engaging with all stakeholders on

these critical issues, and for working collaboratively with the TIC Council and its members to identify solutions to protect the safety of consumers.

We look forward to exploring these issues and seeking solutions with the CPSC and our industry and consumer partners and thank you for your time today.

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



Consumer Federation of America

April 27, 2022

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 2023 and 2024”

Chair Hoehn-Saric, Commissioners Baiocco, Feldman, and Trumka, I appreciate the opportunity to provide testimony about the Consumer Product Safety Commission’s (CPSC’s) agenda and priorities for Fiscal Years (FY) 2023 and 2024. I am Rachel Weintraub, Legislative Director and General Counsel at Consumer Federation of America (CFA). CFA is a non-profit association of approximately 250 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. 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 so many critical safety issues recently: window coverings, magnets, furniture stability, adult bed rails, residential elevators, and final rules for infant sleep products and infant mattresses. All of these issues have posed significant harm to consumers for far too long and we appreciate that the CPSC is taking action to address these hazards.

In addition to addressing specific product hazards. We urge the CPSC to use the tools it has to protect consumers, to issue meaningful and effective recalls, to share critical safety information, and to hold entities who do not comply with CPSC’s laws and regulations accountable.

A. Product Safety Issues Recently Addressed through Regulatory Action, New Research, Public Hearing

I. Window Coverings

An effective mandatory standard that addresses the strangulation hazard posed by all window coverings is necessary because the current voluntary standard has failed to address the key hazard pattern associated with corded window coverings available on the market. For almost 30 years, the voluntary standard has repeatedly failed to address the issue in an effective way. The CPSC has been communicating with the manufacturers of these products for years. The voluntary standard had minimally changes over time, until 2018. But then, it didn't cover all of the products on the market. Unfortunately, and consistently, the industry has not significantly addressed the issues posed by accessible cords in all window coverings. The industry's voluntary standard has not meaningfully reduced the death rate. The CPSC is aware of 194 reported incidents, including 89 fatal strangulations and 105 near-miss strangulations that did not result in death from children becoming entangled by cords on window coverings from 2009 through 2020. The CPSC estimates that at least 8 children die each year because of cords on window coverings.

There are products on the market that do not pose strangulation risks to children. "Virtually every window covering type is available with a "cordless" operating system."¹ The research and technology already exists to design products without strangulation risks. Manufacturers know how to do this. In fact, manufacturers stated to the CPSC in 2015 that cordless options are available in every product category.² And yet, corded products still are for sale and are not prohibited from being sold. This is unacceptable. Although safer designs are available on the market, manufacturers currently sell some of them at a premium, making them cost-prohibitive for many families. If the CPSC enacts a mandatory rule, it will ensure that this minimum level of safety is applied to all products for sale in the market. This will protect all consumers effectively and will strengthen the market for companies who want to innovate to protect children.

A mandatory standard that reduces the risk posed by operating cords on custom products will minimize the risk to children. Without a doubt, reducing the number of products with hazardous accessible cords that can strangle children will reduce risk to children. This proposed rule builds upon the incomplete 2018 voluntary standard that addressed operating cords on stock products and inner cords of stock and custom window coverings.

This proposed rule will require that "operating cords on custom window coverings meet the same requirements as operating cords on stock window coverings"³ as included in the ANSI/WCMA 2018 standard. This would require that operating cords on custom products must be cordless, inaccessible, or 8 inches or shorter in length in any use position.

We urge the Commission to quickly finalize this rule in the next fiscal year.

¹ Ibid at 1018.

² Statement of Tom Merker, Director of Engineering at Springs Window Fashion, Inc, at a CPSC public meeting with WCMA on May 27, 2015.

³ Ibid at 1014.

II. Infant Sleep Products and Crib and Infant Mattresses

We applaud the CPSC for promulgating a mandatory standard for infant sleep products on June 2, 2021. The rule will regulate products marketed or intended to be sleep products for infants up to five months old. Before this rule passed, these products were unregulated and led to at least [94 infant deaths](#). The CPSC estimates that one in three families own one or more of the items that would have been regulated by the rule.

CFA strongly supports the CPSC’s final rule for crib mattresses. By including aftermarket mattresses in the rule, it will eliminate supplemental mattresses that are intended to be added to mesh play yards in addition to non-full size rigid cribs. All aftermarket mattresses will have to be essentially the same as the original mattress that is sold with the play yard. Replacement mattresses are to be sold to replace a previous mattress; not sold as an additional mattress. The proposed rule will cover all mattresses sold for full-size cribs and requires a firmness test. Soft surfaces have been linked to infant deaths.

III. 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,⁴ “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%).”^{5 6}

The CDC and the Austin Public Health Department conducted an epidemiological investigation of these incidents that was published in April of 2019⁷ 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%).”⁸ “Almost half (80) of the injured riders had a severe injury.”⁹ The study also determined “that there were 20 individuals injured per 100,000 e-scooter trips taken during the study period.”¹⁰ The study determined that, “[t]hese injuries may have been preventable. Only one of 190 injured scooter riders was wearing a helmet.”¹¹

⁴ 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

⁵ <https://www.cnet.com/news/electric-scooter-injuries-are-sending-more-and-more-people-to-the-hospital/>

⁶ <https://www.cnet.com/news/electric-scooter-injuries-are-sending-more-and-more-people-to-the-hospital/> citing the JAMA study mentioned above.

⁷ https://austintexas.gov/sites/default/files/files/Health/Web_Dockless_Electric_Scooter-Related_Injury_Study_final_version_EDSU_5.14.19.pdf

⁸ Ibid at p. 5.

⁹ Ibid at p. 6.

¹⁰ Ibid at p. 10.

¹¹ Ibid at p, 11.

In a report issued in 2020,¹² 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 2019.¹³ The CPSC staff documented 27 fatalities associated with e scooters from 2017 through 2019.¹⁴ 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.¹⁵

The CPSC issued a new report, “Micromobility Products-Related Deaths, Injuries, and Hazard Patterns: 2017–2020”¹⁶ in October of 2021. The report found that for emergency department treated injuries, for all micromobility products, there were an estimated total of 190,500 ED visits from 2017 through 2020; the corresponding annual estimated ED visits for 2017, 2018, 2019, and 2020 were 34,000, 44,000, 54,800 and 57,700, respectively. For-scooters, there were an estimated total of 75,400 ED visits from 2017 through 2020; annual estimated ED visits were 7,700, 14,500, 27,700, and 25,400 in 2017, 2018, 2019, and 2020 respectively. Thus, for all microbosity products and e-scooters, injuries have increased for each year studied. The CPSC found that estimates for dockless/rental e-scooters did not meet the reporting criteria for NEISS. 2 These estimates accounted for 10 percent of ED visits for e-scooters. However, this may be an underestimate because not all dockless/rental e-scooters may have been identified as dockless/rental in the NEISS data by the hospital staff.¹⁷

The CPSC conducted a special study on e-scooters involving the investigation of 142 e-scooter cases in 2020. The CPSC found that rental e-scooters accounted for 28 percent of the e-scooter-related ED visits in the special study; fifty-seven percent of the injuries occurred on paved roads; twenty percent of the victims reported that it was dark or difficult to see; sixteen percent of the injured were carrying or holding something while riding the e-scooter; seventy-nine percent of the riders were wearing a helmet while riding the e-scooter.

The study also included information about fatalities. For all micromobility product, the CPSC identified 71 fatalities from 2017 through 2020. The number of fatalities were 5, 11, 31, and 24 in 2017, 2018, 2019 and 2020, respectively. For e-scooters (dockless/rental in parentheses), the CPSC staff is aware of 42 (11) fatalities from 2017 through 2020. The number of fatalities were 1 (none), 5 (2), 25 (7), and 11 (2) in 2017, 2018, 2019, and 2020, respectively.¹⁸

¹² <https://www.cpsc.gov/s3fs-public/Micromobility-Products-Related-Deaths-Injuries-and-Hazard-Patterns-2017%E2%80%932019.pdf?90dOQxCOSzGvGRFGX6UF6Z6zvQhV9R1P>

¹³ <https://www.cpsc.gov/s3fs-public/Micromobility-Products-Related-Deaths-Injuries-and-Hazard-Patterns-2017%E2%80%932019.pdf?90dOQxCOSzGvGRFGX6UF6Z6zvQhV9R1P> at page 3.

¹⁴ 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.

¹⁵ 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.

¹⁶ <https://www.cpsc.gov/s3fs-public/Micromobility-Products-Related-Deaths-Injuries-and-Hazard-Patterns-2017-2020.pdf?VersionId=s8MfDNAVvHasSbqotb7UC.OCWYDcqena>

¹⁷ <https://www.cpsc.gov/s3fs-public/Micromobility-Products-Related-Deaths-Injuries-and-Hazard-Patterns-2017-2020.pdf?VersionId=s8MfDNAVvHasSbqotb7UC.OCWYDcqena> at 2-3.

¹⁸ <https://www.cpsc.gov/s3fs-public/Micromobility-Products-Related-Deaths-Injuries-and-Hazard-Patterns-2017-2020.pdf?VersionId=s8MfDNAVvHasSbqotb7UC.OCWYDcqena> at 3.

We appreciate that the CPSC held a forum on micromobility devices on September 15, 2020, and in 2023 and 2024, 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.

IV. 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. “The average fatality rate over the 11- year period 2010 through 2020 is 64 deaths per year, when only a generator was involved, and 68 deaths per year when a generator and another CO-producing consumer product was involved.”¹⁹ In February, 2022, the CPSC issued, “Briefing Package on Assessment of Portable Generator Voluntary Standards’ Effectiveness in Addressing CO Hazard, and Information on Availability of Compliant Portable Generators,”²⁰ “Staff’s analysis found that generators compliant with the PGMA G300 standard would avert nearly 87 percent of deaths that occurred with baseline generators, with 55 survivors requiring hospitalization, and 34 survivors seeking medical treatment and being released. Staff’s analysis found that generators compliant with the UL 2201 standard would avert nearly 100 percent of the deaths, with three survivors requiring hospitalization, and 22 survivors seeking medical treatment and being released and found that “based on staff’s current review,” and found that compliance with UL 2201 appears to be minimal; compliance with PGMA G300, although greater, is still lacking for most models or units currently being sold.”²¹

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.²² Currently two voluntary standards (UL 2201 and ANSI/PGMA G300) address the safety aspects of portable generator carbon monoxide emissions.

We applaud the CPSC for issuing the findings of its evaluation of the efficacy of each standard. We urge the Commission to take enforcement actions to protect consumers from products that do not comply with an adequate standard. We also support the staff’s recommendation to propose that the Fiscal Year 2023 Operating Plan include the issuance of a rulemaking briefing package on portable generators to the Commission.

V. Senior Safety

We applaud the CPSC for issuing the new report on “Consumer Product-Related Injuries and Deaths Among Adults 65 Years of Age and Older.”²³ “Americans over age 65 comprise 71 percent of

¹⁹ https://www.cpsc.gov/s3fs-public/Briefing-Package-on-Portable-Generator-Voluntary-Standards.pdf?VersionId=hLnAkKQ6bCD_SKin8RE6Iax.BjZsB5x3 at 2.

²⁰ https://www.cpsc.gov/s3fs-public/Briefing-Package-on-Portable-Generator-Voluntary-Standards.pdf?VersionId=hLnAkKQ6bCD_SKin8RE6Iax.BjZsB5x3

²¹ Based on staff’s current review, compliance with UL 2201 appears to be minimal; compliance with PGMA G300, although greater, is still lacking for most models or units currently being sold.

²² <https://www.federalregister.gov/documents/2016/11/21/2016-2692/safety-standard-for-portable-generators>

²³ <https://www.cpsc.gov/s3fs-public/Consumer-Product-Related-Injuries-and-Deaths-Among-Adults-65-Years-of-Age-and-Older-December-2021.pdf?VersionId=wpc3QqmHU3hlMHLXpsFShkIvX13ZFjZE>

consumer product-related deaths annually, despite making up only 16% of the population.”²⁴ The CPSC staff found that from 2016 through 2020, adults age 65 and older sustained an estimated 14.6 million injuries serious enough to require emergency room treatment.²⁵ The CPSC found that the estimated rate of emergency department-treated injuries is higher for adults 65 and older (5 product related injuries per 100 older adults compared to adults 25-64 (3 product related injuries per 100 adults 25-64 years old).²⁶ Significantly, almost two-thirds of all of the estimated consumer product – related injuries involving adults over 65 involved falls. “From 2016 through 2020, emergency departments treated nearly 7.3 million estimated injuries sustained by older adults associated with floors, stairs/steps, and beds.”²⁷ The CPSC’s staff’s study is an important in depth analysis of the interaction between consumer products and older adults. In 2023 and 2024, 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.

VI. High Powered Magnet Sets

The past ten years have illustrated the important beneficial impact of a mandatory standard for magnets and the inadequacy of the voluntary standard to effectively address the known hazard.

CFA supports the CPSC’s notice of proposed rulemaking seeking to develop a safety standard to address “the unreasonable risk of injury and death associated with ingestion of loose or separable high-powered magnets.”²⁸ Incident data from the CPSC, as well as from pediatric gastroenterologists across the country, has documented the serious medical consequences that occur as a result of a child ingesting such high powered magnets. The unique properties of these magnets cause serious life threatening injuries when a child ingests two or more magnets. These injuries are vastly different from, and more serious than, those that occur from the ingestion of other small parts.

In the notice of proposed rulemaking, the Commission proposes safety standards for magnets. The safety standard proposed would apply to “consumer products that are designed, marketed, or intended to be used for entertainment, jewelry, mental stimulation, stress relief, or a combination of these purposes, and that contain one or more loose or separable magnets.”²⁹ The proposed rule would require loose or separable magnets “to be either too large to swallow, or weak enough to reduce the risk of internal interaction injuries when swallowed.”³⁰ The proposed rule would require

²⁴ <https://www.cpsc.gov/Newsroom/News-Releases/2022/Older-Americans-Are-More-Likely-to-Suffer-Fatalities-from-Falls-and-Fire-CPSC-Report-Highlights-Hidden-Hazards-Around-the-Home>

²⁵ ²⁵ <https://www.cpsc.gov/s3fs-public/Consumer-Product-Related-Injuries-and-Deaths-Among-Adults-65-Years-of-Age-and-Older-December-2021.pdf?VersionId=wpc3QqmHU3hlMHLXpsFShkIvXl3ZFjZE> at 4.

²⁶ ²⁶ <https://www.cpsc.gov/s3fs-public/Consumer-Product-Related-Injuries-and-Deaths-Among-Adults-65-Years-of-Age-and-Older-December-2021.pdf?VersionId=wpc3QqmHU3hlMHLXpsFShkIvXl3ZFjZE>
At 4.

²⁷ ²⁷ <https://www.cpsc.gov/s3fs-public/Consumer-Product-Related-Injuries-and-Deaths-Among-Adults-65-Years-of-Age-and-Older-December-2021.pdf?VersionId=wpc3QqmHU3hlMHLXpsFShkIvXl3ZFjZE> at 4.

²⁸ Ibid at 1260.

²⁹ Ibid at 1260.

³⁰ Ibid at 1260.

that subject magnets that fit entirely within the small parts cylinder must have a flux index of less than 50 kG² mm².

CPSC's proposed rule accurately describes the serious injuries caused by ingestion of magnets from magnet sets, which can be very grave and potentially life threatening.

When one or more than one magnet is ingested, the magnetic force of the magnet can "interact internally through body tissue with an unrelated magnet or a ferromagnetic object resulting in an internal injury."³¹ The CPSC data, therefore, indicate that even one magnet poses the same risk as numerous magnets. Thus a single magnet or magnets can trap tissue between them, such as tissue from the intestinal wall, esophageal tissue, and other digestive tissue. This tissue, when essentially caught between the magnetic force, is damaged. Such damage could entail a tear or perforation, death of the tissue, or could create a fistula. This damage results in a serious injury or death. The longer the damage is not identified and remedied, the more serious and acute the injury.

The most common intervention for high-powered magnet ingestion is surgical repair of a perforation and/or fistula. In cases where bowel resection is required, the health implications are long-term and serious.

CPSC has estimated that 23,700 ingestions of magnets were treated in emergency rooms in hospitals across the country from 2010 through 2020. Of great importance, the CPSC identified "significantly fewer ED-treated magnet ingestions in 2015 than in any of the following years."³² "Likewise, there were significantly fewer ED-treated magnet ingestions in 2016 than in any of the following years. . . Overall, 2014 through 2016 had the lowest number of estimated ED-treated magnet ingestions."³³ Clearly, these incidence significantly correlate to the issuance of CPSC's mandatory standard for magnet sets in 2014 and the revocation of the rule in 2016.

Thus, numerous serious injuries, many of which required surgical intervention, have been caused by these magnets. We support the CPSC's assessment of the seriousness of these injuries and agree that this data provides evidential support for the promulgation of a proposed rule that effectively addresses this serious hazard as soon as possible.

VII. Furniture Tip-Overs

The hazard of unstable furniture, specifically clothing storage units, has been well known to the CPSC and to too many families who have suffered from tragic losses as a result of tipping furniture for at least twenty years. A voluntary standard was first published in 2000 and has been revised seven times, and yet the hazards to children posed to children from unstable furniture have not decreased. The voluntary standard is not sufficient and a mandatory standard such as the one proposed by the CPSC in this NPR is needed. A strong enforceable standards is critical to protecting consumers from hazards posed by furniture tip overs. Consumers expect that furniture should be stable and that it should not be their responsibility to finish the job of manufacturers and ensure the stability of furniture in their home.

³¹ Safety Standard for Magnets, NPR at 1288.

³² Ibid at 1266.

³³ Ibid. at 1266.

The Consumer Product Safety Commission (CPSC) is aware of 226 fatalities related to clothing storage unit (CSU) tip overs between 2000 and 2020.³⁴ CPSC indicated that of these, 193 or 85% involved children under 18-years-old; 11 or 5% involved adults 18 to 64-years-old; and 22 or 10% involved people 65 years and older.³⁵ An estimated 78,200 injuries related to CSU tip overs were treated in U.S. hospital emergency rooms between 2006 and 2019.³⁶

The CPSC data indicate that 56,400 or 72% of these non-fatal injuries involved children.³⁷ “Of the victim’s whose ages were known, there were more injuries suffered by children 3-years-old and younger, than to older victims; and the injuries suffered by these young children tended to be more sever, compared to older children and adults/seniors.”³⁸ For each year from 2006 through 2019, there was an estimated 2,500 to 5.900 non-fatal injury treated in an emergency room.³⁹

The CPSC has undertaken extensive research as part of this rulemaking process and has identified the hazards patterns involved in furniture deaths and injuries. This serves as the critical basis for the notice of proposed rulemaking. The CPSC identified numerous hazard patterns involved in CSU tip over incidents: filled drawers- 51% of incidents involved partially filled or full drawers; and interaction with the CSU- of these incidents that including how the child interacted with the CSU, 74% involved a child climbing on the CSU, 17% involved a child sitting, laying, or standing in a drawer; and 9% involved a child opening drawers. “The CPSC found that climbing was the most common interaction for children 3-years-old and younger.”⁴⁰ Specific interactions include climbing open drawers, and open drawers and climbing simultaneously. CPSC also identified differences in interactions with CSUs by age and found that climbing is pervasive among children under 3-years-old.

The CPSC also identified that in incidents involving fatal tip-over incidents with children and CSUs and where the type of flooring was identified, 82% of incidents involved carpeted floors. For non-fatal incidents, the CPSC identified that 80% of incidents in which flooring was known, involved a carpeted surface.⁴¹

We support the CPSCs NPR for the Safety Standard of Clothing Storage Unit. We believe that the voluntary standard does not adequately address the tip over hazard posed by CSUs. We support the mandatory standard proposed in the NPR that includes numerous strengthening provisions that better reflect real world use of CSUs by children and all consumers. We strongly support this NPR because it will significantly reduce the risks to children posed by unstable clothing storage units and urge the CPSC to finalize the rule in the next fiscal year.

B. Product Safety Issues not Recently Addressed

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid at 6249.

³⁹ Ibid at 6250.

⁴⁰ Ibid at 6251.

⁴¹ Ibid at 6253.

I. Crib Bumper Pads

After over a decade of inaction by the CPSC on the hazards posed to babies by crib bumpers, we are disappointed that the agency has not issued a final rule for crib bumpers

Crib bumpers 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 this hazard.

II. Flame Retardants in Consumer Products

Flame retardants can be found in numerous types of consumer products and are chemicals that have been associated with serious human health problems, including cancer, reduced sperm count, increased time to pregnancy, decreased IQ in children, impaired memory, learning deficits, hyperactivity, hormone disruption and lowered immunity. These chemicals migrate continuously out from everyday household products into the air and onto dust. As a result, 97% of U.S. residents have measurable quantities of toxic flame retardants in their blood. Children are especially at-risk because they come into greater contact with household dust than adults do. Studies show that children, whose developing brains and reproductive organs are most vulnerable, have three to five times higher levels of flame retardants than their parents.

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

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

While the CPSC has voted to move forward with our petition and has acknowledged that the CPSC has clear authority under the Federal Hazardous Substances Act to regulate potentially toxic chemicals, that there is clear legal precedent for the CPSC to regulate a class of chemicals, and that there is strong scientific evidence documenting the hazards posed to consumers by these chemicals. We urge the Commission to take significant steps to reduce the risks posed by these chemicals.

III. 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.⁴² 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.

⁴² Press release February 7, 2017, available at <https://www.gartner.com/newsroom/id/3598917>.

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.⁴³ Finally, and unfortunately, we know of reports⁴⁴ 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 and in March 31, 2022. We look forward to continued prioritization of AI and product safety in 2023 and 2024.

IV. Liquid Nicotine

According to a 2018 article in *Pediatrics*,⁴⁵ there were 8,269 liquid nicotine exposures among children less than 6-years-old reported to U.S. poison control centers from January 2012 to April 2017. 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, over 5,000 reports⁴⁶ in 2021, and as of February 28, 2022, poison control centers have managed 831 exposure cases about e-cigarette devices and liquid nicotine in 2022.⁴⁷ 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

⁴³ <https://www.cpsc.gov/about-cpsc/commissioner/elliott-f-kaye/statements/statement-of-commissioner-elliott-f-kaye-regarding-a>

⁴⁴ <https://www.wired.com/story/xiaomi-scooter-hack/>

⁴⁵ Govindarajan P, Spiller HA, Casavant MJ, et al. E-Cigarette and Liquid Nicotine Exposures Among Young Children. *Pediatrics*. 2018;141(5):e20173361

⁴⁶ The AAPCC no longer provides exact annual exposure numbers.

⁴⁷ <https://aapcc.org/track/ecigarettes-liquid-nicotine>

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 2023 and 2024, we urge the Commission to immediately and effectively enforce the law, monitor the market and take enforcement actions for those products that don't comply.

V. Laundry Packets

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

“Some children who have put the product in their mouths have had excessive vomiting, wheezing and gasping. Some get very sleepy. Some have had breathing problems serious enough to need a ventilator to help them breathe. There have also been reports of corneal abrasions (scratches to the eyes) when the detergent gets into a child's eyes.”⁴⁸

“As of February 28, 2022, poison control centers have managed 1,280 cases related to laundry detergent packet exposure in children 5 and younger.”⁴⁹ In 2021 there were over 10,000 exposures,⁵⁰ in 2020, exposures increased to 10,572 from 10,021 in 2019.⁵¹ In 2017, 10,576⁵² 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 concentrated packets of laundry detergent by children 5 and younger.⁵³ We urge the CPSC to investigate why the number of ingestions increased from 2018 to 2020.

According to a Consumer Reports article from 2017,⁵⁴ 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.”⁵⁵

⁴⁸ Laundry Detergent Packets, American Association of Poison Control Centers, <https://aapcc.org/track/laundry-detergent-packets>

⁴⁹ <https://aapcc.org/track/laundry-detergent-packets>

⁵⁰ The AAPCC is no longer providing exact numbers of exposures for each year.

⁵¹ <https://aapcc.org/track/laundry-detergent-packets>

⁵² <https://aapcc.org/track/laundry-detergent-packets>

⁵³ Ibid.

⁵⁴ <http://www.consumerreports.org/laundry-cleaning/liquid-laundry-detergent-pods-pose-lethal-risk/>

⁵⁵ Ibid.

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 has not consistently been the case since the voluntary standard was published. 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.

VI. 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 556 reported fatal incidents from 2016 through 2018.⁵⁶ The CPSC has estimated an annual average of 4,300 injuries due to UTVs and ROVs.⁵⁷ The CPSC has documented fatal incidents associated with off-highway vehicles (OHVs) by vehicle and has found that ROV fatalities have increased from 155 deaths in 2016, to 179 deaths in 2017, to 172 deaths in 2018.⁵⁸

CFA and its partners documented 1,163 ROV fatalities between January 1, 2013 and March 7, 2022. We have documented zero ROV deaths in 2022 thus far, 60 deaths in 2021, and 215 fatalities in 2020, the highest recorded annual fatality count. In 2019, we documented 213 fatalities for ROVs, and in 2018, we documented 171 fatalities, in 2017 we documented 147 fatalities, and in 2016 we documented 118 fatalities. These numbers are likely underestimates as they are based solely on media reports and may grow as more data becomes available about additional deaths.⁵⁹

⁵⁶ <https://www.cpsc.gov/s3fs-public/2021-Report-of-Deaths-and-Injuries-Involving-Off-Highway-Vehicles-with-more-than-Two-Wheels.pdf?VersionId=nm0R8oYxTu.mRD7KNRvNp95ogHw2SYOD> at 6.

⁵⁷ <https://www.cpsc.gov/s3fs-public/2021-Report-of-Deaths-and-Injuries-Involving-Off-Highway-Vehicles-with-more-than-Two-Wheels.pdf?VersionId=nm0R8oYxTu.mRD7KNRvNp95ogHw2SYOD> at 12.

⁵⁸ <https://www.cpsc.gov/s3fs-public/2021-Report-of-Deaths-and-Injuries-Involving-Off-Highway-Vehicles-with-more-than-Two-Wheels.pdf?VersionId=nm0R8oYxTu.mRD7KNRvNp95ogHw2SYOD> at 6.

⁵⁹ Available at <https://consumerfed.org/off-highway-vehicle-safety/>

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 analysis⁶⁰ of off highway vehicle (OHV) recalls and found that over the past ten years, there have been 150 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, and in 2021 there were 20 recalls. In 2022 thus far, CFA has tracked seven 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, 2019.⁶¹ In addition, CFA analysis of CPSC OHV recall reports from January 1, 2010 through March 9, 2022 found that 24 brands⁶² were involved in the recalls, and the brand with the most recalls was Polaris.⁶³ CPSC reports identified at least 76 injuries and four deaths linked to OHVs that were subsequently recalled. Also, more than two million⁶⁴ 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.⁶⁵

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

⁶⁰ https://consumerfed.org/recall_blog_2020/

⁶¹ https://consumerfed.org/recall_blog_2020/

⁶² 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.

⁶³ 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.

⁶⁴ 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.

⁶⁵ <https://www.cpsc.gov/content/joint-statement-of-cpsc-and-polaris-on-polaris-rzr-900-and-1000-recreational-off-highway>

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 appreciate that the CPSC issued an ANPR for OHV Fire and Debris Penetration in May and we submitted comments. We hope the CPSC continues to prioritize this issue in 2023 and 2024 and finalize the rule.

2. All-Terrain Vehicles

From 2016 through 2018, the CPSC has received 1,591 reports of fatal incidents associated with ATVs.⁶⁶ In 2020, there were an estimated 112,300 OHV-related, emergency department-treated injuries in the United States.⁶⁷ An estimated 27 percent of these involved children younger than 16 years of age. The reported deaths associated with ATVs was 575 in 2016, 529 in 2017, and 487 in 2018.⁶⁸ For all reported deaths for OHVs including ATVs, UTVs, ROVs and unknown vehicles, from 2016 through 2018, there were 2,211,⁶⁹ though the 2018 data is not considered complete and the number of fatalities will almost certainly increase as more data is received.

In 2018, OHVs killed at least 73 children younger than 16, accounting for 10 percent of OHV fatalities. Fifty- five percent of children killed were younger than 12-years-old in 2018.⁷⁰ Children

⁶⁶ <https://www.cpsc.gov/s3fs-public/2021-Report-of-Deaths-and-Injuries-Involving-Off-Highway-Vehicles-with-more-than-Two-Wheels.pdf?VersionId=nm0R8oYxTu.mRD7KNRvNp95ogHw2SYOD> at 6.

⁶⁷ <https://www.cpsc.gov/s3fs-public/2021-Report-of-Deaths-and-Injuries-Involving-Off-Highway-Vehicles-with-more-than-Two-Wheels.pdf?VersionId=nm0R8oYxTu.mRD7KNRvNp95ogHw2SYOD> at 13.

⁶⁸ <https://www.cpsc.gov/s3fs-public/2021-Report-of-Deaths-and-Injuries-Involving-Off-Highway-Vehicles-with-more-than-Two-Wheels.pdf?VersionId=nm0R8oYxTu.mRD7KNRvNp95ogHw2SYOD> at 6.

⁶⁹ <https://www.cpsc.gov/s3fs-public/2021-Report-of-Deaths-and-Injuries-Involving-Off-Highway-Vehicles-with-more-than-Two-Wheels.pdf?VersionId=nm0R8oYxTu.mRD7KNRvNp95ogHw2SYOD> at 6.

⁷⁰ <https://www.cpsc.gov/s3fs-public/2021-Report-of-Deaths-and-Injuries-Involving-Off-Highway-Vehicles-with-more-than-Two-Wheels.pdf?VersionId=nm0R8oYxTu.mRD7KNRvNp95ogHw2SYOD> at 9.

under 16 suffered an estimated 30,400 serious injuries in 2020. This represents 27 percent of all injuries.⁷¹

CFA and our partners have documented 4,070 ATV related deaths from 2013 through March 7, 2022. CFA has documented 34 ATV deaths thus far in 2022, and we documented 352 ATV deaths in 2021.⁷² 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%.⁷³ Fourteen states have

⁷¹ <https://www.cpsc.gov/s3fs-public/2021-Report-of-Deaths-and-Injuries-Involving-Off-Highway-Vehicles-with-more-than-Two-Wheels.pdf?VersionId=nm0R8oYxTu.mRD7KNRvNp95ogHw2SYOD> at 13.

⁷² <https://consumerfed.org/off-highway-vehicle-safety/>

⁷³ 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 at page 14.

documented increases in OHV incidents during the pandemic: Arkansas,⁷⁴ California⁷⁵, Colorado,⁷⁶ Florida,⁷⁷ Georgia,⁷⁸ Kentucky,⁷⁹ Louisiana,⁸⁰ Minnesota,⁸¹ Missouri,⁸² North Dakota,⁸³ Tennessee,⁸⁴ Vermont,⁸⁵ West Virginia,⁸⁶ and Wisconsin.⁸⁷

C. Consumer Product Safety Commission Authority and Enforcement

I. 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

⁷⁴ <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>

⁷⁵ <https://www.kusi.com/desert-dangers-all-terrain-vehicle-injuries-for-children-are-on-the-rise/>

⁷⁶ <https://www.koa.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/>

⁷⁷ <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/>

⁷⁸ <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

⁷⁹ <https://www.wsaz.com/2020/09/28/boyd-county-sees-increase-in-atv-related-accidents-first-responders-urge-caution/>

⁸⁰ <https://www.kplctv.com/2020/05/15/atv-accidents-juveniles-rising/>

⁸¹ <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>.

⁸² <https://www.kmmo.com/2020/07/23/mshp-troop-b-reports-increase-in-fatal-motorcycle-and-off-road-vehicle-fatalities/>

⁸³ <https://www.newsdakota.com/2020/09/22/atv-fatalities-up-in-north-dakota/>

⁸⁴ <https://www.wmactionnews5.com/2020/07/12/trauma-season-injuries-violence-coronavirus-keeping-hospitals-busy/>

⁸⁵ 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.samessenger.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/>

⁸⁶ <https://woay.com/atv-related-incidents-on-the-rise-in-southern-west-virginia/>

⁸⁷ https://www.leadertelegram.com/country-today/country-life/country-life-news/surge-in-child-atv-injuries-likely-linked-to-pandemic-experts-say/article_280fd735-d403-5f17-92f2-98a0e6bce135.html

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.

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.

II. 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 penalties⁸⁸ 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. In 2021 there was one civil penalty and thus far in 2022, there was one civil penalty. We hope that assessing civil penalties will be a priority this year, in 2023 and 2024, and in the years ahead.

- In FY 2022, the CPSC has collected 1 civil penalty for \$6.5 million; and no criminal penalties.
- 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.

⁸⁸ See <https://www.stericycleexpertsolutions.com/wp-content/uploads/2018/02/ExpertSolutions-RecallIndex-Q42017.pdf>

- 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.
- 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.⁸⁹ 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.

III. 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

⁸⁹ <https://www.justice.gov/opa/pr/two-corporate-executives-indicted-first-ever-criminal-prosecution-failure-report-under>

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 2007.⁹⁰ Despite the fact that the CPSC found numerous home lead kits unreliable, it did not name them. Similarly, in a furniture stability study in 2016,⁹¹ 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.

IV. 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 Tracking Trends: Children's Product Recalls in 2021,⁹² that the agency and manufacturers have not been doing sufficiently.

V. 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, high chairs, infant sleep products, crib mattresses, 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.

⁹⁰ <https://www.cpsc.gov/id/node/19866>

⁹¹ https://www.cpsc.gov/s3fs-public/Product%20Instability%20or%20Tip%20Over%20Report%20August%202016_1.pdf

⁹² <https://kidsindanger.org/wp-content/uploads/2022/03/KID-Tracking-Trends-2022.pdf>

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

VI. SaferProducts.gov

We appreciate that the Commission held a hearing on SaferProducts.gov in March of 2019 and July of 2020, and responded positively to the recommendations CFA, KID and CR made to the Commission. We appreciate the changes that the Commission has made to SaferProducts.gov this far, and we urge the Commission to take additional action, including:

- **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.

VII. 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.

D. 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.

6. Lisa Siefert
Shane's Foundation

Thank you for allowing me to submit comments on the CPSC's agenda and priorities.

Sadly this is not my first time here speaking or coming before some of you and other commissioners before you since 2011 which is an indicator we are not moving fast enough to prevent furniture tip-overs.

I am Lisa Siefert, founder of Shane's Foundation, a non-profit child safety organization focusing on tip-over awareness and prevention.

"Love you," I said to my baby boy. "Love you," he said back from his bed as I closed the door to his bedroom for his afternoon nap.

Later, I went to wake my baby from his nap as my husband came in from yard work. My husband heard a sound that was unrecognizable - my screams.

I found Shane under his dresser.

I am a wife and mother of a daughter who is 15 years old and to my son Shane who would be 13, but is tragically two... forever.

I founded Shane's Foundation in 2012, a mere year after Shane passed away. I felt the urgent need to warn parents of this hidden danger in their homes. No family should go through the death of their child, especially one that is so easily preventable and no child should pass away in such a horrific way as Shane did.

ANCHORIT!

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

ASTM PRESENCE

I applaud your recent work in researching tip-overs and further fully support the NPR. It is long overdue and we need to press forward with urgency.

This is not my first time mentioning testing to real life use, additional weight of 60 lbs. carpet surface, loaded drawers and include all furniture, even those shorter than 30" such as KID and Shane's Foundation tested in our report of which you are all familiar. We urge CPSC to continue to prioritize this work, giving staff the time and resources they need to develop strong standards that will reduce injuries and deaths from dressers and clothing storage units.

EFFECTIVE RECALL

I further urge you to recall furniture that does not meet the current standard. Your leadership will show a commitment to safer furniture with these recalls. Recalls need to accelerate to take dangerous products off the market. Further, companies with a recalls need to be helped with recall effectiveness. The public needs to be made aware of and steps to be taken on how to get that product fixed or out of their homes.

Thank you for allowing me the opportunity to speak today and I look forward to continue to work with the CPSC.

7. Meghan DeLong
Parents Against Tip-Overs (PAT)

Good morning. My name is Meghan Delong, and I lost my 2-year old son Conner to a dresser tip-over nearly 5 years ago. On Mother's Day, 2017, I found my beautiful blue-eyed son, lifeless inside a drawer of his dresser that had tipped over on him. He died the next day. His dresser is compliant with the current ASTM voluntary safety standard for CSUs. The fact that it has not been recalled and it is still sold today, is infuriating and mind-boggling to me.

My testimony today is on behalf of Parents Against Tip-Overs (PAT). PAT is a group of parents who, like me, have lost their children to dresser tip-overs, and we want to see an end to tip-over injuries and deaths. Members of PAT are also actively involved with the CPSC's Anchor It! campaign as well as the ASTM voluntary standard committee for CSU safety, and while we are grateful for the progress that has been made, we are frustrated that meaningful and effective progress has taken so long. We are not there yet and there is much more that needs to be done by the agency with regard to tip-overs, and it needs to be done with urgency. Far too much time has already passed, and far too many children have been injured and killed while the CPSC and the ASTM committee dragged their feet on meaningful and effective measures to reduce those injuries and deaths from tip-overs.

The CPSC knew furniture tip-overs were a substantial product hazard in the 1990's, as evidenced by safety alerts issued by the agency. The ASTM voluntary standard committee to address Clothing Storage Unit (CSU) safety and stability was formed in 1998, with the first version of the standard, F-2057-00, issued in 2000. It's been 24 years, and yet the voluntary standard process has failed to produce a standard that adequately addresses the reasons tip-overs happen, while tens of thousands of children have been seriously injured every year, and more than a hundred have lost their lives to dresser and CSU tip-overs alone. One death is too many, hundreds are completely inexcusable. And that's just CSU tip-overs. More than 550 have died when you include other types of furniture, TV's and appliances! Children are still being injured by CSU tip-overs every single day and several more are dying every year. And those are only the ones the CPSC is aware of. Countless other tip-overs happen that are never

reported, because those children were simply lucky, and not seriously injured, or, those who knew of the incident did not know how or why to report it.

PAT would like to thank the Commission for the attention and dedication to tip-overs and for making it a priority of the agency for the past several years, but we would be remiss for not pointing out that the agency has been very slow to act on this issue, especially given how long the agency has been aware of the hazard, and the fact that despite issuing annual tip-over reports since the year 2010, it took until 2017 before the ANPR was issued. It was nearly another 4 years before the NPR was released and voted on by the Commission just a few months ago.

We would like for the agency to continue to make furniture tip-over awareness and prevention a top priority of the agency and take the following significant steps to adequately and comprehensively address tip-overs and reduce injuries and deaths by:

1. Quickly and decisively move toward a final rule on the NPR for CSU safety that adequately and comprehensively addresses *all* of the factors that contribute to tip-overs. Historically, final rules have taken the agency years, and often, decades, if they are issued at all. We challenge the agency to fast track this final rule that is far too long in coming already. If it existed 17 years ago, none of the PAT parents would have lost their children, nor would the more than a hundred other families who lost their children. We remind the Commission that every tip-over is a potential death, even the ones that did not cause an injury or were not reported.
2. Continue to promote and evolve the Anchor It! Campaign, increasing both its scope and reach. While the consumer should *never* have to take any action to finish making a product safe, anchoring included, furniture, TV's, and appliances that are already in homes, hotels, schools, child care facilities and even senior living communities need to be anchored to prevent injuries and deaths due to tip-overs.

Anchor It! should include and expand partnerships and collaboration with advocacy groups, retailers, social service providers, child care providers, organizations that educate and work with parents, pre-schools, DCF providers, hotel chains, AirBNB and other rental organizations, to name a few. Informational webinars, and website and social media content that talks about the dangers of *all* types of furniture and not just CSUs, TV's, and appliances, will help consumers understand that any and all of these products, no matter the age, height, size, shape, cost, manufacturer/retailer, or weight, all have the potential to tip and cause injury or death, and how they can prevent tip-overs from happening.

The Anchor It campaign also needs to address the misconception by many parents and consumers that all anchors are created equal, as they are not. This is becoming even more of an issue with "knock-off" products becoming more widely available and with misleading advertising online, potentially creating a false sense of security with an inferior product sold to unsuspecting consumers.

3. Continue to expand the scope, reach, and awareness of saferproducts.gov. The recent changes to the Website have increased the ease of use and reporting, but there remains a lack of awareness of the general public as to its existence. Consumers don't know what a wealth of information the site holds nor do they know or understand what to report, or how and why to do it. Even more importantly, those in a position to report product related injuries or deaths are not aware of its existence and purpose either. The agency needs to develop educational webinars and programs aimed at health care providers like pediatricians, all ER providers, urgent care providers, child care providers and preschools, social service providers and dept of child and family services organizations/providers, medical examiners, and retailers to name just a few. Addressing what is done with the information that is reported would also be helpful,

especially since consumers, and especially parents, are often fearful of reporting to a government agency. Knowledge is power and eases fears and concerns.

4. The Commission needs to use its full scope and power to issue timely warnings, safety alerts, and recalls, and get unsafe furniture, TV's, and appliances off the market and alert the American people to the danger that may lurk in their homes. It is completely unacceptable that the dresser that killed my son was compliant with the voluntary standard, which clearly exemplifies why this standard is inadequate, and yet has not been recalled and is still sold today. It's known to have tipped on other children as well, and yet, nothing has been done to prevent it from happening to others. This is irresponsible and action should have been taken immediately by the manufacturer and the agency. Parents cannot protect their families if they don't know about the danger!

In closing, safety programs don't save lives if people don't know about them. Tip-overs, and in particular clothing storage furniture tip-overs, remain a hazard in every home in America, and put the most vulnerable, our children and elders, at risk of injuries and death. Injuries and deaths that would be prevented by a multi-pronged approach of a strong, comprehensive, robust and timely final rule on CSU safety, expansion of the Anchor It! program and saferproducts.gov, and a robust communication and recall program to educate consumers in a timely manner and alert the public to known product hazards quickly. It will save lives. If the agency embraced and implemented these strategies 24 years ago, our children, and hundreds more, would be here today.

Thank you.

8. Oriene Shin, Policy Counsel
Consumer Reports



**Written Comments of Consumer Reports to the
U.S. Consumer Product Safety Commission on:
“Agenda and Priorities FY 2023 and 2024”
Presented by Oriene Shin, Policy Counsel
Docket No. CPSC-2022-0012**

Submitted to the Office of the Secretary via cpsc-os@cpsc.gov
March 30, 2022

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 years 2023 and 2024.

For more than 85 years, improving product safety has been central to CR’s mission. We assess safety risks, investigate their impact on consumers, and inform the public and the CPSC when we identify product hazards—all on a data-driven basis. We push for strong action from the CPSC to keep the public safe from unreasonable risks posed by consumer products, and defend the agency’s authority to carry out its duty, including through promulgating mandatory safety standards and warning the public about potential hazards. We support and defend the CPSC’s vital role in pursuing a more consumer-driven marketplace in which both people and companies benefit from safer products and fewer product-related injuries and deaths.

As the agency enters its fiftieth year of operation, the CPSC must be proactive in addressing long-standing product safety issues that have persisted for decades. We welcome Chair Hoehn-Saric and look forward to working together as the agency enters a new chapter. We also look forward to future opportunities to work with Commissioner Baiocco, Commissioner Feldman, Commissioner Trumka, and a fifth commissioner to improve the vast and evolving product safety landscape.

We applaud the Commission’s recent actions that put consumers first, including filing administrative complaints when companies refuse to recall hazardous products, as well as advancing strong mandatory standards. We urge the CPSC to build on its strong recent actions and continue to lead robust initiatives that clearly serve the agency’s mission to protect the public. As the Commission continues to take action necessary to keep people safe, we urge the agency to prioritize the following key principles and activities in its fiscal year 2023 and 2024 plans.

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

Empower CPSC staff to be strong and vocal champions for consumer safety

It is hard to overstate the importance of CPSC leadership working closely with career staff to fully carry out the agency's mission and meet the demands of today's complex, interconnected, and ever-changing marketplace. 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 engage resistant companies to ensure they take action in support of safety, and require strong mandatory actions when companies do not act voluntarily.

The Commission should continue to 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 should more regularly champion agency positions and cast more ballots 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. We also urge CPSC staff, especially its technical experts, to be more accessible to stakeholders, including parent advocates and consumer organizations, in order to provide insights on what informs the agency's critical work.

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 remain concerned that these changes contribute to unreasonable delays in the agency's capabilities, which 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. We also urge the Commission to empower the agency's staff once again with the discretion to evaluate and implement the agency's Inspector General's recommendations as appropriate.

In addition, the CPSC needs to take critical steps to integrate further into its everyday work ways to better identify, reach, and serve all 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. The CPSC's decisions and communications with the public must be informed by people with a drive for equity and an unwavering focus to inform and serve consumers who may have been overlooked or underrepresented in the past.

Hold companies responsible for delays and wrongdoing in a timely way

The CPSC should continue to increase the use of its compliance and enforcement tools to improve consumer safety and corporate accountability. We applaud the CPSC's more creative and proactive efforts to use the tools and resources it has. This includes unilateral warnings and higher civil penalties, in order to hold companies accountable and foster culture changes in the marketplace that would help ensure companies put consumer safety before profits. It is critically

important for companies to follow through on their commitments to issue a recall and carry out related actions, and for the CPSC to push companies to carry out recalls as quickly and as completely as possible, and in a manner that makes consumer participation as easy as possible.

CR strongly urges the CPSC to continue taking a more aggressive approach in response 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 enforcement authority. The CPSC should continue to levy substantial civil penalties, which are essential for 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 as a given by the public, the CPSC should continue to embolden its compliance staff to address safety concerns and prevent 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 Sections 15 and 37 of the Consumer Product Safety Act (CPSA) in order to ensure the agency receives the information necessary to fully investigate and address serious hazards.

Bolster greater information transparency 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 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 support current efforts in 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. Second, the agency should make public the current status of all recalls and whether companies are meeting 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. Finally, the agency should also bolster efforts to collect data that would help the agency determine disparate or different

impacts that product hazards may have on particular communities.

Actively support and promulgate strong consumer-centric standards

Enrich and strengthen voluntary standards processes

Given that the CPSA generally requires the CPSC to rely first 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 timely data and direction for voluntary standards development; (2) encourage vocal and evidence-based 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 safety-centered progress in voluntary standards development, including prompt 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 numerous recent voluntary standard meetings. Voluntary standards should set strong safety minimums that protect the public and provide clear expectations for companies, not just give products a rubber stamp of approval. We urge the CPSC and its staff to remain active in future voluntary standards processes.

Advance strong mandatory standards

The CPSC should not hesitate to pursue and advance mandatory standards to address hazards that have not been adequately addressed in a voluntary standard, including those that have gone unaddressed for years, if not decades. We also 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 such persistent product hazards that put consumers at risk of injury or death. Specifically, CR encourages the Commission to advance a proposed rule addressing button cell or coin battery ingestion; to issue final rules regarding magnets, table saws, and window coverings; and to revisit and recommit to advancing mandatory standards for portable generators and gas appliances, including boilers and furnaces, to reduce the risk of carbon monoxide poisoning.

CR especially urges the CPSC to move forward with the promulgation of 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.

Identify future CPSIA Section 104 rulemaking needs

We support the agency's work to issue strong safety standards under Section 104 of the Consumer Product Safety Improvement Act (CPSIA). 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 voluntary standards as well as those products with voluntary standards currently under development. However, we are concerned with the Commission's decision as part of the FY 2022 Operating Plan to limit the agency's work on certain infant products, including with respect to the safety of pillow-like products.² We urge the Commission to address, in a timely manner, any emerging hazard that may put infants and children at serious risk. It is paramount that the agency ensures that only those durable infant and toddler products that meet strong safety standards and align with expert medical recommendations are for sale in the marketplace.

We commend the CPSC for finalizing its mandatory safety standards for infant sleep products. This final rule is an essential step in integrating the American Academy of Pediatrics' safe sleep recommendations into CPSC rules, voluntary standards, and the broader product safety culture. We urge the CPSC to continue moving forward on other standards for durable infant and toddler products, including a mandatory standard for crib bumpers, in order to provide greater safety for infants and increased clarity in the marketplace for parents and caregivers.

Address hidden home hazards

In addition to the other comments we have shared, we urge the CPSC to continue its work to address the following issues that may lead to hidden hazards in people's homes:

- *Exposure to poisonous products, including liquid laundry detergent packets*
- *Home fires and the improper use of smoke and carbon monoxide detectors*
- *Pool safety and the risk of drowning*

Over the years, Consumer Reports has repeatedly raised these issues, among others, as priorities for the CPSC. While we are grateful to see the rulemaking process move forward to address certain longtime persistent hazards, we urge the agency to continue working to protect the public in these areas as well as from emerging hazards.³

Conclusion

In conclusion, CR looks forward to the CPSC continuing to take strong pro-consumer action to address hazards associated with consumer products. We are eager to continue to work with the agency to fulfill its mission in fiscal years 2023 and 2024.

² CPSC, "Fiscal Year 2022 Operating Plan" (Sept. 24, 2021) (online at: www.cpsc.gov/s3fs-public/FY-2022-Operating-Plan.pdf).

³ See Consumer Reports, "Written Comments of Consumer Reports to the U.S. Consumer Product Safety Commission on: 'Agenda and Priorities FY 2022'" (Apr. 7, 2021) (online at: advocacy.consumerreports.org/wp-content/uploads/2021/04/CR-written-comments-to-CPSC-on-FY-2022-Priorities-March-17-2021.pdf); 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).

9. Jay Howell, Executive Director
American Fireworks Standards Laboratory (AFSL)

Before the U.S. Consumer Product Safety Commission

Commission Agenda and Priorities Hearing for Fiscal Years 2023 and 2024

Written Comments by the American Fireworks Standards Laboratory

The American Fireworks Standards Laboratory (AFSL) thanks the U.S. Consumer Product Safety Commission (CPSC) for holding its annual Agenda and Priorities Hearing and for offering all stakeholders the opportunity to submit both written and oral comments.

As an organization committed to the safe design, production, sale, and use of consumer fireworks, AFSL's comments will focus on the following areas where it believes CPSC can have the greatest impact in protecting consumers from preventable injuries and deaths associated with consumer fireworks:

- Enhancing enforcement against the importation and sale of illegal aerial explosives;
- Partnering with industry to broaden education efforts relating to the safe purchase and use of consumer fireworks; and
- Reengaging in rulemaking to update and improve the current mandatory standards of consumer fireworks.

About AFSL

The American Fireworks Standards Laboratory (AFSL) was established in 1989 as an independent, non-profit, voluntary standards development and product testing and certification organization. AFSL is not an industry association. Through its Consumer Fireworks Standards Committee with representation from governmental, consumer, and industry entities and individuals, AFSL establishes and maintains comprehensive performance, content, and labeling standards for consumer fireworks.¹ These regularly updated standards quickly adjust to changes in both consumer fireworks product trends and hazard issues as they arise and include all current mandatory CPSC and APA/DOT (87-1) consumer fireworks standards relevant to the consumer use of fireworks. Because AFSL standards go well beyond those established and enforced by either the CPSC or DOT, AFSL believes its standards greatly contribute to the overall safe use and enjoyment of consumer fireworks in the U.S. AFSL appreciates the valuable contributions CPSC staff have made to this process as non-voting members of its Standards Committee.

AFSL ensures that all fireworks imported into the U.S. by its members are thoroughly tested and certified by an independent, CPSC-accepted laboratory (currently Bureau Veritas) as meeting all applicable AFSL (including CPSC) standards prior to their shipment to, or sale in, the United States. Fireworks that fail to comply with AFSL standards may not be imported or sold in the U. S. by the AFSL member under the terms of their agreement with AFSL.

AFSL tested 12.6 million cases of fireworks in 2021. AFSL estimates that it tests approximately 80% of the consumer fireworks imported into the U.S. every year. Slightly over 95% of the cases tested by AFSL in 2021 complied with all requirements. Only cases that successfully test to all requirements may be imported with AFSL's label.

In addition to testing, AFSL works with its members, especially new ones, to educate them regarding the requirements under the mandatory and voluntary standards as well as other compliance matters.

AFSL is deeply committed to reducing the number of injuries and deaths associated with consumer fireworks. As part of its efforts in this regard, AFSL conducts its own investigations into reported deaths and injuries. These investigations help identify areas of potential risks that AFSL can address with its members, patterns of consumer misuse that AFSL and other stakeholders can target through consumer education and outreach, and potential areas where AFSL's standards can be updated or improved.

Finally, AFSL actively works with government agencies at the local, state, and federal levels, including many state and local fire marshals, by supporting and promoting their safety messaging on the safe use of fireworks and by providing training to these agencies on how to identify potentially unsafe and non-compliant fireworks and explosives to increase enforcement against such products.

Increase Enforcement Against Illegal Aerial Explosives

Consumer fireworks that do not meet CPSC's safety standards and display fireworks illegally sold to consumers are not merely non-compliant products, they are extremely dangerous illegal explosives. The most common violation found by CPSC, as shown in CPSC's Notices of Violation from 2017-2019, is pyrotechnic materials overload. In lay terms, this means that the device has more explosive materials, and thus more stored explosive energy than allowed by law. The use of overloaded fireworks or other fireworks with substantive safety violations can lead to catastrophic injury or even death. Consumer use of display fireworks—which are more powerful, have shorter fuse times, and require specialized knowledge and equipment to shoot safely—can be similarly tragic.

We must concern ourselves not only with consumers who intend to use these products safely and responsibly but also with those who choose not to. Otherwise, these products are essentially explosive devices that can be used to cause immeasurable harm.

Therefore, we urge CPSC to take more aggressive action to stop the importation, shipment, and illegal sale of such illegal explosives. CPSC can more efficiently target these products in port inspections by focusing on imported fireworks that do not bear the AFSL logo, which is highly correlated with compliant and safe products. CPSC should also take advantage of its exceptional group of field officers by enhancing inspection of retailers of consumer fireworks, especially in the run-up to the Fourth of July. Additionally, CPSC should enhance its efforts to educate consumers about how to make sure they are buying and using compliant and safe consumer fireworks.

Engage With Industry on Enhanced Consumer Education Efforts

CPSC's annual fireworks safety event on the National Mall is always an important and popular way to advance fireworks-related safety messaging. The fireworks industry also has ongoing messaging programs, such as the materials found on APA's Fireworks Safety Foundation site, the NFA fireworks safety videos, safety materials distributed in the tents and stores of many of the AFSL members, and with AFSL's retail consumer product safety and compliance partners including Target and Walmart. However, we need more sustained and strategic efforts if we are going to move the needle in addressing the types of irresponsible behavior that lead to preventable fireworks-related deaths and injuries every year.

As noted earlier, AFSL typically tests approximately 80% of the consumer fireworks imported into the U.S. each year. Our compliance rate has averaged 94% over the last 10 years and is trending upwards. However, we need something more than higher levels of compliance to the standards if we are going to

continue to reduce the risk of injuries from fireworks. We need more effective safety messaging targeting the very different user groups: 1) those responsible users who need good information on how to celebrate safely with fireworks and 2) those who use fireworks in an irresponsible manner who need to better understand the risk they take and the severe consequences that could result from their behavior.

To address this need, AFSL has partnered with a Public Relations firm to design and disseminate an effective safety campaign aimed directly at fireworks users who are at most risk of fireworks-related deaths and injuries: those who engage in irresponsible and unsafe use of fireworks.

There is little time, only a few months until the 4th of July, to drive home a message that will help reduce the number of injuries and deaths that may occur around this holiday. As an organization dedicated to enhancing fireworks safety, we would welcome the opportunity to work together with CPSC to get the safety message out to a broad audience between now and Independence Day.

Revisit CPSC's Proposed Fireworks Rule

In 2019, AFSL was disappointed that the Commission failed to pass the rigorous and protective final rule proposed by staff. AFSL had expressed its strong support for the proposed rulemaking, with some suggested modifications and clarifications. The proposed rule was essential for bringing CPSC's mandatory regulations, which have not been substantively updated in many years, in line with other mandatory federal regulations, current voluntary standards, and advances in technology.

The proposed rule included important safety updates that would have made consumer fireworks safer while also removing unnecessary burdens on industry. For example, an important and much-discussed update in the proposed final rule was a replacement of the extremely subjective "ear-test" with a quantifiable method of identifying "devices intended to produce audible effects" in § 1500.17(a)(3). Any test required to determine compliance with a federal regulation should be objective, repeatable, and reproducible. The current CPSC method fails to meet any of these criteria.

At the time of the vote, some Commissioners expressed concern over the data supporting staff's recommendations. While we are confident that the staff's proposed final rule was fully supported by available data, we note that work by other agencies since the 2019 vote should help address any lingering concerns. Following the 2019 CPSC rulemaking attempt, PHMSA initiated a research project on fine mesh metals in the burst charge to see if there may be some nominal, acceptable amount appropriate for consumer fireworks. The goal of the research project is to prepare a technical report that will inform a science-based decision on an appropriate level of fine mesh metals in a burst charge versus the current zero-tolerance limit. This question was a key point of contention between the two fireworks industry associations, and it is our hope that this government study will settle the matter and allow the CPSC to move forward with a Final Rule for fireworks. AFSL believes that updating the current regulations will provide a more straightforward means of ensuring safety while reducing some testing burdens. As a result, the use of fireworks by American consumers will be safer.

Thank you for providing AFSL an opportunity to submit these written comments and testify at this annual Priorities Hearing. AFSL is committed to working cooperatively with CPSC to advance our joint mission – protecting American consumers.

ⁱ The AFSL standards are available, free of charge, at <https://afsl.org/sites/default/files/AFSL%20Standards%202022-02%2003042022.pdf>

10. Ian Paul, MD, MSc
Professor of Pediatrics and Public Health Sciences
Penn State College of Medicine

Representing: Breastfeeding & Infant Development
Support Alliance

Breastfeeding & Infant Development Support Alliance (BFIDSA)
Comments on CPSC's Agenda and Priorities for Fiscal Years 2023 and 2024

March 30, 2022

The Breastfeeding & Infant Development Support Alliance calls on the CPSC to recognize the value of Breastfeeding and Infant Support products, including "infant pillows," and the critical role they play supporting breastfeeding and infant development.

- The Breastfeeding & Infant Development Support Alliance (BFIDSA) is comprised of stakeholders committed to ensuring the safety of products used by parents and caregivers in support of breastfeeding and infant development.
- The Alliance appreciates the opportunity to provide feedback to the CPSC on the importance of these products.
- We encourage the CPSC to take actions that ensure parents and caregivers continue to have access to these critical products.
- We call on the CPSC to recognize the immense value that breastfeeding and infant support products play in infant development.
- The CPSC should continue to encourage the development of a voluntary standard for breastfeeding and infant support products.

Breastfeeding and infant support products (aka "nursing pillows" or "infant pillows") are critical tools for parents and caregivers to help infants develop healthy feeding habits and reach critical developmental milestones.

- Studies and data show the use of breastfeeding and infant support products increases breastfeeding rates, which in turn correlates with a positive trend in health data and milestone achievement.
- Breastfeeding correlates with positive health outcomes for children. [CDC data shows that breastfeeding helps reduce risks of:](#)
 - Asthma and severe lower respiratory disease;
 - Obesity;
 - Type 1 diabetes;
 - Ear infections;
 - GI infections; and
 - Sudden Infant Death Syndrome (SIDS).
- Breastfeeding and infant support products provide caregivers indispensable help in promoting milestone development, like tummy time and sitting.
 - The American Academy of Pediatrics (AAP), the World Health Organization (WHO), the Mayo Clinic, and other prominent healthcare organizations recommend "tummy time" for a variety of reasons, including muscle and motor skill development.
 - Tummy time can also prevent the back of baby's head from developing flat spots (positional plagiocephaly).
- A [study published in Pediatric Reports](#) found the breastfeeding and infant support products improve breastfeeding rates:

**Breastfeeding & Infant Development Support Alliance (BFIDSA)
Comments on CPSC Agenda and Priorities for Fiscal Years 2023 and 2024**

- “The use of a breastfeeding pillow significantly decreases maternal discomfort experienced during the breastfeeding process. Maternal comfort is expected to enhance the quality of breastfeeding by improving the position and attachment of the mother-baby during the breastfeeding process, increasing the baby’s sucking ability and the period of baby’s breastfeeding to ensure optimal nutrition or improve the baby’s suckling needs. A comfortable and relaxed condition can also suppress the release of stress hormones and increase the hormones that play a role in breast milk production. Thus, it is important to implement the use of a breastfeeding pillow among postpartum mothers.”
- Breastfeeding and infant support products provide ergonomic support for caregivers while nursing or bottle feeding.
- Products that offer breastfeeding and support functionality are more attractive to consumers, including for those consumers with limited resources or space.
- Pediatric physical therapists and occupational therapists find breastfeeding and infant support products to be useful tools in helping infants achieve important developmental milestones.

Limiting the availability of breastfeeding and infant support products will have significant unintended consequences.

- Breastfeeding helps reduce the incidence of SIDS. Without infant feeding and support products, fewer moms may breastfeed infants.
- Breastfeeding and infant support products play a critical role in infant development and milestones.
- Data supports the fact that breastfeeding and infant support products are safe when used as directed — for supervised awake time; a concept that is intended to be reinforced through an industry standard, currently under development with ASTM.
- Without safe breastfeeding and infant support products on the market, caregivers will turn to dangerous options such as traditional pillows and blankets.
- Product misuse is most effectively addressed through consumer education campaigns.

The Alliance calls on the CPSC to recognize the value that breastfeeding and infant support products play in promoting breastfeeding and supporting infant development.

- The CPSC should continue to support the development of a voluntary standard that is currently being developed through the ASTM process for breastfeeding and infant support products by providing relevant data and research.
- We invite the CPSC to work with members of the Alliance and other recognized stakeholder organizations to promote breastfeeding and support infant development through the safe use of products.

Professional Guidelines and Research Related to Infant Support Pillows



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Financial Disclosures

- Dr. Paul has served as a paid consultant for The Boppy Company via the law firm, Kilpatrick Townsend & Stockton LLP since October 2021.



Professional Support for Infant Support Pillows

- Several policy statements and/or guidelines from professional societies including the Academy for Breastfeeding Medicine (ABM) and the American Academy of Pediatrics (AAP) advocate for pillows to support breastfeeding and its evaluation
- Numerous peer-reviewed publications describe the benefits of infant support pillows



ABM Clinical Protocol #14: Breastfeeding-Friendly Physician's Office

- The optimal circumstance for a healthcare provider to evaluate the mother-baby dyad requires a nursing pillow:
 - “Provide comfortable seating and a **nursing pillow** for the breastfeeding dyad to facilitate adequate evaluation.”
 - This models what mothers should be doing with their infant outside the office.

Breastfeeding Medicine 2006;1(2):115-119.

Breastfeeding Medicine 2013; DOI: 10.1089/bfm.2013.9994



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ABM Clinical Protocol #16: Breastfeeding the Hypotonic Infant

- Recognizes the unique challenges experienced by mothers of infants with low tone:
 - “Use of a sling or **pillows to support the infant** in a flexed position allows the mother to use her hands to support both her breast and the infant’s jaw simultaneously.”

Breastfeeding Medicine 2007;2(2):112-118.

Breastfeeding Medicine 2016;11(6): DOI: 10.1089/bfm.2016.29014.jat.



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AAP consumer website

Healthychildren.org: Positions for breastfeeding

- **“Most new mothers first try breastfeeding sitting up in a hospital bed, with the baby supported by a pillow in their lap and cradled in their arms. If you choose this position, elevate the head of the bed as much as possible and place **pillows** behind you until your back is comfortable. **Place your baby on a pillow on your lap (this is an especially good idea if you've given birth by cesarean section) so his head is level with your breast.** Put **pillows** at your sides to rest your arms on so they won't tire in mid-feeding.”**

<https://www.healthychildren.org/English/ages-stages/baby/breastfeeding/Pages/Positioning-Your-Baby-For-Breastfeeding.aspx>



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AAP Committee on Genetics: Health Supervision for People with Achondroplasia

- Recognizes the unique challenges of mothers of children with achondroplasia:
 - “Position the infant for feeding with a straight back and head and neck in alignment, **supported by firm pillows.**”

Pediatrics 2020;145(6): e20201010



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La Leche League: Breastfeeding Positioning

- “Position yourself comfortably with back support, **pillows supporting your arms and your baby**, and your feet supported by a footrest or a telephone book.”

<https://www.llli.org/breastfeeding-info/positioning/>



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United States Department of Agriculture (USDA), Women, Infants, and Children (WIC) Program

- United States government agency supports use of pillows to aid breastfeeding:
- **“Pillows can help make breastfeeding more comfortable and relaxing for you and your baby. You can use pillows under your arms, elbows, neck, or back to give you added comfort and support. Keep trying different positions until you are comfortable. What works for one feeding may not work for the next feeding.”**

<https://wicbreastfeeding.fns.usda.gov/breastfeeding-supplies>



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The use of breastfeeding pillow to reduce discomfort for breastfeeding mothers

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body, namely lower abdomen, lower back and breasts.² Sitting too long while breastfeeding often causes back discomfort.³ Using a breastfeeding pillow is expected to minimize maternal discomfort during the breastfeeding process.

Materials and Methods

The research design used was a randomized control trial (RCT) design, which involve an intervention group who used

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Key words: Premature; nutrition; discomfort; breastfeeding pillow; attachment.

Acknowledgments: The writer expresses gratitude to all respondents and their families, the

- Randomized, controlled trial of 70 women in Indonesia, assigned to using breastfeeding pillow or control. Outcome was discomfort while nursing.
- **The results showed a significant reduction in maternal discomfort among participants using breastfeeding pillows ($P < 0.05$).**



A Cluster Randomized Trial of Tailored Breastfeeding Support for Women with Gestational Diabetes

Alison M. Stuebe,^{1,2} Karen Bonuck,³ Reuben Adatorwovor,³ Todd A. Schwartz,^{4,5} and Diane C. Berry⁵

- Cluster randomized trial to determine the efficacy of a breastfeeding education and support program for 100 women with GDM
- Intervention group women received a breastfeeding pillow as part of the intervention.
- Women allocated to the intervention group were less likely to stop breastfeeding or to introduce formula.



Evaluation of an Office Protocol to Increase Exclusivity of Breastfeeding



WHAT'S KNOWN ON THIS SUBJECT: A gap exists with lack of programs to help mothers breastfeed. The 2012 American Academy of Pediatrics' "Policy Statement on Breastfeeding and the Use of Human Milk" re-emphasized breastfeeding as an important public health initiative rather than a lifestyle choice.



WHAT THIS STUDY ADDS: Families who receive care in a primary care setting that has implemented a "breastfeeding-friendly" office protocol may have increased rates of exclusive breastfeeding. This study evaluated an accepted clinical protocol in a large, diverse pediatric primary care setting.

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KEY WORDS

baby-friendly, breastfeeding, breastfeeding education, breastfeeding exclusive, evidence-based health care, primary health care

ABBREVIATIONS

AAP—American Academy of Pediatrics
ABM—Academy of Breastfeeding Medicine

- Study with 757 women evaluating ABM office protocol through age 6 months.
- Policy states women should be “seen in a specially equipped room that includes a precision scale to measure milk transfer, a comfortable chair, **breastfeeding pillow**, and supplies that may be needed by the IBCLC.”
- The results of this evaluation were positive for exclusive breastfeeding, with group comparisons showing a **statistically significant increase in exclusive breastfeeding rates at all 5 time points.**



Numerous Qualitative Studies Support Pillows for Breastfeeding

- **Cross-sectional study of 383 Nigerian women: 81.7% felt nursing pillows were essential during breastfeeding** (BMC Research Notes 2013, 6:552)
- **Pillows cited as helpful for breastfeeding mothers with postpartum depression** (Breastfeeding Medicine 2021;16(10):790-798)
- **Pillows cited as supportive of women attempting exclusive breastfeeding** (Breastfeeding Medicine 2013;8(3): DOI: 10.1089/bfm.2012.0020)
- **Pillows helpful for women with obesity** (Maternal & Child Nutrition 2017;13:e12344)



Support for Infant Motor Development

- Use of infant pillows shown to **increase infant tolerance** of spending greater length of time in **prone position** (Physical & Occupational Therapy in Pediatrics 2017;37(3):308-321)
- Postural support **promotes variation in motor behavior of young infants**, particularly for infants with minor neurologic dysfunction. (Developmental Medicine & Child Neurology 2006;48:966-972)



Summary

- Professional guidelines and/or guidance from ABM, AAP, La Leche League, and USDA support use of infant pillows to aid breastfeeding mother-infant dyads
- Evidence from the peer-reviewed medical literature also supports use of infant pillows for breastfeeding and infant motor development





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Written Comments Only

Kimberly Amato
Megan's Hope / Parents Against Tip-Overs (PAT)

Lisa Trofe, CAE
Managing Director
Juvenile Products Manufacturers Association (JPMA)

David French, Senior Vice President
Government Relations
Customs Policy National Retail Federation (NFR)

Abi Valesco, Racial Equity Policy Associate
Public Citizen

Chris Netram
Managing Vice President
Tax and Domestic Economic Policy
National Association of Manufacturers (NAM)

Kimberly Amato
Meghan's Hope
Parents Against Tip-Overs (PAT)

CPSC Agenda and Priorities FY 2023 and/or 2024

Submitted by Kimberly Amato of Meghan's Hope

My name is Kimberly Amato, and I lost my 3-year-old twin daughter Meghan on December 18th, 2004, to a dresser tip-over. It had fallen on her sometime in the early morning hours while the rest of our family was asleep. We don't know what she did to cause it to tip, but it fell onto her, on to a carpeted floor and if it made a sound, it wasn't loud enough to wake us. She was unable to cry, her airway compressed by a drawer. She died. Alone. In minutes. In the room next to us as we slept.

Her dresser was well-made, expensive, and a changing table style design with most of it just 30 inches tall and a small section of it 35 inches tall. I thought it was safe. Especially since it was part of a nursery set and purchased at a high-end children's furniture store. I was wrong. Meghan weighed just 28 pounds and the dresser close to 150 pounds, taking 2 adults to move it. Yet she somehow managed to exert enough force to cause it to tip. Leaving our family devastated and traumatized to this day, *from a product hazard that the CPSC not only knew about years before she died, but has failed to adequately address to this day*, more than 17 years after my Meggie died.

If the CPSC, and the ASTM voluntary safety standard committee tasked with addressing the hazard of furniture and particularly, clothing storage unit tip-overs, had done the right thing when this hazard was first identified, Meggie, and the hundreds of children who have died since, would still be here today. One death is too many, hundreds are inexcusable.

Please know that I am very grateful for the CPSC's increased focus and attention on the furniture tip-over issue in recent years, and especially for the work, research, and testing that went into developing the recently published CSU NPR. I am writing today to advocate for why furniture safety and tip-over prevention needs to remain a top priority of the agency through these key components:

- 1. Making the NPR for CSU's a top priority of the agency and moving quickly and decisively toward a final rule on the Safety Standard for Clothing Storage Units (CSUs).**

The CPSC first knew of the hazard furniture tip-overs and in particular, dresser and CSU tip-overs posed to children in the 1990's. The CPSC is required to rely on voluntary standards when they are available. The ASTM furniture safety subcommittee tasked with addressing the CSU tip-over issue was formed in 1998, and the first voluntary safety standard, F-2057 addressing CSU tip-overs was issued in 2000.

That standard has only been revised 7 times, and only two of those revisions included notable changes to the standard. The first, in 2009, added warning label requirements and the inclusion of a tip-restraint to the voluntary standard, and the most recent revision in 2019, ten years later, changed the height of CSU's covered by the standard to 27 inches and above, from the previous 30 inches and above. Yet we know children continue to be injured and killed at nearly the same rate as before this change, and at least one child has died from a CSU compliant with the current version of ASTM F-2057. All of the other revisions were minor changes to language or testing instructions that did not improve consumer safety.

Not coincidentally, each time there was a notable change to the voluntary standard, there was also a concurrent threat of legislation in Congress that, if passed, would regulate the industry against their "will". Then, once the threat of legislation passed, the committee fell back into a

pattern of circular arguments, resistance to change, and an unwillingness and/or inability to make meaningful, timely, forward progress that would translate into safer and more stable furniture and save lives.

In fact, we find ourselves in that very place right now, with The STURDY Act in the Senate and the publication of the draft NPR in July of 2021, suddenly motivating some key manufacturer members of the ASTM F2057 Committee to (finally) actively engage in developing tests that would address much of what we, the parent advocates, consumer advocates, and some key manufacturers and retailers have outlined in the STURDY Act. The requirements of the STURDY Act are also the very things the NPR for CSU's addresses and clearly states the current F-2057 CSU voluntary standard is woefully inadequate at addressing.

HOWEVER, while we are optimistic that for the first time in the history of the ASTM F-2057 committee, that there might be truly meaningful and collaboratively developed and agreed upon changes to the standard that addresses multiple open and loaded drawers, the impact of carpet on CSU stability, and the dynamic forces a child exerts when interacting with a CSU, *history tells us that we cannot rely on the good intentions of a few to translate into the will of the entire committee.* Actually passing and incorporating testing that would significantly reduce injuries and deaths from CSU tip-overs by addressing all of these factors could take years or more at the voluntary standards level, does not guarantee the elements that pass will be sufficient enough, and frankly, those changes are already long overdue, and if the industry truly wanted those changes, they'd already have happened.

I caution the CPSC to remain focused on quickly moving forward with the NPR toward a final rule. Unless and until these new, collaborative, and potentially significant and effective changes to the voluntary standard are balloted, passed, and incorporated into ASTM F-2057 and in a form that would address all of the issues that contribute to CSU tip-overs, *they cannot be guaranteed or counted on.*

Should a robust and comprehensive update to the ASTM F-2057 voluntary CSU standard be published soon, and adequately addresses the factors that contribute to CSU tip-overs that the agency feels is comparable to the testing proposed in the NPR, and a final rule has not yet been issued, then perhaps the agency could re-consider some or all of the voluntary standard as they move forward with a final rule.

In summary, I strongly encourage the Commission to aggressively pursue rulemaking toward a robust, effective, and comprehensive mandatory CSU final rule. It needs to be an urgent priority. It's been more than 24 years since the CPSC first identified CSU tip-overs as a significant product safety hazard posing a threat of injury or death to children, and hundreds of children have died since then. And yet, the ANPR was not issued until 2017. It took another 4 years before the NPR was issued last July. Historically, rulemaking takes years if not decades by the Commission and frankly, too much time has already passed and too many children have been injured or killed already. This final rule is long overdue. I beg of you to make a final rule on CSU tip-overs your top priority and to fast track the process, so you arrive at a robust and effective final rule quickly.

2. The Anchor It! Campaign

Since its debut in 2015, the Anchor It campaign has continued to evolve, yet its scope and reach are still not what it needs to be. Safety campaigns can take years, if not decades to have a significant impact and as such, I encourage the Commission to continue to adequately fund and continue to grow and expand the Anchor It! campaign.

There is a tremendous need to continue the anchoring message, even after there is a robust and effective mandatory standard/final rule, because there are millions of pieces of furniture in homes right now that have the potential to tip and injure or kill a child or even an adult. Anchoring is the only way to prevent deadly tip-overs for furniture already in people's homes. *HOWEVER, anchoring should be a secondary safety measure for new CSU's, as the consumer should never have to take steps to make a product safe. It should be made and sold to be stable and safe when free standing.*

The anchoring message remains vitally important, and it needs to be publicized in a vast and comprehensive way and to multiple demographic audiences. The anchoring message also needs to be broader in scope than just CSUs, as we know other types of furniture does tip and cause injuries and deaths to both children and adults, as do TV's and appliances, and there is no voluntary standard for those other tip-over categories, either. All of these tip-over scenarios and age groups need to be targeted and addressed by the campaign.

Parents need to hear this message from their childbirth educators, pediatricians, OB or midwife, maternity and newborn units of hospitals, pre-schools, at stores where they shop, through parenting sites and apps, on TV, on social media, and online as well as through anchorit.gov.

The program should also partner with retailers, and they should be strongly encouraged to sell and advertise anchoring devices and showcase furniture in showrooms properly secured to the walls with informational documentation as to why anchoring is necessary. It shouldn't take a multimillion-dollar lawsuit over a child's death to get a company to launch an informational and anchoring for safety campaign, yet right now, it's often the only thing that does.

The anchoring message is reaching more people, but it is far from common knowledge, which is why it must continue to be a priority of the agency. Here's why:

- Improving the voluntary furniture safety standard and moving forward with the NPR and issuing a final rule will make an impact with new furniture coming into the market but it won't address the millions of pieces of at-risk furniture already in people's homes.
- According to research conducted by [Consumer Reports Advocacy](#) and by the CPSC's own Anchor It! effectiveness survey, we know that approximately only 1/3 to less than 50% Americans have ever anchored even just one piece of furniture to the wall.
- Many state that even if they know furniture tip-over can injure or kill kids, they don't think it can happen to them, think that they are always with their kids and therefore it's not a risk, or mistakenly believe it's only certain types, sizes, weights, or brands of furniture that tip. Those myths must be addressed by the campaign.
- While the focus has been appropriately on the hazards posed to young children, I believe the campaign needs to expand that focus to include other types of tip-overs and include grandparents and elders as a target demographic. Pursuing partnerships and collaboration with the AARP, Senior Living communities and senior centers, as well as physicians who

work with elders will expand the awareness and reach of the campaign and ensure homes are safe for all who live in them.

- There is no mandatory standard for anti-tip restraints or anchors, and with the sharp increase in “knock-off” or counterfeit anti-tip restraints on the market, consumers are left unaware and likely mistakenly thinking all anchors are essentially the same and are tested and safe, when they are not, and creating a false sense of security and a potential life threatening tip-over when those anchors fail. The campaign needs to address this, perhaps with a guide “What to look for in a strong and effective (or good) anti –tip restraint” highlighting choosing from brand names you know and trust, choosing anchors with metal instead of plastic brackets, etc. Perhaps even a good, better, and best guide, even if done without naming brands, but instead, components (metal instead of plastic, strong cables instead of fabric straps, etc.).
- Department of children and family services and social workers need to be among the target demographics for education about the program as well, as they are “boots on the ground” doing home safety assessments for foster and adoptive families as well as for at risk children and elders and are in a unique position to educate these families about tip-overs. Similarly day care providers and pre-schools are also a vitally important demographic for education and awareness about anchoring and should be an included demographic for collaboration and awareness.

The Anchor It! Campaign needs to continue and with the collaboration and support the current community and consumer advocates and seek additional collaborators to create a more diverse pool of collaborators to share the Anchor It! message. Guidelines on suggested ways collaborators can help amplify the messaging with toolkits and using collaborators as focus groups before new materials are rolled out could improve the product and reach. Expanding offerings to include webinars, additional downloadable and printable materials, checklists, and other resources would help to improve the reach and positive impact of the program as well.

3. Expanding data collection efforts beyond NEISS and increasing awareness of Saferproducts.gov

There is a fundamental problem with the NEISS hospital system and with saferproducts.gov. Barely anyone outside of the NEISS system or the CPSC who is in a position to provide vital information and data on product hazards, injuries, and deaths to the agency is aware of how or why to do so. There are also surely tip-over incidents that are missed. Every tip-over has the potential to be an injury or death, but those are not usually captured if there was no ER visit, so while we get estimates, we are surely missing key actual data that can better inform all stakeholders.

To that end, one of the priorities of the commission should be to increase the awareness of saferproducts.gov, and to educate key groups who can improve reporting and thus, the data on product hazards, injuries, and deaths. These groups should include but not be limited to, ALL physicians but especially pediatricians and family practice physicians as well as those who work with elders, ALL emergency rooms and urgent care centers, ALL public health departments and child protective services programs, ALL medical examiners, and ALL childcare providers, as well as parents and those who work with parents.

Educating parents through the same avenues as suggested in increasing awareness of the Anchor It! campaign is also important. In fact, the Anchor It! campaign should include on its Website and marketing materials, information about saferproducts.gov. Informative webinars published on the CPSC's YouTube channel or Website aimed at parents, older Americans, various providers, and parents would be a great way to expand awareness of both programs and result in better and timelier data, in addition to increasing awareness and prevention.

Explanations about what happens once a hazard is reported and what to expect and why would also improve reporting as many parents fear the government or the authorities will "come after them" for doing something wrong if they report a tip-over, especially if there was an injury.

4. Recalls

The Commission needs to use its authority to recall furniture that is not compliant with the current voluntary standard immediately, and use every tool at its disposal to not only get those items off the market and out of homes as soon as they know it's a danger, but to ensure the American people hear about the hazard or recall and know what to do to remedy it. ONE death is too many.

I acknowledge that there are other limitations that somewhat tie the hands of the CPSC regarding some of the actions I'd like to see them take, but they should not significantly impact the work of the Commission on furniture tip-over prevention. These limitations, which also need to be addressed by Congress include:

- **Section 6(b)** of the Consumer Product Safety Act needs to be repealed immediately. It takes more lives than it saves and favors the companies and manufacturers, not the consumers. The Commission is charged with product safety and the American People, and the most vulnerable, our children, should be the priority. The "red tape" and delays that section 6(b) causes needs to go and go now. The CPSC needs to have the power to issue safety alerts, warnings, and recalls based on injury and death reports, without the company/manufacturer having to agree to it and then be allowed dictate the terms of these warnings and recalls, and without the expense and time the legal challenges take. The current method is backward, time consuming, expensive, and directly responsible for countless injuries and deaths because of the time it takes to act to protect consumers and their children, and the "gag" that is placed on the Commission during the current process. I understand that Congress needs to make this happen and I fully support legislation to do so.
- **Funding** for the CPSC needs to be increased immediately by a significant amount, so the Commission has the budget and funds to be able to use toward educational campaigns like Anchor It!, recall initiatives, an improved system for reporting dangerous products, research and testing to inform rulemaking, an improved and easy to navigate CPSC Web site, and expanding and improving the reporting interface for saferproducts.gov, and the tools it needs to carry out its directive to protect consumers, especially with regard to tip-overs.

In conclusion, the issue of furniture tip-over remains a clear and present danger to citizens of the U.S., especially the most vulnerable, our children and elders, and one that is literally in every single household in the U.S., not to mention schools, day cares, hotels, church halls and classrooms, retail stores where

furniture is displayed, and other public spaces. It needs to be at the top of the Commission's priority list for the coming fiscal year(s).

Having tip-overs as a priority of the commission, however, is not enough.

The CPSC must move quickly and decisively to issue a final rule on CSU tip-overs before the end of the next fiscal year. The Commission also needs to improve their avenues of communication with consumers and the public, including the saferproducts.gov Website, recall resources, and broaden the Anchor It! campaign with their partners and collaborators to reach every household in the U.S.

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

I believe the Commission wants to do the right thing, but they can't without agreement to do so among Commissioners, adequate funding, bi-partisan support, and focusing on the consumer instead of caving and catering to the pressure from industry. You are the *Consumer* Product Safety Commission. Priority #1 is to educate and protect consumers, in this case, from furniture and particularly CSU tip-overs. The CPSC must be willing and able to use the all the avenues and tools available to them currently within their scope of power to protect consumers and their children from furniture tip-over, and the legal freedom to do so. And to do so as quickly and efficiently as possible.

The day Meghan died, as I held her lifeless body in my arms and rocked her for the last time in the E.R., I looked at her beautiful face and whispered a promise. That she would be the last one to ever die from a dresser tip over. I truly believed it was a freak accident and she would be the last one. Yet I quickly learned, she was not the first, the only, and was definitely not the last. Literally hundreds have died since she did from furniture tip-overs, while the ASTM Furniture Safety Committee and the CPSC did nothing to prevent it from happening to other children! Each of you has the ability, right now, to help me finally honor that promise to Meggie. With all that I am, I ask you to do so, by issuing a final rule on the CSU NPR as fast as possible.

I often share the story that when Meghan wanted to get your attention, she'd climb into your lap, take your face in her tiny little hands, look right at you with her deep, blue eyes, and say "You listen (or talk) to Meggie!" Meghan's Hope is that everyone, but especially those in a position to truly make furniture safer like the CPSC, do absolutely everything in their power and as quickly as possible. *Please, listen to Meggie!*

Thank you,

Sincerely,

Kimberly Amato

Kimberly Amato, PT
Founder and President of Meghan's Hope
www.meghanshope.org

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

Lisa Trofe, CAE
Managing Director
Juvenile Products Manufacturers Association (JPMA)



March 30, 2022

Alberta E. Mills
Division of the Secretariat
U.S. Consumer Product Safety Commission
Transmitted via email to cpsc-os@cpsc.gov

Re: 2022-05637 Agenda and Priorities FY 2023 and/or 2024

Dear Ms. Mills,

On behalf of the industry, the Juvenile Products Manufacturers Association (JPMA) appreciates the opportunity to submit comments regarding the CPSC's agenda and priorities for FY 2023 and/or 2024. JPMA has appreciated its close relationship over the years with the Commission and individual commissioners. We have many times outlined our priorities and concerns about the agency and its activities, but always with a view toward making juvenile products as safe for American families as possible. Toward that end, we have highlighted three areas of concern that we urge the Commission to consider when outlining priorities for the 2023 and/or 2024 fiscal year.

JPMA is a national not-for-profit trade organization representing 95% of the prenatal to preschool industry including the producers, importers, or distributors of a broad range of childcare articles that provide protection to infants and assistance to their caregivers. JPMA collaborates with government officials, consumer groups, and industry leaders on programs to educate consumers on the safe selection and use of juvenile products. 90% of our members are small businesses. Promoting baby safety is a key mission of the association. We are the originator and sponsor of Baby Safety Month, which occurs each September.

Therefore, briefly, here are JPMA's key recommendations for the CPSC:

Incident Data Collection & Analysis: JPMA strongly recommends that CPSC establish a transparent and documented incident data collection and analysis process. When provided, incident data from the CPSC supports trend analysis, hazard identification, and in many cases, the formation of task groups to revise the

JUVENILE PRODUCTS MANUFACTURERS ASSOCIATION, INC.

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jpma@jpma.org • www.jpma.org

individual standards. Since the highly publicized breach of confidentiality in the release of thousands of documents containing sensitive information in 2019, CPSC staff dedicated to data analysis has dwindled and thus, the incident data that is available is limited. We believe the industry and related ASTM committees working on standard development activities for these product categories would benefit from much more granular data with further information on specific product types (recognizing Brands need to be blinded), circumstances, conditions of use, ancillary investigative information by local authorities and whether product use accorded with manufacturer and/or generally regarded safe use requirements for non-sleep products. The ASTM committees would also greatly benefit from a documented and transparent approach to data collection, analysis, and sharing with committee members to improve the standard-setting process.

Independent of the need for better data sharing with JP ASTM Standard Setting Committees, with increased budgets being Congressionally supported, we continue to advocate for better Agency expertise related to data collection and analytics. We believe that the Agency needs to adjust and improve its data collection methodology so as to better distinguish between associative and causative analysis and characterization of incident data. To this end the agency should employ epidemiologists. We have consistently supported the need for such expertise at the Agency.

Infant Bedding Final Rule: After multiple briefings, hearings and procedural votes, the Commission finally voted unanimously (4-0) to approve publication of the proposed rule with specified changes, on or about March 18, 2020. Similarly, ASTM, with involvement from CPSC staff, implemented updated dynamic performance and labeling requirements for crib bumpers in its F1917-20 “Standard Consumer Safety Performance Specification for Infant Bedding and Related Accessories”. Yet, another two years have passed without final action. As the proper government agency with regards to this product category, we would urge the Commission to publish a final rule regarding the use of this product. We also note that such requirements should be performance based rather than material based to avoid unintended creation of mandates that require monopolistic use of patented materials and designs.

Infant Sleep Products Final Rule: Several member companies and associate member testing labs have attempted to seek clarification on practical questions of their own, which are product and brand-specific, as CPSC staff indicated they should

at several ASTM meetings and task group calls. I understand that despite outreach to various different departments at the agency, no answers have yet been received. As the effective date of the rule looms closer and amid supply chain disruption and significantly longer than normal lead times to get product to market, many of our member companies are facing difficult decisions related to production and placing orders, whereby products may be deemed non-compliant before they reach retail shelves. An official interpretation and response to the questions outlined in our, and our member companies' communications, will ease this burden and ensure that compliant products can get into the hands of American consumers; products which have utility and serve in the care and support of infants. While we have heard that a guidance document is forthcoming, JPMA or its members have yet to receive any information from CPSC in advance of the looming effective date.

Finally, we would like to encourage and invite Commissioners and staff to the JPMA Summit in Washington, D.C. from May 10-12. This event will bring manufacturers, regulators, retailers, and industry stakeholders together to discuss pressing regulatory and product safety topics for the juvenile products industry. We believe this is a great opportunity for the Agency to speak and meet with the regulated community and view the new products and innovations in the marketplace.

As always, we look forward to our continuing engagement with CPSC and the ability to provide feedback and help in a meaningful way. I am certain you share our concerns and we thank you for your attention to this matter. Please let me know if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Lisa R. Trofe".

Lisa Trofe, CAE
Managing Director

David French, Senior Vice President
Government Relations
National Retail Federation (NRF)



March 30, 2022

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 2023 and/or 2024

Dear Secretary Mills:

The National Retail Federation (NRF) appreciates the opportunity to supply written comments to the CPSC with regard to the virtual hearing on the agency's agenda and priorities for FY 2023 and/or FY 2024.

NRF, the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

NRF has appreciated its close working relationship over the years with both the Commission and CPSC staff on a wide variety of issues and matters as we mutually seek to make our collective efforts toward consumer product safety as effective and efficient as possible. Our nation's retailers are committed to the safety of their customers across the country and across all product categories. And it is in that spirit that we suggest the following for the activities, agenda and priorities of the CPSC now and for the coming federal fiscal year(s):

Permanent Stakeholder Advisory Group

First, for over a decade, NRF has been advocating for the establishment of a **permanent** stakeholder advisory group that would meet regularly and otherwise engage with at minimum senior CPSC staff. Collectively, such a group would discuss solutions to many of the CPSC's most pressing and evolving missions, specifically those related to import surveillance and compliance activities, especially port procedures and policies, recall requirements and expectations, and civil penalty policies and procedures, among others.

There has been significant resistance among some at the agency who feel that the establishment and maintenance of such a group would be overly burdensome to agency staff and other resources and would require utilization of the Federal Advisory Committee Act (FACA). We respectfully disagree on both points. In our view, such a group would not be required to

operate under FACA and could merely be a regular but informal consultation with stakeholders. This occurs regularly at the agency now, typically as “one-off” discussions where conclusions and commitments are few and concrete follow-up is rare.

Various import policies have been developed in the recent past at the CPSC, among them initial e-filing plans (and fees), testing and certification requirements — including what constitutes a “reasonable testing plan” — as well as numerous other policies that have been proposed and even finalized but then effectively abandoned or indefinitely delayed. Such spinning of the regulatory wheels is a far greater drain on agency resources than would be essentially no-cost live or virtual meetings and other information sharing among such a group, to be selected by the CPSC in consultation with agency stakeholders from various sectors with expertise on imports, compliance, emerging technologies and hazards, consumer outreach, etc.

Our members and other stakeholders, e.g., testing labs, have vast, collective understanding of and many innovative and concrete suggestions about how best to address these issues. This expertise is currently underutilized by the agency. For example, many of our members participate in the CBP Trusted Trader Program and can help inform the agency on how it can maximize the benefits of this win-win federal import program. The agency simply does not have the resources to have full understanding of all issues and matters, and the public comment period for proposed regulations is very often too little too late to have a significant impact on agency outcomes.

We therefore strongly urge the Commission to direct staff to begin to establish such an advisory group. NRF stands ready and willing to assist in this process in any way possible.

Retailer Reporting Program

NRF continues to be concerned about the status of the CPSC’s Retailer Reporting Program (RRP). We strongly encourage the CPSC to reopen the program to new participants and that reports under the program be considered to be at least preliminary (“initial”) reports under Section 15(b) of the Consumer Product Safety Act. This program has provided a number of retailers and other companies the ability to regularly report to the agency product safety incidents and other product safety information about which the program participants become aware, even if those participants may not reasonably believe that such information is required to be reported to the CPSC under Section 15(b).

We believe the RRP represents a true win-win-win for consumers, the agency and program participants alike. It provides to the agency incident and other information about which the CPSC might not otherwise become aware, and in so doing enables the agency to make faster and more complete determinations about whether certain products should be subject to a recall or other corrective action; enhances the agency’s overall understanding of product hazard trends; and removes the inherent uncertainty all companies sometimes experience about whether certain incidents are required to be reported under Section 15(b).

Unfortunately, for many years now, the CPSC has considered the RRP to be “closed” to new entrants, as the agency apparently continues to undertake a “review” of the program, its requirements and its implications for participants, especially with regard to 15(b). To date, no information has been forthcoming about when or under what conditions the RRP will be reopened to new entrants, if ever.

We request that the Commission direct agency staff to complete the program review, including soliciting public input on the program, and to reopen the program to new participants as quickly as practicable. We would request that the agency reexamine any position that reports under the RRP cannot satisfy the 15(b) reporting obligation.

Corrective Action Plan/Other Agency “Mission Creep”

NRF also reiterates its growing concern over what has generally been a steady increase in extra-regulatory agency expectations regarding corrective action plans (CAPs, especially recalls) — expectations that for all practical purposes are really agency demands, with the inherent threat of more formal legal, unilateral media or other actions by the agency if these demands are not met. While several existing CPSC regulation guidance documents have for many years set forth specific actions and information disclosures that are expected to be undertaken by voluntarily reporting and recalling companies, including what is required for a “full” 15(b) report, these documents have been greatly eclipsed by ever-changing and expanding staff demands, including in areas such as information and document disclosures to the agency, hazard remedies, direct consumer contact and social media outreach. NRF will address social media demands in separate correspondence to the Commission shortly.

In addition, for years it has been an open secret that the agency personnel tasked with overseeing a CAP and the political and media forces at play on a given potential product safety issue or hazard is at least as important to the recalling firm and CAP outcome as the underlying facts of any given matter. And rumors constantly circulate among stakeholders that essentially secret new policies are being hatched and (often inconsistently) implemented regularly at the CPSC with regard to compliance matters of all kinds. This is simply not the way to undertake transparent, consistent, fair and efficient recalls and other CAPs, let alone civil penalty investigations and settlements or, as mentioned, import policies and procedures. “Enforcement discretion,” as is so often asserted by agency staff as the basis for this status quo, is simply not a sufficient excuse. All stakeholders, including consumers themselves, deserve to know what the agency expects of and commits to them.

Part and parcel of addressing this admittedly complex and difficult overall issue is the need for the CPSC to finally establish different requirements and expectations, including recall actions, directly depending on the level of hazard a particular product poses, from A to D level hazards. Such is often done as a matter of agency staff practice, but not as a formalized matter of agency policy, as it should. Nominally establishing the same requirements for a low-hazard product recall as for a high-hazard product is unnecessary, often unfair and needlessly burdensome on the recalling company, and is known to lead to consumer recall fatigue and a concomitant reduction in recall effectiveness.

Another key issue in this regard is continuing to make the CPSC's highly acclaimed "Fast Track" recall program as fast and efficient as possible. To our knowledge, too many senior agency staff must approve all Fast Track recalls, which often turns them into regular recall programs. That defeats the intent to remove potentially hazardous product from the market as efficiently as possible. This, coupled with the cumbersome nature of the now-required online Fast Track reporting forms (without, we would note, public notice or comment) and other factors, has tied numerous anchors around what was once a highly effective and efficient program.

NRF therefore again urges the Commission to have a fulsome exposition of all extant and planned general compliance policy procedures and expectations, especially regarding recalls, and then to formalize those in its regulations (after full public notice, comment and other engagement, e.g., consultation with a stakeholder advisory group). Good government and the ultimate safety of consumer products and consumers demand nothing less.

Product Safety Regulations

The CPSC is now considering public comments on a number of important, pending new product safety standards. NRF congratulates the Commission for working across party lines to move forward important issues like window coverings, clothing storage units, rare earth magnets, and crib and play yard mattresses, among others. Whether or not our members decide to submit collective comments on these individual proposed regulations, NRF requests the agency take all substantive public comments on such regulations seriously and not summarily dismiss them, as some of our members perceive can be the case. Comments that are substantive in nature and offer valid objections and/or reasonable alternatives to what agency staff may have proposed should be well considered and addressed, as is required by law in any case. Again, we believe that a competent and disciplinarily diverse permanent advisory group may be very valuable to the agency in this regard.

Thank you very much for considering this input in connection to your upcoming, annual Priorities Hearing. We look forward to a continued and highly valued relationship with the Consumer Product Safety Commission.

Sincerely,



David French
Senior Vice President
Government Relations

Abi Velasco, Racial Equity Policy Associate
Public Citizen (Unable to testify due to scheduling conflict)



Written Testimony of
Abi Velasco
For the
U.S. Consumer Product Safety Commission
Submitted on March 30, 2022

Public Citizen appreciates the opportunity to submit testimony with our recommendations for priorities that the U.S. Consumer Product Safety Commission (CPSC, Commission, or agency) should add to its Fiscal Year 2023 agenda.¹ Public Citizen is a national non-profit organization with more than 500,000 members and supporters across the country. Now celebrating our fiftieth year, we represent the public interest through legislative and administrative advocacy, litigation, research, and public education on a broad range of issues that include product safety and consumer rights in the marketplace.

I. Introduction

The U.S. Consumer Product Safety Commission (CPSC or Commission), founded in 1972, was dubbed the “most powerful Federal regulatory agency ever created”² when it was established. The CPSC 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 However, history has proven that industry influence and built-in delay has kept the Commission from as fiercely protecting consumers as was intended. As the CPSC itself enters its half century in existence, it is helpful to assess some of the ways in which the CPSC has not functioned as it was designed.

There is much more that can be done to ensure the CPSC 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, expand 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 equity into

¹ Notice of Public Hearing, Commission Agenda and Priorities, FR 2022-05637 (March 17, 2022).

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 *supra* note 3

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.

The agency’s operations have become increasingly opaque to the public and Congress. One way to fix this problem is for Congress to repeal Section 6(b) of the Consumer Product Safety Act (herein 6b). Section 6(b) restricts the CPSC from 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 and keeps it from getting to the public in a timely manner. 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 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 delays the release of safety information to the public still further. The inevitable result: the CPSC is forced to issue vague warnings that fail to prevent avoidable injuries and deaths or issue no information at all.

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

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://www.consumerreports.org/child-safety/while-they-were-sleeping/>.

⁵ Remington A. Gregg, *Delay and Secrecy: How Section 6(b) of the Consumer Product Safety Act Keeps Consumers in the Dark* (June 24, 2019), <https://www.citizen.org/article/delay-and-secrecy/>

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.

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 to get dangerous products out of our homes. 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 the provision 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. Despite this recommendation being previously provided to the Commission, it does not appear that specific reporting on the use of 6(b) has been implemented so we urge the CPSC to include it in its FY23 priorities.

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

We are pleased that more than a decade ago 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 discontinue use of 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. The same is true for the National Electronic Injury Surveillance System (NEISS) database, which collects data on consumer product-related injuries occurring in the United States. These two databases can, and should, be used more effectively to help the Commission understand which products may be more unsafe than others, where product-related injuries are occurring and in which communities. This, however, takes more funding from Congress in order to create a more useful database. Public Citizen also recommends that the Commission reach out to major medical societies and organizations to understand how more health care professionals can better utilize NEISS and SaferProducts.gov.

To better understand these disparities, the Commission should research how to collect robust race and ethnicity data through SaferProducts.gov and NEISS. When the Centers for Disease Control and Prevention looked at NEISS-Work data, which is a subset of two-thirds of the total

⁶ *Id.* at 3.

hospital sample used by the Commission, they found that “race and ethnicity are not always uniformly reported because NEISS-Work hospitals do not collect race and ethnicity data the same way, if they collect or report it at all.”⁷ When race and ethnicity data is missing, we recommend the Commission use proxy data, such as zip codes, to understand the racial demographics of the community where an injury has taken place. The same method should be used for SaferProducts.gov if it is unable to directly collect race and ethnicity data. By collecting zip codes, the Commission can use zip codes from complaints and injuries in order to match them to census tracts. The Federal Trade Commission’s Bureau of Consumer Protection⁸ and the Consumer Financial Protection Bureau⁹ have published reports to understand issues affecting communities of color using this method. It is imperative that the Commission collect thorough race and ethnicity data in order to understand how communities are impacted and if disparities exist. As Chair Hoehn-Saris stated in his remarks at the International Consumer Product Health and Safety Organization’s 2022 Annual Meeting, “[i]n too many product categories there are significant disparities when it comes to which communities suffer from injuries and deaths related to consumer products.”¹⁰ While the Commission researches ways obtain more robust race and ethnicity data, it can first release the racial demographic data it does obtain through NEISS in its annual NEISS Data Highlights reports and include race and ethnicity as a search variable in the NEISS Estimates Query Builder.

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.¹¹ We once again submit that list for your consideration.

III. The Commission should become stronger advocates for increased agency funding.

CPSC has jurisdiction over more than 15,000 consumer products. While its staggeringly low budget gained a modest increase to \$139 million in FY 2022, but this is still much lower than the

⁷ *Work-Related Injury Statistics Query System*, CENTERS FOR DISEASE CONTROL AND PREVENTION (viewed Mar. 25, 2022), <https://bit.ly/3wIFWJt>.

⁸ *Serving Communities of Color: A Staff Report on the Federal Trade Commission’s Efforts to Address Fraud and Consumers Issues Affecting Communities of Color*, FEDERAL TRADE COMMISSION (Oct. 2021), <https://bit.ly/36L1LNB>.

⁹ *Consumer Complaints Throughout the Credit Life Cycles, By Demographic Characteristics*, CONSUMER FINANCIAL PROTECTION BUREAU (Sept. 2021), <https://bit.ly/37QEV7J>.

¹⁰ *Remarks of CPSC Chair Alexander Hoehn-Saris International Consumer Product Health and Safety Organization (ICPHSO) 2022 Annual Meeting February 16, 2022 12:45pm*, U.S. CONSUMER PRODUCT SAFETY COMMISSION (Feb. 16, 2022), <https://bit.ly/36A2kdg>.

¹¹ Remington A. Gregg, *Comments on the Request for Information on Possible Improvements to Saferproducts.gov* (March 5, 2020)(on file with author) (We believe the CPSC’s Twitter presence, for example, has the potential to effectively reach the public).

CPSC and President Biden’s FY2022 ask of \$170 million. Without an adequately funded CPSC, the agency’s dedicated staff face challenges in carrying out its mission. According to former Acting Chair Robert 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.”¹² That staggering statistic should serve as a wakeup call to every Commissioner to strongly advocate for more funding. Without a substantial increase in its appropriations, the agency will continue to struggle to meet all the statutory and regulatory demands the agency faces and the will continued to be hamstrung from being the agency it is was designed to be.

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

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 concluded that, “[s]ome research suggests that there are racial and ethnic disparities in child death rates due to injuries related to particular consumer products.”¹³ Since the time of the GAO report’s publishing, it is has become even clearer that Black and Brown people have disproportionately lower health outcomes, life expectancies, incomes, and household wealth than whites¹⁴—all damning indictments on how society treats Black and Brown people. The CPSC’s complicity in allowing these disparities to continue without directly addressing them is no better than the rest of society’s failures to do so. In addition to the racial and demographic data collection suggestions included above, Public Citizen urges the Commission to wholeheartedly embrace the Biden-Harris Administration’s commitment to centering racial equity into agency policymaking.

In Public Citizen’s testimony for the Commission’s FY2022 priorities, we recommended the Commission show a genuine commitment to listening to impacted communities and creating policies that address those concerns, including meeting people in their communities. We are delighted to see Chair Hoehn-Saric echo this recommendation in his remarks during International Consumer Product Health and Safety Organization’s 2022 annual meeting: “Ultimately, the CPSC serves the public and we can best achieve our mission when we listen to the consumers

¹² *Id.* at *supra* note 2

¹³ *Better Data Collection and Assessment of Consumer Information Efforts Could Help Protection Minority Children*, U.S. Government Accountability Office (Aug. 2009), <https://bit.ly/3iJmOmh>.

¹⁴ Jamila Taylor, *Racism, Inequality and Health Care for African Americans*, THE CENTURY FOUNDATION (Dec. 19, 2019), <https://bit.ly/3qCwXpp>; 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*, BROOKINGS INSTITUTE (Sept. 25, 2020), <https://brook.gs/35dafNb>; John Creamer, *Inequalities Persist Despite Decline in Poverty For All Major Race and Hispanic Origin Groups*, U.S. CENSUS BUREAU (Sept. 15, 2020), <https://bit.ly/3IGCHER>. (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.”),

and those consumers have the opportunity to share information with each other. We want to hear from people about safety concerns they are having with their consumer products.”¹⁵

We are enthusiastic to see the Commission create a position in the Office of Hazard Identification and Reduction for a Diversity Risk Manager.¹⁶ We recommend the Commission continue creating positions to address the needs of diverse and vulnerable populations in all offices and divisions of the Commission, especially in policymaking roles. In addition to creating roles that focus on diverse and vulnerable populations, 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.

V. The Commission should quickly embark upon additional rulemaking and finalize proposed rules that protect consumer.

Nursing Pillows and Pillow-Like Loungers

In October 2020, the Commission warned parents and caregivers to not use “pillow-like infant products, including nursing pillows and ‘lounging pads,’” which are designated as safe for sleep.¹⁷ The Commission also stated it would be investigating deaths associated with these products.¹⁸ According to data analyzed by Consumer Reports, these products are associated with at least 28 infant deaths from 2012 to 2018. Since issuing this warning, the Commission has taken enforcement actions against two manufacturers of these types of products.¹⁹ While these enforcement actions are vital to getting products linked to infant deaths off the market, we recommend the Commission move swiftly to promulgate a strong mandatory rule for all nursing pillow and pillow-like loungers.

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.

¹⁵ *Id.* at *supra* note 13

¹⁶ *Program Analyst*, USA JOBS (viewed Mar. 24, 2022), <https://bit.ly/3JMYTYe>.

¹⁷ *CPSC Warns Parents Not to Use Nursing Pillows for Sleep; Agency is Investigating Infant Deaths that May Be Associated with Pillow-Like Products*, U.S. CONSUMER PRODUCT SAFETY COMMISSION (Oct. 7, 2020), <https://bit.ly/3iGqZPT>.

¹⁸ *Id.*

¹⁹ *The Boppy Company Recalls Over 3 Million Original Newborn Loungers, Boppy Preferred Newborn Loungers and Pottery Barn Kids Boppy newborn Loungers After 8 Infant Deaths; Suffocation Risk*, U.S. CONSUMER PROTECTION SAFETY COMMISSION (Sept. 23, 2021), <https://bit.ly/3qFrHl3>; *CPSC Sues Leachco Over Suffocation Hazard from Defective Infant Loungers, Seeks Notice and Refund to Consumer from Company*, U.S. CONSUMER PRODUCT SAFETY COMMISSION (Feb. 9, 2022), <https://bit.ly/3uzWmB8>.

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. In addition, the Senate recently passed the Safe Cribs Act, which would ban the sale of dangerous and unsafe crib bumpers.²⁰ We hope the Commission will support the legislation and its passage.

Magnets and Window Coverings

In December 2021, the Commission unanimously agreed to advance rulemaking for a mandatory standard for magnets and window coverings. Public Citizen urges the Commission to quickly finalize these rules.

Clothing Storage Units

The Commission recently published a notice of proposed rulemaking for clothing storage units. Public Citizen urges the Commission to move quickly in finalizing this rule. In addition, the Stop Tip-Overs of Unstable, Risky Dressers on Youth (STURDY) Act was introduced in the Senate in February 2021. This bill would direct the Commission to develop mandatory safety standards for furniture and require rigorous testing measures. We hope the Commission will support this legislation and its passage.

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." However, the acute safety risks that pushed Congress to create the CPSC and other consumer protections are still as pressing as they were 50 years ago.

While the Commission's work is very challenging at the best of times, as the country continues to fight a global pandemic, keeping consumers safe has become an even more difficult task. The Commission's staff work tirelessly to fulfill its mission, but 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 its 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 and members of impacted communities early and often on problematic issues.

²⁰ S. 1259, 117th Congress (2022).

Thank you for the opportunity to provide these comments and we look forward to continuing to work with the Commission to better meet the mandate Congress first gave to it fifty years ago and transform it into a state-of-the-art agency poised to immediately address consumer product hazards and truly protect the American public now and into the future.

APPENDIX

I. Product Safety Memorandum to the Biden Transition

Chris Netram
Managing Vice President
Tax and Domestic Economic Policy
National Association of Manufacturers

April 27, 2022

Dear Chair Alexander Hoehn-Saric,

The National Association of Manufacturers' (NAM) Consumer Product Safety Commission (CPSC) Coalition appreciates the opportunity to comment on the CPSC's agenda and priorities for fiscal years 2023 and 2024. The NAM CPSC coalition represents manufacturers, consumer organizations and retailers of consumer products around the country who support the mission of the CPSC and encourage the allocation of resources to ensure it is able to operate effectively. We wish to address three issues important to our community as you hold your hearing addressing the CPSC's agenda and priorities for the coming years:

Access to CPSC testing data and analyses relevant to consensus standards activities, rule makings and compliance actions

For all CPSC stakeholders to make meaningful comments in pending consensus standards activities and rule makings, and to engage fully with CPSC staff in compliance actions, it often is critical to be able to review the data and analyses underlying the Commission's positions. We recognize that there can be privacy and section 6b concerns in the release of some information but withholding underlying test reports and analyses for reasons other than those restrictions under the law creates a burden on manufacturers.

This is not a new problem, and we recognize the importance of protecting sensitive information, but we respectfully ask the Commission to demonstrate greater openness for sharing information about the basis for its positions in the consensus standards processes, rule makings or even specific compliance actions. Section 6b never prevents CPSC from disclosing information about a manufacturer to that manufacturer, and, in compliance actions there is value in demonstrating the soundness of CPSC's position (through disclosing the Product Safety Assessment to the firm). Transparency – consistent with privacy laws and principles – adds to the quality of Commission decisions and actions, strengthens the credibility of the Commission in the eyes of the regulated industry and the public and supports due process and fairness.

Pace of enforcement/recall related actions

For the benefit of both the CPSC and entities working to comply with the agency's regulations, greater resources or prioritization is needed to move adequately forward in processing Fast Track and basic section 15 filings. This includes detainment and inspection actions, often in coordination with CBP, at the ports which can significantly exacerbate existing supply chain disruptions. Even receiving acknowledgment that a report has been filed can take weeks, resulting in uncertainty for regulated entities at an already challenging moment.

The credibility of the Fast Track recall as well as the integrity of the section 15 process is undermined when actions are delayed without explanation for lengthy periods of time. We urge that resources be directed at remedying this situation. At a minimum, filing should be immediately acknowledged, even if just by an automatic message, and if there are going to be significant delays parties should be informed. Providing greater autonomy for agency staff who are directly dealing with Fast Track and other corrective actions could speed the process. The alternative is a continued "Fast Track" that is anything but fast, which increases the risk that more companies – eager to implement corrective actions that will advance the safety of their

consumers – will opt to go it alone, gaining speed at the cost of losing CPSC’s expertise and collaboration.

Public engagement by Commissioners and staff

One of the benefits of a small federal agency with multiple commissioners is the availability of commissioners and senior staff to meet with interested parties on relevant topics. Most of these meetings will be publicly accessible, but some involve proprietary, confidential or even enforcement related issues and must be closed. But, in any case, the opportunity for stakeholders to discuss issues directly with commissioners is mutually beneficial. We hope, consistent with the open-door policies of previous Commissions under both Republican and Democratic leadership, that a spirit of collegiality and openness to engage with *all* members of the CPSC community will continue.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Netram", with a stylized flourish at the end.

Chris Netram
Managing Vice President
Tax and Domestic Economic Policy
National Association of Manufacturers