

**CONSUMER PRODUCT SAFETY COMMISSION
HEARING ON FISCAL YEAR 2022 AGENDA AND PRIORITIES
(APRIL 7, 2021)
SUPPLEMENTAL INFORMATION**

**UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION
QUESTIONS FOR THE RECORD**

**HEARING ON
“Commission Agenda and Priorities for FY 2022”
Wednesday April 7, 2021**

Written Questions Submitted to Lee Savio Beers, MD, FAAP, President, American Academy of Pediatrics, from
Hon. Peter A. Feldman, Commissioner, U.S. CPSC.

1. Dr. Beers, children under 3, whom the CPSC Small Parts Rule is intended to protect, are among the most vulnerable American consumers. Under CPSC regulations regarding toys, 16 CFR 1500.18, CPSC bans any toy or other article intended for use by children under 3 years of age which presents a choking, aspiration, or ingestion hazard because of small parts. The ban references 16 CFR 1501’s method for identifying toys intended for use by children under three, which states that the regulation applies to, among other things, “stuffed, plush, and flocked animals and other figures.”

With respect to stuffed, plush, and flocked animals, it’s my understanding that CPSC compliance staff still allows these small parts to be sold as is or as toy accessories, if they believe that the toy itself is age graded appropriately for 3 years or older. I believe that this is inconsistent with both the regulation and the official policy referenced in the regulation. I also believe that this enforcement interpretation is dangerous and warrants agency attention and correction.

In my view, under a plain reading of our regulation, flocked animals and other figures are *per se* intended for use by children under 3, and therefore subject to the small parts standard, which applies regardless of the labeling.

Do you believe CPSC should continue to allow these small parts to be sold on toys that are labeled 3 plus?

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Consumer Federation of America, from
Hon. Peter A. Feldman, Commissioner, U.S. CPSC.

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Answer from Rachel Weintraub:

I agree that choking hazards pose a serious risk to children under three and that the test for small parts should be reevaluated to include products larger than the choke test tube due to incidents associated with products of this size.

My interpretation of 16 CFR 1501’s methods for identifying toys intended for children under three is that the regulation does apply to “stuffed, plush, and flocked animals and other figures.”

Further, it is important to note that products such as food, or bottles that are put in mouths during normal use, will have that mouthing behavior replicated when the food, bottle, or other product is a toy. Thus, consideration should be made for toys that will likely include mouthing behavior.

CPSC should not allow small parts to be sold on or with stuffed, plush, and flocked animals and other figures even if labeled 3 years and over. We know that some of these types of products have play value, are appealing to children under three, and that there have been serious incidents associated with these types of products.

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Written Questions Submitted to Nancy Cowles, Executive Director, Kids In Danger, from
Hon. Peter A. Feldman, Commissioner, U.S. CPSC.

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April 20, 2021

Response to Commissioner Peter A. Feldman

From: Nancy A. Cowles, Executive Director, Kids IN Danger

Re: Question for the Record on small parts and flocked or plush toys

Commissioner Feldman,

I appreciate your question¹ on the small parts regulation at CPSC and flocked or plush toys. This is a matter of great interest to KID. Our research² has shown that products outside the scope of the regulation still can pose choking hazards to children and that as you point out, some products age graded for children older than three, may still appeal to younger children and pose a choking risk.

For decades, the CPSC has had in its guidance that plush, stuffed and flocked toys are considered to have an appeal to children under 3 and therefore covered by the small parts regulation. And yet, as you mention, flocked animal sets are a very popular item and are not only themselves sometimes small parts, but their accessories are too. We are aware that there has been at least one death³ reported with an accessory and potentially other near misses.

We would agree that given the guidance currently available, small parts involving or included with flocked, plush or stuffed toy animals should be subject to the small parts regulation. If CPSC intends this not to be the case, the business guidance that is publicly available should be updated. I think this would also be perfect content for the Regulatory Robot, to make sure businesses could get the clarity they need to make safe toys.

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² *Choking Hazards: Are Current Product Testing Methods for Small Parts Adequate?*

<https://www.hindawi.com/journals/ijpedi/2017/4705618/>

³ <https://www.saferproducts.gov/PublicSearch/Detail?ReportId=1762317>



April 15, 2021

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

Re: Proposed Agenda and Priorities of the CPSC for FY 2021 and 2022.

Dear Acting Chairman Adler and Commissioners:

The National Retail Federation (NRF) appreciates the opportunity to submit these written comments in conjunction with the Commission's recent hearing regarding its agenda and priorities for the remainder of FY 2021 and FY 2022.

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 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 in a positive way and always with a view toward making consumer products as safe for American families as possible. Toward that end, let me reiterate some of our ongoing suggestions and concerns as well as highlight those over emerging safety issues.

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

1. **Recalls and Civil Penalties.** First, it continues to unfortunately be the case that, all too often, if the agency finds it difficult to identify and engage in a recall with a (US) manufacturer/importer of a particular product, their first inclination is to seek the recall from the retailer or retailers that have sold the product. As the commissioners and all agency staff know, where the retailer is not the manufacturer or importer of record for a particular product, it is difficult if not impossible for the retailer to even be aware of let alone understand a particular safety issue, especially if that issue is complex and latent (hidden). Therefore, we urge greater efforts, where possible, to try and identify and engage with the actual manufacturer/importer of the product to undertake the recall, of course in cooperation with relevant retailers.

As we have stated for the record in the past, we also believe it is generally abusive and extra-statutory for the Chairman of the agency to issue unilateral product safety “warnings” to consumers, especially if the retailer is not the intended party to undertake any necessary recalls. In such cases, retailers are often deluged with consumer inquiries and/or complaints about products that, at the time of the unilateral release, are perfectly legal to sell. There are several prominent examples of these occurrences, but to the extent they will continue to exist, we urge that policy to be halted. Relatedly, as we have noted in the past, there have been a number of instances cited by our members where the CPSC has demanded issuance of a recall press release even before the mechanisms are in place at various retailers (whether for bricks-and-mortar or online sales). This is unfair (and often unsafe) to both consumers and retailers where they are the recalling entity.

As many commentators (and members of Congress) have noted in recent years, the CPSC’s award-winning Fast Track Program has appeared to have increasingly become bogged down in more and more bureaucracy (generally relating to internal reviews and “sign-offs” by various offices within the agency), therefore often taking the “fast” out of Fast Track. This is to the detriment of consumers, since the primary intent of the program was to get recall information to consumers as quickly as possible, since the “traditional” recall process can take several weeks or even months. This continues to be a concern among our members.

Finally, as many in the industry and the media have noted, the recent spate of record high civil penalty settlements has many among all industry groups very concerned. If the notion is that, with the new Administration, there is a “no limit” attitude among CPSC staff with regard to civil penalties, such may look good for certain commissioners or in the eyes of some advocacy groups, but it will only serve in the long run to quell the general desire to fully report to and cooperate with the CPSC among companies—particularly smaller companies—worried that a \$20+ million civil penalty will literally put them out of business. That does not serve either the interests over time of consumers or the CPSC and of course in many instances is flatly overreaction by the agency.

2. **Imports.** Inspections and potential enforcement action by the CPSC are a very high concern for our members where they are in fact are the importers of record for consumer products. Overall, we think the CPSC is doing an efficient and effective job in this regard, but there have been instances reported by our members that inspections and/or sample testing by the CPSC have taken an inordinate amount of time, particularly where testing may be complex or not governed by clear product safety standards. It should absolutely be a priority of the agency to eliminate such instances of delay, which of course often costs the importer dearly, both in terms of expense and customer relations and engagement.

Also, regarding imports, we urge the CPSC to move expeditiously (as have several other agencies) to fully adopt a “Trusted Trader Program,” whereby known responsible companies are not treated the same at port as less reputable firms. NRF understands that there are many factors for the CPSC to carefully consider when fully implanting such a program, and it has the experience and expertise, both among its members and staff, to engage with the agency to implement this in a way that benefits both importers and consumers going forward.

3. **Patchwork State Standards.** As the Commission is well aware, states continue to adopt all types of varying laws, regulations and requirements for the safety of consumer products, especially in the area of the chemical content of children's and other consumer products. This of course is making it increasingly difficult (and sometimes impossible) for sellers of consumer products to comply with all of these laws and standards simultaneously. This has been and increasingly is an untenable position for importers and retailers. While we fully understand that it is not within the power or jurisdiction of the agency to stop such state laws and regulations from being enacted, where there is a proper jurisdictional role for the CPSC to adopt a uniform national standard (as the agency has just done—under congressional mandate of course—with regard to upholstered furniture flammability) may be both necessary and appropriate, with adequate stakeholder input of course and with due consideration to the preemptive effect of such actions. This should absolutely be a priority for the agency going forward.
4. **Permanent Stakeholder Advisory Group.** As NRF has urged for a number of years, the CPSC should establish a permanent stakeholder advisory group, whereby key staff (and of course commissioners) could engage learned industry and other stakeholders on the issues outlined above and many other current and emerging issues of importance to both the agency and relevant stakeholders. While NRF has appreciated the various webinars and other discussions that the CPSC has hosted in recent years, such discussions are typically ad hoc. NRF believes that a permanent group that regularly engages with the agency on all issues of mutual concern would benefit both sides of the equation.
5. **Prioritization of Hazards.** It has also been a long-standing desire of the CPSC to finally begin to prioritize product hazards (which it generally does for internal use) but then to translate that prioritization into different types and levels of product safety recalls and/or alerts. This not only makes common sense, but it helps avoid consumers simply tuning out recall releases since many if not most do not reflect any imminent and/or relevant danger to the consumer. "Recall fatigue" is a real phenomenon, as the agency well knows, and it is high time the agency moves to fully address it in the general ways we have suggested.
6. **Technology/Emerging Issues.** There are a number of emerging technology issues that we know the CPSC is attempting to put its arms around, which in many cases are very technical and complex. These include artificial intelligence, the internet of things (IoT), privacy and ecommerce-related issues. While there may be a role for CPSC with respect to these and other technology issues, we would encourage CPSC to engage with other technology-focused agencies that have long-standing expertise on these issues, including CISA, FTC and NIST. For example, with respect to IoT issues, NIST is currently developing standards for IoT security pursuant to the IoT Cybersecurity Improvement Act of 2020. If CPSC looks at options to more actively address IoT issues, it should coordinate closely with NIST and other federal stakeholders to avoid redundancy and conflicting guidance. We would also reiterate our desire for a permanent stakeholder advisory group to help the agency on a routine and predictable schedule, and to ensure that compliance and/or regulatory actions are thoughtfully developed and vetted, and do not inadvertently stifle innovation and investment in these areas.

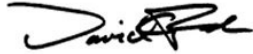
National Retail Federation

April 15, 2021

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Thank you very much for the opportunity to submit these comments, and I would be happy to address any of the issues I have raised on behalf of our NRF members (or other issues as desired) with commissioners or staff at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "David French".

David French
Senior Vice President
Government Relations

Cc: Alberta Mills, Secretary, U.S. Consumer Product Safety Commission

April 14, 2021

Dear Commissioners,

Thank you for allowing me to testify last week at the Priorities hearing. I wanted to reply to Commissioner Kaye's question about whether or not I believed we should have a mandatory standard for stock window coverings. My response was that I needed to think about this question. I have taken some time to think about voluntary standards and it's process and my first thought was, does the U.S. Consumer Product Safety Commission have any power to regulate this voluntary standard? The answer is no. They do not. My second thought is would WCMA willingly change the current voluntary standard to suit their sales if the custom side had a mandatory rule? Absolutely. Everyone has witnessed a ruthless industry dig their heels in for 19 years and refuse to make targeted changes to an inadequate safety standard. While having the technology to fix the problem, more children die on the same standard compliant products they produced each year. This industry pats themselves on the back for a controversial voluntary safety standard at the same time spending millions lobbying the government of Canada on a regulation that actually has promise. No one is talking about this lack of integrity. No reporters are talking about how hazardous cords continue to be manufactured. The public is now more confused than it has ever been about window covering safety.

The WCMA has refused to accept any guidance of the commission and continued to publish lies and empty promises to the U.S. CPSC in Trilateral agreements, statements in the press and in emails about opening the standard and dealing with the hazards on custom products.

I trust a mandatory rule for all corded window coverings is crucial to create secure sleep and play environments for children in the United States.

In my testimony I stated it was imperative to see the same amount of attention and funding for window coverings safety that is used in Tip-Over and Pool campaigns.

I would like to know how much the Commission is going to spend in 2021 and 2022 on window coverings safety? I look forward to your responses.

As I said last week it is time to finally have an adequate educational campaign and a mandatory standard for window coverings so we can end these preventable deaths and help parents and caregivers create safe sleep environments for children in the United States.

With Gratitude,

A handwritten signature in blue ink, reading "Linda Kaiser". The signature is written in a cursive, flowing style.

Linda Kaiser

From: [Schroeter, John](#)
To: [CPSC-OS](#)
Subject: FW: Agenda and Priorities FY 2022-Follow Up Notes
Date: Sunday, April 18, 2021 8:56:18 AM
Attachments: [image001.png](#)

Hi Alberta.

My apologies on the address typo. Please confirm you received this. Thank you.

J

John Schroeter

Hello Alberta and Steve,

My name is John Schroeter and I am the Founder of Applied Textiles in Grand Rapids, Michigan. For 30 years Applied Textiles has managed textile supply chains and compliance for domestic and international textile companies and furniture companies. Our services also include textile finishing/processing services, product development, and education on textiles and code compliance as well as having an accredited testing laboratory. Our customer relationships cross over into many industry channels, from design to manufacturing, for both residential and commercial applications.

We are reaching out today because we attended the CPSC meeting on April 7th regarding the agenda for fiscal year 2022. While we were not able to present, we would still like to bring to light our concerns and suggestions for the newly mandated Cal TB 117-2013 law, which the CPSC will be in charge of enforcing. This act was included in the stimulus bill passed on December 27th, 2020, located in Section 2101 of the bill, also known as "Title XXI-COVID 19 Regulatory Relief and Work From Home Safety Act".

We have put together a PowerPoint that covers the actions Applied Textiles has taken, will be taking, and industry concerns for the implementation of this law. We also submitted questions and concerns on April 6th, however we wanted to follow up with a more formal presentation.

The PowerPoint can be viewed/download with the below Dropbox link:

<https://www.dropbox.com/s/5qhy7aqrk221kzd/CPSC%20Cal%20Presentation.pdf?dl=0> (attached - see pages 3-15)

If you have questions regarding our presentation or concerns please reach out to our sales coordinator Julia Schroeter at julias@applied-textiles.com or our project coordinator Micki Martin at mmartin@applied-textiles.com. I have copied them on this email.

Thank you for your time and attention!

John Schroeter

Founder

e. jschroeter@applied-textiles.com

c. 616.293.3690

applied: textiles

555 76th St. SW Byron Center, MI, 49315

w. applied-textiles.com

Alta™ Hotline: 866.891.6266

Alta Video: <https://vimeo.com/201189210/f504316d8c>

[Applied Textiles Standards](#)



Email secured by Check Point



Work from Home Safety Act (section 2101)

**Flammability Compliance for Residential and Commercial
Upholstered Furniture: California Bulletin 117-2013**

Who We Are.

- 29 years old
- Textile technology, performance, & accredited testing
- Locations in:
 - Grand Rapids, Michigan
 - Graham, North Carolina
 - Hangzhou, China
 - Prato, Italy
 - Bursa, Turkey
- John Schroeter , Founder

Join the Resistance.

What We Do.

Industry Knowledge & Education

Accredited Textile & Material Testing

Textile Technology & Processing

Global Supply Chain & Distribution Services for

Textile and Furniture Companies

Title XXI COVID-19 Regulatory Relief And Work from Home Safety Act (Section 2101)



- Federal flammability compliancy mandate for all residential & commercial upholstered products
- Test requirement: Cal TB 117-2013 smolder test
- Act passed on December 27th, 2020
- Effective June 25th, 2021
- Furniture companies will need to properly label furniture for compliance

Our Customers.

- Domestic & International Textile Companies
 - Interior Designers
- Hospitality & Senior Community Owners & Brands
- Textile Purchasing Agents/Dealers/Showrooms
 - Furniture Companies

*Inclusive of residential, commercial, retail & hospitality environments

Applied Textiles Actions

- Email Campaign to over 6000 industry contacts and social media campaigns
 - Creation and Submission of FAQ to clients
- Develop Solutions for textile & furniture manufacturers
- CEU creation for stakeholders and trade organizations
 - Reduction in testing fee for Cal 117-2013
 - Collection of industry feedback & concerns

Trade Organizations

Trade Association	Industry	Membership #
American Academy of Healthcare Interior Designers (AAHID)	Healthcare & Senior Living	247
American Institute of Architects (AIA)	Design	95,000
American Society of Interior Designers (ASID)	Design	30,000
Interior Design Society (IDS)	Design	2,000
International Textile Alliance (ITA)	Mills & Distributors	800
International Furnishings & Design Association (IFDA)	Design & MFG	10,000

Communication & Education

- Minimal awareness and communication made to the affected trades
- Limited time to meet compliancy for 6/25/21 effective date
- Residential interior designers have limited knowledge on flammability requirements and require education

Testing Requirements

- Acceptance of results from non-accredited labs allows for work arounds, lack of standardization and non-compliant fabrics
- Acceptance of results from Accredited or Non-accredited labs: Clear definition required
- Education required on finding accredited laboratories
- Alternate test method results: Clear definition if NFPA 260 will be acceptable or not
- Explanation of fabric test results required vs. foam tests results required
- Definition of Upholstered furniture: Define inclusivity of:
 - Outdoor Furniture
 - Re-Upholstered Furniture
 - Throw Pillows not associated with bedding
 - Upholstered Headboards & Footboards

Health and Safety

- Most residential fabrics are not tested to Cal TB 117-2013 and contain high percentages of natural or cellulosic fibers which will not pass on their own.
- Health concerns with FR chemicals used in textile technology to meet compliancy.
- Availability of information to identify chemicals or finishes that are safe.
- Availability of non-chemical options to meet compliancy such as barrier fabrics.

CPSC Compliancy & Enforcement

- Availability of sufficient CPSC resources to enforce the law
- Education on how and where the law will be enforced
- Acceptance of invalid test results by with the supply chain
- Sufficient transition or sell through time to address older stock & production
- Clear communication of label requirements
- Clear communication on provision, responsibility and record keeping of test results

Recommendations

- Accredited laboratory test results required to:
 - Improve standardization of data.
 - Reduce non-compliant products from entering the home.
- Clearly defined law verbiage and testing requirements to:
 - Reduce ambiguity and unsafe products.
 - Align industries affected in the supply chain.
 - Improve understanding & shifting of stake holder's responsibility.
 - Protect increased # of consumers working from the home.
- Widespread Communication and Education by the CPSC to:
 - Improve consumer and industry awareness.

Thank you

Closing Slide

Please reach out with any questions you may have for Applied Textiles

- John Schroeter, Founder, jschroeter@applied-textiles.com
- Julia Schroeter, Sales Coordinator, julias@applied-textiles.com
- Micki Martin, Project Coordinator, mmartin@applied-textiles.com
FireCodeExpert@applied-textiles.com

From: [Kristen Kern](#)
To: [Mills, Alberta E.](#)
Subject: RE: Agenda for CPSC FY 2022 Agenda and Priorities Hearing - April 7, 2021
Date: Thursday, April 22, 2021 2:37:49 PM

Dear Secretary Mills,

I understand that the public record was left open following the Priorities Hearing at the beginning of the month. I couldn't find mention of the time when it is set to be closed, but I am hoping that the below addition to AAFA's testimony can be added to the record.

Targeted Import Surveillance

As mentioned earlier in our comment and testimony, AAFA supports the CPSC's use of import surveillance to stop unsafe, noncompliant, and counterfeit products at the port. However, we would like to clarify that in using import surveillance as a strategy to intercept noncompliant products, targeted shipment review and leveraging trusted importer partnerships are key to efficient import surveillance. We have heard from the apparel and footwear industry that following the recent integration of 1USG messaging in the ACE system there have been numerous shipments held for review. In some cases, there have also been reports of lapses in communication around why shipments were stopped and delayed at the port for CPSC review, which is time consuming for both importers and the CPSC. As this rollout continues, we urge the CPSC to prioritize communication and efficiency in reviewing the shipments that it stops at the border by targeting shipments that are a high risk for containing noncompliant or counterfeit products. A company's history of importing safe and compliant products should be a factor in assessing the risk of finding noncompliant products in their future shipments. As a result, incorporating a form of trusted trader status would allow the CPSC to target shipments more efficiently, and focus resources on importers who are more likely to have noncompliant or unsafe products in their shipments. We look forward to working with the CPSC to find a solution that maximizes efficiency in import surveillance to intercept noncompliant and unsafe products.

Thank you,

KRISTEN KERN

Manager, Supply Chain & Sustainability Initiatives

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Washington, DC 20001

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American Apparel & Footwear Association

www.aafaglobal.org | kkern@aafaglobal.org

JOIN US!

Virtual Global Supply Chain & Trade Conference | May 25 & 26