



**U.S. CONSUMER PRODUCT SAFETY COMMISSION**  
Bethesda, Maryland

Public Hearing: Commission Agenda and Priorities  
FY 2021 and/or FY 2022

Wednesday, May 27, 2020 – 10:00 AM

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<b>EDT</b>		<b>Presenter</b>	<b>Affiliation</b>
<b>10:00 AM</b>	<b>Opening</b>	Acting Chairman Adler	
<b>10:05 AM</b>	<b>Panel 1</b>	1 Benjamin Hoffman, MD, CPST-1, FAAP	American Academy of Pediatrics
		2 Diana Zuckerman, Ph.D.	National Center for Health Research
		3 Rachel Weintraub	Consumer Federation of America
		4 William Wallace	Consumer Reports
<b>10:25 AM</b>	<b>Panel 1 Questions</b>	Commission	
<b>10:50 PM</b>	<b>Panel 2</b>	5 Linda Kaiser	Parents for Window Blind Safety
		6 Remington Gregg	Public Citizen
		7 Karin Athanas	TIC Council of Americas
		8 Graham Owens	National Association of Manufacturers
		9 Kristen Kerns	American Apparel & Footwear Association
<b>11:15 AM</b>	<b>Panel 2 Questions</b>	Commission	
<b>11:40 AM – 12:40 PM</b>	----- <b>Lunch Break</b> -----		
<b>12:45 PM</b>	<b>Panel 3</b>	10 Nancy Cowles	Kids In Danger
		11 Crystal Ellis	Member of Parents Against Tip-Overs
		12 Margrett P. Lewis	Survivors for Good
		13 Kimberly Amato	Meghan's Hope
		14 Janet McGee	Parents Against Tip-Overs
<b>1:10 PM</b>	<b>Panel 3 Questions</b>	Commission	
<b>1:40 PM</b>	<b>Adjourn</b>	Acting Chairman Adler	



## 90 Years of Caring for Children—1930–2020

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April 22, 2020

The Honorable Robert Adler, Acting Chairman  
The Honorable Dana Baiocco, Commissioner  
The Honorable Peter Feldman, Commissioner  
The Honorable Elliot Kaye, Commissioner  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, Maryland 20814

### RE: Agenda and Priorities FY 2021 and/or 2022

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

On behalf of the American Academy of Pediatrics (AAP), a non-profit professional organization of 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents, and young adults, I am writing to make recommendations to the U.S. Consumer Product Safety Commission (CPSC) on its agenda and priorities for the 2021 fiscal year. The AAP recognizes that this important discussion is occurring during the middle of the current COVID-19 crisis, which will undoubtedly disrupt the critical work of CPSC. At the same time, we are concerned that many of the household hazards we raise here will take on additional acute risk as families spend significantly more time at home as a result of necessary public health protections including social distancing and remain at home orders. During the pandemic, pediatricians have noticed increased calls and visits related to home hazards such as ingestions and falls. We appreciate the opportunity to comment and look forward to continuing to partner with you on the agency's critical work during this difficult time.

Unintentional injuries remain the number one cause of death in children ages 1-19, and the fifth leading preventable cause of death for newborns and infants under 1.<sup>1</sup> The AAP strongly supports efforts to reduce the incidence of child unintentional injury and related morbidity and mortality. The CPSC has a critical role to protect children from unintentional injuries, sleep-related fatalities, and long-term health risks from hazardous products. Pediatricians look to the guidance of CPSC in assuring parents of the safety of durable infant and toddler products and toys and acting to protect children from household dangers as well as risks from long-term environmental exposures. Parents and caregivers trust that the products they can find on store shelves are safe for their children. The CPSC's work to proactively prevent harm to children is a critical public health function.

The AAP recognizes the large jurisdiction that the CPSC has, and the many different hazards it must address. We are heartened by the agency's recent progress on some child health priorities, but remain concerned with the widespread availability of dangerous products on the marketplace and in homes. We appreciate the CPSC's focus on directing agency resources to the highest-priority consumer product safety risks. We also appreciate your strategic goal to respond quickly in addressing hazardous consumer products in the marketplace. Below are the areas that the AAP believes the CPSC should prioritize in the coming fiscal year in order to protect children's health and safety.

## Safe Sleep

The AAP appreciates the CPSC's work over the past year to propose two crucial safety standards that will create safer sleep environments for children throughout the country, and finalizing these standards expeditiously should be a priority. We know that while much progress has been made to reduce sudden unexplained infant death (SUID) by promoting safe sleep practices and environments for infants, progress has stalled in the last decade. The U.S. Centers for Disease Control and Prevention (CDC) estimate that there are about 3,500 SUID cases annually in the U.S.<sup>2</sup> The CPSC is in a unique position to help address the public health problem of SUID through its jurisdiction over infant products and opportunities to communicate with families, caregivers, and health care providers. We urge the CPSC to prioritize this crucial work to protect infants from sleep-related products that are not safe for sleep, and to use its position to promote consistent safe sleep messages.

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

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

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

The AAP also appreciates the Commission's attention to the risks of crib bumpers and the invitation to participate in the January Crib Bumper Forum. **Crib bumpers have no place in a safe sleep environment.** Given current safety standards for crib slat distance, padded crib bumper products are not necessary to prevent head entrapment, and they can lead to suffocation when an infant's face is pressed against the side of the crib.<sup>3,4</sup> The proposed Safety Standard for Crib Bumpers/Liners is a long overdue and critical step to protect infants from padded crib bumpers. The AAP will be providing comment on the proposal and urging CPSC to continue to prioritize the creation of a robust mandatory safety standard that would prevent padded crib bumpers from being available in the marketplace. As stated previously, the AAP remains concerned about mesh liners due to

the lack of peer-reviewed research supporting their safety. These purely aesthetic products are unnecessary from a safety standpoint, are not demonstrated to be safe in peer-reviewed research, and confuse messaging to parents and caregivers. A consistent “bare is best” message would reiterate that no accessory products on the sides of cribs are beneficial for a safe sleep environment.

The CPSC’s safe sleep awareness campaign has been a useful tool for pediatricians seeking to help parents understand what constitutes a safe sleep environment for infants. The Commission should continue its work promoting safe sleep behaviors and removing unsafe sleep products from the marketplace, including work with other federal agencies and stakeholder groups including the AAP. While education is important, the most effective prevention measures are regulatory actions that promote a safe sleep environment by removing dangerous products from the marketplace. These regulatory actions, investigation of optimal safe sleep messaging, and sustained public health communication will be central to CPSC efforts to address SUID.

### **Liquid Nicotine**

Liquid nicotine is a highly toxic product that poses a serious risk of negative health effects and death for children. The AAP strongly supported the enactment of the *Child Nicotine Poisoning Prevention Act of 2015* (CNPPA), which requires CPSC to enforce a mandatory child resistant packaging standard for liquid nicotine containers, including the use of flow restrictors. Pediatricians have been frustrated with the slow pace of implementation of this law, but are heartened to see steps toward enforcement, including a guidance to industry and test for product compliance. Urgent enforcement action is long overdue, as calls to poison control centers regarding liquid nicotine exposures skyrocketed in 2019.

According to the American Association of Poison Control Centers, calls related to liquid nicotine products increased from 3,139 in 2018 to 5,223 in 2019, a 66% increase. There is also reason to expect that incomplete federal action to confront the youth vaping epidemic could increase the prevalence of so-called open tank liquid nicotine products that pose a greater risk for toxic exposure. The Administration’s partial ban on liquid nicotine products of certain flavors exempted open-tank products. We are already seeing shifting demand to products that pose a greater risk for unintentional poisonings. We urge the Commission to place a significant emphasis on enforcing the CNPPA to get dangerous products off store shelves. Pediatricians stand ready to work with CPSC compliance staff to support your critical enforcement efforts.

### **Drowning Prevention**

Drowning is the leading cause of death for children ages 1-4, and the second leading cause of death among teens. Recognizing the serious threat of drowning and pediatricians’ role in educating families to prevent it, the AAP released an updated policy statement on the prevention of drowning<sup>5</sup> and new resources for parents, caregivers, and others on drowning prevention last year.<sup>6</sup> The AAP has promoted CPSC’s Pool Safely materials along with other educational references as part of those efforts, and would welcome opportunities to work together to further reduce the child fatality toll of drowning. The AAP also supports Congressional appropriations for the CDC to support a National Plan on Water Safety and to improve state and community drowning surveillance efforts.

### **Furniture Tip-Overs**

The AAP appreciated CPSC’s 2018 advanced notice of proposed rulemaking (ANPR) regarding furniture tip-overs. The tragic child deaths from IKEA dressers could have, and should have, been prevented. While we appreciate the educational efforts that both the CPSC and IKEA have made using their “Anchor It” and “Secure It” campaigns, respectively, the best solution is simply to design a safer dresser that will not tip over and harm or kill children. Families living in rental homes or apartments may be prohibited by their landlord or lease from installing anchoring kits into the walls; for such children and families, the “Anchor It” campaign is meaningless, and the dressers pose a real and constant danger. The AAP endorsed the *Stop Tip-overs of Unstable, Risky Dressers*

on Youth (STURDY) Act, and we look forward to additional progress from the CPSC towards a robust mandatory safety standard to prevent this hazard.

Like furniture tip-overs, TV tip-overs can result in horrific injuries or even death. We appreciate the CPSC staff's March 2017 in-depth analysis of non-fatal injuries from TVs falling off furniture.<sup>7</sup> A July 2013 Pediatrics article found that between 1990 and 2011, an estimated 380,885 patients under age eighteen were treated in emergency departments for a TV-related injury; this equals an average of 17,313 children a year, or 2 children every hour. The median age of patients was 3 years, children under five represented 64.3% of patients, and boys comprised 60.8%.<sup>8</sup> Despite studies identifying the risks of TV tip-over injuries, safety standards for TV stability do not include the requirement that TVs be sold with anti-tip or anchoring devices. Both furniture and TV tip-overs are entirely preventable events. Restraints securing these items to the wall can make all the difference but strengthening the stability performance requirements in the relevant safety standards would be the most effective solution. This will require a mandatory standard from CPSC to ensure that all manufacturers comply and that all consumers have an opportunity to keep their children safe from this hazard.

### **High-Powered Magnet Sets**

The AAP was among the groups strongly supportive of a ban on high-powered magnet sets due to the grave injuries caused when ingested in multiples. The AAP applauded the 2013 recalls of the dangerous products by CPSC<sup>9</sup> and Health Canada<sup>10</sup> and the CPSC's 2014 safety standard to make the magnets safer and prevent the sale of unsafe magnets after children suffered critical injuries or death after ingesting these magnets. When two or more high-powered magnets are swallowed, their attractive force (flux) allows them to find each other across or between different segments of the digestive system. For example, connections can occur between the stomach and the small intestine, between the small intestine and the colon, or across loops of bowel. These connections can lead to necrosis of the intestinal tissue, which can lead to serious infections and even death.

Research shows that the CPSC and Health Canada efforts to ban high-powered magnet sets were working to protect children. Researchers studied the impact of Canada's recall by comparing data on magnet ingestion at the Hospital for Sick Children during the two years before the recall (2011 and 2012) and the two years after the recall (2014 and 2015).<sup>11</sup> In the initial two years, there were 22 multiple magnet ingestions, six operations, and nine endoscopic procedures. In the two years after the recall, there were five ingestions, one operation, and four endoscopic procedures.

We were dismayed by the decisions by the Tenth Circuit Court of Appeals and the Federal District Court of Colorado to vacate a previous rule and recall order on these dangerous magnets. In addition, we are concerned that the current work underway at ASTM International is focused on marketing and packaging and will not address the underlying hazard these products pose. To prevent the known harms associated with high-powered magnetic sets, we urge the CPSC to re-issue its recall order and establish a strong mandatory safety standard for small rare-earth magnet sets without delay. A mandatory standard would prevent the widely recognized child harms from small magnets – up to and including death – before they occur, as opposed to a stop sale, which takes magnet sets out of commerce after they have already had an opportunity to enter the consumer marketplace. The AAP has also endorsed the *Magnet Injury Prevention Act of 2019*, which would reinstate the CPSC rule to protect children from these dangerous toys.

### **Flame Retardants and Long-Term Exposure Hazards**

The AAP is a party to the 2015 petition led by EarthJustice and Consumer Federation of America urging CPSC to use its Federal Hazardous Substances Act authority to ban organohalogen flame retardants in four product categories: durable infant or toddler products, children's toys, child care articles, and other articles intended for use by children; furniture sold for use in residences; 6 mattresses and mattress pads; and the plastic casing of electronic articles. Organohalogen flame retardants are widely present in the environment and human

exposure is extensive. These chemicals pose serious public health concerns, particularly for children. They are associated with adverse effects including: reproductive impairment; neurological effects, including decreased IQ in children, learning deficits and hyperactivity; endocrine disruption and interference with thyroid hormone action; genotoxicity; cancer; and immune disorders. The AAP was pleased to see that the CPSC previously voted to move forward on a rulemaking on this topic, to convene a Chronic Hazard Advisory Panel (CHAP), and to issue guidance to consumers and manufacturers. We are encouraged by the initial efforts of the CPSC to seek the expertise of the National Academies of Sciences, Engineering, and Medicine on how to assess the hazards of these chemicals, and we urge you to move forward. The CPSC has a crucial role, complementary to that of the U.S. Environmental Protection Agency, in regulating chronic, long-term hazards associated with the use of consumer products.

### **Laundry Detergent Packets**

Reducing child exposures to liquid laundry detergent packets remains a priority for the Academy. These products are uniquely hazardous to children, and child exposures to them continue at an alarming rate. Children are uniquely vulnerable to these product exposures as a result of their colorful and appealing design and their highly toxic formulation. The AAP has participated in the ASTM process to improve the safety of these products, and we were glad to see the ASTM F3159-15 voluntary standard published in 2015, but our concerns remain as it does not include a number of elements urged by pediatricians. For example, the ASTM voluntary standard does not require the laundry packets to be individually wrapped to keep children from easily accessing them if a caregiver drops one or if a container is left open momentarily. After three years of modest decreases in calls to poison control centers regarding laundry detergent packet exposure by children ages 5 and younger, cases increased in 2019.<sup>12</sup> Current packaging requirements and warnings are insufficient to fully address this issue. We urge the CPSC to stay engaged in the ASTM process, and to ensure that follow-up of the implementation of the standard continues to occur, with appropriate metrics to evaluate effectiveness and a focus on ensuring meaningful decreases in exposures and exposure rates.

### **Window Falls**

Over 3,300 children are treated annually in U.S. hospital emergency departments for injuries related to falls from windows.<sup>13</sup> Some pediatricians have reported an increase in cases of window falls while children are spending more time at home during the COVID-19 pandemic. The AAP would welcome opportunities to work with the CPSC to address this important child injury hazard.

### **Window Coverings**

Window covering cords present an avoidable home hazard. Infants placed in cribs near a window may reach out, grab the dangling pull cord, pull it into the crib, and become entangled. Toddlers playing near a window cord are also at risk of becoming entangled. A study published in *Pediatrics* in December 2017<sup>14</sup> found that from 1990 to 2015, there were an estimated 16,827 window blind–related injuries among children younger than 6 years of age treated in emergency departments in the United States, corresponding to an injury rate of 2.7 per 100,000 children. The most common mechanism of injury was “struck by” (48.8%). Entanglement injuries accounted for 11.9% of all cases, and among this subgroup, 98.9% involved blind cords, and 80.7% were to the neck. Overall, most injuries (93.4%) were treated and released.

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

in minor injuries, cases involving window blind cord entanglements frequently resulted in hospitalization or death.

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

### **Recreational Off-Highway Vehicles**

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

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

With regards to All-Terrain Vehicles (ATVs), the CPSC’s own data demonstrates yet again that ATVs are not safe for children and should not be used by any child under the age of 16. However, children continue to drive and ride in these vehicles, and the injuries and deaths continue as a result. Children are not developmentally capable of operating these heavy, complex machines. The CPSC can and must do more to prevent these incidents in the first place and protect children from further harm. The AAP continues to call upon the agency to reject the manufacture of a transitional, “youth model” ATV 7 for 14- to 16-year-olds that is capable of traveling at speeds up to 38 miles per hour. Preventing children from riding ATVs is still the most effective method to reduce injuries and deaths.<sup>15</sup>

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

## Conclusion

The CPSC is a critical agency whose work impacts the lives of infants and children every day. We urge the Commission, as it moves forward into the next fiscal year, to prioritize work on these child safety issues. We are grateful for the opportunity to comment and look forward to continuing to work with the Commission in protecting the health of all children. If you have any questions, please do not hesitate to contact Zach Laris in the Washington, D.C. office at 202/347-8600 or [zlaris@aap.org](mailto:zlaris@aap.org).

Sincerely,



Sara H. Goza, MD, FAAP  
President  
SHG/zml

- 
- <sup>1</sup> U.S. Centers for Disease Control and Prevention. Ten Leading Causes of Death and Injury. <https://www.cdc.gov/injury/wisqars/LeadingCauses.html>. Updated March 12, 2020. Accessed March 30, 2020.
  - <sup>2</sup> U.S. Centers for Disease Control and Prevention. About SUID and SIDS. <http://www.cdc.gov/sids/aboutsuidandsids.htm>. Updated December 31, 2018. Accessed March 30, 2020.
  - <sup>3</sup> Thach BT, Rutherford GW Jr, Harris K. Deaths and injuries attributed to infant crib bumper pads. *J Pediatr*. 2007;151(3):271–274, 274.e1–274.e3. pmid:17719936
  - <sup>4</sup> Scheers NJ, Woodard DW, Thach BT. Crib bumpers continue to cause infant deaths: a need for a new preventive approach. *J Pediatr*. 2016;169:93–97, e91. pmid:26621044
  - <sup>5</sup> Denney SA, Quan L, Gilchrist J, McCallin T, Shenoi R, Yusuf S, Hoffman, B, Weiss, J; AAP Council on Injury, Violence, and Poison Prevention. Prevention of drowning. *Pediatrics*. 2019;143(5):e20190850.
  - <sup>6</sup> American Academy of Pediatrics. Drowning Prevention. <https://www.aap.org/en-us/about-the-aap/aap-press-room/campaigns/drowning-prevention/Pages/default.aspx>. Accessed March 30, 2020.
  - <sup>7</sup> Lee A, Lee A. U.S. Consumer Product Safety Commission Directorate for Engineering Sciences. In-depth analysis of nonfatal injuries from TVs falling off furniture. [https://cpsc.gov/s3fs-public/NonFatalTVInjuriesreportOctober2016March17\\_o.pdf](https://cpsc.gov/s3fs-public/NonFatalTVInjuriesreportOctober2016March17_o.pdf). Published March 2017.
  - <sup>8</sup> De Roo AC, Chounthirath T, Smith GA. Television-related injuries to children in the United States, 1990-2011. *Pediatrics*. 2013;132(2):267-274.
  - <sup>9</sup> U.S. Consumer Product Safety Commission. High powered magnet balls recalled by SCS due to risk of ingestion; sold exclusively on Amazon.com. <https://www.cpsc.gov/Recalls/2013/high-powered-magnet-balls>. Accessed March 30, 2020.
  - <sup>10</sup> Government of Canada. Information for manufacturers, importers, distributors, and retailers of products containing small, powerful magnets. <https://www.canada.ca/en/health-canada/services/consumer-product-safety/advisories-warnings-recalls/letters-notices-information-industry/information-manufacturers-importers-distributors-retailers-products-containing-small-powerful-magnets.html>. Last updated August 7, 2013. Accessed March 30, 2020.
  - <sup>11</sup> Rosenfield D, Stickland M, Hepburn CM. After the recall: Reexamining multiple magnet ingestion at a large pediatric hospital. *J Pediatr*. 2017;186:78-81.
  - <sup>12</sup> American Association of Poison Control Centers. Laundry detergent packets. <https://aapcc.org/track/laundry-detergent-packets>. Accessed March 30, 2020.
  - <sup>13</sup> Nationwide Children's. Window falls. <https://www.nationwidechildrens.org/research/areas-of-research/center-for-injury-research-and-policy/injury-topics/home-safety/window-falls>. Accessed March 30, 2020.
  - <sup>14</sup> Onders B, Kim EH, Chounthirath T, et al. Pediatric Injuries Related to Window Blinds, Shades, and Cords. *Pediatrics*. 2018;141(1):e20172359.
  - <sup>15</sup> Flaherty MR, Raybould T, Kelleher CM, et al. Age Legislation and Off-Road Vehicle Injuries in Children. *Pediatrics*. 2017;140(4):e20171164.





27 April 2020

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

Ref: "Agenda and Priorities FY 2021 and/or 2022" - 85 FR 12908

Dear Alberta Mills,

The TIC Council Americas is pleased to provide the attached comments and make oral presentations at the hearing on the CPSC "Agenda and Priorities FY 2021 and/or 2022," 85 FR 12908. We understand the date of the hearing is being determined and look forward to presenting at that time.

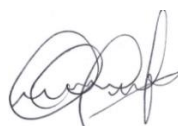
TIC Council is the global trade federation representing the independent third-party Testing, Inspection and Certification (TIC) industry which brings together more than 90-member companies and organizations from around the world to speak with one voice. Its members provide services across a wide range 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](mailto: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 'Roberta Telles'.

Roberta Telles  
Executive Director  
TIC Council Americas  
[rtelles@TIC-Council.org](mailto:rtelles@TIC-Council.org)

## General Comments

TIC Council supports and welcomes CPSC's outreach to stakeholders in requesting inputs for the Commissions' Agenda and priorities for FY 2021 / 2022. TIC Council recommends that CPSC continue to seek opportunities to collaborate and engage with industry to fulfil its mission. The TIC industry remains at the service of CPSC and looks forward to working in partnership with the agency to leverage resources and multiply its impact.

Collaboration with stakeholders broadens the conversation on relevant issues, increases the reach of CPSC's communications, better enables industry to respond effectively to proposed changes. TIC Council members have a global footprint with facilities in over 160 countries and have the technical expertise and capabilities in all aspects of product safety. They provide services that help ensure safety and compliance across all stages of the supply chain, from the design stages to post-retail and manufacturers, retailers, and importers of all sizes rely on TIC industry as a cost-effective solution to meet their legal obligations and demonstrate compliance with safety standards and regulations.

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

- 1) Partnership with TIC Council in a coordinated effort, including industry, consumers, and other stakeholders to address the growing issues of counterfeit products sold through e-commerce platforms.**

A 2019 report by the Organization for Economic Cooperation and Development (OECD) identified growth of 154% from 2005 to 2016 in the trade in fake goods.<sup>1</sup> Of those found to be counterfeit, many are also identified as low-quality and able to cause injury to consumers.<sup>2</sup>

To address this growing issue, a partnership of industry, consumers, TIC, and regulators is needed to find solutions and to educate end users on how they can protect themselves from injury. Campaigns such as check the label and/or mark and education on the risks of using e-commerce platforms would help to reduce injury among consumers and better prepare them to protect their loved ones. TIC Council remains at the ready to partner with CPSC and others to find a common-sense path forward.

- 2) Partnership with TIC Council and its members to leverage their technical expertise and global footprint in CPSC's training of manufacturers and designers.**

Product safety requirements and best practices across the globe can be diverse. TIC Council members assist industry in traversing such requirements by offering training and advising manufacturers and designers on best practices across the globe and better preparing them to meet the requirements of the CPSC and others. These trainings help ensure that safety is being built into the earliest stages of the supply chain, and it is a preventive and cost-effective approach to consumer safety.

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

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<sup>1</sup> OECD/EUIPO, Trends in Trade in Counterfeit and Pirated Goods, Illicit Trade, OECD Publishing, Paris/ European Union Intellectual Property Office, (Mar. 18, 2019), <https://doi.org/10.1787/g2g9f533-en>

<sup>2</sup> U.S. Customs and Border Protection, Fake Goods, Real Dangers, <https://www.cbp.gov/FakeGoodsRealDangers>

**3) Engage with stakeholders to discuss common-sense policies to address safety hazards caused by IoT devices.**

In a report entitled *Status Report on the Internet of Things (IoT) and Consumer Product Safety*, by the CPSC Office of Hazard Identification and Reduction, dated September 25, 2019 it states the “CPSC staff is working to gain an understanding of the best way to define consumer product safety in terms of the IoT, the intersection of, and interdependencies among consumer product safety, data security and privacy, and how our traditional risk management approaches apply to these products.”

TIC Council continues to support CPSC’s efforts to better understand this emerging industry and the risks to safety associated with IoT functionality. We recommend continued engagement with stakeholders, tracking and reporting of IoT related safety incidents through the CPSC incident reporting system, and continued participation in standards development to ensure voluntary standards are considering risks to safety caused by IoT functionality and safe-guarding consumers at the time of manufacture.

Following our CPSC testimony in 2019, TIC Council provided the following additional guidance on recommended changes to the incidence reporting system to address the increasing use of IoT devices. We continue to support CPSC’s efforts and reiterate our recommendation that the CPSC take the following steps:

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

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

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

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

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

**4) Organize stakeholder roundtables to discuss emerging industries and to seek alignment on the best path forward for areas of concern including 3D printing and wearable devices.**

Wearables come in many forms and innovation in all industry sectors have created a growing industry of consumer products. Where IoT and cybersecurity play an interconnected role, the safety of these devices remains paramount and better understanding their function, application, and the intrinsic safety risks that they post will better prepare all stakeholders in ensuring that consumers are protected.

3D printing has become commonplace in classrooms and many homes now have small printers for home use. These devices come with risks of fire, burns, mechanical injury and others and further discussion of their use and the safety risks they pose will better prepare the industry to take action.

For these reasons, we encourage broad discussion through roundtables and workshops with all stakeholder and offer our support and assistance.

**5) Leverage private sector conformity assessment when designing conformity assessment programs to fulfil policy needs.**

As described in OMB Circular A-119<sup>3</sup>, federal agencies are encouraged to rely on private sector conformity assessment (testing, inspection, certification, auditing, etc.) whenever possible to leverage efficiencies and save the agency's resources.

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

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

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

The choice of the appropriate conformity assessment method should always be based on risk assessment and confidence needs applicable to the situation, since there is no one size-fits-all in conformity assessment. Third-party conformity assessment provides higher levels of assurance of compliance with safety requirements<sup>4</sup> and is an essential element in ensuring consumer safety in the United States.

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<sup>3</sup> [https://www.nist.gov/sites/default/files/revise/circular\\_a-119\\_as\\_of\\_01-22-2016.pdf](https://www.nist.gov/sites/default/files/revise/circular_a-119_as_of_01-22-2016.pdf)

<sup>4</sup> [http://www.ifia-federation.org/content/wp-content/uploads/IFIA\\_CIPC\\_239\\_2014-2016\\_Market\\_survey\\_report.pdf](http://www.ifia-federation.org/content/wp-content/uploads/IFIA_CIPC_239_2014-2016_Market_survey_report.pdf)





April 29, 2020

**VIA ELECTRONIC MAIL SUBMISSION (cpsc-os@cpsc.gov)**

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

Re: Agenda and Priorities FY 2021 and/or 2022

Dear Sir or Madam:

The Recreational Off-Highway Vehicle Association (ROHVA) is a national not-for-profit trade association formed to promote the safe and responsible use of recreational off-highway vehicles manufactured or distributed in the United States (ROVs). ROHVA is sponsored by BRP, Honda, Kawasaki, Mahindra, Polaris, Textron Specialized Vehicles and Yamaha. ROHVA is also accredited by the American National Standards Institute (ANSI) to develop voluntary standards for the equipment, configuration and performance requirements of ROVs. Commonly known as side-by-sides, ROVs are well-established in the U.S. marketplace, well-designed, and safe when operated properly.

ROHVA respectfully submits these comments concerning the U.S. Consumer Product Safety Commission's FY 2021-2022 Agenda and Priorities as they relate to ROVs. As presented in the Commission's Semiannual Agenda and Regulatory Plan (84 Fed. Reg. 71238, at 71240-41), the Commission has participated for over a decade in voluntary standards activity related to ROVs. That process began in 2008 and led to voluntary standards approved in 2010, 2011, 2014 and most recently in 2016 (ANSI/ROHVA 1-2016). Despite this collaboration, in November 2014 the Commission voted to publish a Notice of Proposed Rulemaking ("NPR") for a rule imposing a mandatory product standard establishing stability and handling requirements for ROVs. In November 2016, after further collaborative efforts with industry and a careful assessment of new provisions in the current 2016 voluntary standard, the Commission's Staff recommended terminating the NPR and submitted a termination of rulemaking briefing package to the Commission. Contrary to the Staff's recommendations, the Commission voted against termination of the NPR at that time.

In February 2019, Congress passed the Consolidated Appropriations Act (Senate 83-16; House 300-128), including a rider prohibiting the Commission from using appropriated funds to finalize or implement ROV rulemaking. The same rider has been in place since 2016. Nevertheless, and despite Staff recommendations to terminate the NPR, the Commission has not acted and the NPR has simply languished.

Staff is presently collaborating with ROHVA to explore other potential changes to the ROV voluntary standard (*e.g.*, exhaust and fuel systems; chassis integrity -- *see* FY 2020 Proposed Operating Plan Alignment and Midyear Review). However, these additional items are outside the scope of the NPR. The ongoing activities have no bearing on, and are not a valid basis to defer, termination of the NPR.

**ROHVA therefore renews its long-standing request for the Commission to move forward with termination of the NPR.** Staff has likewise renewed its recommendation supporting this agency action. There is no justification for any further delay in termination of the NPR.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Berger', with a stylized flourish at the end.

Alexander Berger  
General Counsel





## CPSC Agenda and Priorities FY 2021 and/or 2022

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

Fifteen years ago, on December 18<sup>th</sup>, 2004, I woke to every parent's nightmare. We found our beautiful 3-year old daughter Meghan lifeless beneath her dresser. It had fallen on her sometime in the night while the rest of the family was asleep. We did not hear it fall, as it fell on her tiny body on a carpeted floor. She was unable to cry, her airway crushed by a drawer under the weight of the dresser.

I held her dead body and rocked her in the emergency room for over an hour in complete shock and disbelief. I thought for sure I was going to die myself. I wanted to hold her forever.

I walked out of the hospital that sunny December morning without my little girl. Instead, I left with a box that contained a lock of her blonde hair, a plaster heart with her hand and footprint and a tiny pink bow, painted hand and footprints for her brothers, and a brochure on grief. I had to go home without her and figure out how to tell her brothers she was gone forever. They were devastated. I had to figure out how I was going to live my life without my precious little girl. Her twin without his soulmate. My heart was shattered into a million pieces. The magic of Christmas was stolen from me that year. I buried my little girl just three days before Christmas.

I vowed that day; no other child would die the way Meggie did. Surely, if parents just knew of the danger, they'd immediately take action to stop it. Surely, retailers would do everything in their power to help me share this message and save lives. Surely, manufacturers would want to ensure the furniture they sell is stable and safe for children to interact with. Surely my government would protect me from potentially dangerous products, including furniture. Right?

Wrong!

[Meghan's Hope](#) was born the night she died, with an email to friends and family asking them to share our story to spare others Meghan's fate. Two weeks later, our website was born. Social media did not yet exist. It was the best way I could think of to reach people. I was disheartened to learn it wouldn't be as easy as I thought to stop tip-overs from happening, and even more so to learn Meggie wasn't the only child to die this way and in fact, the number of children injured and killed by fallen furniture have risen since her death! The CPSC knew about them, but parents did not. People who educated parents did not. Apparently only the CPSC and the furniture industry knew, and they were making no real effort to educate parents or the public about the dangers of furniture tip-over.

As an "overprotective" parent who was also a childbirth educator, my home was well childproofed. I even had a taller, more unstable piece of furniture anchored to the wall (although I now know it was not anchored with a device strong enough to support the weight of the furniture, let alone of it loaded and with the weight and force of a child interacting with it). I had NO idea her dresser, made by a well-known juvenile furniture manufacturer, and wider than it was tall, that took 2 adults to move, could have tipped over, let alone killed a small, 28 pound, 3-year old child. Yet it did. It never crossed my mind that furniture sold in the U.S. (or any other products sold in the U.S., especially for children's use) might not be safe. Especially small and heavy pieces made especially for a nursery like her dresser.

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

Unfortunately, she was far from the last to die in a tip-over incident, but that has not changed my promise to her to do everything I can to stop tip-overs.

Thus, I am writing today to ask the CPSC to make these key components of furniture safety and tip-over prevention ALL priorities for the next fiscal year.

### **1. Saferproducts.gov**

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

If I didn't know how or why to report my daughter's death to the CPSC, how would other parents?! Do physicians, hospitals, and medical examiners all know? They do not. Why not? Because no one has educated them. Parents certainly don't know they should report product hazards or injuries to their children from any product, let alone furniture to saferproducts.gov. They don't know it exists!

This is a fundamental problem with the NEISS hospital system and with saferproducts.gov. Barely anyone outside of the CPSC who is in a position to provide information and data on product hazards, injuries and deaths is aware of how or why to do so.

*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 and especially pediatricians and family practice physicians, ALL emergency rooms and urgent care centers, ALL public health departments and child protective services programs, ALL medical examiners, and ALL childcare providers.*

### **2. The Anchor It! Campaign**

After Meggie died, in my research I learned that companies that made other childproofing products also made anchors specifically for securing furniture to the wall, but they were not sold in stores where their other childproofing supplies were. Why not?! My guess is it was because they were not in demand. Why would they be if parents had no idea furniture could fall and kill their child? In fact, they are still not sold as widely in stores today as other childproofing supplies are, though they are available online.

Had I had seen them next to the outlet covers and toilet locks in a store, I'd have purchased them and used them! The same is true of parents today. \$5 and 15 minutes to anchor her dresser, and the knowledge of how and why to do it properly, *would have saved her life*.

As soon as I learned of the existence of furniture anchors, I began to advocate for their use. I've advocated for the need to anchor furniture for more than fifteen years, and I was a lone voice for many of those years. I became involved in the CPSC's Anchor It! Campaign from the very beginning and am one of the Anchor It! Moms featured in the PSA "[Real Moms Urge You to Anchor it](#)". I also meet quarterly with the campaign with [Parents Against Tip-Overs](#) representatives.

There is a tremendous need to continue the anchoring message, even when there is a robust and effective mandatory standard, because there are millions of pieces of furniture in homes right now that has the potential to tip and injure or kill a child or even an adult.

The anchoring message is vitally important, and it needs to be publicized in a vast and comprehensive way. Parents need to hear this message from their childbirth educators, pediatrician, OB or midwife, maternity and newborn units of hospitals, at stores where they shop, in parenting magazines and apps, on TV, on social media, and online.

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

The anchoring message is vital but it's not yet common knowledge. Even today. Here's why:

- Improving the furniture safety standard and making it mandatory will make an impact with new furniture coming into the market but it won't address the millions of pieces of at-risk furniture already in people's homes, which is why this campaign is so vital.
- According to research conducted by [Consumer Reports Advocacy](#)
  - Only 27% of Americans have anchored furniture (Of those, 66% used the anchors that came with the furniture, which are not always adequate to actually hold the furniture when it's fully loaded with the weight of a climbing 5-year old child on it)
  - 73% of Americans have NEVER anchored furniture
  - 54% without children under 6 in the home did not think anchoring was necessary
  - 7% with children under 6 in the home said that the children were not left alone (we all know that's just not true; we were asleep when Meghan died!)

*The Anchor It! Campaign needs to continue* and with the collaboration and support of the AAP, the furniture industry, and retailers along with parent advocates in sharing the Anchor It! message must be actively pursued and encouraged by the Commission.

The campaign also needs to take a serious tone as the recent whimsical and frankly childish portrayal of tip-overs and all manner of child safety information on social media by the campaign should be an embarrassment to the Commission. I surveyed parents who follow Meghan's Hope and 99% of the respondents agreed the CPSC's current social media posts were not effective and did not help them

understand the danger of tip-over as a serious issue nor did it compel them to see the need to anchor their furniture.

**3. Creating a robust, effective, comprehensive MANDATORY furniture safety standard to prevent tip-overs. Announce an NPR and make it urgent and a top priority.**

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

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

I later found out that the ASTM sub-committee on furniture safety was created in 2000. Four years before Meghan died. It's now twenty years later and there is still not an effective voluntary safety standard let alone a mandatory one. The committee, of which I am an active and voting member, is contentious at times and there is a constant cry for more data, yet very little motivation to seek that data and use it in a timely and proactive manner, stalling the process. All the while, children are still victims of tip-overs approximately every 20 minutes. This is unconscionable.

For an agency tasked with protecting consumers, it has failed to do everything in its power to protect its most vulnerable consumers, our children, from a known hazard in every single home in America. The Commission publishes a report every year now on tip-overs, that clearly portrays that this issue is not getting better on its own, yet it doesn't seem to think issuing a mandatory standard is a real priority. If it was a true priority of the agency, we'd have one by now.

I have been advocating for furniture safety and the dangers of tip-over for fifteen long and painful years, and the harsh truth is, if there were a stronger and mandatory furniture safety standard in place, Meghan might have been the last child to die from this 100% preventable tragedy.

Sadly, she was not, and many more families have lost children since. Why? Because the CPSC chose to side with industry. Because the CPSC's hands were tied by section 6(b) with regard to timely recalls when they chose to pursue them, and forward progress appears to be determined by political party affiliation rather than a true desire to protect the safety of the American children on certain issues like preventing tip-overs.

I assure you; furniture falls on both Republican and Democratic children alike. This is an issue of safety, the safety of every American child, because every single one of them is at risk of injury and death from a tip-over. You and I both know that you cannot tell or predict by looking at a piece of furniture if it will tip

or fall. It doesn't matter how tall, wide, or heavy it is. It doesn't matter where it was purchased or who made it. It doesn't matter if it was expensive or not. If it is not properly anchored to the wall, it has the potential to be a deadly weapon. The consumer should not have to finish making any product safe! It should be made safe!

And while the CPSC could be using their authority to be aggressively pursuing rulemaking for a mandatory furniture safety standard, instead, you wait for the voluntary process to play out. The ASTM furniture safety subcommittee stalls and stonewalls progress toward a standard that would substantially reduce the number of injuries and deaths from furniture tip-overs putting their bottom line over the safety of children. If in 20 years, they can't create a mandatory standard using the data readily available to inform them it's because they don't want to! You are both waiting for the other one, or Congress, to do the work for you. Enough with that game! We need the Commission to take control, issue the NPR and do the right thing.

Until the ASTM and furniture industry members, and the CPSC commissioners, are willing to lay a small child they love in front of their unanchored dresser and apply the testing standards they think are strong enough to protect children from a tip-over, the standard is not strong or adequate enough. Just because you know enough to anchor your dressers doesn't mean everyone else does, or should have to!

Every day that goes by without an effective and enforceable mandatory furniture safety standard, children will continue to die. That is unacceptable. If you had started this process back in 2005 when we brought the first ever tip-over legislation to Congress, children would not still be dying from tip-overs.

As you are aware the STURDY Act is currently in the U.S. Senate, after passing the House with bipartisan support. I am 100% in support of the STURDY Act and it is my hope that Congress takes action to do what the CPSC and the ASTM furniture safety subcommittee has been unable and unwilling to do the past fifteen years. Adequately protect children from the danger of furniture tip-over by passing the STURDY act into law. Myself and my PAT colleagues have lobbied hard and have gotten bipartisan support of the bill in the Senate.

Unfortunately, with the current pandemic and the election looming, it's uncertain if that momentum will carry the bill to the President's desk. I fear it will die on the floor of the Senate, just like Meghan died on her floor. Alone. How many more children need to die this way before quick and decisive action is taken to enact an effective mandatory furniture safety standard?

It also seems like while the STURDY Act was gaining traction over the past year, the Commission and the ASTM furniture safety sub-committee have been taking baby steps toward real action, waiting to see if the decision was going to be made for them by Congress. There is no reason why those two things could not be happening at the same time, and they should be. *The CPSC is as guilty as the ASTM furniture safety sub-committee for stalling the process. We can no longer wait for the perfect data, the perfect test, or the perfect time. The time is now, and it is urgent.*

It goes without saying that I am asking that furniture tip-over awareness and prevention be at the top of the Commission's priority list for the next fiscal year with actions including, but not limited to:

- **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.

- **ASTM Process:** The Commission needs to be *actively involved* in the ASTM sub-committee on Furniture Safety and pro-actively advocate *in person* at the committee meetings and on the phone for task group meetings, to pressure the industry to create a stronger and adequate voluntary safety standard now, and once that standard exists, to make it mandatory. This needs to occur at the same time as the Commission aggressively pursues an NPR.
- **NPR on tip-overs:** The Commission needs to write a standard that will adequately protect children and make it mandatory now. I understand there is an ANPR from 2017 yet still no NPR. Why? 3 years is more than enough time to gather data. You do it annually in your Tip-Over report. Do it now! Don't wait for the data you are collecting from the dresser testing to announce an NPR. There is absolutely no reason why you cannot be doing both testing and rulemaking at the same time. You know it will take time. *The STURDY Act, the ASTM voluntary standards process, and progress on an NPR can and should all happen concurrently.* **We cannot wait for the ASTM furniture safety sub-committee any longer. We can't wait to see if the STURDY Act passes this or a future session of Congress, nor can we wait for more injuries and deaths, what everyone likes to refer to as "data".** The data exists and has not changed significantly for the past 10+ years with regard to the number of injuries and deaths to children each year from tip-overs, which is surely enough to prove the current voluntary standard is not adequate to protect children from tip-overs.
  - The CPSC should issue and enforce a mandatory furniture safety standard for CSU's. At a *minimum* a **mandatory** furniture safety standard should:
    - Cover clothing storage units 27 inches in height and higher (and be immediately reduced if even one death is reported from a CSU of a height lower than 27 inches)
    - Define the test weight to the weight of a child at 72 months of age based on current anthropometric data, as most injuries and deaths that occur involve children 5 years of age and younger
    - Account for the dynamic forces of a child 72 months of age climbing in open drawers, using drawer pulls (drawers all closed), or pulling on open drawers to simulate real-life situations.
    - Testing with all/multiple drawers open in various combinations loaded and unloaded and developing a standardized test to simulate the dynamic force of a child climbing (perhaps using a weighted robot or other system). Children do not slowly and gently gradually apply 50 lbs. of force to the top drawer of a dresser on a level floor with no carpet in real life, which is the current test method, and why it is inadequate and misleading to consumers.
    - Account for the effect of carpet on stability by determining an angle of testing that simulates the effect of the average pile of carpet, padding, and carpet tack as most tip-overs happen in rooms with carpeting
    - The Commission needs to request and have the funds available to conduct this testing and ensure a robust continuing of the Anchor It! program in the next fiscal year.

Former Chair Buerkle supported these measures, and put the manufactures, importers, distributors and retailers on alert telling them not to sell furniture that is not compliant with the current voluntary standard, and that the Commission would seek recalls and impose penalties to those who did not comply, *but the Commission must follow through with industry to hold them accountable to do the right*

*thing and follow through on their statement and to recall non-compliant furniture immediately and pressure ASTM to strengthen the voluntary standard now.*

Acting Chair Commissioner Adler has been more proactive about recalling non-compliant units and this must continue without delay, no matter who is in the Chair position and no matter what the political makeup of the commission is. Furniture falls equally on Democratic and Republican children.

Too many innocent lives have been lost to tip-overs while the ASTM and CPSC have dragged their feet on making meaningful and effective changes to the standard, and the CPSC's mandate is to serve the American consumers, not the furniture industry's interests and desire for higher profits. Engineers have already proven safe, stable furniture that would comply with a height of 27 inches and a test weight of 60 pounds can be made and at an affordable price point.

I acknowledge that there are other limitations that somewhat tie the hands of the CPSC with regard to some of the actions I'd like to see them take, but they should not significantly impact the work of the Commission in regards to furniture tip-over prevention.

- **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 the SHARE Information Act for this reason.
- **Funding** for the CPSC needs to be increased immediately by a significant amount, so the Commission has the budget and funds to be able to use toward educational campaigns like Anchor It!, recall initiatives, an improved system for reporting dangerous products, an improved and easy to navigate 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. Demand it!

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

*Having tip-overs as a priority of the commission, however, is not enough.* The CPSC must act now by issuing an NPR and creating and enforcing a comprehensive and mandatory furniture safety standard and put an end to these preventable injuries and deaths. In order to do this, the Commission needs to earmark the appropriate funding and have and use the authority to not only create and implement such a mandatory standard and conduct the necessary research and testing, but it also needs the ability to issue warnings and recalls freely, without having to get the consent of the company or manufacturer in



violation of the current voluntary standard and any future standard. The CPSC also needs to aggressively pursue those who resist a recall, using all tools at their disposal.

The Commission also needs to improve their avenues of communication, including the saferproducts.gov Website, recall resources, and broaden the Anchor It! campaign with their partners and advocates to reach every household in the U.S.

If these processes and standards were in place fifteen 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 and how many more parents must bury their children before the Commission uses the power and tools currently available to them to put an end to it?

I must believe the Commission wants to do the right thing, but they can't without unanimous agreement to do so, adequate funding, bi-partisan support and 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. The CPSC must be willing and able to use all the avenues and tools available to them currently within their scope of power to protect consumers and their children from furniture tip-over, and the legal freedom to do so. I beg of you, to please do that, and more.

Meghan's twin brother is graduating from high school this year. Her older brother is graduating from college. I'll never see my little girl grow up, graduate, get married, or have children of her own. That was all stolen from me by an expensive, small, heavy dresser made for a nursery one week before Christmas. Instead, I see one where two should have always been. I carry the pain of her loss with me every single day. I don't want anyone else to ever know that pain. The CPSC can help make that a reality.

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, Meghan's Hope [www.meghanshope.org](http://www.meghanshope.org)

Founding member, Parents Against Tip-Overs [www.stoptipovers.org](http://www.stoptipovers.org)





**NATIONAL CENTER FOR  
HEALTH RESEARCH**  
The Voice For Prevention, Treatment And Policy

**Diana Zuckerman, Ph.D., President of the National Center for Health  
Research**

**Comments on the U.S. Consumer Product Safety Commission  
Agenda and Priorities for FY2021/2022**

**April 2020**

The National Center for Health Research is a nonprofit research center staffed by scientists, medical professionals, and public health experts who analyze and review research on a range of health issues. Thank you for the opportunity to share our views concerning the Consumer Product Safety Commission's (CPSC) priorities for fiscal years 2021 and 2022. We greatly respect the essential role of the CPSC, as well as the challenges you face in selecting the most important priorities.

We want to start by emphasizing two issues involving chemicals in products that affect our and our children's health, (1) artificial turf and playground surfaces and equipment, and (2) organohalogen flame retardants. We will also briefly discuss sport and recreational helmets, sleep-related products for infants, furniture stability, home elevators, and liquid nicotine packaging. All these issues should be CPSC priorities.

**Artificial Turf and Playgrounds: Risky Chemicals and Lead**

We expressed our concerns about artificial turf and playgrounds last year. Our concerns are even greater this year because of increasing evidence of lead exposure from these products, as well as from playground equipment.

Requiring testing for artificial turf, playground surfaces, and the paint used for playground equipment needs to be a priority, because children are exposed to these synthetic rubber and plastic fields and playground surfaces as well as playground equipment – and the lead and harmful chemicals they contain – day after day, year after year.

A new issue that arose in the last year is research indicating that the **paint used on outdoor playground equipment contains lead**. Professor Alexander Wooten from Morgan State conducted studies in Maryland that indicate that paint with lead is widely used on playground equipment, such as climbing structures, in some cases at very dangerous levels.<sup>1</sup> We have learned that there are no federal restrictions on lead used in outdoor paint, even for products used exclusively by young children. CPSC should investigate this issue immediately.

The rubber and plastic that make up turf and playground surfaces contain chemicals with known health risks, which are released into the air and get onto skin and clothing. Crumb rubber – whether from recycled tires or “virgin rubber” – includes endocrine disruptors such as phthalates, heavy metals such as lead and zinc, as well as other carcinogens and skin irritants such as some polycyclic aromatic hydrocarbons (PAHs) and volatile organic compounds (VOCs).<sup>2,3,4,5,6</sup> Other plastic or rubber surfaces used in playgrounds also contain many of these chemicals.<sup>7</sup> Moreover, the plastic grass in artificial turf also has dangerous levels of lead, PFAS, and other toxic chemicals as well. PFAS are of particular concern because they are “forever chemicals” that get into the human body and are not metabolized, accumulating over the years. Replacing tire waste with silica, zeolite, and other materials also has substantial risks.

Tire crumb is widely used as infill for artificial turf fields and also used for colorful rubber playground surfaces. In addition to the chemicals noted above, these playground surfaces contain lead and create lead dust on the surface that is invisible to the eye but that children are breathing in when they play.<sup>8</sup>

The CPSC is well aware that no level of lead exposure is safe for children, because lead can cause cognitive damage even at low levels. Some children are even more vulnerable than others, and this vulnerability can be difficult or even impossible to predict. Since lead has been found in tire crumb as well as new synthetic rubber, it is not surprising that numerous artificial turf fields and playgrounds made with either tire crumb or “virgin” rubber have been found to contain lead. However, the Centers for Disease Control and Prevention (CDC) also warns that the “plastic grass” made with nylon or other materials also contain lead. Whether from infill or from plastic grass, the lead doesn’t just stay on the surface – it can get into clothes, on the skin, or into the air that children breathe.

While one-time or sporadic exposures are unlikely to cause long-term harm, children’s repeated exposures, especially during critical developmental periods, raise the likelihood of serious harm. There are few activities that children engage in for as many hours in their early years as those on playgrounds and playing fields.

We appreciate the CPSC’s ongoing efforts to investigate the safety of crumb rubber on playgrounds and playing fields. As your study using focus groups to examine children’s use of playgrounds and exposure to playground surfaces has shown, children who use playgrounds with artificial surfaces could be exposed to the chemicals in these surfaces.<sup>9</sup> It is unfortunate that the EPA report on artificial turf (which did not include playground surfaces or playground materials) did not provide the scientific evidence needed to support their assumptions that the likely levels of exposure to dangerous chemicals was low enough that it was not likely to harm children. The EPA did not study the actual impact of the exposure to endocrine disrupting chemicals on children and did not study lead exposure from synthetic playground surfaces, leaded paint used on playground equipment, or artificial turf.<sup>10</sup>

Meanwhile, we have repeatedly heard the companies that make these products and those that install them make erroneous claims at the state and local government levels, falsely stating that CPSC and other federal agencies have concluded that these materials are proven safe. As we all know, that is not correct.

We encourage you to closely evaluate the research that has been done, focusing on independently funded research of short-term and long-term safety issues. We need information that can protect our children from harm. In addition, we strongly urge you to convene a **Chronic Hazard Advisory Panel (CHAP)** to examine the short-term and long-term risks of different types of artificial turf used in playing fields and children’s playgrounds, including surfaces and lead paint used on climbing equipment and other materials.

In addition to the risks of lead and the long-term risks of cancer and other health problems caused by hormone disruption, these fields can cause short-term harms. Artificial turf generates dust which may exacerbate children’s asthma.<sup>11,12</sup> Fields heat up to temperatures far higher than ambient temperature, reaching temperatures that are more than 70 degrees warmer than nearby grass; for example, 180 degrees when the temperature is in the high 90’s and 150-170 degrees on a sunny day when the air temperature is only in the 70’s.<sup>13,14</sup> We have measured the temperatures ourselves and been shocked by the results. These temperatures can cause heat stress and burns.

Fields made of crumb rubber have been marketed as reducing injuries compared to grass. However, research has shown that this is not the case. We have spoken to students terribly harmed by turf burn, and studies have indicated increased risk for some types of injuries, including joint, foot, and brain injuries.<sup>15,16,17</sup> That is the reason that only two Major League Baseball parks use artificial turf and why the men’s soccer World Cup is now always played on grass. In response to the demands of women soccer players, the Women’s World Cup will require grass in 2023.

### **Organohalogen Flame Retardants**

The National Academies of Sciences, Engineering, and Medicine issued their scoping plan to assess the hazards of organohalogen flame retardants (OFRs) last year.<sup>18</sup> The report concluded that OFRs can be divided into subclasses on the basis of chemical structure, physicochemical properties, and predicted biologic activity. As noted in their summary of the report:

*“The committee identified 14 subclasses that can be used to conduct a class-based hazard assessment and concluded that the best approach is to define subclasses as broadly as is feasible for the analysis; defining subclasses too narrowly could defeat the purpose of a class approach to hazard assessment.”*

We encourage you to convene a CHAP to use this scoping plan to evaluate OFRs and to develop regulations to address OFRs in children’s products, upholstered residential furniture, mattresses/mattress pads, and the plastic casing of electronic devices. In addition, it is essential to consider current flammability standards to determine if there are changes that would improve their safety from chemical exposures as well as exposures during a fire.

OFRs are not bound to products to which they are added, so they migrate out of products and into dust. This allows them to get onto our skin and food and into the air. Because of their widespread use and the long-lasting nature of OFRs, consumers are continuously exposed to OFRs<sup>19</sup> and many bioaccumulate in our food supply.<sup>20,21</sup> As a result, OFRs are present in nearly all people in the U.S.<sup>22,23</sup> For these reasons, CPSC should focus on the potential for hormone disruption, altered brain development, reduced ability to get and stay pregnant, and the timing of

puberty.<sup>24,25</sup> While not all OFRs have been adequately studied to determine whether all are unsafe, those that have been sufficiently studied have proved to be harmful to health.

We share the Commission's concerns about fire hazards as well, but there is evidence that these flame retardants may not be effective at preventing deaths in real world situations.<sup>26,27</sup> When the chemicals burn during a fire, the inhaled smoke is more toxic to humans, and exposures could result in serious harms, including death.

### **Helmets for Sport and Recreational Activities**

There are up to 3.8 million concussions reported each year related to sport or recreational activities, with most reported for children and adolescents.<sup>28</sup> This number is likely an underestimate.<sup>29</sup> We urge the CPSC to focus greater attention on the need to ensure the effectiveness of helmets intended to protect against brain injuries during athletic activities. Currently, CPSC only provides guidelines for bicycle helmets, even though many organized sports and recreational activities use helmets to reduce the risk for severe head injuries, including baseball, football, snow sports, skiing/snowboarding, and climbing. Unfortunately, these helmets are not necessarily designed to prevent mild concussions.<sup>30</sup> We encourage CPSC to consider how design changes could improve the ability of helmets to prevent severe head injuries as well as mild concussions, and to develop guidelines for helmets that reduce these risks without interfering with vision or hearing or other safety concerns.

### **Baby Products and Products Posing Risks to Young Children**

The CPSC is the major safeguard to protect infants and young children from unsafe products that are widely sold and inadequately studied. Crib bumpers and infant sleepers are two examples that have received CPSC attention but CPSC has not adequately protected families from the tragedies of infant deaths caused by these products.

There is nothing more tragic than when an infant or young child dies due to a product in the home that families or loved ones purchased because they erroneously assumed they were tested and found to be safe. The standard for these products should not be based on the number of deaths per year, but rather the 1) risk to benefit ratio of the product and 2) whether regulations or restrictions would make the product safer. In the case of crib bumpers, they have no benefit. In the case of inclined infant sleepers, products were sold that were promoted as superior to other available products but in fact had no comparative benefits and were less safe.

Furniture that tips over and home elevators are two other examples of products that have resulted in deaths of young children. In both cases, CPSC should do more to prevent the sale of products that can be redesigned or modified to make them safe.<sup>31</sup>

### **Liquid Nicotine Packaging**

We agree with other public health and consumer organizations that have urged CPSC to immediately remove from the market dangerous liquid nicotine products lacking the child-resistant packaging and flow restrictors required under the Child Nicotine Poisoning Prevention Act of 2015. The law requires the CPSC to enforce a mandatory child-resistant packaging standard for liquid nicotine containers, including the use of flow restrictors.

Liquid nicotine is a highly toxic product that can seriously harm or kill children. Since liquid nicotine can be quickly absorbed through the skin, flow restrictors are an essential safeguard to reduce the risk of nicotine poisoning in children.

Effective CPSC enforcement measures to remove noncompliant products from the market are long overdue, and that enforcement should be an immediate priority.

## Final Thoughts

CPSC is the only federal agency whose mission is to protect children and adults from harmful products used in their daily life. Flame retardants and lead and many different chemicals in artificial turf and playground surfaces and equipment get into the air and dust and thus into our bodies. These chemicals tend to have greater risks for fetuses and children. There are large gaps in our knowledge about the chemicals in the products on the market, because the companies do not provide that information to the public. Ideally, the potential health impact of all of these chemicals would be evaluated in the final product before it was sold. If that doesn't happen, CPSC must do more to identify the health risks as soon as possible after children and adults have been exposed.

Too often, the lack of independently funded and publicly available research has been used to mislead the public. Claims that “there is no evidence of harm” are misunderstood to mean “there is no harm.”

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

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## Consumer Federation of America

May 1, 2020

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 2021 and/or 2022”

Acting Chair Adler, Commissioners Baiocco, Feldman and Kaye, I appreciate the opportunity to provide testimony about the Consumer Product Safety Commission’s (CPSC’s) agenda and priorities for Fiscal Year (FY) 2021 and 2022. I am Rachel Weintraub, Legislative Director and General Counsel at Consumer Federation of America (CFA). CFA is a non-profit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education.

The CPSC is an incredibly important independent agency. Its mission impacts every American, every day: to protect the public from unreasonable risks of injury or death associated with the use of consumer products. The CPSC has numerous tools to fulfill this mission and all of these tools must be used singularly or in combination to effectively protect consumers. For the CPSC to fulfill its mission, it relies upon the authority Congress granted to it through the passage of the Consumer Product Safety Act. The CPSC’s mission relies upon Agency action to issue mandatory standards, assess civil and criminal penalties, work on voluntary standards, conduct recalls, and educate consumers. The use of these tools, in combination, has historically led to the most effective consumer protections.

To effectively use its 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 hope that the Agency increases its focus on mandatory standards. For example, the FY 2020 Operating Plan included 12 mandatory standards in various stages of rulemaking, while the FY 2021

Budget Request<sup>1</sup> includes 5 such rulemakings. Acknowledging that some of the rulemakings in 2020 will be finalized, the decrease in the number does indicate that the CPSC can and should dedicate at least the same resources to the same number of rulemaking proceedings, and not less, in FY 2021. It is imperative for consumers and for the regulated community that the CPSC's laws are enforced rigorously and consistently and that all of the tools Congress gave to the CPSC are used.

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

## **A. Product Safety Issues**

### **I. Window Coverings**

In December of 2019, a new version of the window covering voluntary standard went into effect, which for the first time, requires some window coverings to be cordless. The standard requires window coverings sold as stock products (products sold "as is" in terms of color, design features, size) to be free of dangerous accessible cords. While it is significant that a subset of window coverings will, for the first time, be cordless, there is much more work to do to prevent consumers from the strangulation hazards posed by corded window coverings.

This updated version of the American National Standards Institute/Window Covering Manufacturers Association (ANSI/WCMA) standard was preceded by decades of mounting deaths and injuries caused by window covering cords, and extensive advocacy efforts by CFA, Parents for Window Blinds Safety, the American Academy of Pediatrics and others to protect children from the strangulation hazard posed by these cords. As a recently published Pediatrics journal article reported, approximately eleven children die and 80 children are treated for entanglement and near fatal injuries every year as a result of window cord strangulation.

We are concerned that non-compliant products are being sold online and that hazardous corded stock inventory will be liquidated throughout 2020. Further, the CPSC should rigorously monitor the marketplace to ensure that loopholes do not exist that allow for more products to be considered custom, which would minimize the effect of the standard. CFA's initial research has found some evidence of online retailers selling stock products with cords and failing to provide appropriate warnings. The CPSC should prioritize reducing deaths and injuries from corded window coverings and should take steps to ensure that there is full compliance with the voluntary standard and work to ensure the immediate development of an effective voluntary standard that limits the strangulations risks posed by custom products.

## **II. Crib Bumper Pads and Infant Sleep Products**

### **A. Crib Bumpers**

After over a decade of inaction by the CPSC on the hazards posed to babies by crib bumpers, we applaud the agency's recent action under section 104 of the Consumer Product Safety Improvement Act to promulgate a mandatory standard for crib bumper pads that includes a permeability or airflow standard and a test method for the performance standard. The CPSC's staff previous

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<sup>1</sup> U.S. Consumer Product Safety Commission. (2020, February 10). Fiscal Year 2021 Performance Budget Request to Congress. Retrieved from [https://www.cpsc.gov/s3fs-public/FY-2021-Congressional-Justification.pdf?F.cUurwpAwaSax3bpUnkeNvhhUC\\_A5mXz](https://www.cpsc.gov/s3fs-public/FY-2021-Congressional-Justification.pdf?F.cUurwpAwaSax3bpUnkeNvhhUC_A5mXz) (page 24)

recommendation for a mandatory standard was inadequate because it allows padded crib bumpers to remain on the market without considerations of air flow permeability. To protect consumers, a standard should include a permeability or airflow standard that includes a test method and performance standard. In addition to the air flow test, the CPSC should consider eliminating padding in these products, require bumpers to allow air flow, requiring bumpers to be a thin layer of fabric at most, under a ¼ inch rather than the two inches now permitted by the ASTM standard. While the CPSC included some research on air flow and permeability in the Staff Briefing Package it did not develop a performance standard nor a test method. We urge the CPSC to develop this critical information. We also applaud the CPSC for holding a briefing on crib bumper pads this year.

## **B. Infant Sleep Products**

CFA strongly supports the language of the Commissions’ Supplemental Proposed Rule (Supplemental NPR) of infant sleep products. We applaud that the scope is now “infant sleep products” and not “inclined sleep products.” We further support the definition of infant sleep products as included in the Supplemental NPR defined as “products that provide sleeping accommodations for infants and are not currently covered by bassinets/cradles, cribs (full-size ad non-full size), play yards, and bedside sleepers, as a durable infant or toddler product under section 104(f) of the CPSIA.”<sup>2</sup> The term “inclined sleep product” was inherently confusing and misleading to parents since babies should sleep on a flat surface. The American Academy of Pediatrics’ (AAP) Safe Sleep Guidelines state, “Recommendations for a safe sleep environment include supine positioning, the use of a firm sleep surface, room-sharing without bed-sharing, and the avoidance of soft bedding and overheating.”<sup>3</sup> Since babies should only sleep on a flat surface, the category of infant products that contradicted that message by their existence in the marketplace proved problematic and unsafe.

CPSC has reports of 73 deaths from infant inclined sleep products: 14 deaths were reported to the CPSC before the 2017 Notice of Proposed Rulemaking (NPR) and 59 deaths were reported since the 2017 NPR through June 30, 2019. In addition, there were 392 non-fatal incidents reported. However, recently, Consumer Reports has documented a total of 92 infant inclined sleep product deaths.<sup>4</sup> These deaths and injuries were caused in large part by the design of the sleeping products. Babies rolled over partially or fully from their backs. Some of these babies died as a result of suffocation and asphyxiation.<sup>5</sup>

These suffocation and asphyxiation deaths are explained by a report authored by Dr. Mannen who was commissioned by the CPSC to conduct research on the design of infant inclined sleep products. One of Dr. Mannen’s findings was that “inclined surfaces and inclined sleep products resulted in significantly higher muscle activity of the turn core muscle, which may lead to quicker fatigue and suffocation if an infant finds themselves prone in an incline sleep product.”<sup>6</sup> Dr. Mannen also found that “none of the

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<sup>2</sup> U.S. Consumer Product Safety Commission, Safety Standards for Infant Sleep Products, Federal Register, Vol. 84, No. 218, Tuesday, November 12, 2019, at 60950.

<sup>3</sup> American Academy of Pediatrics, Task Force On Sudden Infant Death Syndrome. (November, 2016). SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment. Retrieved from: <https://pediatrics.aappublications.org/content/138/5/e20162938>

<sup>4</sup> Peachman, R. R. (2020, March 11). New Evidence Shows More Infant Deaths Tied to Inclined Sleepers Than Previously Reported. Retrieved from <https://www.consumerreports.org/child-safety/new-evidence-shows-more-infant-deaths-tied-to-inclined-sleepers-than-previously-reported/>

<sup>5</sup> U.S. Consumer Product Safety Commission, Safety Standards for Infant Sleep Products, Federal Register, Vol. 84, No. 218, Tuesday, November 12, 2019, at 60953.

<sup>6</sup> Ibid. at 60954.

inclined sleep products that were tested and evaluate as a part of this study are safe for infant sleep.”<sup>7</sup> Dr. Mannen found that a 20 degree incline “puts babies at risk for muscle fatigue and suffocation,”<sup>8</sup> while a “10 degree incline does not significantly impact infant motion or muscle activity.”<sup>9</sup>

The result of Dr. Mannen’s study effectively serves as the basis for the recommended strengthening changes to ASTM F3118. The CPSC, in the Supplemental NPR changes the acceptable degree incline from 10 to 20 degrees, to 10 degrees or lower since the Mannen study finds that babies should not sleep at an incline greater than 10 degrees. CFA strongly supports this change. The CPSC also made changes to the introduction and the scope to address a broader number and type of infant sleep products on the market, modified the definition of accessory, compact, infant inclined sleep product and newborn inclined sleep products to remove the term, “inclined,” removed performance and test methods except for new modified requirements, and includes that infant sleep products meet 16 CFR 1218 Safety Standards for Bassinets and Cradles “because the standard is an established standard for products that provide sleep accommodations for infants, and the standard addresses the hazard associated with inclined sleep by limiting the seat back angle to 10 degrees or less.”<sup>10</sup> CFA strongly supports all of these strengthening changes to the existing ASTM F3118. All of these changes are based on sound science and will protect the lives of infants.

### **III. Flame Retardants in Consumer Products**

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

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

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

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<sup>7</sup> U.S. Consumer Product Safety Commission, Safety Standards for Infant Sleep Products, Federal Register, Vol. 84, No. 218, Tuesday, November 12, 2019, at 60953.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid at 60956.



While the CPSC has voted to move forward with our petition and has acknowledged that the CPSC has clear authority under the Federal Hazardous Substances Act to regulate potentially toxic chemicals, that there is clear legal precedent for the CPSC to regulate a class of chemicals, and that there is strong scientific evidence documenting the hazards posed to consumers by these chemicals, a Chronic Hazard Advisory Panel (CHAP) process has been convened to protect consumers from the health hazards posed by flame retardants, while not diminishing fire safety protections. We urge the Commission to take significant steps to reduce the risks posed by these chemicals.

#### **IV. Internet of Things- Connected Products**

The research firm Gartner estimated that by the end of 2017 there would be 8.4 billion “connected things” in use worldwide, of which more than 5 billion would be consumer applications, and that by the year 2020 these numbers will have more than doubled.<sup>11</sup> As more and more consumer products are connected, it is imperative that the CPSC lead efforts to address and prevent product safety risks posed by connected products.

While the Internet of Things (IoT) offers many potential benefits for consumers, there are many concerns as well, including concerns about safety and security. It is crucial for policymakers to put adequate protections in place.

The CPSC held a hearing in May 2018 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.<sup>12</sup> Finally, and unfortunately, we know of reports<sup>13</sup> that an electronic scooter’s Bluetooth module was hacked and that the hacker was able to control the braking and

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<sup>11</sup> van der Meulen, R. (2017, February 7). Gartner Says 8.4 Billion Connected "Things" Will Be in Use in 2017, Up 31 Percent From 2016. Retrieved from <https://www.gartner.com/en/newsroom/press-releases/2017-02-07-gartner-says-8-billion-connected-things-will-be-in-use-in-2017-up-31-percent-from-2016>

<sup>12</sup>Kaye, E. F. (2019, January 31). Statement of Commissioner Elliot F. Kaye Regarding a Framework of Safety for the Internet of Things. Retrieved from <https://www.cpsc.gov/about-cpsc/commissioner/elliott-f-kaye/statements/statement-of-commissioner-elliott-f-kaye-regarding-a>

<sup>13</sup> Newman, L. H. (2019, February 12). The Xiaomi M365 Scooter Can Be Hacked to Speed Up or Stop. Retrieved from <https://www.wired.com/story/xiaomi-scooter-hack/>



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.

## V. Liquid Nicotine

According to a 2018 article in *Pediatrics*,<sup>14</sup> there were 8,269 liquid nicotine exposures among children less than six 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 5,223 human exposures to e-cigarettes and liquid nicotine reported to poison centers and 659 reports in 2020, as of February 29, 2020.<sup>15</sup> The Child Nicotine Poisoning Prevention Act became law in January of 2016 and gave the CPSC the authority to ensure that packaging of liquid nicotine complies with the Poison Prevention Packaging Act. Unfortunately, the CPSC has struggled to effectively enforce this law. Initially the CPSC misinterpreted the start date of the law, unnecessarily delaying application of this important rule to all products on the marketplace. Compounding that delay, the CPSC then did not require the use of flow restrictors in its initial 2018 guidance letter to industry. While we are encouraged that the CPSC has since clarified that the law requires flow restrictors and given industry notice of the test it will use for enforcing that standard, we remain concerned about the lack of vigorous enforcement of this important law, given that clearly noncompliant products remain ubiquitously available on the market. We urge the Commission to immediately and effectively enforce the law, monitor the market and take enforcement actions for those products that don't comply.

## VI. Electric Scooters

The growth of electric scooters (or e-scooters) across the United States has been profound. Along with increased numbers of these products across the country are increased reports of injuries. According to a January 202 Journal of the American Medical Association Article,<sup>16</sup> “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%).”<sup>17</sup> <sup>18</sup> The CPSC, however, has not released data on electric scooters nor publicly announced efforts to take action to monitor, investigate, track or reduce incidents. The CDC and the Austin Public Health Department conducted an epidemiological investigation of these incidents that was published in April of 2019<sup>19</sup> 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/feet),

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<sup>14</sup> Govindarajan P, Spiller HA, Casavant MJ, et al. E-Cigarette and Liquid Nicotine Exposures Among Young Children. *Pediatrics*. 2018;141(5):e20173361

<sup>15</sup> American Association of Poison Control Centers. (2020, February 29). Electronic Cigarettes and Liquid Nicotine Data. Retrieved from <https://piper.filecamp.com/uniq/plVPfHvxYN1g6laz.pdf>

<sup>16</sup> 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

<sup>17</sup> Mihalcik, C. (2020, January 9). Electric scooter injuries are sending more and more people to the hospital. Retrieved from <https://www.cnet.com/news/electric-scooter-injuries-are-sending-more-and-more-people-to-the-hospital/>

<sup>18</sup> Ibid citing the JAMA study mentioned above.

<sup>19</sup> Austin Public Health, & Centers for Disease Control and Prevention. (2019, April). DOCKLESS Electric SCOOTER-RELATED INJURIES STUDY. Retrieved from [https://austintexas.gov/sites/default/files/files/Health/Web\\_Dockless\\_Electric\\_Scooter-Related\\_Injury\\_Study\\_final\\_version\\_EDSU\\_5.14.19.pdf](https://austintexas.gov/sites/default/files/files/Health/Web_Dockless_Electric_Scooter-Related_Injury_Study_final_version_EDSU_5.14.19.pdf)

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%).”<sup>20</sup> “Almost half (80) of the injured riders had a severe injury.”<sup>21</sup> The study also determined “that there were 20 individuals injured per 100,000 e-scooter trips taken during the study period.”<sup>22</sup> The study further determined that, “[t]hese injuries may have been preventable. Only one of 190 injured scooter riders was wearing a helmet.”<sup>23</sup> The CPSC should engage in this type of investigation and lead efforts to enforce reporting obligations, recall unsafe products, track and release incident data, support policies that reduce the severity and incidence of injury and death, and educate consumers about safe operation of these vehicles.

## **VII. Portable Generators**

Portable generators in or near homes pose a hidden hazard to consumers who do not realize the serious risk of carbon monoxide (CO) poisoning that these products pose. On average, there are about 70 deaths and several thousand non-fatal injuries every year associated with CO poisoning from portable generators.<sup>24</sup>

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.<sup>25</sup> Currently two voluntary standards (UL 2201 and ANSI/PGMA G300) address the safety aspects of portable generator carbon monoxide emissions.

We urge the CPSC to expeditiously complete and release the findings of its evaluation of the efficacy of each standard, assess the impact of these standards on the marketplace, take enforcement actions to protect consumers from products that do not comply with an adequate standard, and if the determination is made that neither of the two voluntary standards are adequate or not complied with, the Commission should issue a final mandatory safety standard addressing the risk of carbon monoxide poisoning associated with these products.

## **VIII. Senior Safety**

In 2014, under Commissioner Adler’s leadership, the CPSC introduced a Senior Safety Initiative. At that time 65% of product related deaths occurred to seniors who made up 13% of the population. The CDC also documents that in 2015, medical costs for falls, just one injury pattern, of many, that senior’s experience, totaled more than \$50 billion.<sup>26</sup> The CDC predicts that since the U.S. population is aging, both the number of falls and the costs to treat fall injuries are likely to rise. The population of seniors is growing, predicted in 2030 to comprise 20% of the population and the fall death rate for

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<sup>20</sup> Austin Public Health, & Centers for Disease Control and Prevention. (2019, April). DOCKLESS Electric SCOOTER-RELATED INJURIES STUDY. Retrieved from [https://austintexas.gov/sites/default/files/files/Health/Web\\_Dockless\\_Electric\\_Scooter-Related\\_Injury\\_Study\\_final\\_version\\_EDSU\\_5.14.19.pdf](https://austintexas.gov/sites/default/files/files/Health/Web_Dockless_Electric_Scooter-Related_Injury_Study_final_version_EDSU_5.14.19.pdf) (page 5)

<sup>21</sup> Ibid at p. 6.

<sup>22</sup> Ibid at p. 10.

<sup>23</sup> Ibid at p, 11.

<sup>24</sup> CPSC, Proposed Rule: Safety Standard for Portable Generators, 81 Fed. Reg. 83556-83615 (Nov. 21, 2016).

<sup>25</sup> <https://www.federalregister.gov/documents/2016/11/21/2016-2692/safety-standard-for-portable-generators>

<sup>26</sup> Centers for Disease Control and Prevention. (2019, September 17). Falls Data. Retrieved from <https://www.cdc.gov/homeandrecreationalsafety/falls/fallcost.html>

older adults increased 30% in the United States from 2007 through 2016.<sup>27</sup> Thus, vastly more must be done by the CPSC and others to address this issue. Certain consumer products, such as liquid laundry packets have caused numerous deaths of seniors, yet the current voluntary standard has a focus exclusively on children. CPSC should lead efforts, based on their own data collection efforts, to ensure that voluntary standard efforts, mandatory standard efforts, enforcement and other actions, contemplate senior use and injury and death patterns, and revive, update, and prioritize a new Senior Safety Initiative.

### **IX. High Powered Magnet Sets**

We were alarmed by the United States Court of Appeals for the Tenth Circuit decision that struck down the CPSC's high powered magnet set rule that we supported strongly. We are concerned by the consequences of that decision. According to poison control centers in a January 2020 update, "This has led to six times more magnet ingestions in 2019 – nearly 1,600 cases reported to U.S. Poison Control Centers – than in 2016."<sup>28</sup> Current voluntary standard efforts involve warnings and changes to packaging but we are concerned that these efforts are not sufficient to prevent the increase in magnet ingestions. We urge that the CPSC take immediate action to promulgate a strong mandatory standard to protect children from the harms posed by these products, and carefully monitor the marketplace and incidents.

### **X. Furniture Tip-Overs**

According to the CPSC's most recent data, every two weeks, a child dies as a result of a piece of furniture, appliance or television falling on him or her. Further, each year, more than 38,000 children are injured as a result of a piece of furniture, appliance, or television tipping over. Between 2000 and 2011, there were 363 tip-over related deaths. Eighty-two percent of those deaths involved children younger than eight years old.<sup>29</sup> While the ASTM standard for furniture has been modestly strengthened, much more needs to be done to improve the standard. Further, increased efforts are necessary to bring all of the stakeholders together to collectively address this increasingly problematic, multifaceted and dangerous injury pattern. We support the #AnchorIt campaign that seeks to educate consumers about the need to secure furniture to the wall. Further, we are deeply concerned about the inadequacy and ineffectiveness of the Ikea MALM dresser recall and urge the CPSC as well as IKEA to do much more to reach out to consumers to encourage them to return the dressers and obtain a refund. We applaud the recent furniture recalls that the CPSC has announced and we urge the CPSC to move expeditiously on an effective mandatory standard. We also support legislation, such as the Sturdy Act, to require the CPSC to promulgate a strong mandatory standard that will reflect real world use, make furniture stable, and prevent tip-overs.

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<sup>27</sup> Centers for Disease Control and Prevention. (2017, February 10). Important Facts about Falls. Retrieved from <https://www.cdc.gov/homeandrecreationsafety/falls/adultfalls.html>

<sup>28</sup> Mekonnen, S. (2020, January 9). 'Toy' Magnets Are Dangerous for Children. Retrieved from <https://www.poison.org/articles/2012-oct/toy-magnets-are-dangerous-for-children>

<sup>29</sup> CPSC Report, Preliminary Evaluation of Anchoring Furniture and Televisions Without Tools, May 2015.

Available on the web at: <http://www.cpsc.gov/PageFiles/182505/Tipover-Prevention-Project-Anchors-withoutTools.pdf>

## XI. Laundry Packets

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

“Some children who have put the product in their mouths have had excessive vomiting, wheezing and gasping. Some get very sleepy. Some have had breathing problems serious enough to need a ventilator to help them breathe. There have also been reports of corneal abrasions (scratches to the eyes) when the detergent gets into a child’s eyes.”<sup>30</sup>

In 2020, thus far, according to the American Association of Poison Control Centers, there have been 1,498 children five and younger exposed to laundry packets.<sup>31</sup> In 2019, exposures increased to 10,014 from 9,319 in 2018.<sup>32</sup> In 2017, 10,576<sup>33</sup> children five and younger were exposed to laundry packets, in 2016, 11,545 children five 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 five and younger.<sup>34</sup> We urge the CPSC to investigate why the number of ingestions increased from 2018 to 2019.

According to a Consumer Reports article from 2017,<sup>35</sup> 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.”<sup>36</sup>

While the voluntary standard addresses the packaging container of the packets to some degree, the burst strength and flavor of the packets, and includes warning labels, more should be done. CFA and other organizations have urged that the voluntary standard not only ensure that the outer packages are child resistant, but also require that the packets are individually wrapped to prevent ingestion or eye exposure. Multiple layers of safety are needed to protect children from hazards posed by laundry packets – particularly given that a significant number of children have gained access to loose detergent packets, and

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<sup>30</sup> Laundry Detergent Packets, American Association of Poison Control Centers, <http://www.aapcc.org/alerts/laundry-detergent-packets/>

<sup>31</sup> American Association of Poison Control Centers. (2020, February 29). Laundry Detergent Packets (unit dose liquid) Data. Retrieved from <https://piper.filecamp.com/uniq/Qii8gHFjNYgMMNSj.pdf>

<sup>32</sup> Ibid.

<sup>33</sup> American Association of Poison Control Centers. (2020, March). Laundry Detergent Packets. Retrieved from <https://aapcc.org/track/laundry-detergent-packets>

<sup>34</sup> Ibid.

<sup>35</sup> Janeway, K. (2017, June 15). Liquid Laundry Detergent Pods Pose Lethal Risk for Adults With Dementia. Retrieved from <https://www.consumerreports.org/laundry-cleaning/liquid-laundry-detergent-pods-pose-lethal-risk/>

<sup>36</sup> Ibid.

when they do, injury can be almost immediate. Critically, all relevant data should be reviewed to determine whether the voluntary standard is effectively reducing incidents.

In addition, CFA believes that the most effective way to prevent laundry packet incidents is to require child-resistant packaging to cover liquid detergent packets; address the design and color of the packets, so that they aren't as attractive to children or adults; address the composition of the packets, so that the consequences of exposure are less severe; and ensure the adequacy of the warning labels, to properly inform consumers about the risk.

We further urge the CPSC to carefully monitor the incident data to ensure that incidents are decreasing. If the data indicates that the voluntary standard is not successfully addressing the hazard posed by laundry packets, we urge the CPSC to move forward with an effective mandatory standard.

## **XII. Recreational Off Highway Vehicles and All-Terrain Vehicles**

### **A. Recreational Off-Highway Vehicles (ROVs)**

ROVs pose hazards to consumers and the CPSC's staff has documented 171 reported fatal incidents and 3,200 unadjusted estimated number of injuries of Utility vehicles which include Recreational Off- Highway Vehicles in 2017.<sup>37</sup> In 2018, the CPSC states that its numbers are likely incomplete, but has reported 112 reported fatal incidence and 3,500 unadjusted estimated number of injuries.<sup>38</sup>

CFA and its partners documented 857 ROV fatalities between January 1, 2013 and March 30, 2020. We have documented 25 deaths in 2020 alone and 155 fatalities in 2019, we documented the highest recorded annual fatality count for ROVs in 2018, 171 fatalities. In 2017 we documented 151 deaths and in 2016 we documented 118 deaths. These numbers are likely underestimates as they are based solely on media reports and may grow as more data becomes available about additional deaths.<sup>39</sup>

We are concerned about the increasing number of ROV related fatalities, the increasing number of ROV recalls, and that more effective action is not being taken for known fire hazards posed by ROVs. First, CFA did an analysis<sup>40</sup> of off highway vehicle (OHV) recalls and found that over the past ten years, there have been 110 OHV recalls, and the number of recalls has increased from two recalls in 2010 to 24 recalls in 2017. We defined OHVs to include all-terrain vehicles (ATVs), recreational off-highway vehicles (ROVs), and utility task vehicles (UTVs). CFA's analysis of U.S. Consumer Product Safety Commission (CPSC) OHV recall reports since 2010 found that the highest number of recalls occurred during the past three years, from January 1, 2017 through January 1, 2019. 2017 has the most recalls of all the years analyzed. In addition, CFA analysis of CPSC OHV recall reports from January 1, 2010 through

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<sup>37</sup> Topping, J., & U.S. Consumer Product Safety Commission Staff. (2020, February). Retrieved from [https://www.cpsc.gov/s3fs-public/2018AnnualReportofATVRelatedDeathsandInjuries.pdf?VGaf1cuZ\\_D0SGxct2eRpZUwgcME4LKDY](https://www.cpsc.gov/s3fs-public/2018AnnualReportofATVRelatedDeathsandInjuries.pdf?VGaf1cuZ_D0SGxct2eRpZUwgcME4LKDY) (page 21)

<sup>38</sup> Ibid.

<sup>39</sup> Weintraub, R., & Roper, N. (2020, March). Off-Highway Vehicle Safety and Fatality Data · Consumer Federation of America. Retrieved from <https://consumerfed.org/off-highway-vehicle-safety/>

<sup>40</sup> Weintraub, R., & Roper, N. (2020, February 11). An Analysis of OHV Recalls: Increasing Number of OHVs Pulled from Market due to Safety Concerns · Consumer Federation of America. Retrieved from <https://consumerfed.org/analysis-of-ohv-recalls-increasing-number-pulled-due-to-safety-concern/>



December 18, 2018 found that 19 brands<sup>41</sup> were involved in the recalls, and the brand with the most recalls was Polaris.<sup>42</sup> CPSC reports identified at least 70 injuries and two deaths linked to OHVs that were subsequently recalled. Also, more than one and a half million<sup>43</sup> 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.<sup>44</sup>

The statement informs consumers about fires that have been caused by two models of Polaris ROVs. The joint statement includes, “[M]ost of the vehicles were voluntarily recalled by Polaris in April 2016 to address fire hazards. However, users of the vehicles that were repaired as part of the April 2016 recall, continue to report fires, including total-loss fires. The 2017 RZR’s were not included in the April 2016 recall, but these models have also experienced fires.” While it is critically important that the CPSC and Polaris warn consumers of this fire hazard, the statement does not provide consumers with enough information to protect themselves and their families. The statement includes that fires have been associated with the recalled ROVs, ROVs that have been previously repaired as part of the recall, and ROVs that have not been subject to the recall.

We are very concerned that consumers do not have the information needed to protect themselves from the fire hazard identified in the joint statement. We wrote a letter to CPSC urging action one month after this statement was issued.<sup>45</sup> We are concerned that Consumers could still be unwittingly are operating and riding ROVs that both Polaris and the CPSC know pose an unreasonable fire risk.

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<sup>41</sup> 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, the recall notices do not clearly identify the manufacturer.

<sup>42</sup> 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.

<sup>43</sup> 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.

<sup>44</sup> U.S. Consumer Product Safety Commission. (2017, December 19). Joint Statement of CPSC and Polaris on Polaris RZR 900 and 1000 Recreational Off-Highway Vehicles (ROVs). Retrieved from <https://www.cpsc.gov/Joint-Statement-of-CPSC-and-Polaris-on-Polaris-RZR-900-and-1000-Recreational-Off-Highway-Vehicles>

<sup>45</sup> <https://consumerfed.org/wp-content/uploads/2018/01/cfa-letter-to-cpsc-regarding-polaris-rov-fire-hazard.pdf>

We urge the CPSC to immediately provide clear information to consumers about ROVs that are catching fire, as mentioned in the December 19, 2017 statement. We urge the Commission to immediately recall and stop sale of the ROVs mentioned in the statement that have been associated with fires but not previously subject to recall, to re-issue recalls for the vehicles previously recalled and previously repaired as part of the recall program, to conduct a thorough evaluation as to why these fires are occurring and implement solutions to prevent these fires. The voluntary standards for these vehicles must be reevaluated to address these problems. That consumers are continuing to operate products that are known to have caused fires is creating a significant safety risk to consumers.

Finally, we urge the CPSC to issue injury and fatality statistics for ROVs annually. The CPSC releases this type of data for ATVs and it is an important addition to the public health research on ATVs. We need that same data for ROVs every year and we urge the CPSC to conduct this analysis and release it annually.

### **B. All-Terrain Vehicles**

According to the most recent data released by the CPSC<sup>46</sup> there have been 15,744 ATV-related fatalities occurring between 1982 and 2018. In 2018, there were an estimated 81,800 ATV-related, emergency department-treated injuries in the United States. An estimated 26 percent of these involved children younger than 16 years of age. The estimated number of ATV related fatalities was 658 in 2017, though the 2017 data is not considered complete and the number of fatalities will almost certainly increase as more data is received.

In 2018, ATVs killed at least 27 children younger than 16, accounting for 10 percent of ATV fatalities. Forty-four percent of children killed were younger than 12 years old. Children under 16 suffered an estimated 21,700 serious injuries in 2018. This represents 26 percent of all injuries.

In March 2014, CFA released a report, “ATVs on Roadways: A Safety Crisis.” CFA evaluated laws from all fifty states and the District of Columbia and found that, in spite of warnings from manufacturers, federal agencies, and consumer and safety advocates that ATVs are unsafe on roadways, for several years an increasing number of states have passed laws allowing ATVs on public roads. In April of 2015, we updated the report to include recreational off-highway vehicles (ROVs) and found that all states that allow ATVs on roads also allow ROVs on roads. We lead a coalition that seeks to engage municipalities, counties, states, and other entities that are considering increasing OHV on road access.

The design of ATVs makes them incompatible with operation on roads. ATVs have a high center of gravity, and narrow wheel bases, which increase the likelihood of tipping when negotiating turns. The low-pressure knobby tires on ATVs are explicitly designed for off-road use and may not interact properly with road surfaces. Data from the CPSC and from the National Highway Transportation Safety Administration’s (NHTSA) Fatality Analysis Reporting System (FARS) documents that a majority of ATV deaths take place on roads. Similarly, according to the CPSC’s data from 2007, as

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<sup>46</sup> Topping, J., & U.S. Consumer Product Safety Commission Staff. (2020, February). Retrieved from [https://www.cpsc.gov/s3fs-public/2018AnnualReportofATVRelatedDeathsandInjuries.pdf?VGaf1cuZ\\_D0SGxct2eRpZUwcgME4LKDy](https://www.cpsc.gov/s3fs-public/2018AnnualReportofATVRelatedDeathsandInjuries.pdf?VGaf1cuZ_D0SGxct2eRpZUwcgME4LKDy)

analyzed by the Insurance Institute for Highway Safety, 492 of the 758 deaths for which location was identified, or 65% of ATV fatalities, occurred on roads.

The CPSC must prioritize the issue of ATV safety. The CPSC's ATV rulemaking was required to be finalized in August of 2012. We urge the CPSC to complete the rulemaking which should include a serious analysis of the safety hazards posed to children by ATVs, the adequacy of existing ATV safety training and training materials, and efforts to ensure that children are not riding ATVs that are too large and powerful for them. We also urge the CPSC to be a strong voice in opposing the operation of OHVs on roads, and to be a leader in educating consumers about the dangers of on-road OHV use. Additionally, the CPSC could improve ATV death data by including how many deaths occur on private versus public roads and should seek to reduce the significant time lags in releasing ATV death and injury data.

## **B. Consumer Product Safety Commission Authority and Enforcement**

### **XIII. 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 penalties<sup>47</sup> and that in fiscal year 2018 there was one civil penalty.

- In FY 2020, thus far, the CPSC has collected no civil penalties; and no criminal penalties.
- In FY 2019, the CPSC has collected two civil penalties, ranging from \$1,000,000 to \$3,850,000; and no criminal penalties.
- In FY 2018, the CPSC collected one civil penalty for \$27,250,000; and no criminal penalties.
- In 2017, the CPSC collected six civil penalties, ranging from \$3,800,000 to \$5,800,000; and no criminal penalties.
- In 2016, the CPSC collected five 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 four civil penalties, ranging from \$600,000 to \$3,100,000; and no criminal penalties.
- In FY 2013, the CPSC collected seven 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 dollars; and no criminal penalties.

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<sup>47</sup> Stericycle Expert Solutions. (n.d.). RECALL INDEX Q4 2017. Retrieved from <https://www.stericycleexpertsolutions.com/wp-content/uploads/2018/02/ExpertSolutions-RecallIndex-Q42017.pdf>



- 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 seven civil penalties, ranging from \$25,000 to \$2,050,000; 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.<sup>48</sup> 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.

#### **XIV. Section 6(b) of the Consumer Product Safety Act**

Section 6(b) of the Consumer Product Safety Act is one of the most anti-consumer, anti-transparency provisions in existing laws. Section 6(b) requires that before the CPSC can name a company publicly, it must seek their permission.

The impact of this provision is vast. While the CPSC has historically collected consumer complaints, most are hidden from the public for long periods of time until and if a recall is announced. This means that too often, consumers are unwittingly using products that the CPSC and manufacturers know pose safety hazards. Further, the reach of 6(b) impacts the CPSC's ability to name specific products in their research, which occurred with lead kits in 2007.<sup>49</sup> 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,<sup>50</sup> 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.

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<sup>48</sup> Department of Justice Office of Public Affairs. (2019, March 29). Two Corporate Executives Indicted in First-Ever Criminal Prosecution for Failure to Report Under Consumer Product Safety Act. Retrieved from <https://www.justice.gov/opa/pr/two-corporate-executives-indicted-first-ever-criminal-prosecution-failure-report-under>

<sup>49</sup> U.S. Consumer Product Safety Commission. (2016, August 23). CPSC Staff Study: Home Lead Test Kits Unreliable. Retrieved from <https://www.cpsc.gov/id/node/19866>

<sup>50</sup> Suchy, A., & U.S. Consumer Product Safety Commission Staff. (2016, August). Product Instability or Tip-Over Injuries and Fatalities Associated with Televisions, Furniture, and Appliances; 2016 Report. Retrieved from [https://www.cpsc.gov/s3fs-public/Product%20Instability%20or%20Tip%20Over%20Report%20August%202016\\_1.pdf](https://www.cpsc.gov/s3fs-public/Product%20Instability%20or%20Tip%20Over%20Report%20August%202016_1.pdf)

## **XV. 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 also urge the CPSC to work with manufacturers of infant and baby products to maximize awareness about product registration.

The CPSC should lead efforts to increase direct notice to consumers; expand the use of marketing strategies and technology; consider consumer and business incentives to promote effective recalls and consider disseminating additional information on best practices. The Commission should also use all of its tools to communicate about recalls such as sharing every recall on Twitter and Facebook, something that Kids In Danger (KID) identified in their recent *2020 Children's Product Recalls*,<sup>51</sup> that the agency and manufacturers have not been doing sufficiently.

## **XVI. CPSIA Implementation**

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

Because of the rules promulgated by the CPSC, numerous infant durable products including full-size cribs, non-full-size cribs, infant walkers, play yards, and strollers must now meet new robust mandatory standards. The crib standard which went into effect in June of 2011 is of particular significance as it is the strongest crib standard in the world and offers our nation's infants a safe sleep environment, which their parents have a right to expect. For all of these products, third party testing and certification are required.

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

## **XVII. SaferProducts.gov**

We appreciate that the Commission held a hearing on SaferProducts.gov in March of 2019 and responded positively to the recommendations Consumer Federation of America, Kids In Danger, and

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<sup>51</sup> Kids in Danger (KID). (2020, March). Seeking Safety: 2019 Children's Product Recalls. Retrieved from <https://kidsindanger.org/wp-content/uploads/2020/03/Seeking-Safety-2020.pdf>

Consumer Reports made to the Commission. While the Commission immediately provided a link to SaferProducts.gov on CPSC's web page, we urge the Commission to take additional action and share their plan to update SaferProducts.gov more broadly and include, at a minimum, recommendations that we made at the SaferProducts.gov hearing based on CFA's, KID's and other' analysis of SaferProducts.gov. CFA recommends that the CPSC:

- **Increase use:** Develop, 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.

### **XVIII. 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.

### **XIX. 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.



U.S. Consumer Product Safety Commission

Attn: Alberta E. Mills, Secretary

4330 East-West Highway

Bethesda, MD 20814

**TOPIC: Agenda and Priorities FY 2021 and/or 2022**

May 1, 2020

Dear CPSC:

We at Parents Against Tip-overs are writing to urge you to keep furniture tip-overs your highest priority in the 2021/2022 fiscal years. While progress is slowly being made, it simply isn't moving quickly enough. We have gained great momentum on learning more about tip-overs and exploring possible solutions, but it's time for action. Children across the nation remain vulnerable to dresser tip-over incidents, especially given many states' stay at home orders due to the COVID-19 pandemic. As we all know, over 90% of tip-over fatalities happen within the home.

As we explore priorities moving forward, revisiting the Section 104 rulemaking would be a high, one as we see it. While it will not solve the tip-over problem entirely, it will cover thousands of dressers that are problematic today, and is at least some level of progress. Of the non-Ikea dresser deaths that have happened among our Parents Against Tip-overs members, almost all were purchased at a reputable juvenile product store, and marketed for infant/children use. We urge you to reintroduce this.

We would also like to see the dresser testing that the CPSC is currently undergoing remain a top priority so it can be used to determine final rulemaking. We would like to see the dresser testing process move quicker and be more transparent, as well as better communicated with stakeholders. Additionally, we would like to urge you to leverage our experiences in your research. For example, PAT learned at the F15.42 ASTM meeting in November 2019, that the CPSC would be conducting home studies as part of this research, yet we as parents were never asked any input. Asking a parent if they have ever witnessed their child climb on their dresser seems ineffective, especially given the fact that none of PAT's members had witnessed that before our children died. Why were parents who have nationally spoken out on furniture tip-overs not involved in this? We believe there is valuable resources not being used in your research and urge you to consider incorporating them.

While we understand that the dresser testing process takes time, we feel the CPSC is simply not moving fast enough or using every tool possible to expedite this final rule. The Clothing Storage Unit Tip-overs ANPR was created in 2017. And to date, very little visible progress has been made. We believe the CPSC Commissioners agree now that the ASTM sub-committee F15.42 is not solving this problem and it must be put in the hands of the CPSC to set the safety standard for furniture stability. Now it's time for action.

PAT has been meeting regularly with the Anchor It! staff. We appreciate the opportunity to have open communication with this team. We continue to voice our concern about the CPSC's odd social media tone, and have expressed concern over the effectiveness of it. Perhaps quirky memes are liked and shared, but we must ask, "Is the message actually reaching parents?" What data does the CPSC have that shows it's changing parent behavior and not just being shared because a government entity is developing strange social media content?

We have been encouraged by the dresser recalls that have taken place in recent months. We would ask the CPSC to continue to apply pressure to a company to take these units back instead of only handing out an anchor kit as a repair. We all witnessed Ikea's repair solution be ineffective when it took another child's life in 2016.

As we move into the next fiscal year ahead in uncharted COVID-19 territory, we look forward to seeing tip-overs remain one of your highest priorities. After all of the work that has been done to lay the foundation of solving the tip-over issue, please do not slow down. PAT will continue to offer our experiences, insight, and assistance in any way we possibly can.

Signed,

Janet D. McGee

Bereaved Mother

Parents Against Tip-overs

[www.stoptipovers.org](http://www.stoptipovers.org)

651-600-8229

[jmcgee652@outlook.com](mailto:jmcgee652@outlook.com)





May 1, 2020

Ms. Alberta Mills  
Office of the Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, Maryland 20814

**Re: CPSC Hearing, “Agenda and Priorities FY 2021 and 2022”**

Dear Chairman Adler and Commissioners:

On behalf of the National Retail Federation, I submit the following comments in connection with the agency’s pending Agenda and Priorities Hearing. We welcome our continued partnership with the CPSC to work toward our common goal of improving the safety of consumer products in the U.S. and would welcome any opportunity to discuss in more detail any of the issues raised herein.

The National Retail Federation, 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.

These are unprecedented times for our country and our planet. For the American retail industry, which directly or indirectly employs one out of every four Americans, it is nothing short of catastrophe. Not only are most non-food (or other “essential”) physical retail locations closed virtually nationwide, but the entire global supply chain has also been radically curtailed and, in many cases, shut down entirely.

Federal, state and local governments in the U.S. are stepping up and doing what they can to get us through this crisis. However, NRF suggests there are three specific areas in which the CPSC can and should do its part to join the collective effort to help mitigate this unprecedented situation.

**Recalls:** First, as the agency is well aware, conducting a product safety recall of any kind and with any agency at present is a tremendously difficult undertaking for retailers. In many cases, it is simply logistically impossible to execute the proffered or CPSC-demanded recall remedy. And in cases where a simple repair or replacement is the ideal option, in-person interaction may prohibit such, and an entire product refund is financially untenable.



NRF therefore respectfully requests that the CPSC formally grant necessary compliance discretion flexibility to retailers during the duration of the coronavirus pandemic when reviewing a proffered recall remedy by any retailer.

To the point, it is our understanding that, at present, the CPSC is demanding that recall press releases be issued even before the recalling company (often the retailer) has the ability to undertake whatever remedy has been agreed upon, with an expectation that an additional release and/or direct notice to consumers will be issued once the remedy logistics are in place.

In our view this is generally unnecessary for consumer safety and leads to additional, well-documented recall fatigue by consumers. Other than in the rare case where a product hazard may pose an imminent risk of serious injury or death, to alarm consumers about a less serious product hazard — and then inform them there is no current remedy available — simply reflects poor public policy.

**Role of retailers in corrective actions:** At this most difficult time for retailers, it is incumbent on the CPSC to undertake a very serious and thorough review of the actual role of retailers with regard to CPSC-involved product safety corrective actions (typically recalls).

NRF has for a number of years called into question the CPSC's growing emphasis on retailers as the "go-to" entities to conduct product recalls, even where the retailer is not also the importer of record. While legally entitled to do so, for the CPSC to demand that a retailer execute and pay for a recall, when it has not also directly imported the product, is intrinsically contrary to the agency's organic statutes, congressional intent and simple common sense.

In many cases, it is NOT the retailer that either designs, manufactures, oversees the manufacture of, tests, certifies, stores, ships or distributes products to consumers. It is therefore illogical and contrary to law to expect retailers acting only as such to be responsible when a manufacturing or design defect is discovered. While it may be more expedient for the CPSC to seek a recall first from a retailer, doing so at the present time can be crippling to many companies and of no immediate benefit to consumers or consumer safety.

**Crib bumper rulemaking:** Finally, NRF urges the CPSC to finalize the proposed new crib bumper/liner rule (CPSC-2020-0010). This important rule would in large measure adopt the existing consensus standard for such products, ASTM F1917-12, and is generally reflective of existing retailer policy regarding crib safety. However, we strongly urge that the Final Rule contain very strong, federal regulatory (as opposed to preamble) preemption language, in order to curtail the continuing proliferation of state and local laws seeking to ban such product in ways that may or may not be consistent with the pending new federal safety standard.

Further, this preemption should be retroactive for state and local laws already adopted. As with so many other product safety issues, while we respect the inherent power and right of states and localities to adopt consumer safety standards, it is far more effective and efficient for the federal government to adopt uniform standards whenever possible. The pending crib

National Retail Federation

May 1, 2020

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bumper/liner rule is a perfect example of how a strong, preemptive federal standard simply makes the most sense for consumers and the industry alike.

I appreciate the opportunity to submit these comments, as well as the close relationship NRF has had with the CPSC over the years. While we have communicated many other suggestions as to the activities and priorities of the agency, we believe the above points are the most critically important at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "David French". The signature is stylized and cursive.

David French  
Senior Vice President  
Government Relations





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Written Testimony of  
Remington A. Gregg  
For the  
U.S. Consumer Product Safety Commission  
May 1<sup>st</sup>, 2020

Public Citizen appreciates the opportunity to submit testimony with our recommendations for priorities that the U.S. Consumer Product Safety Commission (CPSC or Commission) should add to its agenda for Fiscal Years 2021 and 2022.<sup>1</sup> Public Citizen is a national non-profit organization with more than 500,000 members and supporters. We represent the public interest through legislative and administrative advocacy, litigation, research, and public education on a broad range of issues that include product safety and consumer rights in the marketplace.

Public Citizen is eager to see the CPSC increase transparency through less reliance on Section 6(b) of the Consumer Product Safety Act, increase the use of technology to advance the agency's mission, swiftly finalize rulemaking on important issues that have languished at the agency, and advocate strongly for more funding for the agency to carry out its important mission.

I. **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.**

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

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<sup>1</sup> Notice of Public Hearing, Commission Agenda and Priorities, 86 FR 12908 (March 5, 2020).

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. Last year, 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.<sup>2</sup> 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.”<sup>3</sup> Normally, such a generic name would not provide enough information to a consumer to know that a specific product may be in their home, but that is especially true for busy, sleep-deprived parents. As of March 2020, these infant inclined sleep products have been linked to 73 deaths.<sup>4</sup>

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 recent Public Citizen report found that 6(b)’s restrictions are time consuming and waste money that could be better spent keeping consumers safe.<sup>5</sup>

Earlier this year, U.S. Rep. Bobby Rush (D-Ill.) introduced the Safety Hazard and Recall Efficiency (SHARE) Information Act. This legislation would repeal the problematic provision of Section 6(b), which gives product manufacturers an effective veto-power over the CPSC by allowing them to go to court to stop the release of critical health and safety information.

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<sup>2</sup> 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/>.

<sup>3</sup> Remington A. Gregg, *Delay and Secrecy: How Section 6(b) of the Consumer Product Safety Act Keeps Consumers in the Dark* (June 24, 2019), available at <https://www.citizen.org/article/delay-and-secrecy/?eType=EmailBlastContent&eId=69ca5714-d2bf-46ad-af54-a518ed13b9ad>

<sup>4</sup> *Infant Inclined Sleepers: The Rise and Fall of a Dangerous Baby Product*, CONSUMER REPORTS, <https://www.consumerreports.org/product-safety/inclined-sleeper-safety/>.

<sup>5</sup> *Id.* at 3.

While we will work with Congress to repeal or at the very least reform 6(b), the Commission can play a role in increasing transparency into how often companies invoke 6(b) in order 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.

## **II. The Commission must collaborate with technologists to more effectively carry out its responsibilities.**

We are pleased that Congress required the Commission to create the Saferproducts.com database. The database serves a dual purpose. It gives consumers more information to enable them to avoid buying or continue to use dangerous products. The database also helps close the time gap between a manufacturer learning of a hazard and the information reaching consumers. While we continue to applaud the creation of the Saferproducts.gov, the website can become a more effective tool to avert death or injury to the public. 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.<sup>6</sup>

In addition to implementing those recommendations, creating a more effective database requires expertise that we do not believe is currently housed at the Commission. We applaud Sen. Jerry Moran (R-KS) for introducing the CPSC CIO Parity Act,<sup>7</sup> which would require the agency to hire a chief technologist who would help address this important issue among others, such as improving recall effectiveness rates, as well as transforming the Commission into a nimbler agency for our complex society.

## **III. The Commission should quickly finalize rulemaking that protect infants.**

While we believe that most federal agencies should suspend rulemaking unrelated to the COVID-19 crisis for the duration of national emergency declaration, we believe that the below rules, which have the unanimous support of the entire Commission, should be finalized with all deliberate speed to protect the safety of our nation's infants.

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<sup>6</sup> 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 social media presence, for example, it's highly popular @twitter handle, shows that the agency can use technology effectively).

<sup>7</sup> S. 1858, 116th Cong. (2019).

### *Inclined Sleep Products and Gates and Enclosures*

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

The infant sleep proposed rule limits the incline of infant sleep products to a maximum of 10 degrees for products that are not already addressed by another safety standard. We are troubled that thirty-four months passed between the posting of the initial rule and the submission date for the revised proposed rule. During that timeframe, infants have been injured and died.<sup>8</sup> We hope that the Commission's laudable decision to revise the 2017 rulemaking proposal will serve as a lesson learned in the future for it to heed the calls from the consumer protection advocacy community to propose adequately protective safeguards from the start. Moreover, we noted in comments submitted by Consumer Federation of America, Consumers Union (now Consumer Reports), Public Citizen, and U.S. PIRG (Consumer Groups) in response to the 2017 notice of proposed rulemaking that "Canada only allows up to a 7-degree angle in their sleep products."<sup>9</sup> While we are heartened that the Commission has accepted Dr. Erin Mannen's recommendation to prohibit infant sleep products to an incline of no more than ten degrees, we urge you to not consider your job complete. We urge the Commission to add to its priorities studying the impact and efficacy of adopting Canada's more protective standard in order to determine whether further rulemaking is warranted.

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

### *Crib Bumpers*

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

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<sup>8</sup> Rachel Rabkin Peachman, *Inclined Sleeper Deaths Rise to 50 as Industry Continues to Sell the Products*, CONSUMER REPORTS (June 20, 2019), <https://www.consumerreports.org/child-safety/inclined-sleeper-deaths-rise-to-50-as-industry-continues-to-sell-the-products/> (according to Consumer Reports, four families "filed a joint lawsuit, alleging that their infants suffocated while in the Rock 'n Play Sleeper, with three of those deaths occurring between January and March 2019, just before Fisher-Price recalled the product.").

<sup>9</sup> Consumer Groups Comments, June 21, 2017, *available at* <https://www.regulations.gov/document?D=CPSC-2017-0020-0006>.

**IV. The Commission should become stronger advocates for increased agency funding.**

CPSC has jurisdiction over more than 15,000 consumer products. Its staggeringly low budget—at less than \$130 million—makes it difficult for the agency’s dedicated staff to carry out its mission. We believe that every Commissioner has an obligation to strongly advocate for more funding. Without more substantially more funding, the agency will continue to struggle to meet all the demands that statutory requirements and the public place on it.

**V. Conclusion**

The Commission faces many challenges and we know that agency staff work tirelessly to carry out its mission to protect the public from unreasonable injury or death. However, the Commission must do more, including promulgating robust rules and standards to protect consumers, proactively working to get ahead of product safety hazards, and engaging with consumer advocates early and often on issues that they are seeing are problematic. Most importantly, we urge every Commissioner—current and those who may join the Commission in the future—to put science, consumer safety, and commonsense safeguards before politics and unbending ideology.

We believe that only if the Commission proceeds with a mandate to prioritize consumer safety above all else—including above the interests of business and industry—can it truly fulfill its decree to advance product safety and protect the lives and health of Americans.

Thank you for the opportunity to provide comments and we look forward to continuing to work together to improve consumer safety. If you have questions, please do not hesitate to contact me at [rgregg@citizen.org](mailto:rgregg@citizen.org) or 202.454.5117.







Chris Netram  
VP, Tax and Domestic Economic Policy

May 1, 2020

Division of the Secretariat  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
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**Re: CPSC Agenda and Priorities FY 2021 and 2022**

On behalf of the 12.8 million men and women who make things in America, the National Association of Manufacturers (“NAM”), appreciates the opportunity to comment in response to the Consumer Product Safety Commission’s (“CPSC” or “Commission”) request for information in anticipation of its public hearing on Commission Agenda and Priorities for Fiscal Years 2021 and FY 2022.<sup>1</sup> The NAM is the largest industrial association in the United States, representing small and large manufacturers in every sector and in all 50 states.

Manufacturers of consumer products are committed to providing safe products and ensuring a well-functioning and credible product safety regime that gives all stakeholders confidence that products meet all applicable safety standards and regulations. To support this commitment, the NAM has long been a leader in the effort to improve the Consumer Product Safety Act (“CPSA”) and the Consumer Product Safety Improvement Act (“CPSIA”) to ensure the laws works for consumers, manufacturers and importers. Manufacturers’ long-standing commitment to product safety drives our support for an effective, tailored regulatory regime.

At this unique moment in history, manufacturers are playing a key role in the effort to combat COVID-19, which reflects the industry’s commitment to product safety. As part of the nation’s critical infrastructure, manufacturers have been supplying health care workers and other Americans on the front lines of this crisis with vital goods, including personal protective equipment, hospital beds, and ventilators. Our unique perspective informs the NAM’s American Renewal Action Plan, which helps policymakers chart a path forward through the response, recovery and renewal phases of this crisis.<sup>2</sup>

We applaud the Commission’s ongoing leadership in improving the safety of consumer products and addressing the growing problem of counterfeit products. We respectfully request that the Commission include the items outlined below in its agenda for FY 2021 and 2022 to help protect the public from unreasonable risk of harm. If adopted, these policies will foster the collaborative and communicative relationship necessary to simultaneously protect consumers and empower manufacturers to continue leading the efforts secure the future health, safety, and prosperity of all Americans.

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<sup>1</sup> See Notice of Public Hearing, 85 Fed. Reg. 12908 (Mar. 5, 2020).

<sup>2</sup> See, *infra* Appendix A, NAT’L ASS’N OF MFRS., AMERICAN RENEWAL ACTION PLAN (April 22, 2020), <https://www.nam.org/wp-content/uploads/2020/04/v9-NAM-American-Renewal-Action-Plan.pdf>.

*Leading Innovation. Creating Opportunity. Pursuing Progress.*

## I. Address the Disproportionate Regulatory Burden Borne by Manufacturers

Manufacturers are making the products essential to supporting America during the crisis and a strong economic recovery will simply not be possible without a robust manufacturing industry. Manufacturing has the highest multiplier effect of any economic sector, with every \$1.00 spent in manufacturing adding another \$2.74 to the economy.<sup>3</sup> In addition, for every one worker in manufacturing, there are another five employees hired elsewhere.<sup>4</sup> Taken alone manufacturing's \$2.18 trillion value in the United States would constitute the eighth-largest economy in the world, built almost entirely on the backs of small businesses.<sup>5</sup>

Yet, despite the immense value of the manufacturing sector, the cost of federal regulations falls disproportionately on manufacturers. On average, manufacturers pay \$19,564 per employee to comply with federal regulations, or nearly double the \$9,991 per employee costs borne by all firms as a whole.<sup>6</sup> This burden falls heavily on small businesses; of the 248,039 firms in the manufacturing sector in 2017, all but 3,914 were considered small (i.e., less than 500 employees), with three-quarters of these firms having less than 20 employees.<sup>7</sup>

The importance of a stable and tailored regulatory regime has become particularly clear during the COVID-19 crisis, as manufacturers across the country work around the clock (in some instances completely redesigning their shop floors) to produce critical materials like respirators and protective equipment. Accordingly, the NAM respectfully submits the following suggested actions that the Commission should take to enhance the regulatory environment in which manufacturers operate and protect consumer safety while fostering collaboration with industry.

### A. Make Combating Counterfeit Goods a Priority

According to multiple recent reports, counterfeiters—who have long preyed on vulnerable consumers to make a profit—are trying to take advantage of consumers' increased anxiety and fear, high demand for certain goods, and the substantial increase in e-commerce necessitated by stay-at-home orders.<sup>8</sup> The Internet has long provided these unscrupulous actors with channels through which to sell counterfeits easily, quickly and anonymously. These sales channels present unique challenges for manufacturers who must devote ever-increasing resources and time to monitoring search engine results, e-commerce channels, social media postings, payment providers and others who may all play a role in driving online traffic to counterfeit products.

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<sup>3</sup> NAT'L ASS'N OF MFRS., FACTS ABOUT MANUFACTURING: TOP 18 FACTS YOU NEED TO KNOW, <https://www.nam.org/facts-about-manufacturing/> (last visited April 30, 2020).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See, e.g., Jay Kennedy, *Buyer Beware: Counterfeit markets can flourish during a public health crisis*, The Conversation (March 26, 2020), <https://theconversation.com/buyer-beware-counterfeit-markets-can-flourish-during-a-public-health-crisis-134492>; Europol, *How Criminals Profit From the Covid-19 Pandemic* (Mar. 27, 2020) <https://www.europol.europa.eu/newsroom/news/how-criminals-profit-covid-19-pandemic>; Daniel Bennett, *Covid-19 and Counterfeiting: How the Pandemic is Reshaping Brand Protection – Part 1* (Apr. 2, 2020), <https://www.corsearch.com/covid-19-counterfeiting-how-pandemic-reshaping-brand-protection/>.

A tide of fake products is coming into the U.S. through both physical and, increasingly, online channels.<sup>9</sup> Ultimately, the flood of fake products entering the market represents a threat to consumer safety.<sup>10</sup> These counterfeit parts may present health and safety risks to Americans. They also impose a significant economic burden on law-abiding manufacturers. Counterfeits are estimated to cost the U.S. economy up to \$41 billion annually by diverting sales away from purchases of legitimate products.<sup>11</sup> Collectively, a failure to take swift action to prevent the flow of counterfeits and hold e-commerce platforms accountable for their role in the sale of counterfeits will significantly hamper manufacturers' ability to continue to secure the future health, safety and prosperity of all Americans.

The CPSC should therefore prioritize addressing the growing issue of counterfeit consumer products making their way to the U.S. marketplace, as identified in CPSC Strategic Objective 2.3.<sup>12</sup> Specifically, the Commission should consider adopting the following proposals in the coming years, and, where necessary, work with Congress to effectuate these reforms.

- Prioritize utilizing its unique access to the product injury and recall data built into the National Electronic Injury Surveillance System to identify patterns of injuries and deaths likely to be caused by counterfeit products and report them to Customs and Border Patrol ("CBP"), the National Intellectual Property Rights Coordination Center ("IPR Center"), and other relevant governmental entities, domestically and internationally, to better enable them to identify and seize counterfeits before they reach consumers.<sup>13</sup>
- Prioritize fully implementing Commission authorities to address counterfeits that have been granted by Congress, such as the authority under the CPSIA to establish and make full use of a substantial product hazard list.<sup>14</sup>
- Prioritize surveillance, enforcement and public awareness campaigns of counterfeit product categories that also pose public health and safety concerns (e.g., children's products, consumables and household electrical and electronic products).
- Identify ways to hold e-commerce platforms to the same standard as brick and mortar retailers. Online virtual shelves should not escape the agency's scrutiny for failing to closely monitor for fake and untested goods, while physical shelves face intense scrutiny and, in some instances, steep penalties.

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<sup>9</sup> According to a 2019 OECD report, international trade for counterfeit goods reached \$509 billion, or 3.3 percent, of world trade in 2016. ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT AND THE EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE, TRENDS IN TRADE IN COUNTERFEIT AND PIRATED GOODS, 11 (Mar. 18, 2019), <https://doi.org/10.1787/g2q9f533-en>.

<sup>10</sup> *Protecting E-Commerce Consumers from Counterfeits: Hearing Before the S. Comm. on Fin.*, 115th Cong. 61 (2018) (response to question for the record).

<sup>11</sup> See SENATE FINANCE COMMITTEE, THE FIGHT AGAINST FAKES: HOW STATUTORY AND REGULATORY BARRIERS PREVENT THE SHARING OF INFORMATION ON COUNTERFEITS 6 (2019), [https://www.finance.senate.gov/imo/media/doc/The%20Fight%20Against%20Fakes%20%20\(2019-11-07\).pdf](https://www.finance.senate.gov/imo/media/doc/The%20Fight%20Against%20Fakes%20%20(2019-11-07).pdf).

<sup>12</sup> U.S. CONSUMER PRODUCT SAFETY COMM'N, STRATEGIC PLAN 2018-2022 5 (2018), [https://www.cpsc.gov/s3fs-public/CPSC\\_2018-2022\\_Strategic\\_Plan.pdf](https://www.cpsc.gov/s3fs-public/CPSC_2018-2022_Strategic_Plan.pdf).

<sup>13</sup> Reports show that 4 out of every 5 consumer product recalls (or 345 of 439 recalls) involve imported products and approximately 90 percent of counterfeits are imported from China. With this data, the CPSC should prioritize looking for patterns of fake goods starting with injury reports stemming from Chinese imports purchased via e-commerce platforms. See U.S. CUSTOMS & BORDER PROTECTION, INTELLECTUAL PROPERTY RIGHTS SEIZURE STATISTICS: FY2009 (2009).

<sup>14</sup> 15 U.S.C. § 2064(j).

B. Prioritize Identifying and Implementing Regulatory Improvements to Support Investment in Domestic Manufacturing

The renewal of the U.S. economy will require policymakers to take actions now that will set the stage for long-term growth, including identifying and implementing regulatory improvements. Given the CPSC's vast jurisdiction and critical mission, the Commission is uniquely well positioned to be a leader in identifying ways to ensure the U.S. regulatory regime is the most effective and efficient in the world.

An effective regulatory regime is one that simultaneously improves the health and safety of consumers while encouraging economic investment and ingenuity. Accordingly, the NAM respectfully urges the CPSC to prioritize policies to:

- Engage in periodic review of all regulations and mandatory standards to determine effectiveness, results and continued need for the regulations. All significant proposed regulations should include specific plans for when they will sunset and a review for effectiveness, which includes a description of how effectiveness is evaluated. Similarly, all proposed regulations should include a timeframe and process for withdrawing proposed rules on which the Commission fails to act in a timely manner rather than allowing a proposal to sit in a docket for decades.
- Focus resources on the most cost-effective and least intrusive means to achieve voluntary compliance. Compliance assistance programs, especially for small businesses, better serve the public's interest in achieving beneficial outcomes. Regulatory programs' success should be measured by outcomes and improvements in economic and social welfare, not by amounts of fines or the number of enforcement actions.
- Ensure regulations and supporting material are written in plain, understandable language.
- Prioritize conducting robust cost-benefit analyses of significant rules and subject the Commission's analysis to third-party review through the Office of Information and Regulatory Affairs (OIRA) or a similar governmental entity just as Executive Branch agencies do. Consistency across the government in regulatory procedures and analysis would only improve regulatory certainty and the transparency of the process.

C. Consider Providing Enforcement and Compliance Flexibility to Consumer Product Manufacturers Now Producing Essential Products

The CPSC should consider ways that the agency can provide regulatory flexibility for manufacturers that are rising to meet the challenge of COVID-19, particularly those that have shifted production to help produce essential products such as PPE and respirators. These products are critical to health and safety of Americans, and firms manufacturing these items may face the new regulatory compliance issues as they switch production. This challenge is compounded by the necessity of remote work for compliance teams and the implementation of social distancing on shop floors. In recognition of these unique circumstances, we urge the CPSC to prioritize regulatory flexibility for manufacturers.

**II. Agency Administration Priorities: Improving the Effectiveness of the CPSC**

A. The CPSC Should Prioritize Promoting, Not Discouraging, Open Communications Between Manufacturers and the Commission

The CPSC should prioritize taking steps to promote one of the most important aspects of its role in ensuring a well-functioning product safety regime: fostering a system that encourages industry and the Commission to work as partners rather than combatants. Indeed, Congress made it clear in the CPSA that the Commission must work closely with industry when it mandated that the Commission first rely on voluntary standards created by industry where the standards would eliminate or adequately reduce the risk of injury addressed and there is likely to be compliance with the voluntary standards.<sup>15</sup> In other words, the CPSC has no authority to act unilaterally to impose mandatory standards unless it first works with industry to create and utilize voluntary standards.

The CPSA also requires industry to work closely and communicate regularly with the Commission. Section 15(b) of the CPSA requires every manufacturer, importer, distributor and retailer of consumer products to report immediately to the Commission when the firm obtains information which reasonably supports the conclusion that such product distributed in commerce contains a defect which could create a substantial product hazard or that such product creates an unreasonable risk of serious injury or death.<sup>16</sup>

Congress clearly expressed its intent to encourage manufacturers to openly communicate with the CPSC regarding potential issues without fear of reputational risk. It included multiple sections in the CPSA prohibiting the Commission from disclosing certain information about manufacturers to facilitate these communications. While providing for exceptions for urgent safety issues, Section 6(b) “generally prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer unless the Commission has taken “reasonable steps” to assure (1) that the information is accurate, (2) that disclosure of the information is fair in the circumstances, and (3) that disclosure of the information is reasonably related to effectuating the purposes of the CPSA and of the other laws administered by the Commission.”<sup>17</sup> Similarly, Section 6(a) of the CPSA prohibits the Commission from disclosing confidential business information.

Protecting Section 6(b) is perhaps the most important role the agency can play in ensuring the agency fosters an open and affable relationship with manufacturers. The congressionally mandated protections of Section 6(b) perform a critically important balancing function with the congressionally mandated reporting requirements of Section 15(b), encouraging companies to voluntarily over-report potential product concerns and work cooperatively with the CPSC, even when reporting might not be required under the law. Any erosion of Section 6(b) protections would act as a disincentive to speedy voluntary disclosure, creating a bias toward working with legal counsel before alerting the Commission. In turn, this would deprive the agency of access to critically important information that, while perhaps not legally required to be reported, could nonetheless inform the agency of dangerous counterfeit products. The Commission’s policies on information disclosure have also been in place for over 30 years and provide manufacturers and other firms a clear expectation of when the Commission considers information disclosures to be subject to section 6(b). Removing this clarity, particularly at a time when manufacturers are struggling to address a global health crisis,

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<sup>15</sup> 15 U.S.C. § 2056(b)(1).

<sup>16</sup> 15 U.S.C. § 2064(b).

<sup>17</sup> 15 U.S.C. § 2055(b).

would inject unnecessary regulatory uncertainty and potentially cause significant delays in the relaying of information critical to the agency's ability to fulfill its mission.

Legal obligations aside, however, it is simply in the best interest of consumers' safety for the CPSC and industry to work collaboratively. It is critically important that manufacturers and the Commission have knowledge of and access to the unique technical knowledge and expertise that each party possesses. Manufacturers have technical knowledge of their products and the Commission has a unique understanding of consumer needs and behavior. Together, these sources of information can play a critical part in making the safest and most durable products possible.

As such, the Commission should prioritize encouraging an open and cooperative relationship between industry and the CPSC, including maintaining Section 6(b) protections, to ensure that the Commission is the first organization manufacturers turn to for guidance when they have questions or concerns regarding a product's safety.

#### B. The CPSC Should Prioritize Ensuring Stakeholders Are Provided Fair Notice and Due Process

Under the CPSA, the CPSC is required to "take reasonable steps" to ensure information is fair and accurate before making it public.<sup>18</sup> The CPSC is required to provide prior notice when the agency wants to talk about a particular company.<sup>19</sup> However, the CPSA offers only injunctive relief where the Commission makes a disclosure that a company believes is inaccurate or unfair. To obtain an injunction, the company must sue the CPSC in courts that frequently defer to agencies, and the litigation unfolds in public—"a cure that may be just as bad as the disease when a company's brand is at stake."<sup>20</sup> Further, the law does not require the agency to make its case before any neutral arbiter either before or after making the press release public, only requiring it to retract any factual errors ... well after the damage has been done. Finally, even where notice is required, the CPSC can—and regularly does—shrink the notice period, reducing the time available to a company to make what could be a bet-the-company decision.

The CPSC's mission of protecting the public from unreasonable risks of injury will be better served if the CPSC works with, not against, manufacturers to ensure that all information released to the public is accurate *prior* to issuing any unilateral press release. The CPSC should therefore prioritize developing an action plan to ensure that (1) manufacturers are provided as much advance notice as is possible to verify the information, (2) the agency has time to make necessary adjustments, and (3) where necessary and appropriate, the two parties can agree on alternative corrective actions prior to any public statement by the Commission. Such a system would ensure that accurate safety information is provided to the public and allow the Commission and regulated entities to avoid the costs associated with years-long litigation.

#### C. Make Fast-Track Fast Again

Instituted by the CPSC in August 1995, the fast-track program provides companies who are willing the ability to move quickly with a voluntary recall of their product. The fast-track

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<sup>18</sup> 15 U.S.C. § 2055(b)(1)-(3).

<sup>19</sup> No such notice is required when discussing category of products, even when it may otherwise be obvious which company is being referred to, resulting in the same "economic death knell".

<sup>20</sup> See Gentine, *CPSC Data Breach*.

program eliminates procedural steps from the traditional recall process, which includes CPSC staff's technical evaluation of a product to determine if a defect exists that could harm consumers. This procedure, called a preliminary determination, can take several months. Shortly after its introduction, the fast-track program garnered immense praise for its effectiveness, being named a 1998 winner of Harvard University and the Ford Foundation's prestigious Innovations in American Government award for programs that "have taken a fresh approach to a problem in government."<sup>21</sup>

The issue, however, is that the program's signature quality—that of being fast—seems to have been recalled itself. Recently, this fast track program has slowed down not by any substantive reviews by either the agency or the manufacturer undertaking the voluntary recall, but by non-substantive bureaucratic issues. This is not good for consumers, the Commission or manufacturers. The Commission should therefore prioritize ensuring the fast track program becomes fast again to ensure that unsafe consumer products can be recalled voluntarily as quickly and efficiently as possible.

#### D. CPSC Should Be More Involved in Safety Issues Posed by "Right to Repair" Movement

Under the "right to repair" regulations and proposals, consumers and independent repair providers ("IRPs") argue they should have an unadulterated right to possess and use IP-protected diagnostic and repair information, software, tools and parts created by original equipment manufacturers ("OEMs"). Supporters of this movement argue that state and/or federal legislation is necessary "to prevent a monopoly by compelling manufacturers to make parts, diagnostic software and repair tools freely available to individuals and independent repair shops," which they believe would lower the total cost of ownership for IP-protected products.<sup>22</sup>

The theory underlying this movement has two major flaws, one of which should deeply trouble the CPSC. In addition to the fact that efforts to erode the value of IP protections involve important constitutional questions and implicate deeply rooted American legal concepts, manufacturers' ability to maintain a meaningful degree of quality control over the subsequent repair of their products is important to consumers—and to consumer safety.<sup>23</sup> Right to repair laws would create innumerable harms and unintended consequences for consumers and manufacturers alike, including threatening consumers' safety and wellbeing and opening the door to counterfeit parts. Many consumer products—particularly when electronic in nature—contain parts that may pose serious safety risks to the physical well-being of consumers when repaired by anyone but an authorized expert. Indeed, the Commission regularly warns consumers not to attempt to repair their own products, as attempts to do so have resulted in injury and even death.<sup>24</sup> Further, for some consumer products that are typically repaired in a

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<sup>21</sup> See U.S. Consumer Product Safety Comm'n, *Innovations in American Government Award: Fast-Track Recall Program* (Feb. 14, 2013), <https://www.cpsc.gov/Business--Manufacturing/Recall-Guidance/Innovations-in-American-Government-Award-Fast-Track-Recall-Program>.

<sup>22</sup> Daniel Cadia, *Fix Me: Copyright, Antitrust, and the Restriction on Independent Repairs*, 52 U.C. DAVIS L. REV. 1701, 1704 (2019).

<sup>23</sup> For a more in-depth analysis of the constitutional questions and safety issues raised by the proposed right to repair laws, please see the NAM's written comments from the Federal Trade Commission's recent workshop on the subject. See Nat'l Ass'n of Manufacturers, Comment Letter on Fed. Trade Comm'n's "Nixing the Fix" Workshop (Sept. 16, 2019), <https://www.regulations.gov/document?D=FTC-2019-0013-0079>.

<sup>24</sup> See e.g. Consumer Product Safety Comm'n, *Repairing Aluminum Wiring 2* (2011), <https://www.cpsc.gov/s3fs-public/516.pdf>.



consumer's home, manufacturers may lose the ability to take certain precautions to ensure that repair providers are authorized, properly certified and do not pose a risk to the consumer.

Although these may be state bills at the moment, the CPSC should nonetheless prioritize taking on a more involved role in right to repair discussions to ensure that these consumer safety issues are fully considered and appropriately addressed as the unintended safety consequences of these bills, if passed, will not respect state borders. In some cases, right to repair laws would directly contradict CPSC guidance on safety measures for making repairs. Accordingly, we urge the Commission to take a more involved role in right to repair discussions to ensure that these consumer safety issues are fully considered and appropriately addressed. Specifically, we urge the Commission to consider holding a public hearing on the safety issues surrounding right to repair laws, solicit comments, and consider publishing a report to inform Congress and state legislatures.

### III. Specific Regulatory and Rulemaking Priorities

#### A. Withdraw Proposed Rule on Public Disclosure of Information, 6(b)

In February 2014, the CPSC issued a proposed rule that would significantly alter the Commission's policy on publicly disclosing company and product information, eliminating protections for manufacturers that encourage cooperation with the agency. The law requires the CPSC to "take reasonable steps to assure" that any disclosure of information relating to a consumer product safety incident is accurate and fair. Congress never directed CPSC to undertake this rulemaking and, after no agency action on the rule for 6 years, the agency should withdraw the rule.

#### B. Withdraw Proposed Mandatory Standards for Table Saws

In April 2017, the CPSC voted to issue a proposed rule that would establish a mandatory standard that would require all table saws to employ patented technology. This would create a government-mandated monopoly run by the owner of more than 100 granted patents. Not only would such action violate the law, it would conflict with the important principle of cooperation that is the foundation of our product safety framework. A final rule would also increase the price of the most common table saws from roughly \$300 to \$1,300. As such, the Commission should prioritize withdrawing the proposed rule from consideration.

#### C. Withdraw Proposed Mandatory Standard for Recreational Off-Highway Vehicles

In November 2014, the CPSC issued a proposed rule that would establish mandatory standards for lateral stability, vehicle handling, occupant retention, and information and warnings for recreational off-highway vehicles (ROVs). In November 2016, following developments of the relevant voluntary standards, CPSC staff recommended withdrawing the proposed rule and terminating the rulemaking. CPSC staff found that "the current voluntary standards will adequately address the risk of ROV rollover and occupant ejection."<sup>25</sup> The Commission has twice rejected this recommendation without providing a substantive rationale for disputing staff's conclusions. Moreover, in its Fiscal Year 2020 Midyear Review, the CPSC allocated \$250,000 for research on ROVs, but specifically linked to two areas that are outside

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<sup>25</sup> CAROLEENE PAUL, EVALUATION OF VOLUNTARY STANDARDS FOR RECREATIONAL OFF-HIGHWAY VEHICLES (ROVs) 3 (Nov. 2016), <https://www.cpsc.gov/s3fs-public/RecreationalOffHighwayVehiclesTerminationofRulemaking.pdf>.

the scope of the 2014 proposed rule. As there is no information to suggest that staff's November 2016 recommendation changed, and as the areas the CPSC is now investigating could not lawfully be the subject of the current proposed rule, the agency should withdraw the proposed rule.

D. Withdraw Voluntary Recalls Proposed Rule

In November 2013, the CPSC issued a proposed rule that would negatively impact the Commission's voluntary recall process and place significant burdens on manufacturers and retailers of consumer products. Among other provisions, the proposal would make voluntary corrective action plans and recalls legally binding and effectively end the Fast Track Recall program. The agency lacks the statutory authority to proceed with binding regulations for voluntary programs. If finalized, firms could face increased enforcement jeopardy and legal consequences in product liability, other commercial contexts or in a civil penalty matter. For these reasons, the Commission should withdraw the rule.

**IV. Conclusion**

Thank for your consideration of these comments. Manufacturers stand ready to work with the CSPC to ensure that the agency discharges its critical mission in a responsible, collaborative, and effective manner. We all share the Commission's goal of ensuring that products on the market are safe, and that consumers can trust the products they purchase.

Sincerely,



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

# American Renewal Action Plan

## NATIONAL ASSOCIATION OF MANUFACTURERS

Manufacturers have mobilized to respond to the unprecedented COVID-19 pandemic in ways unseen in modern history. The industry has been on the front lines as part of the nation's critical infrastructure, supplying health care workers, working toward treatments and producing Americans' daily needs.

The men and women of manufacturing, even as they are profoundly affected by the economic crisis, have a special and essential role in America's response, recovery and renewal. We offer this **American Renewal Action Plan**, knowing manufacturers possess a unique perspective on the current situation and are critical to ensuring America emerges stronger than ever before.

In accordance with the President's "Opening Up America Again" guidelines, governors and local officials will make the call on exactly when and how we "reopen" and move forward. But it is clear that America urgently needs personal protective equipment to support not only our hospitals but all sectors of the economy. This unforeseen crisis has created an unprecedented demand for PPE—unique to this threat and time—that our nation is woefully unprepared to meet. This is why during the **response** phase manufacturers must be able to ramp up production of PPE in an historic way so that the country is ready and well supplied.

Manufacturing has long been the backbone of the American economy, and our future success will depend on manufacturing's resiliency. For the **recovery** phase, policymakers must provide the tools needed to restart our economy, including strong liability protections. And for long-term **renewal**, we must set the stage for long-term growth, which will include historic investment in our nation's infrastructure, robust workforce training, regulatory improvements and more.

The road ahead is not easy. Bringing our \$22 trillion economy out of our "induced coma" is a herculean task for the ages. This challenge will require our policymakers to innovate and act boldly. This crisis will need the whole of the nation to unite in common pursuit. And, as with other consequential moments in our history, it will be manufacturers who make the difference to lead us forward—to secure the future health, safety and prosperity of all Americans.

# American Renewal Action Plan

## RESPONSE: MANUFACTURERS RISE TO SUPPORT AMERICA DURING THE CRISIS

**The nation is not prepared for the near-constant demand for personal protective equipment** that will come from all industries as states prepare to reopen their economies. For manufacturers to meet these and other essential needs, and save lives, the nation will also need a significantly larger supply for PPE. Action is needed to allow manufacturers to ramp up production and enhance distribution:

- Congress and the administration should provide **direct financial support and incentives** to domestic manufacturers who can successfully retool production to support the nation's additional PPE demands.
- The **Strategic National Stockpile** should be replenished with appropriate PPE and medical supplies.
- To ensure maximum PPE for the duration of the declared national emergency, the administration should take key steps to **facilitate trade in PPE** and other essential goods, including avoiding imposing additional tariffs, export restrictions or actions that could jeopardize U.S. efforts to reopen the economy.
- Congress and the administration should **expand cargo capacity** and consider prioritizing medical cargo, including active ingredients, raw materials, work-in-process inventory and components.
- The White House, U.S. Trade Representative, Department of State and Department of Commerce should ensure **robust coordination with foreign governments** on essential business guidance implemented around the world, while ensuring the continued safety of those employed by American manufacturing companies around the world.

## RECOVERY: THE TOOLS NEEDED TO REOPEN AND RESTART OUR ECONOMY

Ramping up production of essential goods means that **employees must be able to go out in public and into their places of work confident that proper health precautions are being implemented**. More testing is needed, as is clarity on other best practices for staying safe and healthy:

- Congress should appropriate funds to ensure that **COVID-19 tests** are widely available so that Americans can safely return to work.
- The Equal Employment Opportunity Commission should provide guidance to employers on administering employee **temperature checks and COVID-19 testing**.

- The Centers for Disease Control and Prevention, Occupational Safety and Health Administration, Department of Labor and EEOC should publish “**Return to Work**” **guidance** that clearly defines proper hygiene and sanitization processes and practices that employers must follow.
- OSHA must publish a guidance memorandum that defines the differences between face coverings and PPE and whether using **face coverings** is mandatory or voluntary.
- OSHA must notify businesses that they will trigger **PPE requirements** (hazard assessments, testing, etc.) when they require employees to do certain tasks.
- The EEOC should continually **update its guidance materials** to help employers understand what questions they can ask employees and what actions can be taken to increase safety protocols and not discriminate against employees. The EEOC should use its discretion and not penalize employers that have taken good faith efforts to protect workers and increase safety measures.
- The Department of Labor should provide employers **flexibility to modify schedules** and create new work calendars to lower the risk of spreading COVID-19.
- Congress should enhance tax incentives for employers who invest in safety equipment, including handwashing stations, respiratory equipment and cleaning products.

**Legal reforms are necessary for companies in essential industries** that are trying to do the right things so that they can continue their vital work in keeping America safe and healthy:

- Congress should limit lawsuits in state and federal courts claiming damages for COVID-19 exposure in the workplace to those based on claims that companies had actual knowledge that the person would be exposed to COVID-19 and acted with reckless indifference or conscious disregard as to whether the person would contract it, and require that such allegations be pled with particularity.
- Congress should acknowledge that the patchwork of advice, industry practices and state responses during a national emergency creates difficulties to identifying a clear standard of care.
- Congress should provide employers with a safe harbor for collecting and exchanging crucial information related to employees’ health status and implementing reasonable measures such as temperature checks to combat workplace transmission of COVID-19.
- Congress should place state public nuisance claims off-limits for the spread of a pandemic disease during a declared national emergency.
- Congress should insulate publicly traded companies for claims based on hindsight evaluations of decisions to remain operational during the crisis or to close entirely or at specific sites based on good faith concerns, or for regulatory disclosures made based on the limited and imperfect information available at the time of the disclosure.

- Congress should prevent the creative use of state tort claims from undermining a response to this crisis or one yet to come.
- The Department of Labor should protect employers from frivolous litigation by publicly announcing what California has already said: COVID-19 can be considered an “unforeseeable business circumstance” under the WARN Act.

Manufacturers across the country have completely redesigned their shop floors to produce critical materials like respirators, face shields, masks, gowns and hand sanitizer for the first time. Others have taken protective equipment that they themselves would have used and donated it to local hospitals. Yet state and local Good Samaritan protections vary widely and **may fail to protect manufacturers from unwarranted lawsuits related to these lifesaving actions. Targeted legal reforms are necessary** to protect manufacturers who have acted in good faith to aid those on the front lines of this crisis:

- Congress should enact liability protection from state or federal claims arising out of the use of masks, respirators and other protective equipment.
- Congress should allow manufacturers to use basic masks and other items designed to slow the spread of COVID-19 in their sites without fear of liability if more suitable options are deployed for health care workers on the front lines.
- Congress should extend volunteer protections for employees who deliver protective equipment to hospitals.
- Congress should generally limit liability to attach only to those who acted with actual knowledge of the product’s defect in conscious disregard for the health and safety of others.

Additional steps are also needed to ensure the **financial health of American workers**:

- Congress should provide additional funding to support **unemployment insurance benefits**.
- Congress should exempt COVID-related temporary wage increases or bonuses from **“regular rate of pay” rules** under the Fair Labor Standards Act.
- Congress should allow companies to pay **tax-free bonuses** to employees who work during this crisis.

## RENEWAL: A STRONGER AMERICA IS SAFER AND MORE PROSPEROUS

**A strong economic recovery will not be possible without a strong manufacturing industry.** Investments made today will **protect jobs** and ensure that manufacturing in America remains viable and ready to lead robust economic growth when the crisis abates:

- Congress should continue to provide liquidity up to **\$1.4 trillion in loans and grants** for manufacturers impacted by COVID-19, ensuring financial security for the nearly 13 million men and women who make things in America.
- Congress should **expand the Paycheck Protection Program** by increasing funding sufficient to ensure that all small businesses can qualify for the program.
- Congress and financial regulators should engage in oversight of PPP lenders to ensure that **loans are disbursed fairly** and manufacturers of all sizes, from all areas of the country, including **minority- and women-owned businesses**, are able to access needed funds. Where appropriate, penalties should be assessed for discriminatory actions that prohibit these small businesses from receiving loans.

**Clarifying loan requirements and speeding up delivery** will make a profound difference for manufacturers:

- The Treasury Department and the Small Business Administration should encourage **rapid and timely disbursements from the Paycheck Protection Program** by providing needed certainty to lenders:
  - Provide clear guidelines regarding eligibility and processes or loan forgiveness.
  - Reduce legal liability for lenders who comply with the legal requirements to disburse funds pursuant to the program.
  - Allow captive finance companies to participate as lenders in the program.
  - Clarify terms of secondary market purchases of loans made pursuant to the program by non-bank lenders.
  - Reform affiliation rules to ensure that all small manufacturers can qualify for the program.
- The Treasury Department and Federal Reserve should **speed the delivery of aid to businesses** by addressing key issues related to their new lending facilities:
  - Clarify the scope of a Federal Reserve provision that prohibits companies from participating in certain liquidity programs if they have otherwise received “specific support” from the CARES Act or other federal legislation. Businesses that utilize general items authorized in the bill, like tax credits, should not be excluded.



- Allow more companies to access funding facilities by expanding the pool of qualifying bond ratings and ratings agencies used to determine eligibility for specific liquidity programs.
- Ensure that a U.S. entity with a substantial American workforce or significant domestic presence can access needed liquidity resources, irrespective of the country in which its legal parent company is domiciled.
- Allow more borrowers to utilize the Main Street Lending Program, including by reducing the minimum loan amount and reforming the maximum loan calculation to encourage participation from smaller companies.

Through **tax and pension provisions**, Congress and the IRS can take additional immediate actions to **inject more liquidity into the manufacturing industry**, further enhancing job security:

- Congress should provide additional liquidity to manufacturing by expanding and improving upon recently enacted tax relief provisions (such as net operating loss carrybacks and the employee retention tax credit) and by allowing companies to **accelerate the utilization of tax benefits**, including general business credits.
- The IRS should further **delay all scheduled federal tax payments** (including quarterly payments of estimated tax) during this crisis and the initial stages of the economic recovery.
- Congress, the Pension Benefit Guaranty Corporation and the IRS should provide **relief to defined benefit plan sponsors** by freezing interest rates at pre-crisis levels for the purposes of determining contribution requirements, extending pension smoothing, modifying the interest rate corridor and extending the time frame for plan sponsors to make funding balance elections.

A renewed economy will also be a changed economy, and **dislocated workers will need significant support through training and jobs programs**. The Manufacturing Institute, the workforce and education partner of the National Association of Manufacturers, recommends a **\$10 billion investment in workforce and job training programs** through Workforce Innovation and Opportunity Act, Perkins and grants programs. \$2.5 billion should be reserved for manufacturing programs with a focus on key priorities:

- Congress and the Department of Labor should award all discretionary or competitive grant funds no later than 18 months after passage of a bill, and funds should be given for grant proposals no longer than 24 months in length.
- Congress and the Department of Labor should prioritize **customized training models** for all funded programs up to two years in length to guarantee a connection to employment for participants.
- Congress should prioritize **earn-and-learn models** in all workforce legislation and allow for expenses that support business participation and student success.



- Federal and state lawmakers should enable recovery funds from Perkins and USDOL grants to be used for the **purchase of necessary equipment** in community and technical colleges and allow for secondary schools to utilize this new equipment through partnerships between high schools and community colleges.
- Congress and the Department of Education should **reduce barriers** and encourage flexibility to allow experienced manufacturing employees to become training instructors.
- Congress should require **partnerships with industry associations** or reserve a portion of funding for industry associations to improve dissemination of successful solutions across companies and regions.

Even before the crisis, America desperately needed bold infrastructure investment. Now, building a **21st-century infrastructure system** will not only provide urgently needed jobs but also lay the foundation for a more competitive economy:

- Congress should approve historic investment of at least \$1 trillion in our nation's infrastructure that aligns with the **NAM's "Building to Win" blueprint**, which calls for upgrades to our transportation, water, energy and digital infrastructure systems.

**Smart adjustments to America's tax and financial regulatory policies** will further spur growth and safeguard economic progress:

- Congress should enact comprehensive **multiemployer pension reform** to protect retirement benefits and put the Pension Benefit Guaranty Corporation's Multiemployer Program on a path to solvency.
- Congress should enact legislation that **exempts from taxation income from loan modification, forgiveness or cancellation**.
- Congress should enact legislation that reduces to 2018 levels the **base erosion and anti-abuse tax**.
- The Securities and Exchange Commission should finalize reforms that would **expand the pool of "accredited investors"** who can provide capital to manufacturers.
- The Securities and Exchange Commission should allow companies to better convey to their investors the long-term nature of manufacturing investments by **moving away from one-size-fits-all quarterly reporting** obligations.
- Congress should enact a **reinsurance framework** to provide a backstop for manufacturers affected by disruptions from COVID-19 and future pandemics.

**Encouraging exports and facilitating international trade will bolster manufacturing** in the United States and create lasting job opportunities:

- Customs and Border Protection should **expedite duty drawback payments** and Section 301 tariff refunds, which were delayed before and during the COVID-19 pandemic, to allow these funds to be used to rehire and reinvest as soon as possible.
- Congress, the U.S. Trade Representative and U.S. International Trade Commission should **extend critical tariff relief programs**, such as the Miscellaneous Tariff Bill and the Generalized System of Preferences, to allow the importation of components critical to support the growth and renewal of U.S. manufacturing.
- Congress should **increase the competitiveness of the Export-Import Bank** to allow manufacturers in the United States to compete on a level playing field with foreign manufacturers that are supported by increasingly flexible and tailored financing from foreign Export Credit Agencies.
- The U.S. Trade Representative and Congress should recommit to an **active trade agenda** to remove foreign trade barriers and open critical markets, including by restarting trade negotiations paused or slowed during the coronavirus—such as binding “phase two” China trade agreement negotiations—and launching negotiations to eliminate tariff and nontariff barriers with likeminded countries (for example, U.S.–EU, U.S.–UK and U.S.–Kenya negotiations).
- The White House, U.S. Trade Representative, Department of Treasury and Department of Commerce should postpone internal U.S. government discussions regarding potential U.S. withdrawal from the **World Trade Organization** generally and WTO agreements, including the Government Procurement Agreement, as such moves would create significant business uncertainty and operational disruption.
- The Department of Commerce and Small Business Administration should expand U.S. government **export promotion programs**, enhancing manufacturers’ ability to compete and win in the global marketplace.
- The administration should develop a targeted list of products for which Section 301 tariffs and retaliatory tariffs can be suspended or removed to spur economic growth and job creation; in the interim, credit the tariffs being paid back to the companies affected.

Leaders can take action now to recognize that future economic and national security are both enhanced by a **strengthened U.S. manufacturing supply chain**:

- The administration and Congress should promote manufacturing in the United States by creating a tangible policy plan to support investments in domestic manufacturing. This plan should:
  - Utilize the tax code to encourage investment in U.S. manufacturing.
    - Create a new tax credit to support the onshoring of manufacturing activities, such as moving operations to the U.S. or investing in capital equipment, to support the purchase of property, facilities and more.
    - Provide tax incentives to help companies recruit and train the skilled workforce needed to expand modern manufacturing in the U.S.
    - Ensure that tax incentives for equipment purchases and a full deduction for R&D expenses remain in place.
    - Pass legislation to prevent scheduled tax law changes from going into effect that would increase the cost of obtaining a business loan.
    - Create an incentive, effective for a limited period of time after operations are moved to the U.S., to help mitigate increased labor costs.
  - Direct the General Services Administration to open the federal government's portfolio of surplus and underutilized real property and equipment for purchase—at less than market rates—by companies that want to onshore.
  - Produce an annual, comprehensive report on the relative competitiveness of the U.S. tax and regulatory regime with expedited congressional consideration of recommended actions to ensure that America is the most attractive place in the world to start and grow a business.
  - Expedite federal permitting necessary to acquire and build onshored operations.
  - Expand federal investments in advanced manufacturing technologies to ensure the long-term competitiveness of the sector.





# RETAIL INDUSTRY LEADERS ASSOCIATION

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May 1, 2020

*Via Electronic Filing*

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

**Re: Proposed Agenda and Priorities FY 2021 and 2022; 95 Fed. Reg. 18926 (April 3, 2020)**

Dear Secretary Mills:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit written comments on the U.S. Consumer Product Safety Commission's (CPSC or Commission) proposed agenda and budget priorities for Fiscal Years (FY) 2021 and 2022. RILA and its members support the Commission's critical consumer safety mission and appreciate the CPSC's leadership on product safety matters, including consumer education campaigns, and stakeholder outreach.

By way of background, RILA is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

RILA and its members have a long history of collaborating with the CPSC to address consumer product safety issues. RILA members cooperate regularly in implementing product recalls, actively participate in the Commission's industry partnership programs, and promote CPSC's consumer awareness initiatives.

As the Commission determines its FY 2021 and 2022 priorities, RILA wishes to renew and reemphasize a few of its previous recommendations to the Commission on FY 2020 budget priorities provided in detailed written and oral testimony delivered on May 1, 2019<sup>1</sup> and raise additional recommendations, detailed below.

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<sup>1</sup> [RILA Testimony](#), Hearing on FY2020 Proposed Agenda and Budget Priorities, U.S. CPSC, Docket No. CPSC-2019-05102 (May 1, 2019).

The Commission should:

- Continue efforts to enhanced data-driven decision making by increasing capacity for data collection and analysis including formalization and expansion of the Retail Reporting Program (RRP).
- Enhance import surveillance by transforming the current joint Customs and Border Protection (CBP)/CPSC Importer Self-Assessment – Product Safety (ISA-PS) Program into a robust Trusted Trader Program for low-risk importers and align with the CBP's Trusted Trader Program, when that program eventually rolls out.
- Prioritize increased Commission understanding of the safety hazards and risks associated with emerging technologies, including Internet of Things (IoT).
- Prioritize promulgation of standards for consumer product categories where, in the absence or delay of a federal standard, states and cities are moving to enact state and local standards (e.g., crib bumpers) that can lead to a patchwork of conflicting standards and regulatory uncertainty for retailers and manufacturers.
- Pilot a tiered recall system that would elevate awareness of products that pose the greatest risk to consumers.

Each of these recommended priorities is discussed in more detail below.

### **1. Increasing Capacity for Data Collection and Analysis is Critical to Advancing the Commission's Data-Driven Safety Mission**

Data collection and analysis are an integral part of the Commission's core mission and industries' daily operations. The volume of data relevant to consumer product safety issues continues to increase at an exponential rate. As previously emphasized in our 2019 testimony before the Commission, RILA and its members urge the CPSC to maintain investment in staffing resources, including a chief technology officer, and in enhancing information technology (IT) systems, and software resources. The CPSC has made strides in its data gathering and predictive analytics capabilities in recent years, and continued investment to further grow its capacity in this area is necessary to protect U.S. consumers.

RILA also continues to recommend that the Commission invest resources in the expansion and formalization of the so-called Retail Reporting Program (RRP) pilot. In theory, the RRP pilot concept held great potential for CPSC to leverage data from retailers and other participating companies on consumers' interactions with products to gain valuable insight into emerging risks and defect trends. This information could then be used by CPSC to work with participants to recall products much earlier than current timelines, thereby preventing consumer injuries and property damage. However, without adequate capacity at the time to handle the volume and complexity of data the RRP stagnated.



Data analysis tools that employ machine learning and predictive analytics have grown rapidly in the years since the RRP pilot stalled. With the capacity now possible, the CPSC should dedicate resources to reviving the RRP and implementing it through a formal rulemaking process. Formal rulemaking would allow those interested to collaborate in a true government-industry partnership, with defined benefits and requirements to participate. Under a revised and expanded program, data submissions should serve as a functional equivalent of a participating company's *initial* 15(b) reporting requirement. This is not to suggest it would replace or absolve participants from fulfilling all the other section 15 reporting obligations. Another potential participant benefit could be for participation in the program to be considered as a mitigating factor in civil penalty cases. A formal program should have tiered levels of participation tied to company size and/or other metrics such as number of data fields contributed. Having a variety of entry points will facilitate broader participation and benefit the program and its overall goal of more efficient and timely action on recalls.

RILA encourages the CPSC to revisit and formalize the RRP concept and prioritize engagement with its members and other stakeholders on how the Commission can best partner with retailers and manufacturers to leverage industry gathered data on customers' interaction with products to further shared consumer safety goals.

## **2. Continued Enhancement of CPSC's Trusted Trader Program Will Ensure CPSC's Import Surveillance is Directed Where Most Needed to Protect Consumers**

As a relatively small federal agency with limited resources, the CPSC should target its import surveillance toward monitoring and inspection of high-risk importers and high-risk shipments where there is the greatest potential for detecting and preventing non-compliant and unsafe consumer products. In addition, high-risk importers and high-risk shipments could include those affiliated with criminal enterprises that traffic in counterfeit and stolen goods, which can harm consumers, retailers, and manufacturers alike. One way to ensure surveillance resources are directed where they are most needed, is to leverage low-risk importers that are willing to partner with federal agencies in a Trusted Trader Program.

For almost a decade, the CPSC has carried out a trusted importer program in the form of the joint CBP/CPSC Importer Self-Assessment- Product Safety (ISA-PS) pilot. Unfortunately, in practice the ISA-PS pilot effort has failed to live up to initial promise due in part to its lack of real and significant benefits to justify participants opening their product safety compliance program to CPSC's scrutiny and annual review. In spite of industry requests, CPSC has yet to provide data demonstrating where program participation has led to a measured decrease in inspections or customs holds for pilot participants as compared to those importers that participate only in the Importer Self-Assessment or Customs-Trade Partnership Against Terrorism (C-TPAT) programs. Without concrete and demonstrable benefits, the ISA-PS program has stalled and failed to attract new participants.





To that end, RILA wishes to re-emphasize its previous recommendations urging the Commission to create a new Trusted Trader program with clearly defined benefits such as: 1) exemption from any future import certificate E-Filing requirement; 2) program participation as a mitigating factor in enforcement cases; and 3) demonstrably lower percentage of CPSC inspections and holds for CPSC Trusted Trader participants. By developing a robust Trusted Trader program, the CPSC will be able to focus its limited import surveillance resources where they are needed most to protect consumers.

### **3. Increasing Understanding of Emerging Technologies Will Assist the Commission with Addressing Safety Risks Associated While Enabling Innovation**

Fostering industry innovation is central to RILA's mission and the modern retail industry. The rapid expansion of technologies in the consumer product space and proliferation of IoT products, from smart door locks to fitness wearable technologies, has provided new functionality and conveniences that consumers have come to expect and rely on in their daily life. While the benefits and potential for these products are endless, they also come with cybersecurity, privacy and safety challenges that federal agencies and industry are working to address.

As RILA has emphasized in the past, the mere possibility that an IoT product may be hacked by a bad actor, should not alone substantiate a CPSC finding that it presents a substantial safety hazard. Rather, CPSC should look to follow the risk-based assessment taken by other federal agencies (e.g., Federal Trade Commission) and take into account whether a company has incorporated "reasonable" data security measures that take into consideration the sensitivity of the data collected and level of risk if a breach occurs. To that end, RILA applauds CPSC's leadership in forming an intergovernmental group to address connected consumer products and establish individual agency responsibilities.

RILA urges the CPSC to continue to prioritize resources and staff toward furtherance of these interagency efforts. It is critical that federal agencies work together to develop a comprehensive risk-based approach to regulation of IoT products to address, privacy, cybersecurity and consumer safety concerns while promoting innovation and new product development.

### **4. Prioritize Promulgation of a Federal Standard Where Emerging State Activity is Creating a Potential Patchwork of Inconsistent Product Safety Mandates**

Faced with staff and resources limitations, the CPSC must make difficult decisions as to which discretionary rulemakings should be prioritized. RILA recognizes there can be many other drivers at play that slow the pace of the Commission's promulgation of federal consumer product safety standards. In recent years, there has been increasing momentum from some cities, state legislatures and rulemaking bodies to move forward with issuing locality and state-specific consumer product safety mandates where federal standards are delayed or absent. This growing trend can lead to a patchwork of state and local





standards that creates confusing inconsistencies and differing compliance requirements for retail businesses operating in multiple states or nationwide. Crib bumpers and liners are one recent example of a product category where perceived CPSC inaction or delay led states to pursue setting standards at the state level, including an Ohio law enacted in 2017 that went into effect this month.<sup>2</sup>

RILA urges the Commission to account for emerging state activity around standard setting as it prioritizes resources toward promulgating federal product safety standards. In the case of Ohio, the crib bumper law enacted in 2017 included a three-year delay in the effective date to afford time for the development of a federal standard. RILA is encouraged to see that the CPSC recently issued its proposed crib bumper/liner standard.<sup>3</sup> We urge the Commission to act expeditiously to finalize the standard following the close of comment period in June 2020 and to include regulatory language preempting state and local standards. In this case a federal safety standard is needed to restore regulatory predictability and consistency nationwide.

#### **5. Pilot a Tiered Recall System that Elevates Awareness of Those Recalled Products that Pose the Greatest Risk to Consumers**

RILA and other stakeholders have long advocated for the CPSC to consider tiering recalls so that the most hazardous product safety notices get the much needed and greatest attention. The current system requiring that all corrective action announcements use of the word "recall" does little on its own to convey the gravity of the potential safety hazard. A consumer can be confused as to whether the recalled product poses a risk of death or serious bodily issue or only a minor issue not requiring immediate action. What is worse, this one-label-fits-all approach can lead to a "recall fatigue" phenomenon where a consumer over time ignores announcements of recalled products that may pose serious harm. Having a tiered approach would not only give consumers the important safety information they need, when they need it, but it could also significantly increase the rate of consumers acting on the most serious recalls.

The idea of having a tiered recall system is not new. The Food and Drug Administration (FDA) has been issuing "classes" of recalls based on the level of hazard to consumers for many years. Under a tiered recall system, the word "recall" would be reserved for the most severe hazard cases, and thus could require direct notification of consumers. Other terms to identify recalls of products that pose less risk to consumers could include "safety alert" or "warning." Such terms would clearly alert consumers that they should be aware of a notice, but immediate action to remove the product from their homes may not be necessary. The tiering not only identifies the level of risk but also determines the level of public outreach by the recalling company.

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<sup>2</sup> [Title 37 Ohio Rev. Code § 3713.022](#)

<sup>3</sup> [Notice of Proposed Rulemaking, Safety Standard for Crib Bumpers/Liners](#), 85 Fed. Reg. 18878 (April 3, 2020).



Piloting a tiered system should not come with substantial resource strains or additional staffing and training and holds great potential to improve recall effectiveness. RILA recommends the CPSC collaborate with all stakeholders to make sure the intended purpose of a tiered recall system is achieved. Clearly identifying risk for consumers is paramount. Having broad stakeholder input is critical to a tiered recall system's success. RILA and its members encourage the CPSC to consider implementing a tiered recall pilot program to test how implementation of such a process would work.

### **Conclusion**

In closing, RILA and its members strongly support the CPSC's safety mission and share the Commission's commitment to protecting consumers and ensuring that all products sold to U.S. consumers meet or exceed all applicable safety requirements and standards. We appreciate CPSC's leadership and consistent track record of meaningful engagement with stakeholders, including its efforts to work collaboratively with voluntary standard-setting bodies. RILA offers these comments to continue that great industry-government partnership and collaboration and to enhance the work of the Commission going forward.

Sincerely,

Susan Kirsch  
Director Regulatory Affairs and Compliance





U.S. Consumer Product Safety Commission  
Attn: Alberta E. Mills, Secretary  
4330 East-West Highway  
Bethesda, MD 20814  
Topic: Agenda and Priorities FY 2021 and/or 2022

Dear CPSC:

I am writing again this year, to ask that you continue to invest in the issue of tip-overs. Our group, Parents Against Tip-Overs, with your help and others, has had our voice amplified to bring more light to this issue. We have gained momentum with the STURDY Act, passing through Congress and now in front of the Senate. However, with the current COVID-19 crisis, the legislative approach has begun to stall. We need the help of the CPSC even more now.

In June of 2014, my son, Camden Ellis, was the 7<sup>th</sup> child to die (that we know of) due to unstable dressers made by Ikea. At the time, I thought this was a freak accident and I had no idea that this was a danger in my home. His dresser was 30 ¾" tall. When I discovered that he was not only the 7<sup>th</sup> child to die because of the negligence of this particular manufacturer, without a recall, but that children were dying at the rate of one every 10 days, I was absolutely devastated. How was this possible? I had taken multiple getting ready for baby classes, had put up baby gates, outlet covers, cabinet locks, and had our car seat professionally installed as a first time parent. None of the professional educators, health care providers, mom group leaders, or other parents had ever told me about the risk of dresser tip-overs killing my son. I know that there are many other parents in this country that also have no idea that their dresser is a risk in their home. They assume, as I did, that any product that is sold to consumers in the United States of America has been vetted and tested by their government and would not be sold if it could kill us. One death every 12 days, today, is a crisis that needs to be immediately addressed. It has already been almost 6 years since the death of my son, over 15 years since the death of Kim Amato's daughter, Megan Beck, the earliest death in our group, and not enough has been done to keep children safe today. With the COVID-19 mandatory shelter in place orders, children are at an even greater risk. Dressers continue to be unanchored for many reasons, and, as you know, over 90% of tip-overs happen in a child's home.

In my opinion, there are still several factors that are keeping unsafe dressers in our homes. First is 6B. Commissioner Kaye said it best, when he said, "People die because of 6B. It is as simple as that." We have no idea why this rule is legal, when there are no similar restrictions on sister agencies or proof that it is acting as intended. Some lawmakers continue to argue that we need to keep 6B to protect the manufacturers from the CPSC and even each other. There is simply not enough data to support this theory. The original reasoning for the enactment of 6B is tied to a misstatement by the FCC and shouldn't have been tied to a punishment for the CPSC and American consumers. We need to eliminate 6B to protect consumers, the constituents. The restriction of information prevented my family from even having a chance to know that our dresser was unsafe. I spoke on this issue in February 2020 at the ICPSHO annual meeting, with

several others, and the bottom line is we have to do what is best to protect the consumer. The CPSC is tasked with protecting us and the rule ties your hands. I am personally speaking about, and advocating for, the legislation introduced by Bobbie Rush of Illinois, the Share Information Act. I also am advocating for an increased budget for the CPSC. Your tiny budget is not enough to effectively protect consumers and advocate for us. First and foremost, your agency has to be a big enough presence that people know who you are and that you are the place to go to ask for help with consumer product issues.

This leads me to my next concern, the effectiveness of recalls. I am encouraged by the recent increase in dresser recalls. However, more should be done to push manufacturers to make a recall the most effective it can be. If they know how to market and sell a product to millions of consumers, then they know how to get the message of a recall to those same consumers. Being allowed to offer an anchor kit, instead of a full return is a deadly mistake. That message was tried by Ikea and it killed Ted McGee. That ineffective recall eventually led to the death of Josef Dudek. The industry needs a bigger stick to get them to do what they know will make a difference. Also, I continue to argue, if a dresser is, according to the manufacturer, meeting the voluntary standard but is still killing children, it should be recalled. This is clear evidence that their product is still not safe for consumers.

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

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

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

today. Part of our PAT mission is to educate consumers on the need to anchor furniture, and we need the Anchor It! Campaign as partners. As part of this education piece, we are grateful to continue to engage with the Anchor It! Committee at CPSC, but we want to continue to press for a different approach with social media. Tip-overs are a serious issue and we continue to advocate for a social media campaign that makes this risk clear.

I am disappointed that CSUs are still not added to section 104 rulemaking. As both Commissioner Adler and Commissioner Kaye pointed out, just because we cannot save all with this solution does not mean we should not save some. To quote Commissioner Kaye directly, “We should be pursuing every authority available that we have. We should send a signal to industry that we are not leaving any tool unused.” Many of the parents that I work with bought their dressers from stores selling only marketed children’s products. They believed, as many consumers do, that buying these “children’s dressers” is an increased level of safety. They are made with children immediately in mind, right? This is another way to accelerate the timeline for increased safety. To that end, we also need to move more quickly on moving the ANPR to an NPR. Testing has been happening at the CPSC to gather more data about the tip-over hazard in the current marketplace. This testing could use more transparency and feedback from parents that have direct knowledge of the risks, including information about the home studies. The issue of moving the ANPR to an NPR needs to be addressed immediately and must be made a priority. Our two most vulnerable populations, children and seniors are at the greatest risk from this hazard.

Thank you, again, for the opportunity to speak to this issue. I am hopeful that we can continue to work together to make progress in stopping tip-overs.

Sincerely,

Crystal Ellis

Mother of Camden Ellis

Member of Parents Against Tip-overs

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**Written Comments of Consumer Reports to the  
U.S. Consumer Product Safety Commission on:  
“Agenda and Priorities FY 2021 and/or 2022”  
William Wallace, Manager, Home and Safety Policy**

Submitted to the Office of the Secretary via [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov)  
May 1, 2020

Consumer Reports (CR), the independent, non-profit member organization,<sup>1</sup> welcomes the chance to submit comments on the CPSC’s agenda and priorities for the next two fiscal years.

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

The CPSC’s work remains as essential as ever during the COVID-19 pandemic. With millions of people remaining at home for extended periods, it is an especially important time to help protect them from hidden product hazards in the home. We understand that the pandemic is having a substantial impact on the agency’s work, particularly insofar as CPSC staff are not able to conduct laboratory testing; nevertheless, the agency must move forward everywhere it can.

With these broader objectives in mind, we highlight topic areas in the following comments that we encourage the agency to emphasize in fiscal years 2021 and 2022. We divide them into two categories: (1) the CPSC’s role and capabilities; and (2) hazards around the home.

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



## **The CPSC's role and capabilities**

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

### *Safety leadership and expertise*

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

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

CR welcomes the creation of the Consumer Ombudsman role. We are thrilled to see this important idea become a reality, and appreciate the hard work required to make it happen. CR looks forward to working with the Consumer Ombudsman going forward, and to helping ensure to the best of our ability that this role is successful in connecting consumers and advocates with the agency's critical work, and vice-versa.

### *Increased use of civil penalties*

CR strongly urges the CPSC to put the agency's civil penalties authority to far greater use, and take a more aggressive approach to violations of the statutes and regulations under the agency's jurisdiction. The CPSC uses a range of tools, including its authority to levy civil penalties, to hold companies accountable and help change corporate behavior. Civil penalties are essential to enforcing against unlawful conduct that could place consumers at risk, including failures to report potential defects or misrepresentations made to the CPSC. As warranted, the

agency should not hesitate to levy fines at the highest levels permitted under the law to deter future violations.

Historically, civil penalties have been underutilized, and in recent years, the Commission has shied away even more from using this important tool. In fiscal years 2018 and 2019, the agency entered into a total of three settlement agreements that included civil penalties; in 2016 and 2017, it entered a total of 11 such settlements. Even worse, the CPSC has not announced *any* assessment of civil penalties since November 2018—a span of 18 months. This must change.

#### *Active participation in voluntary standard development*

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

We strongly support and applaud the agency's ongoing efforts under Section 104 of the Consumer Product Safety Improvement Act, through which a broad group of stakeholders develop safety standards in a consensus-based process and the CPSC promulgates a mandatory standard that is either substantially the same or more stringent. Numerous infant and children's products are now manufactured to be far safer than they once were, and compliance must be tested and certified by a third party. We urge the Commission to continue, in fiscal years 2021 and 2022, to make its Section 104 activities a top priority, given the demonstrated record of success. We especially urge the CPSC to prioritize finalizing strong safety standards for infant sleep products and crib bumpers/liners.

#### *Effective recalls and enforcement*

Perhaps the most common way that consumers interact with the CPSC is when they learn of product recalls. CR applauds the recent increase in needed recalls, especially those pertaining to products that place infants and children at risk of injury and death. We urge the CPSC to keep pursuing recalls aggressively and to make use of all available tools to protect consumers from harm, especially during these difficult times. Furthermore, the agency should reject any efforts by companies to delay recalls due to the current public health crisis. CR understands that the COVID-19 pandemic is likely to have a significant impact on participation in recalls, and we fully support the CPSC's efforts to inform the public of potential delays of certain remedies.

When a recall is warranted, CR considers it best for consumers if the recall happens as quickly, as completely, and as easily as possible. Recalls vary greatly in how well they fulfill

these goals, and accordingly, we urge the CPSC to do all it can to make recalls more effective and verify that companies get unsafe products off the market and out of homes. A key component of ensuring fast and effective recalls is to have strong corrective action plans with terms that serve the public—not just the terms that recalling companies seek. The CPSC should continue working to employ novel communication and outreach tools, improve companies’ implementation of recalls, and draw on consumer behavior research, including on the use of incentives, to help ensure that recalled products are removed from use.

When a manufacturer fails to recall a hazardous product, the CPSC must find ways to alert retailers and consumers. The agency also should never issue, or allow a company to issue, just a general warning to the public when far stronger or more specific action is needed. Finally, the CPSC should take appropriately strong enforcement action against any entity that offers recalled or violative products for sale. In doing so, the agency should at a minimum demand the active cooperation of all that facilitate such sales, including online platforms and marketplaces.

### *Market surveillance*

CR urges the CPSC to strengthen its commitment to market surveillance, while acknowledging the disruptions the COVID-19 pandemic has had on many of the agency’s functions. It is critical for the CPSC to monitor imports of products at as many ports as possible to prevent entry of dangerous products into the U.S. marketplace. The CPSC should also continue to more broadly monitor the marketplace to ensure that unsafe products are removed from online platforms, second-hand markets, and child care facilities. Today’s various online marketplaces play a major role in how consumers buy and sell products, and their influence continues to grow. While individual marketplaces’ policies and practices vary, consumers too often encounter unsafe products for sale that these entities have failed to keep off of their sites.

We also urge the CPSC to strengthen its surveillance related to the growing issue of counterfeit goods. The scale of the counterfeit problem, its breadth, and its impact on consumers are all on the rise in the U.S. market, and growth in e-commerce is a major driver. Counterfeits can harm consumers’ safety or health, defraud them, and otherwise fail to deliver on what consumers reasonably thought they were buying. Where these products are prohibited under a CPSC-administered statute, the agency should take action to stop their distribution and sale.

### *Availability of information and accountability to the public*

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

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

In addition, we continue to strongly support the *SaferProducts.gov* public database. At the same time, we're concerned that reports of harm received via *SaferProducts.gov* represent an exceedingly small portion of the actual product hazard-related incidents that occur. We have appreciated the opportunity to provide comments and recommendations to the CPSC about the database, and look forward to continuing to work with the CPSC to develop and implement enhancements to *SaferProducts.gov* that would bolster product safety and help protect consumers, including by: increasing reports of harm; taking steps to redesign and clean up parts of the website and ease the reporting process; and improving data source integration and the public availability of *SaferProducts.gov* data.

### *Funding and staffing*

As we have said repeatedly, and as we have communicated to the House and Senate Appropriations Committees, the CPSC should receive at least double its current funding and staff levels to implement fuller programs to prevent consumer harm. We appreciate the efforts of the Chairman and other commissioners to prevent cuts in resources and push for additional funds; at the same time, we recognize that the agency is not currently resourced at a level reflecting that product safety, truly, is a federal priority.

### **Hazards around the home**

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

#### *Safe infant sleep*

The U.S. has the highest rate of sudden unexpected infant death (SUID) among all developed nations, and we are committed to preventing these tragedies. CR continues to pressure the CPSC, manufacturers, and retailers to remove from the market hazardous infant sleep products that fail to comply with the American Academy of Pediatrics' safe sleep

recommendations for consumers to place babies alone to bed on a firm, flat surface in their own space, with no extra bedding.<sup>2</sup>

We commend the CPSC for taking action on infant inclined sleep products over the last year. More than five million infant inclined sleeper units have been recalled, and the Commission has proposed a strong safety standard for infant sleep products that would effectively prohibit inclined sleepers. CR strongly supports this standard and urges the agency to finalize it without delay. In working with consumers across the country, CR has received approximately 22,650 signatures from people in support of this proposed safety standard for infant sleep products.

While medical and epidemiological evidence makes clear that inclined sleep products are not safe for infant sleep, some manufacturers still are unwilling to remove the products permanently from the marketplace. In addition to the continued presence on the market of products eerily similar to the long ago-recalled Nap Nanny, we observe that some manufacturers appear to be trying to side-step the issue by rebranding inclined sleep products as “loungers” or “bouncers” without making significant changes to the product design or marketing. These types of changes fail to fully address the danger to infants, and could potentially leave parents and caregivers confused and their infants at risk of injury and death. This behavior makes it all the more urgent for the CPSC to finalize its strong safety standard for infant sleep products and to seek appropriate compliance actions for inclined sleepers that remain on the market.

In addition, we thank the agency for its proposal to effectively remove padded crib bumpers from the marketplace. As CR testified at the CPSC Crib Bumper Forum earlier this year, the risks to infants from padded crib bumpers are severe. We agree with the November 2016 joint policy statement by several commissioners that there is a “clear risk of injury or death associated with padded crib bumpers” and that parents and caregivers should not use them.<sup>3</sup> In its most recent staff briefing package on crib bumpers, delivered in September 2019, CPSC staff identified 113 fatal and 113 non-fatal incidents related to crib bumpers between 1990 and 2019.<sup>4</sup> From branded data that the CPSC released in error, CR identified 23 infant fatalities tied to crib bumpers between 2012 and 2018.

The continued presence of padded crib bumpers on store shelves, and especially in-store displays, is misleading to consumers. In January 2020, Consumer Reports queried its consumer research panel of 1,000 people, which included 248 self-identified parents, and asked the parents how they understood crib bumpers in the context of the “bare is best” message. While 73% of the

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<sup>2</sup> American Academy of Pediatrics, “SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment” (Oct. 24, 2016) (online at: [pediatrics.aappublications.org/content/pediatrics/early/2016/10/20/peds.2016-2938.full.pdf](https://pediatrics.aappublications.org/content/pediatrics/early/2016/10/20/peds.2016-2938.full.pdf)).

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

<sup>4</sup> CPSC staff, Briefing package on “Proposed Rule: Safety Standard for Crib Bumpers/Liners under the Danny Keysar Child Product Safety Notification Act” (Sept. 4, 2019) (online at: [www.cpsc.gov/s3fs-public/Proposed%20Rule%20-%20Safety%20Standard%20for%20Crib%20Bumpers-Liners%20Under%20the%20Danny%20..\\_0.pdf](https://www.cpsc.gov/s3fs-public/Proposed%20Rule%20-%20Safety%20Standard%20for%20Crib%20Bumpers-Liners%20Under%20the%20Danny%20.._0.pdf)).

parents believed “bare is best” for infant sleep, only 55% of the parents believed that crib bumpers are unsafe to use for infant cribs. This stark contrast in responses—nearly a 20% difference—demonstrates the confusion that crib bumpers create for parents. We urge the CPSC to continue moving forward on its safety standard for crib bumpers/liners to ensure greater clarity for parents and caregivers and greater adherence to the AAP’s safe sleep recommendations for infants.

### *Furniture tip-overs*

Hundreds of deaths from tip-over incidents involving dressers and other clothing storage units (CSUs) have occurred since 2000, and thousands of emergency room-treated injuries happen each year because of these incidents. CR has conducted extensive research, analysis of incident and injury data, and comparative testing of a cross-section of the marketplace of CSUs to determine whether a given model is more or less likely to tip over relative to other models. Based on our investigation, the industry’s voluntary standard leaves too many children at risk. Our testing has demonstrated that it is feasible for dressers at all price points to pass a more rigorous test, and our analysis of the injury and fatality data shows why it is necessary for furniture manufacturers to meet a stronger standard.

While it is essential, where possible, to help avoid tip-over incidents by securing dressers to walls—as the Anchor It! campaign advocates—we recognize that taking this step is not always an option for tenants or those not handy with tools. The current COVID-19 crisis highlights the necessity for sturdier dressers as it keeps millions of people, including children, at home for prolonged periods. Fundamentally, it is the industry’s responsibility to ensure safer and sturdier dressers, and safety should not rely on consumer skill to anchor a dresser to a wall.

CR—in proud partnership with all of the parents who are painstakingly turning their tragedies into progress toward safer dressers—continues to urge the CPSC to set a strong, mandatory safety standard for CSUs, which, among other things, would allow the agency to enforce the rules and more easily gain industry cooperation for recalls. In the meantime, recognizing Section 7 and 9 mandatory standards can take a several years to develop without industry cooperation, CR also continues to urge furniture companies to take stronger action immediately and to protect more children and cover more dressers by increasing the test weight to 60 pounds. It is of the utmost importance for Commissioners and CPSC staff to actively support and encourage members of the furniture industry to support these improvements to the voluntary standard, and we applaud those who have done so or are doing so.

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

On the compliance side, we applaud the CPSC’s announcement of recalls involving additional unstable dressers, and notably, dressers under 30 inches tall. CR urges the CPSC to continue to announce recalls of unstable dressers and work to remove them from the market, and ensure that companies offer consumers strong remedies, including the option for full refunds.

### *Portable generators*

CR periodically tests and rates portable generators, including for their ability to reduce the risk to consumers of carbon monoxide poisoning. As the incident data make tragically clear, education and warning labels alone are not enough to protect consumers from this risk. With an average of about 70 deaths and several thousand non-fatal injuries annually,<sup>5</sup> performance requirements are needed, and the CPSC should implement a mandatory safety standard for portable generators to address the risk of carbon monoxide poisoning and other safety risks associated with the products. Such a standard would apply across the marketplace, make it easier to recall noncompliant products, and more effectively protect consumers.

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

### *Magnet sets*

CR is highly concerned about tiny, high-powered magnets having returned to the marketplace. The CPSC estimated in 2014 that potentially 2,900 emergency department-treated magnet set ingestions occurred in the United States from January 1, 2009, through December 31, 2013.<sup>6</sup> CR supported the strong mandatory safety standard for these products that was returned to the Commission by the Tenth Circuit Court of Appeals in November 2016, and we urge the Commission to expeditiously replace the standard with new measures that will prevent the kind of extensive, severe injuries that have occurred.

### *Internet-connected consumer products*

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

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<sup>5</sup> CPSC, Proposed Rule: Safety Standard for Portable Generators, 81 Fed. Reg. 83556-83615 (Nov. 21, 2016).

<sup>6</sup> CPSC, Final Rule: Safety Standards for Magnet Sets, 79 Fed. Reg. 59961 (Oct. 3, 2014).

### *Liquid laundry detergent packets*

The safety hazards of liquid laundry detergent packets remain significant, including to children and cognitively impaired adults.<sup>7</sup> Given the ongoing threat to young children demonstrated by exposure data from poison control centers, the CPSC should consider promulgating an enforceable mandatory standard. CR will continue to urge households where children younger than 6 or cognitively-impaired adults are ever present to skip these products altogether until there is a meaningful decline in injuries.

### *Smoke alarms, carbon monoxide alarms, and appliance fires*

According to the National Fire Protection Association, working smoke alarms more than double the chance of surviving a fire, and between 2012 and 2016, fires in homes with no smoke alarms caused an average of 1,020 deaths per year (40% of home fire deaths). An additional 440 people per year (17% of home fire deaths) were fatally injured in fires in which smoke alarms were present but failed to operate.<sup>8</sup> According to the Centers for Disease Control and Prevention (CDC), during 2010–2015, a total of 2,244 deaths resulted from unintentional carbon monoxide (CO) poisoning, with 393 of those deaths occurring in 2015.<sup>9</sup>

CR often stresses the importance of installing and maintaining smoke and CO alarms, and we look forward to continuing to work with the CPSC to reduce deaths and injuries from fires and carbon monoxide poisoning in the home. The most recent CR buying guide and ratings on these alarms offer consumers comparative information about different products that were tested.<sup>10</sup> To help keep consumers safe, CR also has shared information about how to ensure that smoke and carbon monoxide detectors function properly,<sup>11</sup> and has sought to help prevent home fires in the first place by providing consumers with information on proper precautions to take.<sup>12</sup>

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<sup>7</sup> See “The problem with laundry detergent pods,” Consumer Reports (July 16, 2015) (online at: [www.consumerreports.org/cro/magazine/2015/07/the-problem-with-laundry-detergent-pods](http://www.consumerreports.org/cro/magazine/2015/07/the-problem-with-laundry-detergent-pods)); “Laundry Detergent Pods Caused Surge in Chemical Eye Burns in Children,” Consumer Reports (Feb. 7, 2017) (online at: [www.consumerreports.org/product-safety/laundry-detergent-pods-sharp-increase-chemical-eye-burns-in-children](http://www.consumerreports.org/product-safety/laundry-detergent-pods-sharp-increase-chemical-eye-burns-in-children)); see also “Consumer Reports Finds Liquid Laundry Detergent Pods Pose Lethal Risk for Adults with Dementia,” Consumer Reports (June 15, 2017) (online at: [www.consumerreports.org/media-room/press-releases/2017/06/consumer-reports-finds-liquid-laundry-detergent-pods-pose-lethal-risk-for-adults-with-dementia](http://www.consumerreports.org/media-room/press-releases/2017/06/consumer-reports-finds-liquid-laundry-detergent-pods-pose-lethal-risk-for-adults-with-dementia)).

<sup>8</sup> National Fire Protection Association, Smoke Alarms in U.S. Home Fires (online at: [www.nfpa.org/news-and-research/fire-statistics-and-reports/fire-statistics/fire-safety-equipment/smoke-alarms-in-us-home-fires](http://www.nfpa.org/news-and-research/fire-statistics-and-reports/fire-statistics/fire-safety-equipment/smoke-alarms-in-us-home-fires)).

<sup>9</sup> CDC, Quick Stats: Number of Deaths Resulting from Unintentional Carbon Monoxide Poisoning (online at: [www.cdc.gov/mmwr/volumes/66/wr/mm6608a9.htm](http://www.cdc.gov/mmwr/volumes/66/wr/mm6608a9.htm)).

<sup>10</sup> Consumer Reports, “CO & Smoke Alarm & Carbon Monoxide Detector Buying Guide” (June 8, 2018) (online at: [www.consumerreports.org/cro/smoke-carbon-monoxide-detectors.htm](http://www.consumerreports.org/cro/smoke-carbon-monoxide-detectors.htm)).

<sup>11</sup> Consumer Reports, “How to Spot and Stop Carbon Monoxide Poisoning” (Oct. 31, 2017) (online at: [www.consumerreports.org/home-safety/how-to-spot-and-stop-carbon-monoxide-poisoning](http://www.consumerreports.org/home-safety/how-to-spot-and-stop-carbon-monoxide-poisoning)); Consumer Reports, Check Smoke and Carbon Monoxide Detectors When Moving Into a New Home” (March 9, 2018) (online at: [www.consumerreports.org/smoke-carbon-monoxide-detectors/check-smoke-and-carbon-monoxide-detectors](http://www.consumerreports.org/smoke-carbon-monoxide-detectors/check-smoke-and-carbon-monoxide-detectors)).

<sup>12</sup> See, e.g., Consumer Reports, “How to Prevent Dryer Fires” (Apr. 21, 2020) (online at: [www.consumerreports.org/clothes-dryer/how-to-prevent-dryer-fires](http://www.consumerreports.org/clothes-dryer/how-to-prevent-dryer-fires)).



### *Mattress flammability*

According to National Fire Protection Association estimates, home mattress fires caused one-third (3,100) of the 9,400 estimated reported home structure fires that began with mattresses and bedding per year in the 2007-2011 time frame; 16% (52) of the 330 mattress and bedding civilian fire deaths per year; 37% (502) of the 1,350 mattress and bedding civilian injuries per year; and 37% (\$132 million) of the \$361 million in direct property damage per year.<sup>13</sup> Mattress fires continue to pose a significant risk to consumers, and the CPSC should keep prioritizing work to reduce associated deaths and injuries during the next two fiscal years.

### *Window covering cords*

Efforts to address the risk of injury to young children from hazardous, accessible window covering cords have made progress, but there is more to be done. On average, one child dies every month in an incident associated with this hazard,<sup>14</sup> adding up to hundreds of child fatalities in the more than 30 years that the problem has been well understood. CR continues to support the development, by the CPSC, of a mandatory standard to eliminate the risk of strangulation and prevent future tragedies. In the meantime, we urge all window covering manufacturers to conform to the latest version of the voluntary ANSI/WCMA standard and continue to work urgently to bolster the standard so it also requires custom products to be free of accessible cords. For their part, retailers of window coverings should commit, without delay, to only sell cordless products.

### *Table saws*

More than 30,000 table saw injuries occur annually, with an average of ten amputations happening every day on the products.<sup>15</sup> CR supports a performance standard to limit the depth of a cut, because it is a sensible approach that is feasible to meet and, according to the agency's estimates, would yield large net benefits. We urge the Commission to keep moving forward on the mandatory safety standard for table saws.

### *Bike helmets*

In 2015, more than 1,000 U.S. bicyclists died, and there were almost 467,000 bicycle-related injuries, with approximately 85,000 head injuries attributable to bike crashes. Annually, about 26,000 of these bicycle-related injuries to children and adolescents are traumatic brain

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<sup>13</sup> National Fire Protection Association, RE: CPSC Request for Comments: Review of the Standard for the Flammability (Open Flame) of Mattress Sets under Regulatory Flexibility Act Sec. 610; Docket No. CPSC-2006-0011 (online at: [www.regulations.gov/document?D=CPSC-2006-0011-0010](http://www.regulations.gov/document?D=CPSC-2006-0011-0010)).

<sup>14</sup> CPSC, "Window Covering Cords Information Center" (online at: [www.cpsc.gov/Safety-Education/Safety-Education-Centers/Window-Covering](http://www.cpsc.gov/Safety-Education/Safety-Education-Centers/Window-Covering)).

<sup>15</sup> Kevin C. Chung and Melissa J. Shauver, *Table saw injuries: epidemiology and a proposal for preventive measures*, National Institutes of Health PubMed Central (Nov. 2013) (online at: [www.ncbi.nlm.nih.gov/pmc/articles/PMC4154236](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4154236)); Sadeq R. Chowdhury, Ph.D., Caroleene Paul, *Survey of Injuries Involving Stationary Saws, Table and Bench Saws, 2007-2008*, U.S. Consumer Product Safety Commission (March 2011).

injuries treated in emergency departments. As has long been established, bicycle helmets reduce head injuries by up to 50%.<sup>16</sup> It is important for the CPSC to work with all stakeholders to ensure that the CPSC bicycle helmet standard drives the market toward helmets that provide greater protection from impact, and CR looks forward to continuing this work.

CR promotes bicycle safety, both by monitoring the helmet market and informing consumers of safe practices.<sup>17</sup> In July 2019, CR published the results of an investigation finding that bike helmets not meeting safety standards were widely available.<sup>18</sup> CR shoppers, working with our testing experts, were able to find and purchase 13 helmets without a label certifying compliance with the CPSC standard for protection from skull fracture. We bought the helmets from four online marketplaces: Amazon.com, Sears.com, Aliexpress.com (a subsidiary of Chinese retail giant Alibaba), and LightInTheBox.com (a global retail company with headquarters in Beijing). These helmets represented a variety of styles, marketed toward road cyclists, mountain bikers, and recreational riders.

These helmets arrived without a required label, which would, at best, leave a consumer uncertain about their safety, and, at worst, indicate that they were not tested according to CPSC standards. The lack of a label itself, or the presence of an improper label (such as just the European “CE” safety standard but no label pertaining to the stronger impact requirements of the U.S. standard) made the helmets non-compliant, meaning they should not have been for sale in the U.S. CR contacted all four online retailers to inform them of what we discovered, and they all said they would remove or already had removed the items. While we were pleased with the swift response, our investigation highlighted a more pervasive issue: products that may threaten consumer safety are easy to purchase, even when regulations say they should not be.

Unfortunately, this is the case even for savvy buyers. The author of CR’s investigative story on bike helmets bought a helmet online for his toddler that claimed to have a CPSC certification on the online product listing, had a four-and-a-half star rating on Amazon, and even arrived with a label inside the helmet claiming certification to the CPSC standard. As CR’s journalist later discovered, that label did not contain all the information required by the CPSC, which is a red flag. The label lacked required information such as the month and year of product manufacture, and the statement saying which CPSC safety standard the helmet complies with, making the helmet not properly certified for safety. CR contacted the CPSC with our findings.

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<sup>16</sup> CDC, Bicycle Safety (June 5, 2017) (online at: [www.cdc.gov/motorvehiclesafety/bicycle/index.html](http://www.cdc.gov/motorvehiclesafety/bicycle/index.html)); Bicycle Helmet Safety Institute from the Department of Transportation 2017 report on bicycle injuries, “Helmet Statistics” (June 2017) (online at: [www.bhsi.org/stats.htm](http://www.bhsi.org/stats.htm)); CDC, Head Injuries and Bicycle Safety (Jan. 28, 2015) (online at: [www.cdc.gov/healthcommunication/toolstemplates/entertainmented/tips/headinjuries.html](http://www.cdc.gov/healthcommunication/toolstemplates/entertainmented/tips/headinjuries.html)); American Association of Neurological Surgeons, Sports Related Head Injury (online at: [www.aans.org/en/Patients/Neurosurgical-Conditions-and-Treatments/Sports-related-Head-Injury](http://www.aans.org/en/Patients/Neurosurgical-Conditions-and-Treatments/Sports-related-Head-Injury)) (accessed July 11, 2017).

<sup>17</sup> See, e.g., Consumer Reports, “4 Biking Safety Tips for Commuters” (Sep. 22, 2017) (online at: [www.consumerreports.org/safety/biking-safety-tips-for-commuters](http://www.consumerreports.org/safety/biking-safety-tips-for-commuters)).

<sup>18</sup> CR, “Bike Helmets That Don't Meet Safety Standards Are Widely Available, Consumer Reports Finds” (July 1, 2019) (online at: [www.consumerreports.org/bike-helmets/bike-helmets-that-dont-meet-federal-safety-standards-are-widely-available](http://www.consumerreports.org/bike-helmets/bike-helmets-that-dont-meet-federal-safety-standards-are-widely-available)).

### *Lawn mowers*

According to published academic research, there were 934,394 lawn mower injuries treated in the U.S between 2005 and 2015—an average of 84,944 injuries per year.<sup>19</sup> Between 1990 and 2014, 212,258 children suffered lawn mower-related injuries, many of which resulted in long-term physical, psychological, and financial damage.<sup>20</sup> During these periods, the incidence of lawn mower injuries for children and the general population failed to decline.<sup>21</sup> Considering the severity and persistent incidence of lawn mower-related injuries, the CPSC should dedicate additional staff time and resources to potential design changes and safety equipment that could reduce the risk of injury to consumers.

### *Pool safety*

From 2005 to 2014, an average of 3,536 fatal non-boating-related unintentional drownings occurred annually in the United States, or about ten deaths per day. About one in five people who die from drowning are children 14 and younger. Over 4,100 children younger than age 5 suffer submersion injuries and require emergency room treatment; about half are seriously injured and are admitted to the hospital for further treatment.<sup>22</sup> The CPSC rightly recognizes pool safety as a critical part of its current portfolio, and the subject should remain a priority as long as injuries and deaths remain elevated.

### **Conclusion**

In conclusion, CR greatly appreciates CPSC’s important efforts to address hazards associated with consumer products. We look forward to continuing to work with the agency to fulfill its mission in fiscal years 2021 and 2022.

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<sup>19</sup> Christopher Harris, Jonathan Madonick, and Thomas Ryan Hartka, *Lawn mower injuries presenting to the emergency department: 2005 to 2015*, American Journal of Emergency Medicine (Jan. 8, 2018)

<sup>20</sup> Karen Ren et al., *Children treated for lawn mower-related injuries in US emergency departments, 1990–2014*, American Journal of Emergency Medicine (Mar. 13, 2017); Marielena Bachier and Alexander Feliz, *Epidemiology of lawnmower-related injuries in children: A 10-year review*, Society of Black American Surgeons (2016).

<sup>21</sup> *Id.*

<sup>22</sup> CDC, “Unintentional Drowning: Get the Facts” (Apr. 28, 2016) (online at: [www.cdc.gov/homeandrecreationalafety/water-safety/waterinjuries-factsheet.html](http://www.cdc.gov/homeandrecreationalafety/water-safety/waterinjuries-factsheet.html)).



Written Testimony of Linda Kaiser, President, Parents for Window Blind Safety  
To the U.S. Consumer Product Safety Commission  
Agenda and Priorities FY 2020 and 2021

Since the death of my daughter, Cheyenne Rose and the founding of our organization, 18 years ago, our mission was educating consumers about hazardous cords on window coverings and working with the industry in eliminating this preventable hazard through the standard development process.

I continue to have deep concerns about the ANSI/ WCMA A100,1-2018 safety standard, the remaining hazard not addressed by the standard, the availability of non-compliant products on the market, and how the CPSC will monitor compliance including how the CPSC will handle manufactures who are using the lack of clarity in the standard to continue to sell corded stock products.

The same strangulations hazards are present on all custom product that have cords. Cords are hazardous, period.

The data clearly shows that children are able to gain access to cords in several ways. Unsuspecting consumers who follow current safety tips<sup>1</sup> for custom products with cords continue to put children at risk when using cord cleats, tassels, and continuous loops.

The current WCMA standards leaves numerous risks unaddressed<sup>2</sup>, including::

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

Knowing that all of these hazards still exist on custom products in the United States, I humbly ask that the CPSC prioritize window covering safety. We are not done. We were

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

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

promised a re-opening of the custom side of the standard in June of 2019. This was a year ago. CPSC made a commitment to continue to work on the ANPR if the Window Covering Manufactures did not fulfill their obligations to eliminate the hazards associated with window covering cords. To date, the hazards still exist. Where is the commitment to future children? To the advocates?

Health Canada has pulled up their pants and fought very hard for the safety of children in their country and created a regulation that was firm. What about the US children? My plea to you as an advocate, a mother who has lost a child from hazardous cords, is that the CPSC move forward on our petition that was filed in 2012 and implement a mandatory standard due to the failure of the current voluntary standard to effectively address the risks posed by custom window coverings and the lack of commitment from the Industry to address these risks. It is imperative to act now. My daughter would be almost 19 years old. I have been writing the CPSC for nearly 18 years. Over 300 children have died and hundreds have been seriously injured since her death. I have worked on this issue tirelessly for almost two decades. It is time to finish this up, to finalize a strong mandatory standard, and create a safer environment for children.

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

- Moving the petition filed in 2012 forward due to the reneged commitment of the WCMA.
- Budgeting funds and staff time for the window covering safety mandatory standard to be finalized.
- Adequately informing the public about hazards posed by window coverings.

As an agency, it is your duty to adequately inform the public of all dangers that continue to exist with consumer products in the home. Continuing to spread the message to consumers to keep cords out of reach confuses consumers. All cords are reachable for adults and children. Data proves kids have accessed cords out of reach and strangled on them<sup>3</sup>.

We are changing our safety message to: keep cords out of sight. Anyway a parent can keep cords out of sight, could have a better impact than keeping cords out of reach. Out of sight includes taping cords to the window so curious kids cannot see

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

them, for consumers who have corded window coverings and no current option to replace with a cordless product.

We recommend that the CPSC update their messaging by stating:

- Keep cords out of sight, all children can access cords out of reach.
- Stating cords on custom products are hazardous, instead of ignoring it.
- Stating cords are hazardous to children ages seven and under, instead of staying "Young Children"
- Urging the public to go cordless, regardless of whether they have children. Visiting children have died in homes.

Consumers become parents every day. They have no idea that cords are hazardous. It is vital that the message is clear and not diluted. It is vital that the CPSC makes window covering safety a top priority again and play an active role in compliance, and push for the hazards on custom products to be designed out of the product through the standard.

Thank you for your time and for all of your hard work on this issue over the years, especially your hard working staff who has been at the agency since our organizations founding

With Gratitude,

A handwritten signature in blue ink that reads "Linda Kaiser". The signature is written in a cursive style with a large initial "L".

Linda Kaiser







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May 1, 2020

Via Email

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Re: Agenda and Priorities FY 2021 and/or 2022

Dear Ms. Mills:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the Consumer Product Safety Commission's (CPSC or Commission) on its agenda and priorities for fiscal years 2021 and 2022. These comments are filed in response to the Commission's Notice of Public Hearing on its Agenda and Priorities, 85 Fed. Reg. 12908 (March 5, 2020).

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

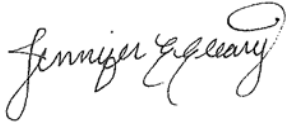
AHAM is also a standards development organization, accredited by the American National Standards Institute (ANSI). The Association authors numerous appliance performance testing standards used by manufacturers, consumer organizations and governmental bodies to rate and compare appliances. Our safety standards activities, however, are aimed at developing, evaluating, and commenting on proposals before standards development organizations such as UL and CSA. In that regard, AHAM has made and supported a significant number of safety proposals (58 for major and portable appliances combined) in the past six years. AHAM's consumer safety education program has educated millions of consumers on ways to properly and safely use appliances such as portable heaters, clothes dryers, and cooking products.

AHAM respectfully requests that the Commission continue to provide funding such that CPSC staff can continue its support of odorants for flammable refrigerants. The flammable refrigerants are used or being proposed to be used in numerous voluntary consensus safety standards for refrigerators and air conditioning. Specifically, the effort is being driven inside UL 60335-2-40, the safety standard for air conditioning equipment. That Task Force recently approved the expanded use of flammable refrigerants in these products.

CPSC staff's participation has been especially valuable. In particular, CPSC staff has been instrumental in providing focus and support for ensuring consumers, fire fighters, and other first responders are protected against potential failure modes. This work is critical because air conditioners must meet California Air Resources Board (CARB) requirements on refrigerant usage and the only way to achieve the CARB requirements is to use a flammable refrigerant.

AHAM appreciates the opportunity to provide these comments on the Commission's agenda and priorities for fiscal year 2021 and 2022, and would be glad to further discuss these matters with you should you so request.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jennifer Cleary".

Jennifer Cleary  
Vice President, Regulatory Affairs





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

May 1, 2020  
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 2021 and FY 2022**

Thank you for the opportunity to submit comments on the U.S. Consumer Product Safety Commission’s (CPSC) agenda and priorities for FY 2021 and FY 2022. Kids In Danger (KID) is dedicated to protecting children by fighting for product safety. Our mission is to save lives by enhancing transparency and accountability through safer product development, better education and stronger advocacy for children.

Here are KID’s recommendations for agenda and priorities in the coming years:

**COVID-19 and Product Safety**

As with almost everything else, COVID-19 has and will continue to have a profound effect on product safety. All CPSC staff is working remotely, testing in the lab has been halted and CPSC personnel are not at the ports. It is unclear what impact it is having on incident investigations or field investigations of dangerous products. Recalling companies are unable to respond to requests for repair kits, refunds or replacement products, increasing the likelihood at least some of those recalled products will remain in use.

With remote working and schooling accompanied by social distancing and quarantines, it is also inevitable that children are more likely to be injured with common household hazards including tipping furniture, ingestion hazards such as magnets, laundry packets, and button cell batteries, as well as window cords, falls from windows, small parts, and more. We urge the CPSC to both find ways to gauge and evaluate injury rates in a timely manner as well as develop plans to mitigate these risks with education, stronger enforcement and strengthened standards.

**Adequate Funding to Fulfill Mandate**

There is one point all stakeholders agree upon – the CPSC does not have adequate resources to fulfill its mandate of protecting consumers from unreasonable risk of harm. To oversee imports at our ports, follow up on reports of harm, develop and enforce strong standards, conduct robust recall activities and reach consumers with important safety information, we would urge the CPSC to request and Congress to grant a budget of no less than \$350 million. We believe that for too long this agency has

been forced to compromise on the safety of consumers, especially children, based on funding. Fully funding the agency will pay off in the long run in reduced health care costs and lost income from preventable injuries.

### **Danny's Law and Durable Infant and Toddler Product Standards**

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

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

There are three open rule development processes— Expansion Gates and Expandable Enclosures, Crib Bumpers/Liners, and Infant Sleep Products. We applaud the efforts that the CPSC has taken to strengthen these standards to protect children and encourage work to continue to publish final rules soon.

The Notice of Proposed Rulemaking (NPR) on Infant Sleep Products, expanding the previous proposed standard addressing infant inclined sleep products to include all infant sleep products not currently covered by another standard is a step KID has urged for many years. Any product intended for infant sleep should not be sold without meeting a mandatory standard. Parents assume 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 many hazards such as inclines over 10° is a great step forward for safety. We hope that the CPSC will prioritize eliminating unsafe infant sleep products such as inclined sleep products and recalling any that remain in homes or on the market. In addition, guidance should be added to the CPSC's Small Business Guidance webpage to discourage small companies from entering this market, unaware of the research that has found this type of product unsafe. Currently, when a user selects "infant inclined sleep product" as the type of product in the Regulatory Robot, the information refers to the ASTM standard and says a mandatory standard is coming soon. There is no word at all of the danger that these products pose.

KID has also been urging a ban on padded crib bumper pads for over a decade. We believe the current NPR adopted unanimously by the Commission provides a pathway to eliminating padded crib bumpers that pose a suffocation risk from the market. KID will submit comments on the NPR separately. While work is being done to look at appropriate airflow tests and other details, we urge CPSC staff to continue to review injury and death data both for padded bumpers and mesh liners to assure the final rule will protect against all known hazards of these products. A standard that doesn't fully address the risk and gives a false sense of safety to parents is more dangerous than no standard.

Further, we believe that the CPSC should seek to include in Section 104 rulemaking all durable infant and toddler products. Parents should have confidence that all the durable infant and toddler products are safe. 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.

### **Product Registration**

As part of the CPSIA, the Danny Keysar Child Product Safety Notification Act requires companies to provide prepaid product registration cards in a conspicuous location and a way to register online. The information gathered must only be used to notify the consumer in the event of a recall or safety notice. Almost all stakeholders agree that direct notification is key to effective recalls. While the CPSIA requires the card and online site at a minimum, we ask the CPSC to work with stakeholders to innovate new and more effective forms of registering, or using existing lists of product owners such as those held by retailers, company loyalty programs, and other data to reach consumers directly. It has been over 10 years since this requirement was implemented. KID and Parents Against Tip-overs recently conducted a survey and found that 46% of respondents said they would be more likely to fill out a product registration card if it were emailed to them and another 34% said they would be more inclined to register their product if it could be done at the time of purchase. In the coming year, the CPSC should evaluate data from recalls conducted since that implementation to determine its effectiveness and barriers to direct notification. This would include data on registration cards returned/online registrations, efforts to use the data during recalls and any obstacles, results of various types of recall participant responses and efforts by companies to increase registration numbers. The resulting research should be publicly available to encourage others to develop new approaches as well.

### **Recalls**

Since 2001, KID has been reporting on children's product recalls annually. Last month, we released our report on 2019 recalls. We found that children's product recalls have seen a downward trend over the past ten years.<sup>1</sup> Although the number of recalls in 2019 is slightly higher than in 2018, the number of recalls is still lower than every other year that KID has collected data. Our research found that 2019 had the highest number of reported deaths associated with recalled products in the 19 years KID has analyzed data. Thirty-seven of the 38 reported deaths were due to recalled infant inclined sleep products – the Fisher-Price Rock 'n Play and Kids II rocking sleeper. The CPSC only posted 52% of children's product recalls on its Facebook page, 59% on Twitter, and a mere 5% on Instagram. KID recommends that the CPSC post all recalls on social media in order to increase recall effectiveness.

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

Innovation is needed in the area of recall effectiveness. Right now, much of the burden from recalls falls on consumers – listening to the news, filling out forms, waiting for and installing repairs. However, consumers are not the ones responsible for recalled products. The CPSC should work with stakeholders to build on past efforts and keep moving the needle towards effective recalls.

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<sup>1</sup> <https://kidsindanger.org/wp-content/uploads/2020/03/Seeking-Safety-2020.pdf>

Some Monthly Corrective Action Plan Reports are aggregated and posted on the CPSC website, but posting is voluntary and only a fraction of recalls are included. It provides little insight into recall effectiveness. Since our testimony last year, only two children's products have been added to this database (last updated 3/30/20) despite 70 children's product recalls in that time.

### **SaferProducts.gov**

One of the most innovative new tools required by the CPSIA is a product database for consumers' incident reporting. **SaferProducts.gov** has great potential to educate consumers on hazards and recalls as well as provide vital information to the CPSC and manufacturers about product hazards. We have seen new links on the CPSC website on each page to both report and review incidents. More should be done to analyze the data on the site and share the resulting reports with the public. Last fall, I participated in a panel at the International Consumer Product Health and Safety Organization's International Conference in Dublin, Ireland. One of the presenters, Samuel Cromie, Assistant Professor of Psychology at Trinity College, presented on Key Elements of a Reporting System. He spoke of the need to make it intuitive, responsive and engaging. The information was intended both for companies and regulators. I urge the CPSC to work with such experts to improve the interface of SaferProducts.gov as well as how it is presented to consumers to increase both the number and quality of incident reports.

### **Section 6(b)**

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. After last year's data breach, there was a resulting focus on securing information from release. Now, a year later, the CPSC should turn its efforts to finding new ways to be transparent and share injury data and other public health information with the public.

The shadow of the provision, amplified by the data breach, is much larger than the Act itself. Businesses use the cover of 6(b) to withhold already public information and for information the act was never intended to cover. We urge the CPSC, while waiting for Congress to repeal the provision, to look closely at the way Section 6(b) is implemented at the agency – from the FOIA office to the communications or compliance divisions and bring it more in line with the law itself. This can weaken its negative impact on public safety.

### **Freedom of Information Act (FOIA) Office**

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

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 efficiently and effectively fill a request for information. We urge the CPSC to prioritize this office for innovative updates.

### **Furniture Tip-overs**

The CPSC's work on a rule addressing the stability of clothing storage units must continue despite the slowdown of testing during the COVID-19 pandemic. While the scope of the voluntary ASTM standard was broadened to include shorter units, nothing was done to ensure increased stability of the units. The ASTM committee has been dragging its heels for 20 years and the CPSC can ensure a strong standard that adequately protects children. We would ask that this continue to be a priority issue for the agency.

### **Ingestion Hazards**

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

### **Conclusion**

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

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