



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

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

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

For the last 85 years, improving product safety has been a central tenet of CR’s mission—and it is just as important to us today. We assess safety risks, investigate their impact on consumers, and inform the public and the CPSC when we find unsafe products—all on a data-driven basis. We push for strong safety standards to protect consumers from the risk of injury, through both rulemakings at the CPSC and voluntary standards development. We support and defend the CPSC’s vital role in order to ensure a consumer-driven marketplace in which both people and companies can benefit from safer products and fewer product-related injuries and deaths.

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

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

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

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

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

Foster a strong and inclusive safety culture at the CPSC

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

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

Empower CPSC staff to put people first

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

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

the public, identify and reduce hazards, and pursue compliance and enforcement actions as the law and their experience dictate.

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

Hold companies accountable for wrongdoing

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

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

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

Promote information accessibility and accountability to the public

Since the 1980s, the CPSC has operated under severe constraints on its ability to communicate clearly with the public about critical safety issues. Fundamentally, the CPSC should inform the public about legitimate safety hazards in a timely and complete manner regardless of whether or not a company wants that to occur. The agency should work to do so as broadly as possible within the confines of the statutory language of Section 6(b) of the Consumer Product Safety Act (CPSA), including by implementing internal practices aimed at maximizing the public's access to critical safety information. At the same time, we want to be clear that the impact of Section 6(b) is anti-consumer and anti-safety, and we are urging Congress to repeal this provision.

While recognizing Section 6(b)'s significant effects on the agency's ability to communicate with the public, we urge the CPSC to take several steps regarding the availability of information and agency accountability to the public. First, it should be an agency priority to reduce Freedom of Information Act (FOIA) backlogs and other factors that cause responses to FOIA requests to be delayed, including beyond the dates by which responses are required. Second, the agency should make public the current status of all recalls and whether companies are meeting its obligations under a recall agreement and are successfully getting unsafe products off the market and out of homes. This effort should include greater public availability of terms that have been agreed to under a corrective action plan, and the routine posting of corrective action plan reports on CPSC.gov. Third, it is critically important for companies to follow through on their commitments to issue a recall and carry out related actions. Even if it cannot disclose the names of the companies or the products involved, the CPSC has an obligation to the public to push companies to commit to carrying out recalls as quickly, as completely, and as easy for consumers as possible.

Actively support and promulgate strong consumer-centric standards

Enrich and strengthen voluntary standards processes

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

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

Identify future CPSIA Section 104 rulemaking needs

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

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

Explore future mandatory standards

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

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

Address hidden home hazards

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

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

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

Conclusion

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

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