



June 4, 2021

The Honorable Carolyn Maloney, Chairwoman
The Honorable James Comer, Ranking Member
U.S. House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Maloney and Ranking Member Comer:

Consumer Reports, the independent, non-profit, and nonpartisan organization, writes regarding the June 7, 2021, hearing of the U.S. House Committee on Oversight and Reform on “Fisher-Price’s Rock ‘n Play Sleeper and Failures in Infant Product Safety.” We greatly appreciate your attention to these important topics.

The subject of safe infant sleep is at the forefront right now. Earlier this week, more than two years after 4.7 million Rock ‘n Play Sleepers were recalled, the Consumer Product Safety Commission (CPSC) voted to approve a final rule to require all currently unregulated infant products intended or marketed for sleep to meet strong safety standards.¹

Unfortunately, this rule has not yet taken effect, and the crisis of unsafe infant sleep products is ongoing. The fact that nearly 100 infant deaths are linked to the Fisher-Price Rock ‘n Play and other inclined sleepers, and at least 23 deaths are tied to unregulated flat sleep products, such as in-bed sleepers, demonstrates the serious hazards associated with infant sleep products that are not required to comply with a CPSC standard, and exposes severe flaws in the country’s product safety system.²

Consumer Reports’ ongoing, multi-year investigation into the safety of infant sleep products revealed, in April 2019, that dozens of previously undisclosed infant deaths were linked to inclined sleepers.³ In November 2019, as the evidence mounted of serious hazards associated with infant inclined sleepers, Consumer Reports President and CEO Marta Tellado sent a letter to Ynon Kreiz, the Chairman and CEO of Fisher-Price’s parent company, Mattel, urging the company to stop selling all inclined products that are for sleep—including those marketed for “napping,” “resting,” or “snoozing,” as well as those that imply they are safe for some kinds of sleep but not “unsupervised,” “prolonged,” or “overnight” sleep—and to immediately “recall all remaining infant sleepers with inclined back surfaces.”⁴

In the company’s response a week later, Chuck Scothon, senior vice president and general manager of Fisher-Price, declined to recall the company’s remaining infant products marketed for infant sleep, including the 4-in-1 Rock ‘n Glide Soother, stating that it “has not been marketed for *overnight* sleep” (emphasis added).⁵ On June 4, 2021, today, Fisher-Price finally recalled the Rock ‘n Glide Soother after it was connected to at least four infant deaths that

occurred between April 2019 and February 2020.⁶ Both Mr. Kreiz and Mr. Scothon are, of course, testifying before the Committee on Monday.

From April 2019 to today, the events surrounding Fisher-Price and manufacturers of other unregulated infant sleep products highlight the need for Congress to consider key ways to strengthen the CPSC's ability to keep hazardous products out of the marketplace. The following is a non-exhaustive list of reforms that, if implemented, would better equip the agency to protect the public:

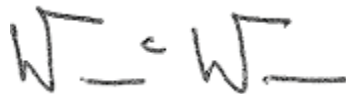
- **Repeal Section 6(b) of the Consumer Product Safety Act (CPSA):** Fundamentally, the CPSC should have the ability to inform the public about legitimate safety hazards in a timely and complete manner regardless of whether or not a company wants that to occur. In May 2018, despite knowing about deaths connected to the Fisher-Price Rock 'n Play Sleeper, the CPSC issued only general warnings about “inclined infant sleep products.” Because of Section 6(b), the public remained in the dark about the severity of the Rock 'n Play's hazards until nearly a year later. It was only the inadvertent release of Section 6(b)-protected information to Consumer Reports—and CR's decision, in the interest of infant safety, to proceed with publishing what the organization had learned—that brought the truth to light. The Sunshine in Product Safety Act ([H.R. 2813](#) / [S. 1355](#)), which Consumer Reports strongly supports, would repeal section 6(b) of the CPSA and assist the CPSC in publicly sharing critical information about unsafe products with the public without the product's manufacturer slowing or stopping the disclosure.
- **Embolden the CPSC to hold companies accountable for safety:** The CPSC should expand the use of its compliance and enforcement tools to improve consumer safety and corporate accountability. Historically, the CPSC has over-relied on drawn-out recall negotiations that rely on company cooperation, and has inadequately used its compliance and enforcement authorities available under federal law. Consumer Reports is urging 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 also seeks a consistently aggressive approach from the CPSC to violations of laws and regulations under the agency's jurisdiction. To assist in these efforts, CR is advocating for Congress to strengthen reporting requirements for companies under Sections 15 and 37 of the CPSA to ensure the agency receives information necessary to fully investigate and address product hazards. CR also urges Congress to amend Section 20 of the CPSA to remove the maximum civil penalty of \$15 million for a related series of violations.
- **Give the CPSC general Administrative Procedure Act (APA) rulemaking authority:** The CPSC must be able to promulgate strong and timely mandatory standards for all product categories.⁷ Rulemaking under Sections 7 and 9 of the CPSA—the CPSC's primary rulemaking authority—requires the agency to, among other things, rely first on voluntary industry standards and find that the rule it is promulgating “imposes the least burdensome requirement which prevents or adequately reduces the risk of injury,” as opposed to maximizing net benefits to the public. Providing the CPSC with general

rulemaking authority under the Administrative Procedure Act would enable the agency to use stronger and timelier mandatory standards to protect people from hazards involving any consumer product. Recognizing the significant limitations that Sections 7 and 9 impose on the CPSC's ability to address hazards, Congress repeatedly has directed the CPSC to promulgate rules for individual products under the APA, rather than Sections 7 and 9, to ensure finalization of the rule in a reasonable period.⁸

- **Increase the CPSC's budget to at least double current funding levels:** The CPSC is the smallest public health and safety regulatory agency, despite having jurisdiction over about 15,000 different product types. The inadequacy of the agency's resources forces the CPSC to make painful choices each year that leave the public at a greater risk of harm from hazardous products than they would be if the agency had the funding and staffing it needs to fully carry out its mission. With the CPSC's current annual funding at just \$135 million, we strongly urge Congress to support a significant funding increase in FY 2022. Specifically, CR supports the request for the CPSC to receive at least \$281 million and an additional one-time allocation of \$89 million, as outlined in the March 1, 2021, letter from CPSC Acting Chairman Bob Adler to House Appropriations Chair Rosa DeLauro.⁹

Thank you for your consideration, and for your examination of infant sleep safety and the overall state of our product safety system and the CPSC. We look forward to working together with you and all members of Congress to create a safer marketplace for consumers.

Sincerely,



William Wallace
Manager, Safety Policy



Oriene Shin
Policy Counsel

cc: Members of the U.S. House Committee on Oversight and Reform

¹ CPSC, "CPSC Approves Major New Federal Safety Standard for Infant Sleep Products" (June 2, 2021) (online at: www.cpsc.gov/Newsroom/News-Releases/2021/CPSC-Approves-Major-New-Federal-Safety-Standard-for-Infant-Sleep-Products); CR, "Product Safety Agency Approves Rule Preventing Sale of Dangerous Baby Sleep Products," (June 2, 2021) (online at: www.consumerreports.org/product-safety/cpsc-rule-preventing-sale-of-dangerous-baby-sleep-products-a1191791052).

² CR, "Government Moves Closer to Stopping the Sale of Dangerous Baby Sleep Products" (May 19, 2021; updated June 2, 2021) (online at: www.consumerreports.org/child-safety/cpsc-stopping-sale-of-dangerous-baby-sleep-products-a6728402111).

³ See, e.g., CR, "Fisher-Price Recalls the Rock 'n Play Sleeper After It Was Tied to Infant Deaths" (Apr. 12, 2019) (online at: www.consumerreports.org/recalls/fisher-price-recalls-rock-n-play-sleeper).

⁴ CR, “Letters from CR President and CEO Marta Tellado to infant inclined sleeper manufacturers calling for immediate recalls” (Nov. 4, 2019) (online at: advocacy.consumerreports.org/research/letters-to-infant-inclined-sleeper-manufacturers-nov-2019).

⁵ Letter from Letter from Chuck Scothon, SVP, General Manager, Fisher-Price & Global Head-IPS, Global Brands Team, to Marta Tellado, President and CEO, Consumer Reports (Nov. 11, 2019).

⁶ CPSC, “Fisher-Price Recalls 4-in-1 Rock ‘n Glide Soothers After Four Infant Deaths; 2-in-1 Soothe ‘n Play Gliders Also Recalled” (June 4, 2021) (online at: www.cpsc.gov/Recalls/2021/Fisher-Price-Recalls-4-in-1-Rock-n-Glide-Soothers-After-Four-Infant-Deaths-2-in-1-Soothe-n-Play-Gliders-Also-Recalled); *see also* CR, “Fisher-Price 4-in-1 Rock ‘n Glide Soother Recalled After Being Linked to 4 Deaths” (June 4, 2021) (online at: www.consumerreports.org/baby-product-recalls/fisher-price-4-in-1-rock-n-glide-soother-recalled-after-bein-a7375955676).

⁷ The new final rule for infant sleep products approved by the CPSC on June 2 has been promulgated under Section 104 of the Consumer Product Safety Improvement Act, which the agency can use only for durable infant or toddler products—not other product categories. Pub. L. 110-314, 15 U.S.C. 2064a.

⁸ *See, e.g.*, Pub. L. 110-278, Pub. L. 110-314, and Pub. L. 112-266.

⁹ CPSC, “Letter from Acting Chairman Adler to Chairwoman DeLauro on Reinventing the CPSC” (Mar. 1, 2021) (online at: www.cpsc.gov/s3fs-public/Reinventing%20CPSC%20-%20DeLauro.pdf).