



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

Submitted to the Office of the Secretary via cpsc-os@cpsc.gov
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Consumer Reports (CR), the independent, nonprofit, and nonpartisan organization,¹ welcomes the chance to submit comments on the agenda and priorities of the Consumer Product Safety Commission (CPSC) for fiscal years 2023 and 2024.

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

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

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

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

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

It is hard to overstate the importance of CPSC leadership working closely with career staff to fully carry out the agency's mission and meet the demands of today's complex, interconnected, and ever-changing marketplace. It is critical for the Commission and CPSC staff to be vocal and persistent advocates for consumer safety in every arena. This leadership role includes clear communication of key messages on safety hazards, as well as informing the public about new potential product hazards as quickly and prominently as possible. The CPSC should continue to engage resistant companies to ensure they take action in support of safety, and require strong mandatory actions when companies do not act voluntarily.

The Commission should continue to empower CPSC staff to demand strong safety practices and policies in the marketplace. Staff should continue to take leadership roles in voluntary standards development, and push for strong consumer-centric standards. They should more regularly champion agency positions and cast more ballots on the basis of their safety expertise and their independent assessment of the matter at hand. Staff should be able to conduct research, educate the public, identify and reduce hazards, and pursue compliance and enforcement actions as the law and their experience dictate. We also urge CPSC staff, especially its technical experts, to be more accessible to stakeholders, including parent advocates and consumer organizations, in order to provide insights on what informs the agency's critical work.

As an independent regulatory agency, the CPSC has been directed by Congress to look out for the safety of Americans in a manner relatively insulated from outside pressures. However, on occasion staff has been unable to fulfill the agency's mission due to abrupt shifts in priorities and focus areas. We remain concerned that these changes contribute to unreasonable delays in the agency's capabilities, which place the public at risk year after year. We urge the CPSC to implement strong and lasting internal mechanisms to protect staff from external and internal pressures they may receive to deviate from their work to maximize consumers' safety. We also urge the Commission to empower the agency's staff once again with the discretion to evaluate and implement the agency's Inspector General's recommendations as appropriate.

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

Hold companies responsible for delays and wrongdoing in a timely way

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

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

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

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

Bolster greater information transparency and accountability to the public

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

While recognizing Section 6(b)'s significant effects on the agency's ability to communicate with the public, we urge the CPSC to take several steps regarding the availability of information and agency accountability to the public. First, it should be an agency priority to reduce Freedom of Information Act (FOIA) backlogs and other factors that cause responses to FOIA requests to be delayed. Second, the agency should make public the current status of all recalls and whether companies are meeting obligations under a recall agreement and are successfully getting unsafe products off the market and out of homes. This effort should include greater public availability of terms that have been agreed to under a corrective action plan, and the routine posting of corrective action plan reports on CPSC.gov. Finally, the agency should also bolster efforts to collect data that would help the agency determine disparate or different

impacts that product hazards may have on particular communities.

Actively support and promulgate strong consumer-centric standards

Enrich and strengthen voluntary standards processes

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

We applaud the agency's expert participation and unwavering support for safety in numerous recent voluntary standard meetings. Voluntary standards should set strong safety minimums that protect the public and provide clear expectations for companies, not just give products a rubber stamp of approval. We urge the CPSC and its staff to remain active in future voluntary standards processes.

Advance strong mandatory standards

The CPSC should not hesitate to pursue and advance mandatory standards to address hazards that have not been adequately addressed in a voluntary standard, including those that have gone unaddressed for years, if not decades. We also recognize that promulgating mandatory standards under Section 7 and 9 of the CPSA can take several years without industry cooperation. However, it is critical to explore all avenues to address such persistent product hazards that put consumers at risk of injury or death. Specifically, CR encourages the Commission to advance a proposed rule addressing button cell or coin battery ingestion; to issue final rules regarding magnets, table saws, and window coverings; and to revisit and recommit to advancing mandatory standards for portable generators and gas appliances, including boilers and furnaces, to reduce the risk of carbon monoxide poisoning.

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

Identify future CPSIA Section 104 rulemaking needs

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

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

Address hidden home hazards

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

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

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

Conclusion

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

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

³ See Consumer Reports, "Written Comments of Consumer Reports to the U.S. Consumer Product Safety Commission on: 'Agenda and Priorities FY 2022'" (Apr. 7, 2021) (online at: advocacy.consumerreports.org/wp-content/uploads/2021/04/CR-written-comments-to-CPSC-on-FY-2022-Priorities-March-17-2021.pdf); Consumer Reports, "Written Comments of Consumer Reports to the U.S. Consumer Product Safety Commission on: 'Agenda and Priorities FY 2021 and/or 2022'" (May 1, 2020) (online at: advocacy.consumerreports.org/wp-content/uploads/2020/05/CR-written-comments-on-CPSC-FY-21-22-priorities-5-1-2020.pdf).