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KEEPING KIDS AND CONSUMERS SAFE FROM DANGEROUS PRODUCTS

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION AND COMMERCE

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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KEEPING KIDS AND CONSUMERS SAFE FROM DANGEROUS PRODUCTS

THURSDAY, JUNE 13, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER PROTECTION AND COMMERCE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:29 a.m., in the John D. Dingell Room 2123, Rayburn House Office Building, Hon. Jan Schakowsky (chairwoman of the subcommittee) presiding.

Members present: Representatives Schakowsky, Kelly, O'Halleran, Cárdenas, Blunt Rochester, Soto, Matsui, McNerney, Dingell, Pallone (ex officio), Rodgers (subcommittee ranking member), Upton, Burgess, Latta, Guthrie, Bucshon, Hudson, Carter, and Walden (ex officio).

Also present: Representatives Kuster and Griffith.

Staff present: Alex Chasick, Counsel; Evan Gilbert, Deputy Press Secretary; Lisa Goldman, Senior Counsel; Waverly Gordon, Deputy Chief Counsel; Alex Hoehn-Saric, Chief Counsel, Communications and Consumer Protection; Zach Kahan, Outreach and Member Service Coordinator; Alivia Roberts, Press Assistant; Chloe Rodriguez, Policy Analyst; Sydney Terry, Policy Coordinator; Jordan Davis, Minority Senior Advisor; Margaret Tucker Fogarty, Minority Legislative Clerk/Press Assistant; Melissa Froelich, Minority Chief Counsel, Consumer Protection and Commerce; Peter Kielty, Minority General Counsel; and Bijan Koohmaraie, Minority Counsel, Consumer Protection and Commerce.

OPENING STATEMENT OF HON. JAN SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Good morning, everyone. The Subcommittee on Consumer Protection and Commerce will now come to order.

We are going to hopefully move pretty quickly through opening statements, because we are going to be called to the floor before too long for a long series of votes, and I really want to hear our witnesses.

You know, the American people are often skeptical of what does government do for them. And I just feel so proud and so lucky to be on this subcommittee, because the kinds of things we are talking about today are about saving lives, and we are actually going to make a difference in the lives of everyday Americans.

I appreciate so much our witnesses for being here today.

We are going to consider seven bills that aim at protecting consumers and, yes, saving lives. This subcommittee's vice chair, for example, Tony Cárdenas, introduced the Safe Sleep Act of 2019, which would ban inclined sleep products.

You know, I wrote to the Chairman of the Consumer Product Safety Commission, Chairman Buerkle, in April asking to recall this Rock 'n Play, which, gratefully, she did. But there are other inclined sleep products out there that are a risk, so I am very grateful to Congressman Cárdenas for introducing this important legislation.

I want to thank Annie Kuster, who has waived onto the subcommittee today. She and Buddy Carter, a member of this subcommittee, have introduced the Nicholas and Zachary Burt Carbon Monoxide Poisoning Act. Those are two brothers who died. And we want to prevent that, and this would establish a CPSC grant program for States to install carbon monoxide detectors in childcare facilities, senior citizen centers, and homes for low-income families or seniors.

Mike Thompson and David Joyce, who, though they don't serve on this committee, have introduced an important bill that we will be considering, the Portable Fuel Container Safety Act, which would direct the Consumer Product Safety Commission to establish a mandatory standard for flame-mitigation devices in portable fuel containers.

Doris Matsui and Morgan Griffith introduced the Safer Occupancy Furniture Flammability Act, otherwise known as SOFFA, which would adopt the California standard for upholstered furniture flammability.

I have introduced two bills. The first is the STURDY Act, which would direct the CPSC to enact a mandatory standard to prevent furniture tipovers.

Every hour of every day, common pieces of furniture, like clothing storage units, dressers, and chests, tip and tilt and fall. And, unfortunately, according to the CPSC, tipovers inflict around three injuries per hour in the United States. And we are going to hear worse today from Crystal, from Ms. Ellis.

In 2020 alone, over 2 million units of children's products faced recall, and nursery furniture was the leading category.

CPSC rulemaking cannot move fast enough. In the last 10 years, the CPSC finalized only one mandatory safety standard. We certainly need to speed that up. And in the meantime, we need to pass legislation.

The second bill that I have introduced this week, with my friends from Chicago, Congresswoman Robin Kelly and Congressman Bobby Rush, is the Safe Cribs Act, which would ban crib bumpers. The American Academy of Pediatrics safe sleep recommends that infants sleep on flat, firm surfaces and does not recommend the use of crib bumpers. Families need that right now.

[The prepared statement of Ms. Schakowsky follows:]

PREPARED STATEMENT OF HON. JAN SCHAKOWSKY

Good morning. I am humbled by chairing this subcommittee as we discuss legislative solutions that can save lives.

This is a big deal. Protecting consumers is what drew me to public life.

And today, we are considering 7 bills that aim to protect consumers and save lives. I am the lead author of two of these bills.

This subcommittee's vice chair, Tony Cárdenas, introduced the Safe Sleep Act of 2019, which would ban inclined sleep products. I wrote Acting CPSC Chairwoman Buerkle in April, asking her to recall the Rock 'n Play, which she did, but there are other inclined sleepers that pose a risk. So I am grateful to you, my friend, for introducing this important piece of legislation. We must get these products off the market and save babies' lives.

I would like to ask for unanimous consent to insert for the record this May 30th Washington Post article. (So ordered.)

Annie Kuster, who has waived onto this subcommittee today, and Buddy Carter, a member of this subcommittee, introduced the Nicholas and Zachary Burt Carbon Monoxide Poisoning Act. This would establish a CPSC grant program for States to install carbon monoxide detectors in childcare facilities, senior centers, and homes for low-income families or seniors.

Mike Thompson and David Joyce, who do not serve on this committee, introduced the Portable Fuel Safety Container Safety Act, which would direct CPSC to establish a mandatory standard for flame mitigation devices in portable fuel containers.

Doris Matsui and Morgan Griffith introduced the Safer Occupancy Furniture Flammability Act, which would adopt the California standard for upholstered furniture flammability.

Which brings me to the two pieces of legislation I have introduced. The first is the STURDY Act, which would direct CPSC to enact a mandatory standard to prevent furniture tipovers.

Every hour, of every day, common pieces of furniture like clothing storage units, dressers, and chests tip, tilt, and fall. According to the CPSC, tipovers inflict around 3 injuries per hour, and cause hundreds of avoidable child fatalities. Product experts and parental groups agree: tipover injuries are preventable, but current industry standards are not enough.

In 2018 alone, over 2 million units of children's products faced recall, and nursery furniture was the leading category. CPSC rulemaking cannot move fast enough. In the last 10 years, the CPSC finalized only one mandatory safety standard.

The second bill, introduced earlier this week with my friends from Chicago, Bobby Rush and Robin Kelly, is the Safe Cribs Act, which would ban crib bumpers. The American Academy of Pediatrics' (AAP) safe sleep recommendations call for infants to sleep on a firm, flat surface and does not recommend the use of crib bumpers due to risk of suffocation. CPSC, for its part, has been working on safety standards for crib bumpers since 2012, but it is not clear when, if ever, they will adopt a standard. Families need this legislation!

Finally, Ranking Member Rodgers introduced the FASTER Act to enable businesses to recall potentially hazardous products via notification to the CPSC. I look forward to hearing more about the bill.

I appreciate the witnesses testifying today on these important bills and hope that we can move forward on a bipartisan basis in the near future.

Ms. SCHAKOWSKY. So I am going to recognize our ranking member, who has introduced an important piece of legislation, the FASTER Act. I am sure she will talk about that.

And I recognize you for 5 minutes.

OPENING STATEMENT OF HON. CATHY MCMORRIS RODGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mrs. RODGERS. Thank you, Madam Chair.

Welcome, everyone, to the Consumer Protection and Commerce Subcommittee hearing. Today marks our first legislative hearing, and we are here to discuss important issues for people's safety.

I want to thank Chair Schakowsky for her leadership to keep the lines of communication open. We have talked a lot about the importance of bipartisan work, which is why I was surprised by the majority's action leading up to the hearing.

Regarding my bill, it was my understanding that to speed up the Fast-Track process, recall process, that it would be considered as a draft, discussion draft, as we continued our negotiations.

However, this week our staff was informed that the E&C will not consider staff drafts for legislative hearings. So I was a bit bewildered when yesterday the Health Subcommittee did just that with the No Surprise Act.

As all Members can appreciate, finding out hours before a deadline that a bill needs to be introduced does not give us the time to incorporate the feedback, find bipartisan cosponsors, or do any of the proper work required to introduce a bill.

All of that said, I did quickly introduce my bill before today's hearing, and I am committed to finding a bipartisan consensus to improve it.

I am glad the majority and I am grateful that the majority is including it today for consideration. A bipartisan approach moving forward not only gives our solutions their best chance to become law, it also gives the public the best chance of seeing results that keep them safe.

The CPSC's mission is to protect people against risk of injuries and deaths associated with consumer products. And, while we cannot protect everyone from every harm, it is our job to address substantial hazards without creating too many opportunities for dangerous work-arounds.

For example, one of the bills today deals with crib bumpers, and it is critical that we examine what States have done in this space. We don't want to create the risk of parents putting blankets or pillows, which pose a suffocating danger, back in the crib, because they can't access safe mesh bumpers.

Earlier this Congress, this subcommittee held an oversight hearing with Acting Chair Buerkle and the four Commissioners of the CPSC. Chair Buerkle is steadfast in her efforts to advance the safety mission of the agency. And once again, I urge my Senate colleagues to confirm her.

The CPSC, though small in size, has a broad jurisdiction over more than 15,000 products that are used every day in our homes, schools, businesses.

Recently we have heard concerns with the slow speed of the existing Fast-Track Recall Program. In some cases, recalls are taking several months. In fact, Mr. Samuels highlights examples in his testimony that prove why we should speed things up, examples like a 2-week approval process for recall press releases, debating the exact phrases on social media posts, or requiring toll-free numbers, which may have made sense in the 1990s when Fast-Track was created, but not anymore.

The Fast-Track Recall Program is intended to protect people by encouraging companies to come forward with dangerous products so they can work with an agency. But like many things in Washington, DC, Fast-Track is now slow because of an outdated bureaucracy. It is a program from 1995 that isn't functioning today. As a result, some companies have bypassed it completely, leaving the CPSC out of the process. So it is time for an update.

And it is important to maintain the connections between the CPSC and good actors in industry, especially when it means remov-

ing hazardous products from our homes to keep our kids out of harm's way.

That is why I have introduced the Focusing Attention on Safety Transparency and Effective Recalls, or the FASTER Act, H.R. 3169. My solution will make Fast-Track work in the 21st century by giving consumers notice more quickly when a company submits a specific recall plan and by learning from the company-initiated recall processes at NHTSA and the FDA. It allows a business to notify the Commission of a recall and directs the agency to promptly issue a notice. No more press release delays, no more hangups over toll-free numbers.

For parents who own dangerous baby cribs and rockers, for households with appliances that are a fire risk, for our children with toys that are a choking hazard, these bureaucratic delays cannot happen.

The FASTER Act will get these products out of our homes and off the shelves as quickly as possible, and will still give the Commission the flexibility it needs to ensure a company remedy is right and, if necessary, to initiate its own recall, and make sure that when something goes wrong, there is a process in place for that recall to happen. And I hope that we can work in a bipartisan way to find a solution.

There are many other important issues, such as the portable fuel container safety standard. I had the chance to sit down with Ms. Ellis on the issue of the tipovers.

I appreciate everyone being here today, all of the witnesses, and look forward to your testimony and working through all of these issues.

And I yield back.

[The prepared statement of Mrs. Rodgers follows:]

PREPARED STATEMENT OF HON. CATHY MCMORRIS RODGERS

Welcome to the Consumer Protection and Commerce Subcommittee hearing. Today marks our first legislative hearing, and we're here to discuss important issues for people's safety.

I want to thank Chair Schakowsky for her leadership to keep the lines of communication open.

We have talked a lot about the importance of bipartisan work—which is why I was surprised by the majority's actions leading up to this hearing.

It was my understanding that my bill—to speed up the fast track recall process—was to be considered as a discussion draft as we continue our negotiations.

However, this week our staff was informed that E&C will not consider staff drafts for legislative hearings.

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I am glad the majority is including it for consideration today.

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It's critical we examine what States have done in this space so we don't create the risk of parents putting blankets or pillows—which pose a suffocating danger—back in the crib because they can't access safe mesh bumpers.

Earlier this Congress, this subcommittee held an oversight hearing with Acting Chair Buerkle and the four Commissioners of the CPSC.

Chair Buerkle is steadfast in her efforts to advance the safety mission of the agency, and I once again urge my Senate colleagues to confirm her.

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In some cases, recalls are taking several months.

In fact, Mr. Samuels highlights examples in his testimony that prove why we should speed things up.

Examples like a 2-week approval process for recall press releases debating the exact phrases of social media posts and requiring toll-free numbers, which may have made sense in the '90s when Fast-Track was created—but not anymore.

The Fast-Track Recall Program is intended to protect people by encouragingcompanies to come forward with dangerous products so they can work with theagency.

But like many things in Washington, DC, Fast-Track is now slow because of an outdated bureaucracy.

It's a program from 1995 that isn't functioning today.

As a result, some companies have bypassed it completely, leaving the CPSC out of the process.

So, it's time for an update.

It's important to maintain the connections between the CPSC and good actors in industry especially when it means removing hazardous products from our homes to keep our kids out of harm's way.

That is why I've introduced the Focusing Attention on Safety Transparency and Effective Recalls or the FASTER Act, H.R. 3169.

My solution will make Fast-Track work in the 21st century by giving consumers notice more quickly when a company submits a specific recall plan to the CPSC and by learning from the company-initiated recall processes at NHTSA and the FDA.

It allows a business to notify the Commission of a recall and directs the agency to promptly issue a notice.

No more press release delays, and no more hangups over toll-free numbers.

For parents who own dangerous baby cribs and rockers for households with appliances that are a fire risk and for our children with toys that are a choking hazard, these bureaucratic delays cannot happen.

The FASTER Act will get these products out of our homes and off the shelves as quickly as possible and it will still give the Commission the flexibility it needs to ensure a company remedy is right and—if necessary—initiate its own recall.

It makes sure that when something goes wrong there's a process in place for recalls to happen and for them to happen fast.

I hope we can work in a bipartisan way on this solution that can save lives as well as the many other important issues we will discuss today, such as H.R. 806, the Portable Fuel Container Safety Act.

I thank our witnesses for being here today and look forward to your testimony.

Ms. SCHAKOWSKY. The gentlelady yields back.

The Chair now recognizes Mr. Pallone, chairman of the full committee, for 5 minutes for his opening statement.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Madam Chair.

Two months ago, this subcommittee discussed whether the Consumer Product Safety Commission is fulfilling its mission of protecting consumers. When CPSC is at its best, it is working proactively to eliminate hazards and adopt strong safety standards,

but as we heard from many of our witnesses, and even some Commissioners, CPSC has not been at its best lately.

To put it simply, we are here today to discuss important consumer protection legislation that is necessary because CPSC has not done its job. CPSC has let industry set its own rules, and the results have been predictably disastrous.

Fisher-Price designed, marketed, and sold the Rock 'n Play Sleeper, a product whose intended use went against the advice of pediatricians. It received an exemption from CPSC's mandatory safety standards and helped write the voluntary standard that it followed instead. A decade later, Fisher-Price admitted that it was aware of at least 32 infants who had died in the product and agreed to recall all 4.17 million Rock 'n Play Sleepers. A similar product from Kids II was recalled as well after at least five deaths were reported.

CPSC knew about the dangers and incidents well before the recall, but didn't take action. These recalls were announced shortly after this subcommittee scheduled an oversight hearing of CPSC, and after CPSC inadvertently provided Consumer Reports with details of the infant deaths in these products, which it had previously refused to disclose.

So it should not take a congressional hearing or an accidental disclosure of information to get a deadly product off the shelves. This is CPSC's job and should be their top priority.

We are also here today because, even when CPSC wants to act, its process for issuing standards is so tedious that years and years will go by before any standards are in place. Kids and consumers simply cannot afford to wait that long. A bipartisan majority of the Commission agrees that a mandatory standard for furniture tipover is necessary, but getting the rule in place would take years due to CPSC's complex rulemaking procedures.

Nearly every safety rule CPSC has issued over the last decade for other products used a streamlined process that Congress authorized under the bipartisan Consumer Product Safety Improvement Act. So today we are considering bills that would direct CPSC to follow a similar process to address hazards from furniture tipover and portable fuel containers.

Product safety is not a partisan issue, and I am pleased to see that a number of these bills are supported by both Democrats and Republicans. Passing these bills will get safety standards in place faster and save lives. I look forward to working with my colleagues to quickly move them forward.

But Congress should not have to pass a law telling CPSC to address every dangerous product that is on the market. If CPSC's authority doesn't allow it to respond quickly and completely to new hazards, we should consider revising that authority.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

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To put it simply: We are here today to discuss important consumer protection legislation that is necessary because CPSC has not done its job. CPSC has let industry set its own rules, and the results have been predictably disastrous. Fisher-Price designed, marketed, and sold the Rock 'n Play Sleeper, a product whose intended use went against the advice of pediatricians. It received an exemption from CPSC's mandatory safety standards and helped write the voluntary standard that it followed instead. A decade later, Fisher-Price admitted that it was aware of at least 32 infants who had died in the product and agreed to recall all 4.7 million Rock 'n Play Sleepers. A similar product from Kids II was recalled as well, after at least five deaths were reported.

CPSC knew about the dangers and incidents well before the recall but didn't take action. These recalls were announced shortly after this subcommittee scheduled an oversight hearing of CPSC, and after CPSC inadvertently provided Consumer Reports with details of the infant deaths in these products, which it had previously refused to disclose. It should not take a congressional hearing or an accidental disclosure of information to get deadly products off the shelves. This is CPSC's job and should be their top priority.

We are also here today because, even when CPSC wants to act, its process for issuing standards is so tedious that years and years will go by before any standards are in place. Kids and consumers simply cannot afford to wait that long. A bipartisan majority of the Commission agrees that a mandatory standard for furniture tipover is necessary, but getting a rule in place would take years due to CPSC's complex rulemaking procedures. Nearly every safety rule CPSC has issued over the last decade instead used a streamlined process that Congress authorized under the bipartisan Consumer Product Safety Improvement Act.

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But Congress should not have to pass a law telling CPSC to address every dangerous product that is on the market. If CPSC's authority doesn't allow it to respond quickly and completely to new hazards, we should consider revising that authority.

I now would like to yield a minute to Rep. Cárdenas.

I now would like to yield a minute to Rep. Kuster.

Thank you, and I yield back my time.

Mr. PALLONE. I have a couple minutes left. I would like to yield one to Mr. Cárdenas, and then the second one to Representative Kuster. So we will start with yielding to Mr. Cárdenas for 1 minute. Oh, he is here.

Mr. CÁRDENAS. Thank you, Mr. Chairman.

And I would like to thank Chairwoman Schakowsky for bringing this important hearing to order.

This week, I introduced H.R. 3172, the Safe Sleep For Babies Act, which bans the sale of inclined sleep products such as the Fisher-Price Rock 'n Play. I introduced this bill because babies have been dying unnecessarily since 2009. They have been dying because companies decided making money was more important than putting infants' lives in danger and because the regulatory agency charged with protecting Americans decided to be puppets for industry and stood by as more precious lives were lost.

Was the Consumer Product Safety Commission waiting for a higher body count before deciding to take action? I don't know. There is plenty of blame to go around, but one major failing I see is that of the CPSC. And even with two recent recalls, these products made by other companies are still available on the market.

As a grandparent, it is just appalling. I think that we should be putting children's lives before profits, and we have a lot of work to do.

And with the limited time, I would just like to say thank you very much, Mr. Chairman.

And I yield back.

Mr. PALLONE. And I yield now to Ms. Kuster.

Ms. KUSTER. Thank you, Chairman Pallone and Chairwoman Schakowsky, for convening this important hearing today.

As a mother of two boys, I know there is nothing more important than keeping our children and loved ones safe. From a young age, we tell children to be careful crossing the street, to always wear seatbelts, and to handle sharp objects with care.

Yet there are some threats that our loved ones cannot see. One of the most dangerous is carbon monoxide, which is the leading cause of accidental poisonous deaths in the United States.

So I appreciate today's hearing discussing my bill, H.R. 1618, the Zachary and Nicholas Burt Carbon Monoxide Poisoning Prevention Act, which I introduced with my Republican colleague Representative Buddy Carter. This legislation incentivizes States to pass laws requiring carbon monoxide alarms in schools, homes, and commercial lodgings, and creates a grant program to install carbon monoxide alarms in low-income and elderly housing. It will save lives, and to that end, I seek unanimous consent to enter into the record letters of support for the Carbon Monoxide Prevention Act from the Security Industry Association and Safe Kids Worldwide.

And I yield back my time.

Ms. SCHAKOWSKY. Without objection, we will put that information into the record.

[The information appears at the conclusion of the hearing.]

Ms. KUSTER. Thank you, Madam Chair.

Ms. SCHAKOWSKY. And now I would like to recognize the ranking member, Mr. Walden, for his opening statement.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Thank you, Madam Chair. And I want to say good morning to you and everyone on the committee and to our witnesses today. We appreciate and will benefit from your testimony as we discuss these bills in the first legislative hearing of the year for this sub.

This hearing is important for a couple of reasons: first, I think the opportunity to discuss the bills under consideration and the policies to improve the safety of products and keep kids and consumers safe—this is a goal we all share; and second, the opportunity to talk directly to the public about the risks and how they can make sure that they are taking steps to protect themselves and their families.

I am grateful that Representative Rodgers has introduced your bill, Cathy, because, as we will hear again today, the Fast-Track Recall Program for good actors who just want to get information to their customers faster has slowed down a lot in recent years. We really do need to find a solution here, and I think we can and will. I understand there is a lot of bipartisan support for this proposal, and I look forward to hearing from our witnesses about it.

In April, we heard directly from the CPSC Commissioners and a number of interested parties about ongoing product-specific

issues at the agency, as well as ways in which we can improve some of the agency processes. We have heard from many stakeholders about concerns of the existing Fast-Track Recall Program at the agency.

It exists, too, as the title of this hearing suggests—to keep kids and consumers safe, that is the goal—by removing potentially hazardous products from the marketplace as quickly and efficiently as possible. And it does not apply to just one or two products. It applies to all 15,000 product categories in the CPSC's jurisdiction.

So, as I mentioned earlier, the Fast-Track program has slowed greatly for unnecessary layers of bureaucracy that, in the examples we will hear today, do not add substantially to the benefit of consumers and further delay for weeks, if not months, when consumers are told about potentially dangerous products. If a company wants to recall a product, shouldn't we be encouraging them to work with the CPSC and not go around the agency?

So I think the answer is clearly yes. This is why I appreciate the work of Mrs. Rodgers, that she has put into the FASTER Act, to solicit comments and ideas on how to improve this previously award-winning recall program.

This bill creates a process that removes the unnecessary red tape slowing down recalls today. It mirrors programs that are already working at the FDA and at the NHTSA.

As I indicated earlier, we are committed to working on the bill with our colleagues on both sides of the aisle, and I think we can find a bipartisan solution to this critical issue.

So I want to applaud Mrs. Rodgers for her thoughtful approach and for helping to advance safety. I urge my colleagues on the committee to support H.R. 3169 as we move forward.

One last point I would like to make is to take this opportunity to reiterate my strong support for Acting Chair Buerkle to be confirmed by the Senate as chair for her new term at the CPSC. She is well positioned to lead this critical agency and has demonstrated her commitment to protect consumers throughout her career of public service. So I am hopeful that our Senate colleagues, who I am sure are dialed in to our hearing today and hanging on every one of our words, will act so we can get a chair there and confirmed.

And with that, Madam Chair, thanks for your leadership on all of these consumer product safety issues over the years. I know it is a great passion of yours, and you have saved lives as a result of your work, and we want to be partners moving forward.

So, with that, unless anyone else wants the remainder of my time, I would be happy to yield back.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Good morning and welcome to the first Consumer Protection and Commerce Subcommittee legislative hearing of the year. Today, we will discuss several bills—all with the same objective: improving consumer safety.

This hearing is important for two reasons:

First, the opportunity to discuss the bills under consideration and policies to improve the safety of products and keep kids and consumers safe.

And, second, the opportunity to talk directly to the public about risks and how they can make sure they are taking steps to protect themselves and their families.

I am grateful that Rep. Rodgers introduced the bill, because as we will hear again today, the Fast-Track Recall Program—for good actors who just want to get information to their customers faster—has slowed down a lot in recent years and we should find a solution. I understand there is a lot of bipartisan support for this proposal and I look forward to hearing from the witnesses.

In April, we heard directly from the CPSC Commissioners and a number of interested parties about ongoing product-specific issues at the agency as well as ways in which we can improve some of the agency processes.

We have heard from many stakeholders about concerns with the existing Fast-Track Recall Program at the agency. It exists to—as the title of this hearing suggests—to keep kids and consumers safe—by removing potentially hazardous products from the marketplace as quickly and efficiently as possible. And it does not apply to just one or two products—it applies to all 15,000 product categories in the CPSC's jurisdiction.

As I mentioned earlier, the Fast-Track program has slowed greatly from unnecessary layers of bureaucracy that, in the examples we will hear today, do not add substantially to benefit consumers, and delay for weeks if not months, when consumers are told about potentially dangerous products.

If a company wants to recall a product, shouldn't we be encouraging them to work with the CPSC and not go around the agency? I think the answer is clearly, yes. This is why I appreciate the work Rep. Rodgers has put into the FASTER Act to solicit comments and ideas on how to improve this previously award-winning recall program.

This bill creates a process that removes the unnecessary red tape slowing down recalls today, and mirrors programs that are already working at the FDA and NHTSA. As I indicated earlier, we are committed to working on the bill with our colleagues across the aisle to hopefully find a good bipartisan solution to this critical issue.

I want to applaud Ms. Rodgers for this thoughtful approach and for helping advance safety and I urge all of my colleagues on this committee to support H.R. 3169 as we move forward.

One last point, I would like to take this opportunity to reiterate my strong support for Acting Chair Buerkle to be confirmed by the Senate as chair and for her new term at the CPSC. She is well positioned to lead this critical safety agency and has demonstrated her commitment to protect consumers throughout her career of public service. I urge my Senate colleagues to confirm her as soon as possible.

Thank you and I yield back.

Ms. SCHAKOWSKY. I thank the gentleman for your kind words, and the gentleman yields back.

I would like to remind all Members that, pursuant to committee rules, all Members' written opening statements shall be made part of the record.

And now it is my honor to introduce the witnesses today, starting right to left.

Let me introduce Mr. Will Wallace, the manager, home and product policy, from Consumer Reports.

Ms. Crystal Ellis, founding member of Parents Against Tip-Overs.

I especially want to thank you for being here today. It would have been your son's seventh birthday, I understand, today.

I want to thank Mr. Chris Parsons, president of the Minnesota Professional Fire Fighters Association.

We thank you so much for traveling here.

Mr. Charles Samuels, who is a member of Mintz Law Firm.

Thank you for being here.

And we absolutely look forward to the testimony.

At this time, the Chair will now recognize each of the witnesses for 5 minutes to provide their opening statements.

Before we begin, I just want to make sure I explain the lighting system. Most of you probably understand. But in front of you are a series of lights. The light will initially be green at the start of

your opening statement. The light will turn yellow when you have 1 minute remaining. Please begin to wrap up your testimony at that point. The light will turn red when your time has expired. Particularly because of the press of votes that are coming up, I hope you will abide by that.

And, again, if you don't mind, I am going to start right to left.

Mr. Wallace, you are recognized for 5 minutes.

STATEMENTS OF WILLIAM WALLACE, MANAGER, HOME AND SAFETY POLICY, CONSUMER REPORTS; CRYSTAL ELLIS, FOUNDING MEMBER, PARENTS AGAINST TIP-OVERS; CHRISTOPHER PARSONS, PRESIDENT, MINNESOTA PROFESSIONAL FIRE FIGHTERS; CHARLES A. SAMUELS, MEMBER, MINTZ

STATEMENT OF WILLIAM WALLACE

Mr. WALLACE. Good morning, Chairwoman Schakowsky, Ranking Member Rodgers, and members of the subcommittee. Thank you for the opportunity to be here on behalf of Consumer Reports, the independent nonprofit member organization that works side by side with consumers for truth, transparency, and fairness in the marketplace.

The Consumer Product Safety Commission is a critical agency with an indispensable public health and safety mission. It plays a significant role in protecting U.S. consumers despite lacking the appropriations, staff, and authorities it would need to carry out all that it is capable of doing.

But we are here today because the CPSC and many manufacturers have failed to protect our children and families. They failed 2-year-old Camden Ellis of Snohomish, Washington, 2-year-old Conner DeLong of Lakeland, Florida, and in total at least 206 children since the year 2000 who died under the weight of a dresser or other clothing storage furniture, despite manufacturers being able to build a more stable dresser at the same price point.

As we document in detail in our written testimony, tipovers are a hidden hazard. They send thousands of people to the emergency room annually. Yet people often do not know the danger, and dressers are particularly deadly.

CR's thorough 2-year investigation, including safety research, testing, reporting, and a survey of consumers, has found that industry's current voluntary stability standard is inadequate to protect children, and a far stronger, mandatory standard is both feasible and necessary.

The CPSC and industry failed 5-month-old Ezra Overton of Arlington, Virginia, and in total at least 37 infants who died in inclined sleepers like the Fisher-Price Rock 'n Play, marketed as a safe solution for weary parents. That is a product that never should have been on the market, but was, because of an industry-driven carve-out from the CPSC's strong bassinet standard.

The entire idea of an inclined sleeper conflicts with American Academy of Pediatrics safe-sleep recommendations, and the product category should be eliminated.

While we welcomed the recalls this spring that have occurred, these particular recalls are not likely to be especially effective at actually getting the products out of homes.

The CPSC's steps to protect infants have repeatedly fallen short. Only an erroneous data release to CR about which we published stories revealing these deaths allowed the public to know the breadth and severity of the danger.

And for too long, the Government and manufacturers have failed the victims of crib bumpers, fires involving portable fuel containers, carbon monoxide poisoning, and those who are injured or killed by other kinds of consumer products.

We need a CPSC that puts the safety of the American public first and is funded and empowered to do so. We need consumer products companies with strong safety cultures that know that, if they step out of line, they will have to face an active and empowered agency.

But right now, we don't have either. That is why it is so important for you to take the opportunity you have before you to support the STURDY, Safe Sleep, Safe Cribs, Portable Fuel Container Safety, and Carbon Monoxide Poisoning Prevention Acts, which will at least show that you put the safety of American children and families first.

You also can reject the FASTER Act in its current form, which would further disempower the CPSC and give recalling companies more control over life-and-death decisions regarding recall implementation.

As members continue to work on that legislation, in particular, we would recommend speaking with those who have significant experience from the consumer advocacy and consumer safety side with respect to the recall implementation at the FDA and at NHTSA. There are some significant concerns with how that works.

Over the longer term, you have the opportunity to reshape the CPSC, to eliminate provisions like Section 6(b), which could easily have kept many of the inclined sleeper deaths hidden if not for the CPSC's data release that occurred in error, and to require much more proactive action, to put safety first by CPSC leadership and companies alike.

Finally, while not on the agenda for today, we urge you to support efforts to strengthen the appropriations and staff that the CPSC receives.

Your children and families, your constituents, have had enough of this failure. Every one of them—all Americans, in fact—deserve so much more than they are getting today when it comes to the safety of their homes and the products they buy, and we look forward to working with you to protect them.

[The prepared statement of Mr. Wallace follows:]

Written Testimony of William Wallace
Manager, Home and Safety Policy, Consumer Reports
Before the U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Consumer Protection and Commerce

Legislative hearing on "Keeping Kids and Consumers Safe from Dangerous Products"
Thursday, June 13, 2019

SUMMARY

- **Congress should pass the STURDY Act to require a new safety standard for dressers and similar units, to help make sure they resist tipping over onto a child**
  - *Tip-overs are a hidden hazard: they send thousands of people to the emergency room annually, yet people often do not know the danger; dressers are particularly deadly*
  - *CR's two-year investigation has found the industry stability standard inadequate to protect children; a far stronger, mandatory standard is feasible and necessary*
  - *Urgent action by Congress is critical to improve stability and protect children; a bipartisan majority of CPSC commissioners supports a strong legislative solution*
  - *STURDY would require dresser stability testing to simulate the weight of children under age 6 and to more closely but reasonably account for real-world circumstances*
- **Congress should pass the Safe Sleep Act to get inclined sleepers off the market; the inherently dangerous products remain for sale even after dozens of infant deaths**
  - *Two recalled inclined sleeper models are tied to at least 37 infant deaths; the product category conflicts with American Academy of Pediatrics safe sleep recommendations*
  - *CPSC steps to protect infants have repeatedly fallen far short; only an erroneous data release to CR allowed the public to know the breadth and severity of the danger*
  - *Law should reflect that an infant product can be safe for sleep or inclined—not both at once; Congress must prohibit inclined sleepers since CPSC and industry have not*
- **Congress should pass the Safe Cribs Act to prohibit crib bumpers, because they contribute to unsafe infant sleep and are not necessary to prevent head entrapment**
  - *Crib bumpers are unnecessary and contribute to an unsafe sleep environment for infants, according to American Academy of Pediatrics expert recommendations*
  - *Several states and major retailers have stopped the sale of crib bumper pads, while the CPSC recognizes the danger but has failed to prohibit the product category*
  - *Crib bumpers remaining for sale at stores and online means that parents and caregivers unwittingly put infants at risk; the products should not be for sale*
- **Congress should pass the Portable Fuel Container Safety Act to help prevent flame-jetting incidents with a binding, enforceable standard applying across the market**
- **Congress should pass the Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act to promote detector installation and protect vulnerable populations**
- **Congress should align SOFFA with state preemption under the Flammable Fabrics Act; while CPSC adoption of the California standard would bring practical enforcement benefits, states should retain the ability to exceed its level of protection**
- **Congress should reject the FASTER Act; it would let companies set their own terms and barrel through any CPSC attempt to ensure high-quality recalls for consumers**

TESTIMONY

Consumer Reports (CR), the independent, non-profit member organization,[1] welcomes the opportunity to testify at the legislative hearing of the U.S. House Committee on Energy and Commerce, Subcommittee on Consumer Protection and Commerce, on "Keeping Kids and Consumers Safe from Dangerous Products." We look forward to helping inform the Subcommittee's critical work to improve child and household safety for consumers nationwide.

It is a core part of CR's purpose to identify marketplace hazards and seek to improve product safety. We assess safety risks, investigate their impact on consumers, and inform the public and the Consumer Product Safety Commission (CPSC) about them—all on a data-driven basis. We push for safety standards to protect consumers from the risk of injury, including both mandatory standards and voluntary industry standards that should be reached through an open, balanced, and consensus-based process. We support the crucial role of a strong and active CPSC, both for consumer safety and for the sake of a fairer marketplace, where cutting corners on safety does not pay.

The CPSC is a critical agency with an indispensable public health and safety mission. It plays a significant role in protecting U.S. consumers despite lacking the appropriations, staff, and authorities it would need to carry out all that it is capable of doing. It is essential for the agency to make effective use of the tools and resources it does have, and for Congress to wield oversight to ensure it is properly carrying out its mission. The Commission and agency staff should always:

- Put consumer safety first—even in the face of industry's reputation, liability, or cost concerns—and defend the CPSC's role as an independent regulatory agency;
- Act immediately in the face of data showing products that pose a risk of death or injury to consumers; the threshold for an unreasonable risk should not be a body count, or even countless emergency room trips—even one product-related death or injury is too many.
- Set a high bar for safety culture, proactive safety measures, and responses to safety issues, and require companies and industries to meet it;
- Advocate vocally for stronger safety measures, including by urging companies and industries—both publicly and privately—to take steps they may not want to take;
- Push for voluntary standards to address known hazards and gaps in protection that leave people at risk, and when voluntary standards are inadequate, set mandatory requirements;
- Ensure that companies' recalls happen quickly, with straightforward consumer participation and strong remedies, and hold companies accountable when they do not live up to their recall obligations or fail to address the hazard facing consumers; and
- Retain the credible use of legal action to force compliance, as well as the issuance of civil penalties at a level that serves as a substantial deterrent to wrongdoing.

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[1] 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 former name of CR's advocacy division, Consumers Union, was retired in November 2018.

The Subcommittee's legislative hearing addresses seven consumer product safety-related bills. As detailed below, Consumer Reports strongly supports the STURDY Act, the Safe Sleep Act of 2019, and the Safe Cribs Act of 2019. Consumer Reports also supports the Portable Fuel Container Safety Act of 2019 and the Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act of 2019. With respect to the Safer Occupancy Furniture Flammability Act, or SOFFA, Consumer Reports recognizes the practical enforcement benefits that would come from the CPSC formally and nationally adopting the California upholstered furniture flammability standard—though it is already a de facto nationwide standard—but we urge members to amend the bill so that other states retain the ability to exceed its level of protection if they so choose. CR has strong concerns with the FASTER Act; we oppose the bill and urge Congress to reject it.

I. Congress should pass the STURDY Act to require a new safety standard for dressers and similar units, to help make sure they resist tipping over onto a child

Consumer Reports strongly supports H.R. 2211, the "Stop Tip-overs of Unstable, Risky Dressers on Youth Act," or the STURDY Act, and urges its swift passage by Congress. The bill would help prevent deaths and injuries from dressers and similar clothing storage furniture tipping over onto children. Long a hidden hazard in the home,[2] tip-overs have been brought to greater prominence today only through the painstaking work of parents to turn their tragedies into progress toward safer furniture. We stand with them—and with members of Congress, CPSC commissioners, pediatricians, other safety experts, and many others—in advocating for a strong mandatory standard to help save children's lives.

A. Tip-overs are a hidden hazard: they send thousands of people to the emergency room annually, yet people often do not know the danger; dressers are particularly deadly

According to the most recent CPSC report on the subject, there were an estimated 28,300 emergency department-treated injuries per year, on average, in the 2015-2017 period that were associated with television, appliance, or furniture tip-over incidents. About half of these injuries involved children under age 18, and more than two-thirds of those injuries involved only furniture.[3] CR research into the CPSC data has identified that dressers and other clothing storage units are particularly lethal, accounting for at least 206 reported deaths since the year 2000, with most of the victims being children younger than age 6.[4] More broadly, children under age 6 are

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[2] CR, "Furniture Tip-Overs: A Hidden Hazard in Your Home" (Mar. 22, 2018) (online at: www.consumerreports.org/furniture/furniture-tip-overs-hidden-hazard-in-your-home).

[3] Adam Suchy, Directorate for Epidemiology, Division of Hazard Analysis, CPSC, "Product Instability or Tip-Over Injuries and Fatalities Associated with Televisions, Furniture, and Appliances: 2018 Report" (Oct. 2018) (online at: www.cpsc.gov/s3fs-public/Product%20Instability%20or%20Tip%20Over%20Report%20Oct%202018_STAMPED.pdf).

[4] CR, "Dressers Exempt from Industry Safety Standard Fail Consumer Reports' Tests" (Nov. 1, 2018; last updated Nov. 16, 2018) (online at: www.consumerreports.org/furniture/furniture-dressers-exempt-from-industry-safety-standard-fail-consumer-reports-tests).

those most commonly involved in clothing storage unit tip-over incidents, comprising 95% of deaths and 83% of injuries involving children of all ages.[5]

CR has found that the most effective and most widely touted tip-over prevention strategy available today—anchoring a dresser to the wall using brackets and straps—is not an easy fix for the majority of consumers. Our nationally representative survey last year of 1,502 U.S. adults found that only 27% of Americans had anchored furniture in their homes, and among Americans with kids under age 6 at home, 40% anchored their furniture.[6] Accordingly, CR has recommended that the furniture industry devote its primary focus to consistently producing dressers and other clothing storage units that are designed to be more stable and that better resist tipping over onto children, regardless of whether or not the furniture is anchored to the wall. Fundamentally, a child's life should not rely on consumer skill at anchoring a dresser to a wall.

B. CR's two-year investigation has found the industry stability standard inadequate to protect children; a far stronger, mandatory standard is feasible and necessary

The terrible toll of furniture tip-overs on children became a call to action for Consumer Reports, and over the past two years, CR has conducted extensive research, analysis of incident and injury data, and comparative testing of a cross-section of the marketplace to determine whether a given model is more or less likely to tip over relative to other models. Based on our investigation, we found that the industry's voluntary standard, ASTM F2057-17, is inadequate, and leaves too many children at risk. In particular, the standard does not adequately account for the weight of children under age 6—those developmentally expected to exhibit behaviors associated with tip-over incidents[7]—and excludes dressers 30 inches in height and smaller despite injuries and fatalities associated with these shorter units.[8]

Building off our analysis of the injury and fatality data, which showed that furniture tip-overs were a leading cause of harm to young kids, CR undertook comparative testing of a cross-section of dressers to see how they would perform and what was achievable in the marketplace. Our results demonstrated that it is feasible for dressers at all price points to pass a more rigorous test.[9] CR bought 42 dressers for evaluation, and put them through a series of three progressively

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[5] CPSC, "Clothing Storage Unit Tip Overs; Request for Comments and Information," advance notice of proposed rulemaking, 82 Fed. Reg. 56752 *et seq.* (Nov. 30, 2017) at 56754.

[6] CR, "Furniture Anchors Not an Easy Fix, as Child Tip-Over Deaths Persist" (Nov. 5, 2018) (online at: www.consumerreports.org/furniture/furniture-anchors-not-an-easy-fix-as-child-tip-over-deaths-persist). Nearly half of adults with children in their home said they did not anchor furniture because their children are not left unattended around furniture. Incident data, however, show that many dresser tip-overs happen shortly after children wake up from a night's sleep or a nap, when they are often alone in their rooms. Other reasons Americans said they do not anchor varied: 41% thought the furniture was stable enough; 25% did not want to put holes in their walls; 16% did not want to put holes in their furniture; 7% were not sure what hardware to buy; and 7% have never heard of anchoring furniture. *Id.*

[7] *Supra* note 5 at 56755.

[8] The ASTM International F15 Committee and its Subcommittee on Furniture Safety likely will soon approve an amendment to the standard to include dressers and other clothing storage units 27 inches in height and taller within the standard's scope. Numerous members of the Committee have voted in opposition to a pending measure to increase the test weight to 60 pounds, which requires a consensus to move forward.

[9] *Supra* notes 2 and 4.

tougher stability tests with drawers empty and the dresser placed on a hard, level, flat surface to see how they would perform. In the first test, all drawers were open. In the second, the top drawer was open to its final stop and a 50-pound weight was hung from the drawer front. In the third, the top drawer was open to its final stop and the 50-pound weight was increased in one-pound increments to a maximum of 60 pounds. While 13 dressers failed all but the first of the tests, 20 dressers passed all the testing, underscoring that manufacturers are capable of successfully designing more stable dressers. The failures reinforce why a stronger standard is necessary to protect consumers. The 20 dressers that passed all our tests cost various amounts, and were representative of all price points in the market.[10]

In light of the unreasonable risk of death or injury to children and the findings of our investigation, CR and others have been advocating for the CPSC to develop and implement a strong mandatory safety standard with performance requirements for the stability of dressers and other clothing storage units, but the CPSC has failed to act. To account for the weight of children under age 6 and the feasibility demonstrated by CR's test results, CR has said the standard should, at a minimum, include a loaded stability test of 60 pounds and extend coverage to dressers 30 inches in height and shorter. We also have said that it is critical for the standard to be mandatory, not voluntary, for several reasons, including because:

- Under the current system of safety oversight, consumers essentially must place their trust in manufacturers that they will produce a reasonably stable dresser;
- Wall anchors and other tip-over restraint devices, while important, are no substitute for adequate stability performance testing;
- A mandatory standard is justified under the Consumer Product Safety Act—with the Commission able to find that such a rule is reasonably necessary and in the public interest since ASTM F2057-17 and any other existing voluntary standard is inadequate to "eliminate or adequately reduce the risk of injury addressed;"[11]
- CR's testing shows that manufacturers are capable of incorporating appropriate design changes to their products that yield adequate stability, and of offering units for sale to consumers that are affordable and do not sacrifice utility; and
- Such a standard would allow the agency to enforce requirements, including performance standards, and more easily gain industry cooperation for recalls; historically, companies have refused to carry out tip-over-related dresser recalls unless they face overwhelming CPSC and public pressure, or their product is linked to a death or failed stability test administered by the CPSC.[12]

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[10] *Id.*

[11] 15 U.S.C. 2056(b).

[12] *See, e.g.,* CPSC, "Memorandum: 2016 Tipover Briefing Package Test Results Update" (Aug. 16, 2017) (online at: www.cpsc.gov/s3fs-public/2016-Tipover-Briefing-Package-Test-Results-Update-August-16-2017.pdf?yMCHvzY_YtOZmBAAj0GJih1lXE7vvu9K); CPSC, "IKEA Reannounces Recall of MALM and Other Models of Chests and Dressers Due to Serious Tip-over Hazard; 8th Child Fatality Reported; Consumers Urged to Choose Between Refund or Repair," press release (Nov. 21, 2017) (online at: cpsc.gov/Recalls/2018/IKEA-Reannounces-Recall-of-MALM-and-Other-Models-of-Chests-and-Dressers-Due-to-Serious-Tip-over-Hazard); CPSC, "South Shore Furniture Recalls Chest of Drawers Due to Serious Tip-Over and Entrapment Hazards; One Fatality Reported," press release (May 9, 2019) (online at: www.cpsc.gov/Recalls/2019/south-shore-furniture-recalls-chest-of-drawers-due-to-serious-tip-over-and-entrapment).

While the CPSC has not yet proposed a rule, important technical research by staff is underway, and the agency's top officials have expressed support for measures to strengthen the current safety framework around furniture tip-overs. On February 27, Acting Chairman Buerkle—with an expression of gratitude and appreciation to the members of Parents Against Tip-Overs (PAT) for their engagement and their courage—announced her support for increasing the ASTM F2057-17 test weight to 60 pounds and expanding the scope of the standard to include clothing storage units between 27 inches and 30 inches in height.[13] CPSC data show that a dresser as short as 27.5 inches in height has been involved in a fatal incident, and at even lower heights where a TV also was involved. At a March 13 public meeting, the full Commission voted to include in the agency's FY 2020 budget request its plans for CPSC staff to complete a notice of proposed rulemaking briefing package addressing furniture tip-overs during that fiscal year.[14] Commissioners at the public meeting made several comments regarding the seriousness of the clothing storage unit tip-over hazard, and the Commission broadly recognized that much of the furniture industry is not taking fast enough or strong enough action to improve its voluntary standard.[15]

C. Urgent action by Congress is critical to improve stability and protect children; a bipartisan majority of CPSC commissioners supports a strong legislative solution

CR commends the leadership of the Commission and the hard work of CPSC staff to move forward on measures to reduce the risk of death or injury from tip-overs, but also recognizes that CPSC rulemaking under its Consumer Product Safety Act Section 7 and 9 authority is likely to take several years, if not a full decade, to complete. While we continue to urge the furniture industry to strengthen ASTM F2057-17 immediately, CR also is advocating for passage of the STURDY Act to help ensure the fastest possible implementation of a strong standard. Enactment of STURDY could yield a new stability standard that is stronger and takes effect years earlier than it would otherwise, and the reduced delay could save children's lives.

In addition to CR, the STURDY Act has the support of Parents Against Tip-Overs as well as the American Academy of Pediatrics, Consumer Federation of America, Kids In Danger, and Public Citizen. A bipartisan majority of CPSC commissioners also has expressed support for the STURDY Act and enactment of a legislative solution that would permit the CPSC to take faster action to help prevent tip-overs than the promulgation of a rule under its traditional rulemaking authority and procedures.[16]

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[13] CPSC, "Acting Chairman Ann Marie Buerkle Prepared Remarks for the 2019 International Consumer Product Health and Safety Organization Annual Symposium" (Feb. 27, 2019) (online at: cpsc.gov/About-CPSC/ann-marie-buerkle/Speeches/acting-chairman-ann-marie-buerkle-prepared-remarks-for-the).

[14] CPSC, "Minutes of Commission Meeting: Decisional Matter – CPSC FY 2020 Performance Budget Request to Congress" (Mar. 13, 2019) (online at: www.cpsc.gov/s3fs-public/2020%20Performance%20Budget%20-%20Comm.%20Meeting%20Minutes.pdf?dFRVaoE_tIxvibk4RKK6apwMI_ME5gL9).

[15] CPSC, "Commission Meeting: FY2020 Performance Budget Request to Congress," video (Mar. 13, 2019) (online at: www.cpsc.gov/Newsroom/Video/commission-meeting-fy2020-performance-budget-request-to-congress).

[16] *See, e.g.,* U.S. House Committee on Energy and Commerce, Subcommittee on Consumer Protection and Commerce, "Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission

D. STURDY would require dresser stability testing to simulate the weight of children under age 6 and to more closely but reasonably account for real-world circumstances

The STURDY Act appropriately follows the recommendations of CR, top officials at the CPSC, and numerous others by requiring the CPSC to implement a strong, mandatory rule for dressers and other clothing storage units to protect children from tip-over incidents. The bill would direct the CPSC's rule to be finalized within one year, to cover all clothing storage units including those under 30 inches in height, and to require tests that simulate the weight of children up to their sixth birthday. The bill also would require testing that more closely, but reasonably, accounts for real-world scenarios reflected in the CPSC's incident data. In the real world, a dresser tip-over incident involves dynamic forces, including those from the movement of drawers or of a child, as well as different flooring surfaces and drawer contents. The STURDY Act sensibly directs the CPSC to account for the impact these factors may have on clothing storage unit stability.

The hazard to children of furniture tip-overs has been insufficiently addressed by both the furniture industry and the CPSC for years. Congress, today, has the chance to finally force a more protective stability standard to take effect. We urge members to seize this opportunity for leadership on behalf of child safety and pass H.R. 2211, the STURDY Act, without delay.

II. Congress should <u>pass the Safe Sleep Act</u> to get inclined sleepers off the market; the inherently dangerous products remain for sale even after dozens of infant deaths

The U.S. has the highest rate of sudden unexpected infant death (SUID) among all developed nations, and CR is committed to helping prevent these tragedies.[17] One way to address a portion of these deaths is through H.R. 3172, the Safe Sleep Act of 2019. We support this legislation because it would prohibit the manufacture, import, and sale of infant inclined sleep products, which pose significant risks to infants and have no place in a safe sleep environment.

According to the Centers for Disease Control and Prevention (CDC), SUID refers to "the sudden and unexpected death of a baby less than 1 year old in which the cause was not obvious before investigation," with a wide range of types, which "often happen during sleep or in the baby's sleep area."[18] One type of SUID is sudden infant death syndrome (SIDS), which refers to accidental suffocation in a sleeping environment. The CDC estimates that there were 3,600 sudden unexpected infant deaths in the U.S. in 2017, with about 1,400 of the deaths due to SIDS, about 1,300 of the deaths due to unknown causes, and about 900 of the deaths due to accidental suffocation and strangulation in bed.[19]

Fulfilling Its Mission?" (Apr. 9, 2019); CPSC, "Public Hearing on Commission Agenda and Priorities for Fiscal Years 2020 and 2021" (May 1, 2019) (online at: www.youtube.com/watch?v=hu8j7f5UNAI).

[17] Carlin R and Moon RY. Learning From National and State Trends in Sudden Unexpected Infant Death. *Pediatrics.* 2018;141(3):e20174083 (online at: pediatrics.aappublications.org/content/pediatrics/141/3/e20174083.full.pdf).

[18] CDC, "About SUID and SIDS" (Dec. 31, 2018) (online at: www.cdc.gov/sids/about/index.htm).

[19] CDC, "Sudden Unexpected Infant Death and Sudden Infant Death Syndrome" (Apr. 10, 2019) (online at: www.cdc.gov/sids/data.htm).

In 2016, in a formal policy statement, the American Academy of Pediatrics (AAP) published updated recommendations for a safe infant sleeping environment, following a thorough, multi-year process by pediatricians to evaluate the state of the medical evidence. According to the AAP, the organization "recommends a safe sleep environment that can reduce the risk of all sleep-related infant deaths."[20] The safe sleep recommendations include that babies should be placed alone to bed on a firm, flat surface in their own space, with no extra bedding.[21]

A. Two recalled inclined sleeper models are tied to at least 37 infant deaths; the product category conflicts with American Academy of Pediatrics safe sleep recommendations

In recent months, Consumer Reports has been investigating the safety of infant inclined sleep products. The entire category of inclined sleepers conflicts with AAP safe sleep recommendations, since these products contain a surface for infant sleep that is not flat. Some products also contain additional padding that can put infants at risk. Additionally, while manufacturers of inclined sleepers often include restraints, the AAP does not recommend products for routine sleep that require restraining a baby, especially if that product also rocks.[22]

CR's investigation has been based in part on our analysis of previously undisclosed, manufacturer-specific data that the CPSC released in error to CR, as well as reviews of lawsuits and interviews with numerous medical experts, product engineers, government and industry officials, and parents.[23] The investigation yielded CR stories in early April reporting that there were dozens of infant deaths that had not been publicly known but were associated with two models of inclined sleepers.[24] Shortly thereafter, Fisher-Price recalled all 4.7 million Rock 'n Play Sleepers in the U.S. and Kids II recalled nearly 700,000 rocking sleepers, with the Rock 'n Play linked to at least 32 infant deaths and Kids II rocking sleepers linked to at least five.[25]

B. CPSC steps to protect infants have repeatedly fallen far short; only an erroneous data release to CR allowed the public to know the breadth and severity of the danger

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[20] AAP Task Force on Sudden Infant Death Syndrome, SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment, *Pediatrics,* 2016;138(5):e20162938, October 24, 2016 (online at: pediatrics.aappublications.org/content/pediatrics/early/2016/10/20/peds.2016-2938.full.pdf).

[21] *Id.*

[22] CR, "Fisher-Price Rock 'n Play Sleeper Should Be Recalled, Consumer Reports Says" (Apr. 8, 2019; last updated May 16, 2019) (online at www.consumerreports.org/recalls/fisher-price-rock-n-play-sleeper-should-be-recalled-consumer-reports-says).

[23] *Id.;* CR, "Four More Deaths Linked to Infant Sleepers Like the Fisher-Price Rock 'n Play Sleeper" (Apr. 11, 2019; last updated May 16, 2019) (online at: www.consumerreports.org/child-safety/more-deaths-linked-to-infant-sleepers-like-fisher-price-rock-n-play-sleeper).

[24] *Id.*

[25] CR, "Fisher-Price Recalls the Rock 'n Play Sleeper After It Was Tied to Infant Deaths" (Apr. 12, 2019; last updated May 16, 2019) (online at: www.consumerreports.org/recalls/fisher-price-recalls-rock-n-play-sleeper); CR, "Kids II Recalls Inclined Sleepers Linked to Infant Deaths" (Apr. 26, 2019) (online at: www.consumerreports.org/recalls/kids-ii-inclined-sleeper-recall-rocking-sleepers-linked-with-infant-deaths).

The recalls of more than five million inclined sleepers tied to infant deaths occurred only after the products were sold to the public for years. Initially marketed alongside traditional bassinets, the popular Rock 'n Play Sleeper prompted Fisher-Price to successfully seek a carve-out from the CPSC's mandatory standard for bassinets and cradles at the time the agency was developing the rule for those flat-surfaced products in the 2011-2013 period.[26] Juvenile product manufacturers, under the leadership of Fisher-Price and despite opposition from safety advocates, instead crafted a voluntary ASTM International standard specifically for infant inclined sleep products.[27]

The CPSC would go on to help legitimize the ASTM standard and the dangerous sleep products within its scope. In 2017, the CPSC issued a notice of proposed rulemaking to adopt the ASTM standard as mandatory pursuant to Section 104 of the Consumer Product Safety Improvement Act.[28] In May 2018, the CPSC issued a general alert not tied to any specific product, which warned that the agency "is aware of infant deaths" and urged caregivers to use restraints with inclined sleep products and stop use as soon as an infant can roll over.[29] After CR contacted the CPSC on April 1, 2019, to seek comment from the agency about our investigation, the CPSC and Fisher-Price issued a new warning on April 5, 2019. That alert generally echoed the messages of the May 2018 alert but stated that "[t]he CPSC is aware of 10 infant deaths in the Rock 'n Play that have occurred since 2015, after the infants rolled from their back to their stomach or side, while unrestrained."[30] Three days later, CR published its story reporting that at least 32 infant deaths were tied to the Rock 'n Play. Three days after that, CR published its story reporting that additional deaths were tied to Kids II rocking sleepers. By the end of the week, Fisher-Price had announced its recall, with Kids II following two weeks later.

In the case of these two dangerous products, CR's investigation found that the CPSC knew that each product was linked to fatalities for years before recalls were issued, and then recalls happened only after CR alerted the public that the sleepers were clearly linked to infant deaths.[31] Section 6(b) of the Consumer Product Safety Act—which sharply restricts and sometimes entirely prevents the CPSC from publicly releasing manufacturer-specific information—kept consumers from learning about the number of deaths associated with the Rock 'n Play Sleeper and the Kids II sleepers.[32] Section 6(b) put people at deadly risk, and not

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[26] *Supra* note 22.

[27] *Id.*

[28] CPSC, *Safety Standard for Infant Inclined Sleep Products,* notice of proposed rulemaking, 82 Fed. Reg. 16963 *et seq.* (Apr. 7, 2017).

[29] CPSC, "CPSC Consumer Alert: Caregivers Urged To Use Restraints With Inclined Sleep Products" (May 31, 2018) (online at: www.cpsc.gov/content/cpsc-consumer-alert-caregivers-urged-to-use-restraints-with-inclined-sleep-products).

[30] CPSC, "CPSC ALERT: CPSC and Fisher-Price Warn Consumers About Fisher-Price Rock 'N Play Due to Reports of Death When Infants Roll Over in the Product" (Apr. 5, 2019) (online at: www.cpsc.gov/content/cpsc-alert-cpsc-and-fisher-price-warn-consumers-about-fisher-price-rock-%E2%80%98n-play-due-to).

[31] CR, "Decades-Old Law Hides Dangerous Products and Impedes Recalls" (Apr. 30, 2019) (online at: www.consumerreports.org/product-safety/decades-old-law-hides-dangerous-products-and-impedes-recalls).

[32] *Id.;* "What Is the Future of the Inclined Sleeper?" (May 8, 2019) (online at: www.consumerreports.org/product-safety/what-is-the-future-of-inclined-sleeper).

for the first time.[33] It is possible, even probable, that the dangerous Rock 'n Play Sleepers and Kids II rocking sleepers would still be for sale if the CPSC had not sent manufacturer-specific information to CR in error. This investigation and the recalls show clearly how Section 6(b) keeps consumers in the dark about product-related hazards, injuries, and even deaths, and why it is critical for Congress to repeal it.

C. Law should reflect that an infant product can be safe for sleep or inclined—not both at once; Congress must prohibit inclined sleepers since CPSC and industry have not

Congress should demonstrate that it can respond meaningfully to this spring's inclined sleeper investigation and recalls, and pass the Safe Sleep Act of 2019 to lock in policy change. Appropriately, the bill would prohibit the manufacture, import, or sale of infant inclined sleep products, since these products are inherently dangerous and have no place in a safe sleep environment. This step is particularly important because there are still several inclined sleep products available for sale, such as the SwaddleMe By Your Bed Sleeper and the hiccapop DayDreamer Sleeper Baby Lounger Seat and Travel Bed for Infants, among others.[34]

Either an infant product can be flat and safe for sleep, or it can have an inclined surface and be used for activities such as swinging or bouncing when an infant is awake and the caregiver is present—not both at once. Congress should ensure federal law reflects this reality by passing the Safe Sleep Act of 2019, especially since both industry and the CPSC have been reluctant to get the full product category off the market. Industry representatives argued vehemently against eliminating the inclined sleeper category at a recent ASTM meeting when consumer groups and the AAP raised the question, citing a lack of data. Having at least 32 deaths tied to the largest-selling inclined sleeper, and an almost identical fatality rate in another model, should be more than enough, especially when combined with the expertise of our nation's pediatricians.

III. Congress should pass the Safe Cribs Act to prohibit crib bumpers, because they contribute to unsafe infant sleep and are not necessary to prevent head entrapment

The risks to infants from crib bumper pads and similar products are serious.[35] We support H.R. 3170, the Safe Cribs Act of 2019, to prohibit these products' manufacture, import, and sale nationwide.

A. Crib bumpers are unnecessary and contribute to an unsafe sleep environment for infants, according to American Academy of Pediatrics expert recommendations

The AAP's thorough, evidence-based policy statement on a safe sleeping environment makes clear that bumper pads are not recommended for infants.[36] According to the organization, the products "have been implicated as a factor contributing to deaths from suffocation,

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[33] *Id.*

[34] *Id.*

[35] *Supra* note 20.

[36] *Id.*

entrapment, and strangulation," and while they originally were intended to prevent infants from getting their heads trapped between the slats in older cribs, "cribs manufactured to newer standards have a narrower distance between slats" and bumper pads "are not necessary to prevent head entrapment."[37] The products do not serve any safety purpose; they only present safety risks.

B. Several states and major retailers have stopped the sale of crib bumper pads, while the CPSC recognizes the danger but has failed to prohibit the product category

CR, along with partner organizations AAP, Consumer Federation of America, and Kids In Danger, has warned parents and caregivers for almost a decade against using crib bumper pads. We also have supported state and local actions to prohibit their sale. Today, Maryland, Ohio, and Chicago, Illinois, all have banned crib bumper pads, and New York State is poised to join them after recently passing a bill through its legislature to prohibit the products.

We agree with the November 2016 joint policy statement by several CPSC 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.[38] These commissioners recognize the danger of the products, as do most major retailers including Walmart and Target, which have removed bumper pads from their shelves, according to Kids In Danger.[39] At the same time, the CPSC as an agency has failed to prohibit bumper pads and similar products. Congress should take action since the CPSC has not.[40]

C. Crib bumpers remaining for sale at stores and online means that parents and caregivers unwittingly put infants at risk; the products should not be for sale

In short, crib bumpers are dangerous, and should not be for sale. The fact that they remain on store shelves and online means that well-meaning parents and caregivers are unwittingly putting infants at risk, and will continue to do so as long as the products are available. New parents or grandparents may be particularly vulnerable to assuming bumper pads are safe because they are available for purchase. We urge Congress to pass the Safe Cribs Act of 2019 to help reduce any confusion in the marketplace that could put infants' lives at risk.

IV. Congress should <u>pass the Portable Fuel Container Safety Act</u> to help prevent flame-jetting incidents with a binding, enforceable standard applying across the market

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[37] *Id.*

[38] 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).

[39] Testimony of Nancy Cowles, Executive Director, Kids In Danger to the House Subcommittee on Consumer Protection and Commerce, on "Protecting Americans From Dangerous Products: Is The Consumer Product Safety Commission Fulfilling Its Mission?" (Apr. 9, 2019) (online at docs.house.gov/meetings/IF/IF17/20190409/109316/HHRG-116-IF17-Wstate-CowlesN-20190409.pdf).

[40] *See* American Academy of Pediatrics, "CPSC Fails to Ban Crib Bumpers Dangerous to Infants" (Nov. 4, 2016) (online at: www.aap.org/en-us/about-the-aap/aap-press-room/pages/CPSC-Fails-to-Ban-Crib-Bumpers-Dangerous-to-Infants.aspx).

Consumer Reports supports H.R. 806, the Portable Fuel Container Safety Act of 2019. According to National Fire Protection Association estimates, fire departments responded to an average of 160,910 fires per year in the 2007-2011 period that started with ignition of a flammable or combustible liquid, resulting in an estimated 454 civilian deaths, 3,910 civilian injuries, and $1.5 billion in direct property damage per year.[41] Manufacturers and safety experts have identified a portion of the death and injury toll to address through product design: incidents involving flame jetting from portable fuel containers intended for reuse by consumers.

Despite the fact that people should never pour fuel such as gasoline, kerosene, diesel, ethanol, methanol, denatured alcohol, or biofuels over a flame or use such fuel for fire-starting purposes, people do—creating a foreseeable scenario that this Act would help address. The Portable Fuel Container Safety Act would require flame mitigation devices, or flame arrestors, to prevent flame from entering these containers and igniting the gases inside. This requirement is consistent with a new voluntary standard recently finalized by ASTM International, ASTM F3326-19,[42] which the CPSC could decide to treat as a mandatory standard under the bill if the agency were to determine that it meets the bill's minimum conditions. The bill also includes: text accounting for future revisions; direction for the CPSC to undertake an education campaign about the proper use and storage of portable fuel containers; and an expansion of existing requirements for child-resistant closures on portable gasoline containers so that they apply to gasoline, kerosene, and diesel fuel receptacles and their components.

The new ASTM standard represents a step forward for safety, and all portable fuel containers intended for reuse by consumers should conform to its provisions. Congress should pass the Portable Fuel Container Safety Act to ensure this standard or a similar standard becomes mandatory. Consumers should have assurance that any new portable fuel container they may buy—which they or someone else may use or misuse—will contain an effective flame mitigation device, and that the CPSC can readily take compliance or enforcement action if a manufacturer fails to follow the law.

V. Congress should pass the Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act to promote detector installation and protect vulnerable populations

Consumer Reports supports H.R. 1618, the Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act of 2019. According to the 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.[43] CR often stresses the importance of installing and maintaining CO detectors, and offers a buying guide and ratings on these products to give consumers comparative

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[41] National Fire Protection Association, "Fires Starting with Flammable Gas or Flammable or Combustible Liquid" (Feb. 2014) (online at: www.nfpa.org/News-and-Research/Data-research-and-tools/Hazardous-Materials/Fires-Starting-with-Flammable-Gas-or-Flammable-or-Combustible-Liquid).

[42] ASTM International, "New ASTM International Standard Will Help Make Portable Fuel Containers Safer," press release (Feb. 21, 2019) (online at: www.astm.org/newsroom/new-astm-international-standard-will-help-make-portable-fuel-containers-safer).

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

information about different products that CR has tested.[44] To help keep consumers safe, CR also has published stories about how to ensure that smoke and carbon monoxide detectors function properly.[45]

The Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act would establish a grant program for CO poisoning prevention, administered by the CPSC. The grants would encourage states to require that up-to-date carbon monoxide detectors be installed in all dwelling units and numerous other facilities with the capacity to hold a large number of people, such as educational, childcare, health care, and adult dependent care facilities, government buildings, restaurants, theaters, and lodging establishments. The grants also would encourage states to develop a strategy to protect vulnerable populations such as children, the elderly, or low-income households, and support states in training fire code enforcement officials and educating the public about the risk associated with carbon monoxide.

With hundreds of people dying each year from carbon monoxide poisoning, it is appropriate to establish a modest CPSC-administered grant program to promote the installation of CO detectors, especially for vulnerable populations. This grant program can be an important part of a broader, multi-pronged strategy to significantly reduce injuries and deaths associated with carbon monoxide poisoning, and Congress should pass the bill.

VI. Congress should align SOFFA with state preemption under the Flammable Fabrics Act; while CPSC adoption of the California standard would bring practical enforcement benefits, states should retain the ability to exceed its level of protection

Flammability standards can help assure consumers that the products in their homes will resist igniting or increasing the severity of a fire. At the same time, exposure to certain flame-retardant chemicals is associated with known adverse health effects, especially for vulnerable populations such as young children and those who are pregnant.[46] H.R. 2647, the Safer Occupancy Furniture Flammability Act, or SOFFA, pertains to flammability standards for upholstered furniture. Consumer Reports does not test upholstered furniture, but has followed recent developments around flammability standards for this product category with interest.

California's upholstered furniture flammability standard has been a de facto national standard for more than four decades, in the absence of a federal flammability standard for the product category. For years, the California standard contributed to the use of flame-retardant chemicals in furniture despite the risks of exposure to the chemicals and their questionable

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[44] Consumer Reports, "Smoke & Carbon Monoxide Detector Buying Guide" (June 8, 2018) (online at: www.consumerreports.org/cro/smoke-carbon-monoxide-detectors.htm).

[45] 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); 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).

[46] CPSC, "Guidance Document on Hazardous Additive, Non-Polymeric Organohalogen Flame Retardants in Certain Consumer Products," 82 Fed. Reg. 45268-69 (Sept. 28, 2017) (online at: www.govinfo.gov/content/pkg/FR-2017-09-28/pdf/2017-20733.pdf).

effectiveness at preventing or mitigating a fire.[47] CR was pleased several years ago when California decided to replace the standard with a new version, reliant on a smolder test, which sought to reduce the risk of ignition on upholstered furniture without driving manufacturers to use flame-retardant chemicals in the products. Today's standard, TB 117-2013, is currently the strongest measure U.S. consumers have to keep them protected from purchasing upholstered furniture that is either highly flammable or loaded with flame-retardant chemicals.

Consumer Reports recognizes the practical enforcement benefits that would come from the CPSC formally adopting the California upholstered furniture flammability standard nationally, but we urge members to amend the bill so that other states retain the ability to exceed its level of protection if they so choose. While new upholstered furniture offered for sale in the U.S. typically already complies with TB 117-2013, SOFFA would permit the CPSC to treat the standard as if it were promulgated under the Flammable Fabrics Act (FFA), enabling the agency to take enforcement action if it discovers noncompliance. However, unlike the FFA, SOFFA provides that California's TB 117-2013 as adopted by the CPSC would preempt any other state flammability law or requirement with respect to upholstered furniture, even in the case of a state standard that provides a higher degree of protection from a risk of occurrence of fire.[48] States should retain the ability to go beyond the California standard and afford people a higher level of protection if they so choose. This is especially important because materials science can change rapidly, and states in the future should be able to implement innovative flammability standards, much as California did in 2013. As SOFFA advances, we urge members to amend the bill so that its state preemption provision aligns with the existing preemption regime under the Flammable Fabrics Act.

VII. Congress should reject the FASTER Act; it would let companies set their own terms and barrel through any CPSC attempt to ensure high-quality recalls for consumers

Consumer Reports has strong concerns with H.R. 3169, the misleadingly named "Focusing Attention on Safety Transparency and Effective Recalls (FASTER) Act," and opposes the legislation. The bill's description indicates that its goal is "to protect consumers," yet almost every change it would make to the current Fast-Track recall program would weaken, not strengthen, the quality of product safety recalls as they pertain to affected consumers.

Under the FASTER Act, the CPSC would become merely the stenographer for companies as they set their own terms for recalls. The agency would have little to no ability to insist on a minimum quality of recall notices to ensure they are effective at reaching consumers and motivating them to action—rather than minimizing their reach and appeal, demotivating consumers from participating, and perhaps even misleading them. The CPSC also would have little to no ability to ensure a recall's scope is appropriate or that a recall remedy is fair given the circumstances confronting affected consumers. While working to speed up recalls is worthwhile, the FASTER Act has the wrong target in mind. Instead of reducing CPSC input in the recall process, a beneficial reform to the Fast-Track program would consider ways to incentivize

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[47] "How safe are flame retardants?" Consumer Reports (Feb. 2013) (online at: www.consumerreports.org/cro/magazine/2013/02/how-safe-are-flame-retardants/index.htm).

[48] *See* SOFFA Sec. 2(c); FFA Sec. 16(b) codified at 15 U.S.C. 1203(b).

recalling companies to approach the CPSC more quickly and with robust recall plans. In light of these concerns, Consumer Reports opposes the FASTER Act and urges members to reject it.

VIII. Conclusion

Consumer Reports thanks the Subcommittee on Consumer Protection and Commerce for the opportunity to testify about child safety and consumer safety. Members of Congress have a critical role to play to help improve the safety of consumer products, especially to address persistent hazards such as those associated with furniture tip-overs and unsafe infant sleep environments. As members wield oversight of the CPSC and consider legislation to address these and other hazards, we look forward to working together to ensure that companies, the government, and consumers put safety first, always.

Enclosures (15):

(1) "A Hidden Hazard in Your Home," Consumer Reports, March 2018 (May 2018 issue of the print magazine)

(2) Comments of Consumer Reports to the CPSC on the advance notice of proposed rulemaking relating to clothing storage unit tip-overs, April 14, 2018

(3) "Dangerous Dressers in Our Homes," Consumer Reports, November 2018 (March 2019 issue of the print magazine)

(4) "Furniture Anchors Not an Easy Fix, as Child Tip-Over Deaths Persist," with survey report, Consumer Reports, published online November 8, 2018

(5) "Ikea Still Sells a Hemnes Dresser Linked to a Child's Death," with CR Advocacy press release, Consumer Reports, published online January 8, 2019

(6) Letter from Consumer Federation of America, Consumer Reports, Kids In Danger, and Parents Against Tip-Overs to the American Home Furnishings Alliance, January 14, 2019

(7) "Furniture manufacturers, government must act now to stop tip-overs, recall dangerous dressers," Consumer Reports Advocacy press release, February 27, 2019

(8) "South Shore Recalls Dresser Linked to Child's Death," with CR Advocacy press release, Consumer Reports, published online May 9, 2019

(9) "New Ikea Dressers Are Designed to Reduce Tip-Over Injuries and Deaths," Consumer Reports, published online June 5, 2019

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(10) "Fisher-Price Rock 'n Play Sleeper Should Be Recalled, Consumer Reports Says," with CR Advocacy press releases, Consumer Reports, published online April 8, 2019

(11) "Four More Deaths Linked to Infant Sleepers Like the Fisher-Price Rock 'n Play Sleeper," with CR Advocacy press release

(12) "Decades-Old Law Hides Dangerous Products and Impedes Recalls," Consumer Reports, published online April 30, 2019

(13) "What Is the Future of the Inclined Sleeper?" Consumer Reports, published online May 7, 2019

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(14) AAP Task Force on Sudden Infant Death Syndrome, SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment, *Pediatrics,* 2016;138(5):e20162938, October 24, 2016

(15) "CPSC Fails to Ban Crib Bumpers Dangerous to Infants," joint press release by the American Academy of Pediatrics, Consumer Federation of America, Consumers Union, and Kids In Danger, November 4, 2016

[Additional material submitted by Mr. Wallace has been retained in committee files and also is available at https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109635.]

Ms. SCHAKOWSKY. Thank you for your testimony.

Now I introduce Ms. Ellis.

You are recognized for 5 minutes.

STATEMENT OF CRYSTAL ELLIS

Ms. ELLIS. Hello. My name is Crystal Ellis. I am an elementary educator, mom, child safety advocate, representing Parents Against Tip-Overs, an organization of families like mine who have lost a child to furniture tipover.

I want to begin by saying thank you to each and every one of you for allowing me the opportunity to speak today.

Today is a very difficult day for me. Today would be my son Camden Ellis' seventh birthday. But, tragically, he was killed 5 years ago, on Father's Day, in a furniture tipover incident. His three-drawer, just 30-and-three-quarter-inch-tall dresser fell as he tried to reach inside to get his clothes, trapping his neck between the drawers and suffocating him. He was unable to cry for help, and we did not hear it fall.

His father found him when he went to get him up for breakfast. I can still hear my husband's screams.

After trying my best to revive him with CPR and 4 days in a coma at Seattle Children's, we had to say goodbye, donating his organs to hopefully save another family from our fate.

At the time, I thought this was a freak accident, and I had no idea that this was a danger in my home. When I discovered that he was not only the seventh child to die because of the negligence of this particular manufacturer, without a recall, or that children were dying at the rate of 1 every 10 days from furniture tipovers, I was absolutely devastated.

How was this possible? I had taken multiple getting-ready-for-baby classes and childproofed my home. None of the professional educators, healthcare providers, mom group leaders, or parents had ever told me about the risk of dresser tipovers killing my child.

I know that there are many other parents in this country that also have no idea that their dresser is a risk. They assume, as I did, that any product that is sold 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 10 days is a crisis that needs to be immediately addressed. It has already been 5 years since the death of my son Camden, over 14 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. I believe a mandatory standard that takes into account real-world use by a child with dynamic testing would have saved my son.

We need the STURDY Act for many reasons. The first is the lack of progress in working with manufacturers to get them to do the right thing. Consumer advocates and parents have been trying for almost 2 decades to strengthen the standard. Manufacturers know how to solve this problem right now by engineering the tipovers right out of the design.

PAT members continue to attend meetings and task groups ready to dive in to improving the standard, but by multiple accounts and measures, this is one of the most contentious sub-

committees, F15.42, overseen by ASTM. They have stalled for years on addressing the furniture tipover issue. They keep saying, "We need more data." Their data is our dead and injured children. We do not need more data.

Even with the devastating statistics we already have, we also know the data is underreported. Most consumers do not know who the CPSC is or the importance of reporting incidents of faulty products to them. Every dresser that falls, at the rate of one ER visit every 17 minutes, has the potential to be a death or a life-altering injury.

Even with the chairman of the CPSC strongly urging these manufacturers to stop stalling and take immediate action to increase the standard, there were still dozens of negative votes at the last ballot.

Some manufacturer members of the ASTM subcommittee have argued we should make the current voluntary standard mandatory, but we know the current standard is not enough. Proof of this exists in the IKEA Hemnes dresser, which currently meets voluntary tipover standards. It was responsible for the death of 2-year-old Conner DeLong in Florida and was seen in a viral video falling on 2-year-old twin brothers in Utah, 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 make the standard strong enough to protect consumers.

Secondly, the CPSC, even though they have expressed that tipovers are their number-one, highest-priority issue this year, are still not using every tool available to them, including Section 104 rulemaking and recalling every dresser that does not meet the current weak voluntary standard.

Also, from participating in the ASTM meeting on May 10, I strongly feel the manufacturers are not afraid of repercussions from the CPSC. Between their small budget and their hands being tied by the limitations from Section 6(b) of the Consumer Product Safety Act, the manufacturers know they have time to stall, time that will result in more deaths of children.

Today, Parents Against Tip-Overs is here to be a voice for our children who have lost theirs, a voice for parents who are home today acting as full-time caregivers for their children who survived a tipover incident but have been left with life-altering injuries, and a voice for parents who cannot find theirs because they are overwhelmed by the darkness of grief and sadness that we have all experienced.

I would like to make it clear that furniture tipover is not a partisan issue. I assure you, furniture falls on both Republican and Democratic children equally. Unstable furniture does not discriminate.

Thank you again for allowing me to speak today, and I hope you will join me in protecting children and families in this country by supporting the STURDY Act.

[The prepared statement of Ms. Ellis follows:]

Written Testimony for 6/13/19
"Keeping Kids and Consumers Safe from Dangerous Products"
Crystal Ellis

Hello, my name is Crystal Ellis. I am an elementary educator, mom, and child safety advocate, representing Parents Against Tip-Overs, an organization of families like mine who have lost a child to furniture tip-over. I want to begin by saying thank you to each one of you for allowing me the opportunity to speak today.

Today is a very difficult day for me. Today would be my son, Camden Ellis' 7th birthday. Tragically, he was killed five years ago, on Father's Day, in a furniture tip-over incident. His 3-drawer dresser, just 30 ¾" tall, fell, as he tried to reach inside to get to his clothes, trapping his neck between the drawers and suffocating him. He was unable to cry for help, and we did not hear it fall. His father found him, when he went to get him up for breakfast. I can still hear my husband's screams. After trying my best to revive him with CPR, and four days in a coma at Seattle Children's, we had to say good-bye, donating his organs to hopefully save another family from our fate.

At the time, I thought this was a freak accident and I had no idea that this was a danger in my home. When I discovered that he was not only the 7th 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 from furniture tip-overs, 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 10 days is a crisis that needs to be immediately addressed. It has already been 5 years since the death of my son, over 14 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. Since Meghan's death, 254 more have died. I believe a mandatory standard that takes into account real world use by a child with dynamic testing would have saved my son and literally tens of thousands of children every year from injuries and death.

We need the STURDY Act for many reasons. The first is the lack of progress in working with manufacturers to get them to do the right thing. Consumers advocates and parents have been trying for almost two decades to strengthen the standard. Since the creation of this ASTM sub-committee, 19 years ago, there has been no significant change in the statistics. Manufacturers know how to solve this problem right now, by engineering the tip-overs right out of the design. PAT members continue to attend meetings and task groups, ready to dive into improving the standard, but, by multiple accounts and measures this ASTM sub-committee, F15.42, is one of

the most contentious sub-committees overseen by ASTM. They have stalled for years on seriously and effectively addressing the furniture tip-over issue. They keep saying they need more data. Their data is our dead and injured children. There are 542 known deaths from 2000-2017, and an average of 75 ER visits a day due to tip-overs. We do not need more data.

Even with the devastating statistics we already have, we also know the data is underreported, as the statistics are only those reported to the CPSC. Most consumers and health care professionals do not know what the CPSC is, or that it even exists, or the importance of reporting incidents of faulty products to them. Every dresser that falls, at the reported rate of one ER visit every 17 minutes, has the potential to be a death or a life-altering injury. Even with the chairman of the CPSC strongly urging these manufacturers to stop stalling and take immediate steps to increase the standard, there were still dozens of negative votes at the last ballot.

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, in the Ikea Hemnes dresser, which currently meets voluntary tip-over standards, yet was responsible for the death of two-year-old Conner DeLong in Florida, and was seen in a viral video falling on two year old twin brothers in Utah, 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 make the standard strong enough to protect consumers.

Secondly, the CPSC, even though they have expressed that tip-overs are their highest priority this year, are still not using every tool available to them, including rulemaking 104 and recalling every dresser that does not meet the current, weak voluntary standard.

Also, from participating in on the ASTM meeting on May 10th, I strongly feel that the manufacturers are not afraid of repercussions from the CPSC and appear content to wait and see if Congress forces them to do the right thing, because that's likely the only way they will. Between their small budget and their hands being tied by the limitations from Section 6b of the Consumer Product Safety Act, the manufacturers know they have time to stall. Time that will result in more deaths of children. How many more dead children will take to compel those in power to stop this crisis?

Today, Parents Against Tip-overs is here to be a voice for our children who needlessly lost their lives to this 100% preventable issue. A voice for parents who are home today acting as full-time caregivers for their children who survived a tip-over incident but have been left with devastating life-altering injuries. And a voice for parents who cannot find theirs because they are overwhelmed by the darkness of grief and sadness that we have all, unfortunately, experienced.

Lastly, I'd like to make it clear that furniture tip-over is not a partisan issue. I assure you; furniture falls on Republican and Democratic children equally. It falls on children from both wealthy and poor families, those who live in both urban and rural communities, babies, toddlers, and even adults sometimes. The only common denominator in a furniture tip-over is unstable furniture. And the only way to stop it is to force manufacturers to adhere to a strong and effective mandatory furniture safety standard, which the STURDY Act would do, and likely the only thing that WILL stop tip-overs.

Thank you again for allowing me to speak today and I hope you will join me in protecting the children and families in this country, by supporting and passing the STURDY Act and being part of the solution to stop tip-overs.

Additional information to consider:

Anchoring is necessary for furniture that is already in homes, but we know less than 1/3 of parents anchor, that the final act of safety should not be on the consumer to anchor, and anchors are not tested for safety and can actually fail and provide a false sense of security (2 of the respondents to a Meghan's Hope/PAT survey said the furniture tipped because a restraint failed) The only solution is to build safer furniture and the industry will only do it if forced to. That is abundantly clear.

The Katie Elise and Meghan Agnes Act first introduced in 2005 to the House with 42 bipartisan co-sponsors, and 5 years after the ASTM furniture safety committee formed (which none of us knew even existed at that time). If it was adopted then, Camden, and all the other PAT children would very likely be alive today. Since Meghan died, there have been 254 reported deaths from tip-overs, and that's only through 2017 and only what was reported to the CPSC. That number should have been 0.

Excerpt from Meghan's Hope safety blog, written by PAT founding member, Kim Amato, about the argument for data, in an open letter to the ASTM, AHFA, and the CPSC (5/19/19):

Here's what you need to acknowledge and understand about data
And then apply it to the voluntary standard process, data collection and analysis, and the creation of a mandatory furniture safety standard.

By the CPSC's clear indication in their annual tip-over report, their reports of injuries and deaths due to tip-overs are ESTIMATES. You all know why they are estimates, but since everyone in that room last week at the ASTM furniture safety subcommittee meeting who was not a consumer member seems to have forgotten, or perhaps just ignored, *let me help you understand why the data you are claiming you need and are waiting for will never materialize.*

1. **The NEISS problem.** The vast majority of the data the CPSC gets on tip-over injuries and deaths comes from the NEISS hospitals. According to the CPSC, "NEISS injury data are gathered from the emergency departments (ED) of approximately 100 hospitals selected as a probability sample of all 5,000+ U.S. hospitals with emergency departments" *That's only 0.02% of the actual data from ER's that is definitively captured.* And it's ONLY accounting for injuries severe enough to require an ER visit! It doesn't take a rocket scientist to extrapolate that data and realize this problem is way more pervasive, and tip-overs are significantly more common, than the CPSC statistics indicate.
2. **The cause of death problem.** Information is also gathered from death certificates. This is never going to be sufficient unless all medical examiners in the U.S. are required to not only report the medical cause of death, but the attributing factors. For example, Meghan's death certificate states positional asphyxiation due to a fallen bureau. I know of other tip-over deaths where the death certificate simply said "asphyxiation" or "blunt

force trauma" with no documentation of the tip-over. Those deaths would never be captured as being due to tip-over. Medical examiners also don't always know what the contributing factors to the death were, either.

3. **Non-ER visit data is not captured**. The minor injuries that don't require or are not seen in an ER, but instead are seen in a pediatrician's office or urgent care center are not captured at all unless a rare and savvy doctor knows how and why to report it to the CPSC. The vast majority do not.
4. **Near misses (furniture that tipped, but the child was not injured) and minor injuries are not captured**. The near misses and minor injuries that don't require any medical intervention at all are completely unknown, since there is no official record of them. Other tip-over parents like myself know about them, because those parents tell us about them, and it happens a lot!
5. **It's not easy to report a tip-over.** The average parent, consumer, physician/medical professional, or medical examiner has no idea Saferproducts.gov exists, or why. They don't know how or why to report injuries due to a defective or unsafe product including tip-overs. Even if they are informed about it, it's cumbersome and time consuming and many parents are fearful of talking to a government agency, especially because many parents whose children are injured or killed by a tip-over are investigated by the police and sometimes DCF. They are treated like criminals because of the lack of awareness and sensitivity training out there as to the frequency and prevalence of tip-overs. If you've gone through that, you are understandably skeptical and traumatized when it comes to talking to any other "agency" about the tip-over incident. The CPSC needs to find a way to ensure everyone knows how and why to report hazards, injuries and deaths due to products sold in the U.S., to simplify the system and make it user friendly, and to make that widely publicized, easy to access, and encouraged, if not required, by every professional who interacts with children.
6. **Reports of tip-overs can happen years after the incident**, due to the reasons outlined above, and many parents find out from other bereaved parents how and why to report their incident. It's also important to realize that from the time an incident is reported, investigated, and the report completed can also take many months if not years. *And while you wait, every 17 minutes, another tip-over happens*. A tip-over that you could have prevented. A life that you could have saved.
7. **You'll never be able to get all the data you want about what the child was doing to cause the tip-over** because the vast majority of the time, no one was in the room where the tip-over happened except for the child who was the victim. For 99% of these injuries and deaths you'll never know exactly how that child was interacting with the furniture. Assumptions can be made, but they are not facts. You'll never be able to know how many drawers were open, if the child was climbing, pulling, reaching, standing in a drawer, leaning on a drawer, or if they simply bumped into it while playing. The answer is simply physics. *So, you need to stop asking for and waiting for that data, because you'll never get it and you already know that.* The CPSC has told you this as recently as the May 10th meeting of this year. This is why we need to include testing with some and all drawers open, loaded with the things typically in drawers (clothes, toys) and to test with enough test weight to simulate the dynamic force of at

least a 72 month old child climbing, pulling, or pushing on open drawers, and to account for the effect of carpet.

8. **Every single child that died because of a tip-over *could have lived,* and every single child that was not killed in a tip-over incident *could have died*.** Let that sink in. There was nothing special about any of these situations. Some call it luck, but you and I know it all comes down to physics, and every single situation was different.
9. **You will never know for sure how many times furniture you (the manufacturer) made has tipped over,** and likely will never know about all the injuries and deaths associated with your furniture falling. So, claiming you have no reports, or "only" one death (and seriously, if that "only" death was your child, how would you feel about me downplaying this topic in that manner), or a handful of minor injuries, is ignorant and dangerous. Why will you never know? In addition to all the reasons I've already pointed out, consumers typically don't know who made their furniture. *Nor do they care*. They want it to be safe and they want it to be functional and aesthetically pleasing. They might remember where they purchased it, but they probably don't know who the manufacturer was, nor would they care until their child is injured or killed. Thus, you will never have accurate data on that, either.
10. **Hiding behind the fact your costs will increase has to stop**. We understand that changes to the safety standards can result in costly changes to your manufacturing processes. We understand you are businesses and need to make a profit. We get that. But I can tell you that as a parent and a consumer, when we shop, we shop for furniture that is aesthetically pleasing, meets our needs, and is in our price range. Whether I'm paying $100, $500, or $1000 for a dresser or other CSU, I'm going to pay a little more if it means I know it's been tested and passes a stringent safety test. In fact, I might change my mind and choose your furniture instead BECAUSE I have proof that your furniture is compliant or goes above and beyond, what is required for safety. So, you can pass those costs onto the consumer at a reasonable dollar amount and absorb some of the cost for the greater good it will result in.
11. **Complaining your competition will hurt your sales if you comply with the voluntary standard has to stop**. Victim consciousness (as in they won't play nice in the sandbox so why should we) has no place in adulting or in the development and enforcement of safety standards. It's immature, a cop-out, and cowardly. My violin is way too small for that. You do you. Don't worry about your competition. Do the right thing. Own it. Be the change. Lead the way. Do it in the ASTM meeting, do it for your constituents, do it because you want to be ethical and trusted by consumers. Do it to save lives and bring the number of injuries and deaths to zero. Do it because it's the right thing to do. You know how to do it. You know how to market. Market yourselves as the ones who do the right thing, who go above and beyond and put your money where your mouth is. Prove it to us. Educate consumers about the tip-over epidemic and then explain what you have done to address it. Require retailers that sell your furniture to educate consumers as well. Don't mislead consumers. It will come back to haunt you. Trust me.
12. **No one is immune.** Even your friends and family. I bet you all have every single piece of furniture in your home anchored, right? Why? Because you know it's not safe when it's freestanding right now. Until you are willing to allow a child you love freely interact

with, climb, and play in a dresser/CSU or lie a child you love in front of any CSU/dresser and apply the current safety test to it, confident that it will remain upright un-anchored, the standard is not strong enough. Consider that. Tip-overs happen to the young and the old, to the wealthy and the poor, the highly educated and the poorly educated, in cities and in rural areas, in private homes and in public places, to people of all races and ethnic backgrounds, to people of all religious and spiritual beliefs, and to all genders. It could even happen to your family. NO. ONE. IS. IMMUNE.

13. **Tip-over is not a partisan issue**. I'm looking at you CPSC and Congress. There is absolutely no reason every member of the CPSC and every member of Congress should not fully support the STURDY Act. This is an issue that affects democrats, republicans and independents. The only common denominator is unsafe furniture because there is no adequate or mandatory safety standard to prevent tip-overs of furniture. We need the STURDY Act to protect consumers, especially the most vulnerable, our children.
14. **YOU NEED US**. Parent advocates and coalitions like Parents Against Tip-Overs and other consumer advocates are a rare breed. For every one of us who are bereaved parent advocates, there are hundreds of others who are not comfortable sharing their stories and their pain publicly, or who can't because of their jobs or other reasons. That doesn't mean they don't exist, and they don't want to see these changes any less than we do. We are here to represent them, too. We are the voice of every person who has ever been the victim of a tip-over, whether it was a near miss, a minor injury, or resulted in a catastrophic injury or death. We are connected to literally thousands of other parents who have had or know someone who has experienced a furniture tip-over incident. We are experts, too, and we bring important perspective, insight, and ideas to the table. You need us and we need you to end this epidemic. We must work together. But waiting for some magical data, some magical number of injured or dead children that will make you finally have a sense of urgency about this will no longer be tolerated.

It is my greatest wish that all members of the ASTM furniture safety sub-committee and the CPSC finally make a commitment to rapid and meaningful forward progress with this standard. It needs to be a priority and it needs to happen now. There is no reason we can't create and implement a stronger standard this year, with the two changes supported by the CPSC and Parents Against Tip-Overs, that being a change in the height to 27 inches and above and a change in the test weight to 60 lbs., and continue to change it for the better as additional testing (carpet, dynamic real world tests, open drawers, etc.) and innovative designs are created. We have all the data we need right now to make a stronger standard.

Ms. SCHAKOWSKY. Thank you, Ms. Ellis. I think you are an American hero, and I appreciate your testimony.

And now I am happy to introduce Mr. Parsons.

You are recognized for 5 minutes. Thank you.

STATEMENT OF CHRISTOPHER PARSONS

Mr. PARSONS. Thank you, Chairwoman Schakowsky, Ranking Member McMorris Rodgers, and members of the subcommittee. I am Christopher Parsons, president of the Minnesota Professional Fire Fighters. I appreciate the opportunity to appear before you on behalf of the International Association of Fire Fighters, General President Harold Schaitberger, and the over 316,000 firefighters and emergency medical personnel who comprise our union.

I serve as captain with the St. Paul, Minnesota, Fire Department and have seen firsthand the unfortunate results of lax consumer safety laws and enforcement in my community. Inaction on these issues impacts not only the public, but also injures firefighters.

I testify today to the fact that the Federal Government can and should do more to help prevent tragedies and the loss of health and life, and offer my full support for SOFFA, the Portable Fuel Container Safety Act, and the Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act.

In 2018, firefighters and paramedics responded to nearly 1.5 million working fires. With each response, firefighters were exposed to large amounts of flame retardants. Once thought to provide a measure of protection, flame retardants were placed in furniture to meet an outdated 44-year-old standard and, unfortunately, proved to be toxic when on fire.

According to numerous scientific studies, firefighters are dying from cancer at an alarming rate. Studies by NIOSH and others have found that firefighters have an increased risk of dying from cancer as compared to the general population.

We know that, when burned, flame retardants emit cancer-causing furans and dioxins into the air. A study of firefighters' blood after working fires found levels of furans and dioxins more than 100 times higher than the public.

We also know that flame retardants are not only toxic, but also ineffective. One study concluded that fires involving furniture treated with flame retardants only provided 3 extra seconds of escape time while producing twice the amount of smoke, 7 times the amount of carbon monoxide, and 80 times the amount of soot compared to nontreated furniture. The toxic soup inhibits occupants' escape from a burning building, adding further risk of injury and death.

Given their toxicity and suspect value, we see no reason to continue the use of toxic flame retardants. The IFF is pleased to endorse SOFFA to make California Technical Bulletin 117–2013 a national standard, replacing an outdated open flame test, which led to the use of toxic flame retardants in furniture, with a more modern, realistic smolder test.

The 2013 California standard reduced the presence of flame retardants, lessening the harmful impacts suffered by firefighters exposed to such chemicals. By passing this bill, Congress will extend these protections to firefighters nationwide.

The IFF also supports the committee's efforts to update fuel container standards. Each year, approximately 450 burn victims will succumb to injuries sustained by a preventible phenomenon known as flame jetting. Flame jetting occurs when flammable vapors escape from an open nozzle and are ignited, creating an explosive flame-thrower-type blaze.

I have witnessed flame jetting at a fire. The initial fire was located on the exterior deck of a house, but the jetting flame caused an immediate increase in the fire's intensity. The jetting flame from a portable fuel container on the deck shot through a doorway into the interior of the house and turned a relatively uneventful fire into a prolonged and sustained attack, causing significantly more damage than would have been expected from the original fire.

For as little as 25 cents, manufacturers of portable flammable liquid containers can add a flame arrestor to prevent the rapid release of vapors that cause flame jetting. The Portable Fuel Container Safety Act would direct the installation of flame arrestors in all containers manufactured to hold flammable liquids.

Finally, the IFF is pleased to support the Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act.

Each year, carbon monoxide poisoning results in more than 20,000 emergency room visits and 400 deaths nationwide. In 1995, Minnesotans Nicholas and Zachary Burt tragically died in their beds as a result of carbon monoxide poisoning.

Like the Rochester firefighters that responded to the Burts' tragic incident, I, too, have witnessed the deadly effects of carbon monoxide firsthand when responding to a St. Paul senior citizen who had passed away from carbon monoxide poisoning.

Fatalities like these are avoidable with the installation of an inexpensive working carbon monoxide detector in the home.

Despite the clear dangers of carbon monoxide, many people remain unaware of the need for carbon monoxide detectors. This bill aims to change that. It will assist States in delivering public education on the dangers of carbon monoxide poisoning while simultaneously providing grants to purchase and install detectors in the homes of elderly and low-income citizens and schools.

In conclusion, I and the International Association of Fire Fighters express our support for these three important public safety bills, and I am happy to answer any questions you may have. Thank you.

[The prepared statement of Mr. Parsons follows:]

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

Statement of

CAPTAIN CHRISTOPHER PARSONS

PRESIDENT, MINNESOTA PROFESSIONAL

FIRE FIGHTERS

before the

SUBCOMMITTEE ON CONSUMER PROTECTION

AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES

on

KEEPING KIDS AND CONSUMERS SAFE

FROM DEFECTIVE PRODUCTS

JUNE 13, 2019

Thank you Chairwoman Schakowsky, Ranking Member McMorris Rodgers, and distinguished members of the Subcommittee. My name is Christopher Parsons, and I am the President of the Minnesota Professional Fire Fighters. I appreciate the opportunity to appear before you today on behalf of the International Association of Fire Fighters, General President Harold A. Schaitberger and over 316,000 fire fighters and emergency medical personnel who serve in every congressional district in this nation.

For over eighteen years, I have served with the Saint Paul (Minnesota) Fire Department, where I currently hold the rank of Captain, assigned as a crew supervisor on a ladder company. As an active-duty fire fighter as well as an elected leader within the IAFF, I have seen firsthand the unfortunate results of lax consumer safety laws and enforcement in my community. Inaction on these issues impacts not only the public at large, in the instances of carbon monoxide poisoning or flame-jetting inuries from portable gas cans, but also injures fire fighters sworn to protect the public, from exposure to toxic, cancer-causing flame retardants.

The federal government can and should do more to help prevent such tragedies, the resultant suffering, and loss of health and life. Today's hearing will examine several legislative proposals to do just that and I come before you today to offer my full support for your efforts. ***The Safer Occupancy Furniture Flammibility Act*** (SOFFA), ***the Portable Fuel Container Safety Act***, and ***the Nicholas and Zachary Burt Carbon Monoxide Poison Prevention Act*** will each address noteworthy gaps in federal consumer safety law and help keep fire fighters and the general public safe in their communities and at work.

Safer Occupancy Furniture Flammibility Act

In 2018, fire fighters and paramedics were dispatched to over thirty-two million emergency incidents, including nearly 1.5 million fires. With each response to a residential, office, or commercial building fire, fire fighters are exposed to large amounts of now-ubiquitous flame retardants. These chemicals, once thought to provide a measure of fire protection, were placed in furniture in to meet an outdated 44 year-old standard and have, unfortunately, proved toxic when on fire.

According to numerous scientific studies, fire fighters are contracting and dying from cancer at an alarming rate. A 2013 study by the National Institute of Occupational Safety and Health analyzed cancers and cancer deaths of nearly 30,000 professional fire fighters from 1950 to 2009 and found that fire fighters have a statistically significant increased risk of dying from seven different cancers, including esophegael and kidney cancer, as compared to the general population.

Further, a 2006 meta-analysis conducted by LeMasters at the University of Cincinnati examined data from thirty-two smaller studies of fire fighters for twenty different cancer types. Their research identified ten cancers for which fire fighters were at an increased risk as compared to

the general population, including testicular cancer, Non-Hodgkin's lymphoma and multiple myelomas. Studies also show that fire fighters contract cancers at a younger age than the general public, and that such cancers are more aggressive.

We know that, when burned, flame retardants emit cancer-causing furans and dioxins into the ambient air. Fire fighters operating in the environment are acutely exposed to these toxins via inhalation, ingestion, and absorption through the skin. They are exposed hundreds of times over a decades long career to such carcinogens. Despite modern advances in personal protective equipment, and clothing worn by fire fighters, such ensembles are often inadequate or only partially effective at providing physical protection for a fire fighter. A 2009 California study measuring fire fighters' blood after working fires found that the level of furans and dioxins was more than 100 times higher than the average level found in the general public.

We also now know that chemical flame retardants are not only toxic, but totally ineffective. A peer-reviewed study published in 2000 in the journal *Fire Science* concluded that fires involving furniture treated with chemical flame retardants only provided three extra seconds of escape time while producing twice the amount of smoke, seven times the amount of carbon monoxide, and 80 times the amount of soot compared to non-treated furniture. This toxic soup inhibits occupants' escape from a burning building adding further risk of injury and death.

Given their toxicity and suspect value, we see no reason to continue use of toxic flame retardants. In Minnesota, I have worked with state lawmakers to prohibit the sale and distribution of childrens' products, mattresses, residential upholstered furniture and textiles that contains certain toxic flame retardants. While the Minnesota law protects fire fighters and the public from many flame retardants, residents of many states have no similar protections.

The IAFF is therefore pleased to endorse, and urges the committee pass the Safer Occupancy Furniture Flammibility Act (SOFFA). SOFFA would make California's Technical Bulletin 117-2013 a national standard, replacing an outdated open flame test, which led to the use of toxic flame retardants in furniture, with a more modern and realistic smolder test. California adopted this standard in 2013, and since then they have demonstrated that while the new standard poses no new fire safety risks, it does reduce the presence of flame retardants in home products and furniture, thereby protecting the citizens of the state while lessening the harmful health impacts suffered by fire fighters exposed to flame retardants. By passing SOFFA, Congress will extend these protections to citizens nationwide and reduce the risks fire fighters face from cancer-causing flame retardants.

Portable Fuel Container Safety Act

The IAFF also supports the Committee's efforts to update fuel container standards. Each year nearly 4,000 Americans are critically injured with burns, and approximately 450 of those burn vicitims will succumb to injuries sustained by a preventable phenomenon known as flame

jetting. Flame jetting occurs when flammable vapors escape from an open nozzle fuel can and are ignited when exposed to an open flame, creating an explosive "flame thrower" type blaze. The rapid and unexpected nature of flame jetting occurs with such speed and power that reflexive human action unfortunately often spreads the lethal stream of flaming vapors.

I have been witness to flame jetting at the scene of a structural fire. When it happened, there was no doubt as to the destructive force I was witnessing. The initial fire was located on the exterior deck of a house, but the jetting flame caused an immediate increase in the fire's intensity. I saw a jetting flame from a portable fuel container on the deck shoot through a doorway to the interior of the house and turn a relatively uneventful fire into a prolonged and sustained attack, requiring fire fighters to use multiple attack lines to extinguish the blaze, and causing significantly more damage than would have been expected from the original fire.

The explosive force of flames exiting from flammable liquid containers ignites everything within its path; many times, this results in innocent victims suffering severe burns. Survivors of flame jetting burns require medical care in a hospital specializing in burn injuries, often necessitating survivors to travel hundreds of miles by ground or air ambulance. Once in the burn center, victims will undergo intensive care to stabilize and treat these wounds. Unlike most hospital stays, care in a burn center usually occurs over weeks or months, frequently at the cost of $25,000 to $35,000 a day for intensive care, with a hospital stay's total cost averaging as much $20,000 a day or more. Furthermore, survivors require a lifetime of follow-up care, including potential additional surgeries and psychological counseling.

Financial cost aside, the pain and suffering of survivors, victims, and their families of flame jetting incidents cannot be overestimated. Yet, there is a simple and effective solution for many such incidents. For as little as twenty-five cents, manufactures of portable flammable liquid containers can add a simple plastic or metal screen, often referred to as a flame arrestor, to preventing the rapid release of vapors that causes flame jetting.

While workplace safety regulations mandate the use of approved flame arresters in flammable liquid containers for industrial use, there is no such requirement for consumer containers used in homes aross the country. The Portable Fuel Container Safety Act fixes this deficency by directing the installation of flame arresters in all containers manufactured to hold flammable liquids. This common sense measure will prevent tragic disfiguring burns from occurring and doubtlessly save lives.

Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act

Finally, the IAFF is pleased to support the Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act. Carbon Monoxide (CO) gas is odorless, tastless, and invisible to its victims. CO is the byproduct of burning fuels and is frequently emitted from improperly used or malfunctioning home appliances such as furnaces, water heaters, stoves, clothes dryers, or portable power equipment. Carbon monoxide gas becomes trapped inside of

homes with toxic concentrations building as long as the faulty appliance remains in use and ventilation is lacking. Low levels of CO poisons its victims, creating symptoms like headaches, nausea, and weakness, which becomes easily confused with common illess while high levels of CO is lethal.

Each year more 20,000 victims of carbon monoxide poisoning visit hospital emergency rooms and 400 deaths nationwide are directly attributable to this poisonious gas. In 1995, a few years before I joined the Saint Paul Fire Department, Minnesotans Nicholas and Zachary Burt, for whom this bill is named, tragically died in their beds as a result of CO poisoning from a malfunctioning furnace. Like the Rochester, MN fire fighters that responded to the Burts' tragic incident, I too have witnessed the deadly effects of CO firsthand.

Years ago, I responded to a call for emergency medical assistance at the home of a senior citizen. This senior citizen appears to have been out of the home grocery shopping, and upon returning home, she parked her car in the garage. She unloaded the groceries from the car and closed the garage door. Later that evening, family members were unable to contact her. Growing concerned, a family member went to the senior citizen's home where she was found unconscious on the floor. The fire department was summoned to help, and I was on the unit dispatched to assist. Upon our arrival, fire fighters determined the senior citizen had passed away from CO poisoning caused by a car left running in the garage. The home had lacked a CO detector.

Fatalities like the Burt children or this Saint Paul senior citizen are often preventable with the installation of an inexpensive working CO detector in the home. Despite the clear dangers of carbon monoxide, many people remain unaware of the need for carbon monoxide detectors. This bill aims to change that - it will assist states in delivering public education on the dangers of carbon monoxide poisoning while simultaneously providing grants to purchase and install CO detectors in the homes of elderly and low-income citizens and schools.

Conclusion

On behalf of the International Association of Fire Fighters, I appreciate the opportunity to share our views on ***SOFFA***, the ***Portable Fuel Container Safety Act,*** and the ***Zachary and Nicholas Burt Carbon Monoxide Poisoning Prevention Act.*** As a nation, we continue to make significant positive progress towards improving the safety of our citizens, but much more must be done. It is crucial that these common sense safety measures be adopted to better protect the health, safety, and well-being of fire fighters along with the public we serve. To the extent that I or the IAFF can assist the Subcommittee in these efforts, I am happy to offer our expertise and pledge to work closely with you and your staffs.

Again, I'd like to thank the Subcommittee for the opportunity to testify today and am happy to answer any questions you may have.

Ms. SCHAKOWSKY. Thank you. I think, as first responders, that we think all firefighters are heroes as well. So thank you.

And, Mr. Samuels, you are now recognized for 5 minutes.

STATEMENT OF CHARLES A. SAMUELS

Mr. SAMUELS. Chair Schakowsky, Ranking Member Rodgers, and members of the subcommittee, thank you for the invitation to testify about the CPSC Fast-Track Recall Program. I am Chuck Samuels, and I have practiced CPSC law for 35 years.

The work of this small agency is critical to the safety of Americans. The vast majority of industry rightfully considers product safety a preeminent value. Companies design and build products to be safe. Sometimes their efforts fail and recalls are required.

Thank you, Representative Rodgers, for introducing H.R. 3169, the FASTER Act, a thoughtful start to improving Fast-Track. Fast-Track incentivizes companies to quickly remove unsafe products from the marketplace and consumers' homes.

Fast-Track is a significant innovation. Unfortunately, it has become ossified. It should not be allowed to languish. It should be revitalized.

To participate in Fast-Track, a business must be prepared to implement a corrective action plan, including a consumer-level recall within 20 working days of submitting a Fast-Track report. The first must immediately stop sale and distribution of the product. About one-third of corrective actions have been Fast-Tracks.

The program also provides benefits to firms. By removing the product from commerce quickly, the potential for injuries and product liability claims is reduced and CPSC will not make a preliminary determination that the product contains a defect that creates a substantial product hazard.

A Fast-Track corrective action plan includes a remedy, a joint news release with CPSC, other customer-level communications, communications through the distribution chain, and a reverse logistics plan.

This is a significant amount of work and requires major planning by the company and others. It also requires—and here is the hang-up—timely review and approval by the CPSC. If that review is not forthcoming, then all components of a corrective action plan languish, and the Fast-Track is no longer fast.

What I have seen over the years is the process slows down considerably because of prolonged examination and back and forth, both internal and between staff and firms, regarding the components of the recall, and especially the press release or other communication. This emphasizes one-size-fits-all over the need for quickly getting safety information to consumers.

Because Fast-Track is no longer fast, some companies are bypassing it and opting for the conventional approach to CPSC, working with Health Canada more quickly than CPSC, or announcing the recall on their own without CPSC.

This situation is not the fault of any particular CPSC administration or staff, but rather the natural bureaucratization of a program, and agency concern that it not be criticized.

I have seen delays due to additional information requests, long CPSC reviews of data and nonsubstantive back and forth about

press releases and other communications. Whether through lack of resources or internal sign-off requirements, this can take weeks.

I have also experienced significant delays in the recall announcement due to additional information requests and customer notification letter revisions which were not substantive.

None of these minor agreements are worth lengthy delays. The FASTER Act speeds up things. If a company provides the required information, then the Commission shall promptly post the notice on the Commission's website.

The bill has safeguards. If the Commission obtains information that the remedy provided in a recall is inadequate to address the product hazard, it will investigate. This should be very rare because companies have an interest in ensuring the success of their recalls.

This legislation is informed by recalls under FDA and NHTSA. They do not micromanage recalls, and their approach is successful.

We must make sure that the bill language doesn't result in the premature public posting of information about a recall before the company is ready to launch. It is frustrating and creates anxiety among consumers to learn about a recall and then have to wait for lengthy periods before they can receive appropriate relief.

We also need to make sure that we are not providing the Commission such great discretion that companies will fear that they will have to undertake multiple recalls. This would freeze the program.

The thrust of the FASTER Act is that the necessary information can get out to consumers quickly, and consumers can act as part of the recall or on their own to protect themselves and their families. If the company has proposed a remedy that is unsafe, then of course the Commission must have the authority to protect the public.

I hope the subcommittee will use this bill as a basis for engagement with all the stakeholders, including the CPSC. Undoubtedly, alternative language will be offered, which we will need to consider.

Thank you, and I would be very pleased to answer any questions.

[The prepared statement of Mr. Samuels follows:]

Testimony of
Charles A. Samuels
Member
Mintz

Before the
Energy and Commerce Subcommittee on Consumer Protection and Commerce
U.S. House of Representatives

Keeping Kids and Consumers Safe from Dangerous Products

June 13, 2019

Putting the "Fast" Back Into Fast-Track Recalls

Chairwoman Schakowsky, Ranking Member McMorris Rodgers and members of the Subcommittee, thank you for the opportunity to testify about revitalizing the important Consumer Product Safety Commission's (CPSC, the Commission, or the Agency) Fast-Track recall program.

I am Chuck Samuels and for 35 years in private practice I have represented numerous manufacturers, importers, distributors, retailers and associations on individual CPSC compliance matters and regulatory and legislative issues. The work of this small agency is critical to the safety and well-being of millions of Americans. It is an agency admired globally as a governmental leader in its field. In my experience the vast majority of CPSC-regulated entities—"industry"—rightfully consider product safety a critical and preeminent value and CPSC as their top regulatory relationship. Companies of all types in the United States and around the world design, evaluate and build products recognizing the criticality that these products must be as safe as they are useful. Sometimes their best efforts fail and, when appropriate, voluntary recalls must be put into place.

That is why I am pleased to testify here today and thank Representative McMorris Rodgers for introducing HR 3169, a thoughtful approach to starting a conversation in the Congress and among stakeholders in the safety ecosystem on how to improve the critical CPSC Fast-Track program. My testimony is limited to this very important CPSC program which has, over the years, incentivized and created a regulatory environment for companies to be able to quickly move to remove or remediate unsafe products from the marketplace and in consumer's homes.

The Fast-Track program was based on great insights and experiences of longtime career CPSC employees and is justifiably recognized as a significant procedural innovation. Unfortunately, like many regulatory programs, it has become ossified and stultified over time. But it should not be allowed to languish; it should be revitalized so for those firms prepared to use it, it allows for faster recalls. H.R. 3169 provides a good launching point for a bipartisan and stakeholder dialogue on recognizing this program and giving it the tools and authority to be even more effective.

The Fast-Track Recall Program

Businesses in a position to remove potentially unsafe consumer products quickly from the marketplace are encouraged to participate in the Fast-Track recall program. The program helps consumers by removing potentially hazardous products from the marketplace as quickly as possible and benefits businesses that act quickly. To participate in this program, a business must be prepared to implement a corrective action plan—including a consumer-level recall (refund, repair, or replacement) within 20 working days of submitting an initial report to CPSC. *See* 62 Fed. Reg. 39827 (July 24, 1998) (detailing the requirements for the Fast-Track recall program). In addition, the firm must immediately stop sale and distribution of the product. *Id.* Over time, I understand that about one-third of the corrective actions have been done under this program. *See* OFFICE OF INSPECTOR GENERAL, U.S. CONSUMER PROD. SAFETY COMM'N, AUDIT OF THE FAST TRACK RECALL PROGRAM 9 (Sept. 19, 2017).

This program was introduced as a pilot program in 1995 and became permanent in 1997 pursuant to the Commission's authority and the reporting obligations under section 15(b) of the Consumer Product Safety Act, 15 USC 2064(b), as well as the requirements to protect children under the Federal Hazardous Substances Act, 15 USC section 1274. *See* 62 Fed. Reg. at 39827 (creating the permanent program); 60 Fed. Reg. 42848 (Aug. 17, 1995) (initiating the "No PD" pilot program).

Obviously, the faster consumers are notified and products are removed or remediated, the safer consumers are. Thus, the program also provides benefits to firms who participate in the program:

- By removing the product from commerce quickly, the potential for incidents and injuries to consumers from potentially harmful products may be reduced. Most importantly, this benefits consumers, but it also may reduce the occurrence of product liability claims or lawsuits. *See* U.S. CONSUMER PROD. SAFETY COMM'N, 3 CONSUMER PROD. SAFETY REVIEW 1 (1998) (noting the Fast-Track program "saves industry and government both time and money, and reduces the potential for injuries and deaths to public").

- An efficiently and expeditiously implemented Fast-Track recall allows good communications, sequencing and coordination for manufacturers and retailers to their recall/reverse logistics vendors, wholesale, retail and consumer customers. This also gets dangerous products off of store shelves and out of homes faster. *Id.* at 3 ("[T]he fast-track program allows [CPSC] to get dangerous products out of the marketplace and out of people's homes faster.").

- When a firm avails itself of the Fast-Track program, CPSC will not make a Preliminary Determination (PD) that the product contains a defect that creates a substantial product hazard, which should expedite the recall process and is beneficial in the event of a product liability or other lawsuit. *See* AUDIT OF THE FAST TRACK RECALL PROGRAM, *supra*, 8.

Companies seeking a Fast-Track recall typically do so in their first contact with the CPSC but that is not always the case and sometimes after an initial report is filed it is recognized that it is desirable, even necessary, to move ahead quickly with Fast-Track. As part of the report to the CPSC, the Fast-Track program requires the development and submission of an acceptable corrective action plan that is ready to be implemented, generally within 20 working days and includes:

- A CPSC-approved remedy (either a refund, fully tested replacement or repair supported by technical documentation at the company's option);
- a joint news release with CPSC;
- other customer level communications which increasingly use online resources;
- communications to the distribution chain; and
- a CPSC approved reverse logistics plan.

See 16 C.F.R. § 1115.13(d); 62 Fed. Reg. at 39827-28. This is a significant amount of work and material and requires major planning by the affected company and others. It also requires—and here is the present hang up—quick review and approval by the CPSC to move forward expeditiously. If that is not forthcoming, then all the components of a corrective action languish, and the Fast-Track recall is no longer fast. What I have seen over the years is that the process slows down considerably because of unnecessary, prolonged Commission examination and unnecessary back-and-forth—both internal and between staff and firms—regarding the components of the corrective action plan, and especially the press release or other communications, emphasizing formalism and one-size-fits-all over the need for speed of information to the marketplace.

The Fast-Track Program Is No Longer Fast

As a result, because the Fast-Track process is no longer fast and, in fact, is rather cumbersome, companies often are bypassing it and opting for the conventional approach. Because, when using the more conventional approach, compliance staff is more experienced in certain product types, as opposed to the compliance staff that works on Fast-Track, which must work across all product categories, some firms find they are able to work with compliance officers that have more experience working with their particular product category. This can be beneficial when reviewing the corrective action plan and, for some firms, outweighs the benefits of the less agile Fast-Track program.

Some companies are relying on the usually simpler Canadian process, through Health Canada, effectively to announce a North American corrective action. And some companies who are anxious to communicate quickly with their customers are simply unilaterally announcing a recall, as they are entitled to do under the law, with little or no notice to the CPSC. This sometimes can work well but it also can mean that the power of CPSC-led communications are not used. If the corrective action plan is inadequately put together, it may then require a subsequent CPSC press release, which is confusing and counterproductive.

This situation is not the fault of any particular CPSC administration or the excellent career staff, but rather the natural bureaucratization over time of a process and the understandable concern of the Agency that it not be criticized if what it approves is less-than-perfect. Some of these concerns undoubtedly are due to the fact that the Fast-Track program is not statutorily recognized.

Nor do delays come only from the government side. Sometimes companies are not prepared to act quickly—perhaps because of the complexity of a remedy or the time it takes to source repair or replacement parts—and CPSC resources are wasted waiting for and assisting them in getting organized.

There are unnecessary delays and issues that could be remedied by putting the "fast" back in Fast-Track. For example, I have seen and been told about delays due to CPSC staff reviews of remedies and data and non-substantive back-and-forth about press releases and other communications. Companies unanimously report that the longest delays involve approval of the press release. Whether through lack of resources or internal sign off requirements, this can take

weeks. CPSC often is looking to package one company's corrective action along with others or not make announcements on what are considered to be poor media days. These changes—which can happen with no or little notice—make internal preparation and coordination by companies with their suppliers, customers, recall vendors and public relations/communications resources more difficult. And most importantly, the result is a delay in the recall information being provided to consumers.

I have also experienced significant delays in the recall announcement due to additional information requests and customer notification letter revisions which were not substantive. In addition, the staff's Corrective Action Plan approval letter arrives after the recall announcement (often three weeks or more after the announcement) and it sometimes contains terms and actions not previously discussed or agreed. This reduces trust between firms and the Agency, which is a disincentive to participating in a Fast-Track recall.

Additional reports I have received, although anecdotal, are illustrative:

- A company asked for Fast-Track treatment and reported the matter to Health Canada shortly after reporting to CPSC. A copy of the draft press release (identical except for sales information) was sent to both CPSC and Health Canada at about the same time. Health Canada approved it the same day. It took almost two weeks to get CPSC approval due to CPSC staff seeking non-substantive changes not related to advancing safety.

- Compliance officers have sometimes taken the position that unless the firm offers a refund, approving a repair solution will take too long to get Fast-Track treatment. But the remedy for any recall—Fast-Track or otherwise—can be a refund, repair or replacement, and is at the option of the firm.

- A Fast-Track recall was delayed for weeks because CPSC staff insisted that the firm provide a manned toll-free number, even though, especially for smaller companies, that is now an increasingly obsolete (and resource-intensive) approach given the use of online reporting.

- A company experienced delay in announcing a Fast-Track recall because the compliance officer insisted on language for social media postings that was not consistent with the approved press release.

Whatever the merits, none of these minor disagreements are worth lengthy delays.

Solutions to Put the "Fast" Back in Fast-Track

We need to speed things up. H.R. 3169 takes a first step to deal with this by codifying the Fast-Track recall program, which is appropriate after its extensive use for so many years. It provides that if a manufacturer, distributor or retailer notifies the Commission of its intention to carry out a Fast-Track through repairs, replacement or refunds the Commission shall promptly post the

notice on the Commission's website. The language states the information that companies must submit consistent with Commission guidelines over the years.

Importantly, the language states that the Commission shall not delay the posting of the public notice of the Fast-Track recall for any reason related to reviewing the adequacy of the remedy or the public notice content and format as long as the specific information required has been supplied. This directly targets the issues firms have seen with non-safety related tinkering with remedies and press releases. In turn, the practice of not issuing a preliminary determination will be maintained.

A caution is that we must make sure that this revised language doesn't result in the premature public posting of information about a recall before the company and its vendors, suppliers and sellers are ready to launch the corrective action. It is frustrating and creates anxiety among consumers to learn about a recall, perhaps reach out to the company, and then have to wait for lengthy periods before they can receive appropriate relief.

The draft language appropriately provides safeguards. If the Commission obtains information that the remedy provided in a Fast-Track recall plan is inadequate to address the potential product hazard, then the usual investigation may ensue. Of course, this should be the very rare case because companies have a vested interest in ensuring the success of their recalls. Safety of consumers is paramount for any business selling consumer products and if a remedy does not correct a safety concern, not only will a manufacturer have to repeat the complex and resource-intensive recall process, but consumers may not return to the brand. Moreover, if an initial Fast-Track recall is second-guessed through Monday-morning quarterbacking on a regular basis, companies will not undertake a Fast-Track if they potentially will have to do it again. Per the bill language, the Commission also would be authorized—in what should be extraordinary cases—to accelerate the time period for the remedy.

Again, as discussion and review of this legislation and proffered amendments proceed, we need to make sure that we are not providing the Commission such great discretion that companies will fear that they will have to undertake multiple recalls. This would freeze the program as a practical matter.

The thrust of H.R. 3169 is that the necessary information can get out to consumers and others as quickly as reasonably possible and, in most cases, consumers can take actions as part of the recall or even on their own to protect themselves and their families.[1] If the company has proposed a remedy, such as a repair, or component replacement, or a new product that is unsafe, then of course the Commission must have the authority to act to protect the public.

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[1] Recall effectiveness calculations do not presently, but should account for actions consumers may take to respond to a recall other than the remedy provided by the recall notice. For example, sometimes consumers learning of a recall simply dispose of the product or take some other form of self-help. Similarly, if a recalled product is no longer in use or is out of circulation, consumers will not respond to the recall and the effectiveness calculation should account for the likely quantity of a recalled product that is no longer in use or circulation. Factors such as a product's size, cost, and average lifetime should be considered in determining the likely quantity of a product no longer in use at the time of the recall or disposed of in response to the recall notice.

This legislation is wisely informed by and its approach is similar to firm initiated recalls under the jurisdiction of the Food and Drug Administration. It is explicitly stated in FDA regulations that though certain information is required: "pending this review, the firm need not delay initiation of its product removal or correction." 21 C.F.R. § 7.46. The FDA does not micromanage recalls and its approach has been successful.

The legislation also reflects the experience at the National Highway Traffic Safety Administration (NHTSA), which administers the federal law that governs safety recalls of motor vehicles and motor vehicle equipment (like child restraints or brake fluid). NHTSA law is similar to CPSC law in that it requires a manufacturer to report any safety-related defect or noncompliance with an applicable safety standard in its vehicles or item of equipment. *See* 49 U.S.C. § 30118(c).

NHTSA also does not micromanage the manufacturer's recall process. It has established the parameters by regulation that specify the information that must be provided to NHTSA, including a description of the remedy and a schedule for the recall launch. *See* 49 U.S.C. § 30119(a); *see also* 49 C.F.R. Parts 573 and 577. NHTSA does not review or approve the remedy in advance, nor does it review or approve most of the manufacturer's public notices about the recall. *See* 49 U.S.C. § 30120(a)(1) (authorizing manufacturers to select a remedy). Only the customer notification letter is reviewed by NHTSA, and that draft ordinarily is approved within a few days. The statute provides NHTSA with the authority to review and determine the adequacy of the remedy after the fact, and empowers NHTSA to order a different remedy if the initial remedy is inadequate, but in practice that rarely happens. *See* 49 U.S.C. § 30120(e). The statute also authorizes NHTSA to accelerate the schedule of a recall if NHTSA determines that public safety so requires. *See* 49 U.S.C. § 30120(c)(3). NHTSA has exercised this authority once, in connection with the Takata air bag inflator recall. Like CPSC, NHTSA supervises hundreds of recalls per year. And the NHTSA-supervised recalls are launched successfully without reducing product safety and without extensive government involvement in the non-substantive details. Accordingly, a similar process should be successful for CPSC.

Conclusion

I thank Representative McMorris Rodgers for introducing H.R. 3169. I hope that all the members of the Subcommittee and the Committee will use it as a first step basis for consideration and engagement with the many stakeholders in the product safety ecosystem. Undoubtedly, as this review ensues and stakeholders review the legislation more fully and as the Subcommittee and the Committee move forward, alternative language or amendments may be offered which we will need to consider. We want to ensure that we are enacting a process that provides flexibility because every case is different. Moreover, the process should minimize unnecessary paperwork to the extent possible. Most importantly, we want to speed up recall announcements when the time is appropriate and more quickly provide information to consumers.

Chairwoman Schakowsky and members of the Subcommittee, thank you for providing this opportunity to testify and for your interest in improving the Fast-Track program to maximize its utility for consumers. I think there is a potential for a win-win for all stakeholders. I respectfully

request that my written statement be included as part of the hearing record. I would be pleased to answer any questions you may have regarding the Fast-Track program.

Ms. SCHAKOWSKY. Thank you so much, Mr. Samuels, and thank you for being within the time, too. Appreciate that.

We have now concluded the witness opening statements for our first panel. We now move to Member questions. Each Member will have 5 minutes to ask questions of our witnesses. I will start by asking some questions.

Ms. Ellis, again, I just can't thank you enough. It takes great courage for you to be here.

What I wanted to have you elaborate on is, why can't we just rely on voluntary standards that are being developed? Two parts, both the standard itself and also the voluntary part of that. Love your comments.

Ms. ELLIS. Thank you.

So, to address the issue of voluntary standard: First and foremost, the voluntary standard that we have currently is still allowing children to be injured and to die. Conner DeLong is an example, and the twins in Utah are another example. I am so grateful that they are OK, but it shows that the standard is not OK.

Secondly, a voluntary standard, to be honest, isn't even wanted by industry. The compliant industry folks want a mandatory standard so that other people, other industry members, will be held accountable and held to the same standard.

So it is something that we do agree on, which is a mandatory standard. We just need to make it tougher than the current voluntary standard.

Ms. SCHAKOWSKY. Thank you.

I know you now have a group. How big is the group of parents that have lost children?

Ms. ELLIS. Well, our founding membership started with nine parents. However, we are growing, and we continue to grow. And there are so many parents that we represent the voice of that may never be in a place to advocate, that are too broken by this tragedy to use their voice to speak.

Ms. SCHAKOWSKY. Let me ask you this: Have you heard from any of these people, both the members of your group and people you have talked to, that there was any hint whatsoever that this was a dangerous product?

Ms. ELLIS. No one knew. No one knew. And it didn't matter what the price point of their dresser was. We have had very expensive dressers kill children. We have had cheap dressers kill children. It is across all demographics, and no one knew. No one knew.

Ms. SCHAKOWSKY. Mr. Wallace, Consumer Reports has done a lot of testing on furniture to learn more about how to prevent tipovers. Can consumers tell if a dresser will tip over by looking at it or even manipulating it in some way?

Mr. WALLACE. No. Consumer Reports' investigation found that there is no easy way for consumers to tell whether a dresser is more or less likely to tip over just by looking at it.

Ms. SCHAKOWSKY. This week I introduced the Safe Cribs Act, which would ban crib bumpers. Crib bumpers, pads, have been banned in Chicago since 2011, and for good reason. Crib bumpers are inconsistent with the safety standards, as has been talked about by the professionals, by the doctors, who for years have recommended that babies sleep in baby cribs free of clutter.

The city council approved the ordinance in response to news, investigatory news stories that found Federal regulators received reports of babies suffocating for years but failed to do anything about it.

Again, Mr. Wallace, what are your thoughts on banning crib bumpers?

Mr. WALLACE. It should happen. I mean, crib bumpers are not—they contribute to an unsafe sleep environment. The American Academy of Pediatrics is clear in its thorough policy statement, developed over the course of years, looking at the medical evidence, that a baby should sleep on its back, in its own space, on a flat surface, firm and flat surface, that has nothing else in there, no added bedding, and the baby in its own space.

And that is why it is critically important not to have these products out on the market, because we suspect there is a lot of confusion out there. Right now, parents may even think that these are necessary for the safety of their babies.

That is not the case anymore. There used to be—under the old crib standard, the gaps between the slats were quite wide. Today, products manufactured to the new standard, it is narrow, and a baby's head can no longer get entrapped between the slats as a result.

Therefore, these products not only create a danger to children, but they are also unnecessary from a safety perspective.

Ms. SCHAKOWSKY. You know, we have done a lot with cribs. There is no longer—I remember with my kids, the drop-side cribs, and so it seems that we need to go a step further here.

I appreciate all of our witnesses. And now I would like to recognize our ranking member, Mrs. Rodgers, for 5 minutes.

Mrs. RODGERS. Thank you, Madam Chair. And I want to say thanks for holding this hearing today so that we can learn and dig into these issues more deeply.

As most of you know, I am an older mom. I have three young children now. They are 12, 8, and 5. I remember Brian had some friends who had lost a toddler when a bookshelf fell over on him, and Brian has been paranoid about the tipover furniture in our household.

Being a parent is the best thing that has happened and also the hardest thing that has happened. And I, too, want to just say thank you, especially to the parents, for the courage and the advocacy, taking what is unimaginable grief and becoming advocates so that all of us across this country can learn and then take action to make sure that we are doing everything possible to protect others.

So I want to say thank you, Crystal. I want to say thank you to Margaret that I see in the audience, and others that are advocating so that we can figure out how to get this right.

Captain Parsons, I want to say thank you for your service in highlighting so many issues important to firefighters, and also as we try to protect people from the danger of fire.

Mr. Wallace, on my legislation, on the FASTER Act, I would just encourage you to let me know what you think needs to happen so that we can make the Fast-Track Recall Program actually work.

That is the goal of the legislation, and my goal is to make it bipartisan so that we can actually get it done.

Mr. Samuels, your testimony certainly highlighted some around the Fast-Track Recall Program. And since that is the bill that I am advocating for this morning, I just wanted you to take some time and highlight some of the examples on how the process has slowed and what has caused the delays.

Mr. SAMUELS. Thank you very much.

Where you have a situation where the company recognizes that there must be a recall, then you want to get out to the public as soon as possible when you are ready to announce the recall. That is the whole genius of the Fast-Track program, which was developed by career employees at the CPSC 20-some years ago. It was recognized actually by Vice President Gore with an innovation award.

But over time, what has happened is, as with many things in a regulatory environment and bureaucracy, they have fallen into patterns. The program has become ossified and stultified. They want to have exactly the same press release. They want to have everybody follow the same path for recall.

Wording changes in press releases, changes in the communications to consumers or to distributors or retailers, they have got certain formats. They insist on it. Sometimes they ask questions or try and impose requirements when you really should be getting out to the public and announcing this recall.

So that is what the problem is, and your bill is a great starting point for a discussion about what we can do so that we can, when companies are ready, make these announcements as soon as possible.

Mrs. RODGERS. So, to be clear, the CPSC has other avenues under current law to investigate companies and conduct recalls, right?

Mr. SAMUELS. Absolutely.

Mrs. RODGERS. Right. And this bill would not impact those authorities?

Mr. SAMUELS. Not at all. The basic requirements for filing under Section 15 of the Consumer Product Safety Act is untouched. Most recalls probably will continue under the conventional process.

And if a company uses the Fast-Track—even now, but certainly under your bill—and their remedy is inadequate, they don't do a good job in repairing the product or replacing it with a safe product, or they don't accurately describe the products that need to be recalled, then CPSC has the authority now, and it would have the authority under your bill, to require possibly a second recall.

Mrs. RODGERS. OK. Thank you very much.

I yield back.

Ms. SCHAKOWSKY. Thank you.

I now recognize Congresswoman Blunt Rochester for 5 minutes. Thank you.

Ms. BLUNT ROCHESTER. Thank you, Madam Chairwoman.

And thank you so much to the panel. A special note of thanks to the parents, and especially Ms. Ellis.

Before coming in, we had the opportunity to talk, and I just want to say that on the seventh birthday of Camden, there is no better

way to honor him than standing up for families and children across our country. So I just want to say thank you for that, and on behalf of Camden, Happy Birthday.

When I thought about this issue and listening even to my colleagues, you hear the conversation about carbon monoxide poisoning. In Delaware, we have an actual father who experienced this with his son in a motel, a very famous person actually. He was able to advocate and get help on the State level to get legislation.

When we talk about Sudden Infant Death Syndrome, I remember as a parent—my children are 30 and 33—but at that time, we made bumpers for our baby cribs. We did things that we thought were the right thing to do. And I also thought about the tipping over, the same thing.

And, Ms. Ellis, you actually made a comment, and it wasn't in my script to ask this question, but you made a comment that most—many people don't even know what CPSC is. So they don't even know to go and get help or to find out if there is something that they need to be protected from.

My question is to you and to the panel. Can you speak to the lack of knowledge about CPSC and the implications, and then any recommendations that you would have?

So maybe we could start with Mr. Wallace and go down.

Mr. WALLACE. Sure. I will just very briefly say that when it comes to the tipovers issue, when it comes to—I mean, one of the most important steps that anybody can take in their homes, if they have a large piece of furniture, like a dresser, is to anchor it to the wall.

But at the same time, we found, through a survey of consumers, nationally representative survey, that it is just not an easy fix for most consumers. And many of them hadn't even heard of it. And so that is an example.

Ms. BLUNT ROCHESTER. Right, right, thank you.

Ms. Ellis?

Ms. ELLIS. I will speak to the fact that not only did I not know what the CPSC was, I just assumed government protected me. I didn't know what specific agency. I just figured my government protected me.

And then after Camden died, I spoke to Cathy about, there are a lot of government agencies coming in, asking you what you did wrong, what is going on. You have police, you have the hospital administrators. And I am a law-abiding citizen, but I was terrified that my other child was going to be taken away in the interim until they could figure it out.

Then the CPSC sends me a letter saying: We want to know all about your accident, give me all of the details. And I went: No thanks. Because it is just not—I don't know what your purpose is, I have never heard of you, and why would I want to tell one more government agency the most terrifying day of my life?

Ms. BLUNT ROCHESTER. Thank you.

Captain?

Mr. PARSONS. Chairwoman Schakowsky, Congresswoman Blunt Rochester, before I got involved in my work on phasing out flame retardants in Minnesota, I had very little knowledge of the CPSC and the work that it has done. It is extremely important work. We

all lead busy lives, and we are not always able to digest all the information that is out there on products.

But I remember as a child growing up in the 1980s when the big smoking initiatives were occurring, through the Surgeon General, we cut down on smoking, smoking among children. Perhaps we need another initiative along that lines because consumer protection is critical for the general public.

Ms. BLUNT ROCHESTER. Thank you.

And, Mr. Samuels, I have about 40 seconds.

Mr. SAMUELS. Well, let me just say that this agency is significantly underresourced. That is the fault of the Congress. It doesn't have the capabilities to do the communications and education that it should. Its budget is vastly smaller than the FDA's. And it really needs the support of Congress.

Ms. BLUNT ROCHESTER. Thank you so much. I will submit my other questions for the record.

But I want to just thank you all for being here.

And thank you for the leadership from Chairwoman Schakowsky and Mrs. Rodgers. Thank you.

I yield.

Ms. SCHAKOWSKY. Thank you.

I just want to tell everyone that is listening now, Recalls.gov will connect you to a list of those products that have been recalled. And SaferProducts.gov is a place to go where you can report if there are products that you have experienced as being unsafe. I just wanted to say that.

And I recognize Mr. Latta for 5 minutes.

Mr. LATTA. Well, thank you, Madam Chair, for calling today's hearing.

And thanks to our witnesses for being with us today.

And, Ms. Ellis, thanks very much for your testimony.

If I could ask several of my questions with you, Mr. Wallace. While newer crib standards have narrowed the distance between slats to prevent head entrapment, I continue to be concerned about the limb entrapment for children. To prevent limb entrapment, several companies have manufactured and marketed mesh crib liners instead of the padded bumpers we are familiar with. Several studies looking at mesh crib liners have shown that there have been no fatalities or injuries treated in emergency departments and no incidents involved in the risk of suffocation.

In the State of Ohio and several other States, lawmakers have recognized this data and excluded mesh crib liners from legislation that ban crib bumpers. If mesh crib liners are also banned, along with padded crib bumpers, my fear is that parents are going to start taking matters into their own hands and come up with different types of self-improvised solutions to prevent that limb entrapment.

In your written testimony, you state that these products do not serve any safety purpose. Did you consider the mesh crib liners when you made your determination?

Mr. WALLACE. I am sorry. I couldn't hear the very end.

Mr. LATTA. Did you consider the mesh crib liners when you made your determination?

Mr. WALLACE. Padded crib bumpers, we know, are linked to suffocation, strangulation, entrapment. Mesh crib liners, there is just not a lot of data. They are pretty new products. And I think the Ohio law was wise in recognizing that the question needed to be revisited after a period of time.

Right now, it is carved out from the Ohio law, mesh liners, but the law charges everybody to come back after, I believe, 2 years and revisit the state of the evidence.

Mr. LATTA. But now have you conducted any tests or anything like that at Consumer Reports on those?

Mr. WALLACE. We have not tested mesh liners or crib bumpers that are padded.

Mr. LATTA. And are you intending that in the near future?

Mr. WALLACE. We don't currently have plans. We don't think that they are consistent with a safe sleep environment. We think that a bare crib is best and that we want to make sure not to confuse anybody about that or to send any mixed messages. Because it is critical to get that message out, as we have since the 1980s, that bare is best. A bare crib, bassinet, or play yard is best, and it is critical not to put anything extra in there, into the infant's sleep environment.

Mr. LATTA. Thank you.

I could ask my next question to you, Captain Parsons. Thanks very much for everything you do out there.

I would like to focus on H.R. 806, which is the Portable Fuel Container Safety Act, which I am also a cosponsor. And, again, this legislation would require that flame-mitigation devices or arrestors would be used on portable fuel containers for those flammable liquid fuels. It would also allow for a voluntary standard to be considered as the consumer product safety rule if it meets the intent of the bill and other requirements.

Captain, could you go into more detail and describe the different types of flame arrestors that are available in the market today?

Mr. PARSONS. Congressman Latta, I do not have information on the specific types of flame arrestors. I would be more than happy to provide that information to you at a later time.

Mr. LATTA. OK. I would appreciate that.

And, again, could you—I know you talked about it a little bit earlier—could you go again into the detail in discussing how the flame arrestors prevent the flames from jetting out?

Mr. PARSONS. Congressman Latta, my understanding is that when a flammable liquid container ignites, pressure builds up in the container itself, and that then shoots flammable vapors out of the opening. This arrestor would keep the vapors from escaping through that opening, thus keeping a flame from shooting from the opening.

Mr. LATTA. Thank you very much.

And, Madam Chair, I am going to yield back the balance of my time.

Ms. SCHAKOWSKY. Thank you.

I am now going to recognize Congressman Soto for 5 minutes.

Let me just announce that on the clock there is just under 4 minutes for vote. However, 364 people have not voted. So we will continue with you, Mr. Soto.

Mr. SOTO. Thank you, Madam Chairwoman, and I am just going to make a brief comment, knowing that we have votes pending.

It wasn't more than 2 weeks ago I had a Florida mom, Meghan DeLong, come into my office from the Sarasota area, talking about her child Conner, who died due to a dresser that was not balanced correctly, and implored me to make sure to support the STURDY Act.

I know that we have also here today, we are joined by Crystal Ellis. Thank you for being here and fighting for our kids.

Whether it is that, whether it is the inclined sleeper, whether it is crib bumpers or carbon monoxide detectors or so many of the other great bills that are up today that we are workshopping, there is the sense—and it was said here—that people assume that government is doing something about it, but that is not always true. People assume that the agencies are doing something about it, and that is not always true. But that is why we are here today.

I thank you for your leadership, Madam Chairwoman, on having a workshop on these bills, because for every one of these, there are hundreds to thousands of stories of everyone from infants and young children to our seniors that are put at risk and, God forbid, pass away because of negligently built, risky products.

So, when people assume the government is working on it, this committee hearing today is evidence that we are, and that we are hearing these stories and these cries from across the Nation. So thank you for that leadership.

Ms. SCHAKOWSKY. If you would be willing to yield then to——

Mr. SOTO. Yes, yield back.

Ms. SCHAKOWSKY [continuing]. To Congresswoman Kelly the remainder or part of your time——

Mr. SOTO. Yes, I yield to Congresswoman Kelly.

Ms. KELLY. Thank you, Rep. And thank you, Chairwoman.

Ms. Ellis, I want to thank you also for your testimony today. I am deeply sorry for the unnecessary loss you and your family have endured.

As you mentioned, the life-threatening hazards of unsafe household products, such as dressers or crib bumpers, can affect anyone and everyone. And my own district, the city of Chicago, as you have heard, has banned the use of crib bumpers, making every infant in Chicago safer and giving Chicago parents more of a peace of mind.

However, only a third of my district is actually in the city of Chicago. Most live in the south suburbs. And then I have a rural portion. So, put in another way, children in two-thirds of my district are at risk, just like your son. Parents in two-thirds of my district are burdened with homework to ensure their purchase is safe.

I wanted to ask a question. When we talk about education, all of you have talked about the education, beside, like, doctors or parents going to parent groups that are going to have children, or in your case, is it firefighters, who should educate beyond government? I know we have our responsibility to do what we need to do, but what would you recommend so we do get to everyday people about what they should do?

Ms. ELLIS. I really am glad to see that the American Academy of Pediatrics is backing the STURDY Act. I think I have been saying with my pediatrician, who had a tipover story herself—she hap-

pened to be in the room with her 8-year-old when it happened—and I am also working in Washington State with Child Profile to add risk of tipover information to the packets that get sent to families.

But sometimes people don't read those. So I think a conversation, especially with your pediatrician, when you are going in for those well-child checks, hey, have you looked at your dresser, have you anchored it to the wall, have you considered all of the different hazards in your home, it should be part of that conversation.

Ms. KELLY. And Captain?

Mr. PARSONS. Congresswoman Kelly, when I first started working with the flame-retardant issue I was scratching my head, why would a firefighter be against flame retardants? And the more that I dug into it, the more education that I got from my union, the IFF, and other colleagues in other States, the issue was very clear and very present in all of our lives. As firefighters, we were all affected.

So, as president of the Minnesota State Association, we took it upon ourselves to educate our firefighters in the State, because firefighters will listen to other firefighters. So that is how we tackled that.

As far as consumer safety products, perhaps putting more of an onus on manufacturers and retailers to get it on the packaging. You know, you can't buy cigarettes without seeing that Surgeon General's warning front and center. So perhaps something like that to where it is in everybody's mind.

Thank you.

Ms. KELLY. I yield back.

And thank you, Chairwoman, for your vigilance.

Ms. SCHAKOWSKY. Mr. O'Halleran, there are still 270 people that have not voted yet. Not that I want to promote delinquency when it comes to voting, but I wondered if you had something short that you wanted to present.

Mr. O'HALLERAN. Thank you, Madam Chair. It is short.

As a former first responder, a police officer, Captain, we have seen a lot of deaths, some preventable, some accidental. Ms. Ellis' case, it was preventable. In many cases of young children dying, it is preventable. And what I heard, a common theme here today is that the action that there is by agencies is too slow. The education process is needed to be gotten to a higher level.

Mr. Samuels, you clearly indicated that the agency is underfunded, vastly underfunded. I believe it is, along with many other agencies that address the needs of the safety of our citizens. And there is a need.

Ms. Ellis, you said there is a need to do more.

It is critical that we do more, and it is also critical that Congress looks itself in the mirror and says, "We need to do more."

This idea that people look at agencies and say it is the agency's fault—the agency is only going to be as good as the people it hires, the supervision, and the amount of funding we give it to be able to do its mission.

And so I am sorry, Ms. Ellis, that you have to be here today, but thank you for what you do.

When it comes to education, we should understand that we are all, all of us are involved. I have three young grandchildren, a

fourth one that is a little older. And when we go into the home, we always check to see if the straps are on, if the sockets are taken care of. Our children are too precious to us all. And if you have seen the trauma that the captain and I and others have seen, you can understand the relevance of making sure we get this done right.

Thank you very much.

Ms. SCHAKOWSKY. Thank you.

Let me close by saying, again, to thank all the witnesses. There may be others who wanted to come back, but we are probably going to be on the floor for about 2½ hours. So I wanted to thank you for being here.

I want to put in the record a statement from Representative Mike Thompson, a statement from Safe Kids Worldwide president, a letter from the National Association of Manufacturers, a letter from BreathableBaby, LLC, a letter from the American Home Furnishings Alliance, an article from The Washington Post regarding inclined sleepers, a letter from Kids in Danger and the Consumer Federation of America, a letter from the Security Industry Association, a letter from Safe Kids Worldwide.

Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. SCHAKOWSKY. And I want to remind Members that, pursuant to committee rules, they have 10 business days to submit additional questions for the record, to be answered by witnesses who have appeared. I want to ask each witness to respond promptly to any such questions that may arise.

And just a final, huge thank you. What you are doing today is saving lives.

And with that, the subcommittee is adjourned.

[Whereupon, at 11:44 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

.....
(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

To prohibit the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any inclined sleeper for infants, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To prohibit the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any inclined sleeper for infants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Safe Sleep Act of 2019".

1 **SEC. 2. PROHIBITION ON SALE OF INCLINED SLEEPERS**
2 **FOR INFANTS.**

3 (a) PROHIBITION ON THE SALE OF INCLINED SLEEP-
4 ERS FOR INFANTS.—Beginning on the date that is 180
5 days after the date of enactment of this Act, it shall be
6 unlawful for any person to manufacture for sale, offer for
7 sale, distribute in commerce, or import into the United
8 States any inclined sleeper for infants.

9 (b) TREATMENT OF VIOLATION.—A violation of sub-
10 section (a) shall be treated as a violation of section
11 19(a)(1) of the Consumer Product Safety Act (15 U.S.C.
12 2068(a)(1)).

13 (c) INCLINED SLEEPER FOR INFANTS DEFINED.—In
14 this section, the term "inclined sleeper for infants" means
15 a product with an inclined sleep surface greater than ten
16 degrees that is intended, marketed, or designed to provide
17 sleeping accommodations for an infant up to one year old.

I

116TH CONGRESS
1ST SESSION

H. R. 1618

To encourage States to require the installation of residential carbon monoxide detectors in homes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2019

Ms. KUSTER of New Hampshire (for herself and Mr. CARTER of Georgia) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To encourage States to require the installation of residential carbon monoxide detectors in homes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act of 2019".

SEC. 2. FINDINGS AND SENSE OF CONGRESS.

(a) FINDINGS.—Congress finds the following:

(1) Carbon monoxide is a colorless, odorless gas produced by burning any fuel. Exposure to unhealthy levels of carbon monoxide can lead to carbon monoxide poisoning, a serious health condition that could result in death.

(2) Unintentional carbon monoxide poisoning from motor vehicles and the abnormal operation of fuel-burning appliances, such as furnaces, water heaters, portable generators, and stoves, kills more than 400 people each year and sends more than 15,000 to hospital emergency rooms for treatment.

(3) Research shows that purchasing and installing carbon monoxide alarms close to the sleeping areas in residential homes and other dwelling units can help avoid fatalities.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Congress should promote the purchase and installation of carbon monoxide alarms in residential homes and dwelling units nationwide in order to promote the health and public safety of citizens throughout the United States.

SEC. 3. DEFINITIONS.

In this Act:

1 (1) CARBON MONOXIDE ALARM.—The term
2 "carbon monoxide alarm" means a device or system
3 that—
4 (A) detects carbon monoxide; and
5 (B) is intended to alarm at carbon mon-
6 oxide concentrations below those that could
7 cause a loss of ability to react to the dangers
8 of carbon monoxide exposure.
9 (2) COMMISSION.—The term "Commission"
10 means the Consumer Product Safety Commission.
11 (3) COMPLIANT CARBON MONOXIDE ALARM.—
12 The term "compliant carbon monoxide alarm"
13 means a carbon monoxide alarm that complies with
14 the most current version of—
15 (A) the American National Standard for
16 Single and Multiple Station Carbon Monoxide
17 Alarms (ANSI/UL 2034); or
18 (B) the American National Standard for
19 Gas and Vapor Detectors and Sensors (ANSI/
20 UL 2075).
21 (4) DWELLING UNIT.—The term "dwelling
22 unit" means a room or suite of rooms used for
23 human habitation, and includes a single family resi-
24 dence as well as each living unit of a multiple family

residence (including apartment buildings) and each living unit in a mixed use building.

(5) FIRE CODE ENFORCEMENT OFFICIALS.—The term "fire code enforcement officials" means officials of the fire safety code enforcement agency of a State or local government.

(6) NFPA 72.—The term "NFPA 72" means—

(A) the National Fire Alarm and Signaling Code issued in 2019 by the National Fire Protection Association; and

(B) any amended or similar successor standard pertaining to the proper installation of carbon monoxide alarms in dwelling units.

(7) STATE.—The term "State" has the meaning given such term in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) and includes the Northern Mariana Islands and any political subdivision of a State.

SEC. 4. GRANT PROGRAM FOR CARBON MONOXIDE POISONING PREVENTION.

(a) IN GENERAL.—Subject to the availability of appropriations authorized under subsection (f), the Commission shall establish a grant program to provide assistance

1 to eligible States to carry out the carbon monoxide poi-
2 soning prevention activities described in subsection (e).
3 (b) ELIGIBILITY.—For purposes of this section, an
4 eligible State is any State that—
5 (1) demonstrates to the satisfaction of the
6 Commission that the State has adopted a statute or
7 a rule, regulation, or similar measure with the force
8 and effect of law, requiring compliant carbon mon-
9 oxide alarms to be installed in dwelling units in ac-
10 cordance with NFPA 72; and
11 (2) submits an application to the Commission
12 at such time, in such form, and containing such ad-
13 ditional information as the Commission may require,
14 which application may be filed on behalf of the State
15 by the fire code enforcement officials for such State.
16 (c) GRANT AMOUNT.—The Commission shall deter-
17 mine the amount of the grants awarded under this section.
18 (d) SELECTION OF GRANT RECIPIENTS.—In select-
19 ing eligible States for the award of grants under this sec-
20 tion, the Commission shall give favorable consideration to
21 an eligible State that—
22 (1) requires the installation of compliant carbon
23 monoxide alarms in new or existing educational fa-
24 cilities, childcare facilities, health care facilities,
25 adult dependent care facilities, government build-

1 ings, restaurants, theaters, lodging establishments,
2 or dwelling units—
3 (A) within which a fuel-burning appliance
4 is installed, including a furnace, boiler, water
5 heater, fireplace, or any other apparatus, appli-
6 ance, or device that burns fuel; or
7 (B) which has an attached garage; and
8 (2) has developed a strategy to protect vulner-
9 able populations such as children, the elderly, or
10 low-income households.
11 (e) USE OF GRANT FUNDS.—
12 (1) IN GENERAL.—An eligible State receiving a
13 grant under this section may use such grant—
14 (A) to purchase and install compliant car-
15 bon monoxide alarms in the dwelling units of
16 low-income families or elderly persons, facilities
17 that commonly serve children or the elderly, in-
18 cluding childcare facilities, public schools, and
19 senior centers, or student dwelling units owned
20 by public universities;
21 (B) to train State or local fire code en-
22 forcement officials in the proper enforcement of
23 State or local laws concerning compliant carbon
24 monoxide alarms and the installation of such
25 alarms in accordance with NFPA 72;

(C) for the development and dissemination of training materials, instructors, and any other costs related to the training sessions authorized by this subsection; and

(D) to educate the public about the risk associated with carbon monoxide as a poison and the importance of proper carbon monoxide alarm use.

(2) LIMITATIONS.—

(A) ADMINISTRATIVE COSTS.—Not more than 10 percent of any grant amount received under this section may be used to cover administrative costs not directly related to training described in paragraph (1)(B).

(B) PUBLIC OUTREACH.—Not more than 25 percent of any grant amount received under this section may be used to cover costs of activities described in paragraph (1)(D).

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), there is authorized to be appropriated to the Commission, for each of the fiscal years 2020 through 2024, $2,000,000, which shall remain available until expended to carry out this Act.

(2) LIMITATION ON ADMINISTRATIVE EXPENSES.—Not more than 10 percent of the amounts appropriated or otherwise made available to carry out this section may be used for administrative expenses.

(3) RETENTION OF AMOUNTS.—Any amounts appropriated pursuant to this subsection that remain unexpended and unobligated on September 30, 2024, shall be retained by the Commission and credited to the appropriations account that funds the enforcement of the Consumer Product Safety Act (15 U.S.C. 2051).

(4) OFFSET.—There is authorized to be appropriated to the Government Publishing Office for each of fiscal years 2020 through 2024 the amount that is $2,000,000 less than the amount appropriated for such Office for fiscal year 2017.

(g) REPORT.—Not later than 1 year after the last day of each fiscal year for which grants are awarded under this section, the Commission shall submit to Congress a report that evaluates the implementation of the grant program required by this section.

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116TH CONGRESS
1ST SESSION

H. R. 806

To require compliant flame mitigation devices to be used on portable fuel containers for flammable liquid fuels, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2019

Mr. THOMPSON of California (for himself, Ms. CLARKE of New York, Ms. DEGETTE, Ms. DELAURO, Mr. DUNN, Ms. ESHOO, Mr. FITZPATRICK, Mr. GALLEGO, Mr. GARAMENDI, Mr. JOYCE of Ohio, Mr. LIPINSKI, Mr. LYNCH, Mr. MARSHALL, Mr. MAST, Ms. MATSUI, Ms. PINGREE, Mr. PRICE of North Carolina, Mr. RYAN, Ms. SPEIER, Mr. SUOZZI, Mr. SWALWELL of California, and Ms. MUCARSEL-POWELL) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To require compliant flame mitigation devices to be used on portable fuel containers for flammable liquid fuels, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Portable Fuel Container Safety Act of 2019".

SEC. 2. PERFORMANCE STANDARDS TO PROTECT AGAINST PORTABLE FUEL CONTAINER EXPLOSIONS NEAR OPEN FLAMES OR OTHER IGNITION SOURCES.

(a) RULE ON SAFETY PERFORMANCE STANDARDS REQUIRED.—Not later than 30 months after the date of enactment of this section, the Consumer Product Safety Commission shall promulgate a final rule for flame mitigation devices in portable fuel containers that impedes the propagation of flame into the container, except as provided in subsection (c).

(b) RULEMAKING; CONSUMER PRODUCT SAFETY STANDARD.—A rule under subsection (a)—

(1) shall be promulgated in accordance with section 553 of title 5, United States Code; and

(2) shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

(c) EXCEPTION.—

(1) VOLUNTARY STANDARD.—Subsection (a) shall not apply if the Commission determines that—

(A) there is a voluntary standard for flame mitigation devices in portable fuel containers that impedes the propagation of flame into the container;

(B) the voluntary standard is or will be in effect not later than 18 months after the date of enactment of this Act; and

(C) the voluntary standard is developed by Subcommittee F15 of ASTM International or such other standard development organization that the Commission determines to have met the intent of this Act.

(2) DETERMINATION REQUIRED TO BE PUBLISHED IN THE FEDERAL REGISTER.—Any determination made by the Commission under this subsection shall be published in the Federal Register.

(d) TREATMENT OF VOLUNTARY STANDARD FOR PURPOSE OF ENFORCEMENT.—If the Commission determines that a voluntary standard meets the conditions described in subsection (c), the requirements of such voluntary standard shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act beginning on the date which is the later of—

(1) 180 days after publication of the Commission's determination under subsection (c); or

(2) the effective date contained in the voluntary standard.

(e) REVISION OF VOLUNTARY STANDARD.—

1 (1) NOTICE TO COMMISSION.—If the require-
2 ments of a voluntary standard that meet the condi-
3 tions of subsection (c) are subsequently revised, the
4 organization that revised the standard shall notify
5 the Commission not later than 60 days after the
6 final approval of the revision.

7 (2) EFFECTIVE DATE OF REVISION.—Not later
8 than 180 days after the Commission is notified of a
9 revised voluntary standard described in paragraph
10 (1) (or such later date as the Commission deter-
11 mines appropriate), such revised voluntary standard
12 shall become enforceable as a consumer product
13 safety rule promulgated under section 9 of the Con-
14 sumer Product Safety Act, in place of the prior
15 version, unless within 90 days after receiving the no-
16 tice the Commission determines that the revised vol-
17 untary standard does not meet the requirements de-
18 scribed in subsection (c).

19 (f) FUTURE RULEMAKING.—The Commission, at any
20 time after publication of the consumer product safety rule
21 required by subsection (a), a voluntary standard is treated
22 as a consumer product safety rule under subsection (d),
23 or a revision is enforceable as a consumer product safety
24 rule under subsection (e) may initiate a rulemaking in ac-
25 cordance with section 553 of title 5, United States Code,

1 to modify the requirements or to include any additional
2 provision that the Commission determines is reasonably
3 necessary to protect public health or safety. Any rule pro-
4 mulgated under this subsection shall be treated as a con-
5 sumer product safety rule promulgated under section 9 of
6 the Consumer Product Safety Act.

7 (g) ACTION REQUIRED.—

8 (1) EDUCATION CAMPAIGN.—Not later than 1
9 year after the date of enactment of this Act, the
10 Commission shall undertake a campaign to educate
11 consumers about the dangers associated with using
12 or storing portable fuel containers for flammable liq-
13 uids near an open flame or any other source of igni-
14 tion.

15 (2) SUMMARY OF ACTIONS.—Not later than 2
16 years after the date of enactment of this Act, the
17 Commission shall submit to Congress a summary of
18 actions taken by the Commission in such campaign.

19 (h) PORTABLE FUEL CONTAINER DEFINED.—In this
20 section, the term ''portable fuel container'' means any con-
21 tainer or vessel (including any spout, retrofit spout, cap,
22 and other closure mechanism or component of such con-
23 tainer or vessel)—

24 (1) intended for flammable liquid fuels, includ-
25 ing gasoline, kerosene, diesel, ethanol, methanol, de-

natured alcohol, biofuels, or liquids with a flash point less than 140 degrees Fahrenheit;

(2) that is a consumer product with a capacity of 5 gallons or less; and

(3) that the manufacturer knows or reasonably should know is used by consumers for receiving, transporting, storing, and dispensing flammable liquid fuels.

(i) RULE OF CONSTRUCTION.—This section may not be interpreted to conflict with the Children's Gasoline Burn Prevention Act (Public Law 110–278; 122 Stat. 2602).

SEC. 3. CHILDREN'S GASOLINE BURN PREVENTION ACT.

(a) AMENDMENT.—Section 2(c) of the Children's Gasoline Burn Prevention Act (15 U.S.C. 2056 note; Public Law 110–278) is amended by inserting after "for use by consumers" the following: "and any receptacle for gasoline, kerosene, or diesel fuel, including any spout, retrofit spout, cap, and other closure mechanism and component of such receptacle, produced or distributed for sale to or use by consumers for transport of, or refueling of internal combustion engines with, gasoline, kerosene, or diesel fuel".

1 (b) APPLICABILITY.—The amendment made by sub-
2 section (a) shall take effect 6 months after the date of
3 enactment of this section.

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116TH CONGRESS
1ST SESSION

H. R. 2647

To adopt a certain California flammability standard as a Federal flammability standard to protect against the risk of upholstered furniture flammability, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2019

Ms. MATSUI (for herself, Mr. GRIFFITH, Mr. RUSH, and Mr. CÁRDENAS) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To adopt a certain California flammability standard as a Federal flammability standard to protect against the risk of upholstered furniture flammability, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Safer Occupancy Furniture Flammability Act" or "SOFFA".

SEC. 2. ADOPTION OF CALIFORNIA FLAMMABILITY STANDARD AS A FEDERAL STANDARD.

(a) DEFINITIONS.—In this section—

(1) the term "bedding product" means—

(A) an item that is used for sleeping or sleep-related purposes; or

(B) any component or accessory with respect to an item described in subparagraph (A), without regard to whether the component or accessory, as applicable, is used—

(i) alone; or

(ii) along with, or contained within, that item;

(2) the term "California standard" means the standard set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117–2013, entitled "Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture", originally published June 2013, as in effect on the date of enactment of this Act;

(3) the terms "foundation" and "mattress" have the meanings given those terms in section 1633.2 of title 16, Code of Federal Regulations, as in effect on the date of enactment of this Act; and

(4) the term "upholstered furniture"—

(A) means an article of seating furniture that—

(i) is intended for indoor use;

(ii) is movable or stationary;

(iii) is constructed with a contiguous upholstered—

(I) seat; and

(II)(aa) back; or

(bb) arm;

(iv) is—

(I) made or sold with a cushion or pillow, without regard to whether that cushion or pillow, as applicable, is attached or detached with respect to the article of furniture; or

(II) stuffed or filled, or able to be stuffed or filled, in whole or in part, with any material, including a substance or material that is hidden or concealed by fabric or another covering, including a cushion or pillow belonging to, or forming a part of, the article of furniture; and

(v) together with the structural units of the article of furniture, any filling mate-

rial, and the container and covering with respect to those structural units and that filling material, can be used as a support for the body of an individual, or the limbs and feet of an individual, when the individual sits in an upright or reclining position;

(B) includes an article of furniture that is intended for use by a child; and

(C) does not include—

(i) a mattress;

(ii) a foundation;

(iii) any bedding product; or

(iv) furniture that is used exclusively for the purpose of physical fitness and exercise.

(b) ADOPTION OF STANDARD.—

(1) IN GENERAL.—Beginning on the date that is 180 days after the date of enactment of this Act, and except as provided in paragraph (2), the California standard shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193).

(2) TESTING AND CERTIFICATION.—A fabric, related material, or product to which the California standard applies as a result of paragraph (1) shall not be subject to section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)).

(c) PREEMPTION.—

(1) IN GENERAL.—Notwithstanding section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) and section 231 of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 2051 note), and except as provided in subparagraphs (B) and (C) of paragraph (2), no State or any political subdivision of a State may establish or continue in effect any provision of a flammability law, regulation, code, standard, or requirement that is designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture.

(2) PRESERVATION OF CERTAIN STATE LAW.—Nothing in this Act or the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) may be construed to preempt or otherwise affect—

(A) any State or local law, regulation, code, standard, or requirement that—

1 (i) concerns health risks associated
2 with upholstered furniture; and
3 (ii) is not designed to protect against
4 the risk of occurrence of fire, or to slow or
5 prevent the spread of fire, with respect to
6 upholstered furniture;
7 (B) sections 1374 through 1374.3 of title
8 4, California Code of Regulations (except for
9 subsections (b) and (c) of section 1374 of that
10 title), as in effect on the date of enactment of
11 this Act; or
12 (C) the California standard.

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116TH CONGRESS
1ST SESSION

H. R. 2211

To require the Consumer Product Safety Commission to promulgate a consumer product safety rule for free-standing clothing storage units to protect children from tip-over related death or injury, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 2019

Ms. SCHAKOWSKY (for herself, Mr. MCNERNEY, Mr. SOTO, and Mr. RUSH) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To require the Consumer Product Safety Commission to promulgate a consumer product safety rule for free-standing clothing storage units to protect children from tip-over related death or injury, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Stop Tip-overs of Unstable, Risky Dressers on Youth Act" or the "STURDY Act".

SEC. 2. CONSUMER PRODUCT SAFETY STANDARD TO PROTECT AGAINST TIP-OVER OF FREE-STANDING CLOTHING STORAGE UNITS.

(a) FREE-STANDING CLOTHING STORAGE UNIT DEFINED.—

(1) IN GENERAL.—In this section, the term "free-standing clothing storage unit" means any piece of furniture manufactured in the United States or imported for use in the United States that is intended for the storage of clothing, including furniture items that—

(A) are commonly referred to as a chest, door chest, chest of drawers, dresser, or bureau; or

(B) may contain a chest, door chest, chest of drawers, dresser, or bureau.

(2) CPSC DEFINITION.—The Consumer Product Safety Commission may adjust the definition under paragraph (1) if the Commission determines that inclusion of additional furniture items is reasonably necessary to protect public health and safety.

(b) CONSUMER PRODUCT SAFETY STANDARD REQUIRED.—

(1) IN GENERAL.—Except as provided in subsection (c)(1), not later than 1 year after the date

of the enactment of this Act, the Consumer Product Safety Commission shall—

(A) in consultation with representatives of consumer groups, clothing storage unit manufacturers, and independent child product engineers and experts, examine and assess the effectiveness of any voluntary consumer product safety standards for free-standing clothing storage units; and

(B) in accordance with section 553 of title 5, United States Code, promulgate a final consumer product safety standard for free-standing clothing storage units to protect children from tip-over-related death or injury that includes—

(i) tests that require the use of weight to simulate children up to 72 months of age using the most recent anthropometric data;

(ii) tests or testing that more closely simulate real world use including to account for impact on clothing storage unit stability of carpeting, drawers with items in them, multiple open drawers, and dynamic force;

(iii) testing of all clothing storage units, including those under 30 inches in height; and

(iv) warning requirements that—

(I) strengthen requirements for permanency and conspicuous placement now in ASTM F2057–17; and

(II) revise the message panel text of ASTM F2057–17 to make more understandable, consistent with typical clothing storage unit use, and written to motivate consumer compliance.

(3) TREATMENT OF STANDARD.—A consumer product safety standard promulgated under paragraph (1) shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

(c) SUBSEQUENT RULEMAKING.—

(1) IN GENERAL.—At any time subsequent to the publication of a consumer product safety standard under subsection (b)(1), the Commission may initiate a rulemaking, in accordance with section 553 of title 5, United States Code—

1 (A) to modify the requirements of the con-
2 sumer product safety standard described in sub-
3 section (b)(1); or
4 (B) to include any additional provision in
5 such consumer product safety standard that the
6 Commission determines is reasonably necessary
7 to protect public health or safety.
8 (2) TREATMENT OF RULES.—Any rule promul-
9 gated under paragraph (1) shall be treated as a con-
10 sumer product safety rule promulgated under section
11 9 of the Consumer Product Safety Act (15 U.S.C.
12 2058).

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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

To prohibit the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any crib bumper, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To prohibit the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any crib bumper, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Safe Cribs Act of 2019".

SEC. 2. PROHIBITION ON SALE OF CRIB BUMPERS.

(a) PROHIBITION ON THE SALE OF CRIB BUMPERS.—Beginning on the date that is 180 days after the

1 date of enactment of this Act, it shall be unlawful for any
2 person to manufacture for sale, offer for sale, distribute
3 in commerce, or import into the United States any crib
4 bumper.

5 (b) TREATMENT OF VIOLATION.—A violation of sub-
6 section (a) shall be treated as a violation of section
7 19(a)(1) of the Consumer Product Safety Act (15 U.S.C.
8 2068(a)(1)).

9 (c) CRIB BUMPER DEFINED.—In this section, the
10 term ''crib bumper''—

11 (1) means any material that is intended to
12 cover the sides of a crib to prevent injury to any crib
13 occupant from impacts against the side of a crib or
14 to prevent partial or complete access to any openings
15 in the sides of a crib to prevent a crib occupant from
16 getting any part of the body entrapped in any open-
17 ing; and

18 (2) includes a padded crib bumper, a supported
19 and unsupported vinyl bumper guard, a mesh crib
20 liner, and vertical crib slat covers.

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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

To protect consumers by codifying a fast-track recall program to remove potentially hazardous products from the marketplace as quickly and efficiently as possible.

IN THE HOUSE OF REPRESENTATIVES

_____ introduced the following bill; which was referred to the Committee on _____

A BILL

To protect consumers by codifying a fast-track recall program to remove potentially hazardous products from the marketplace as quickly and efficiently as possible.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Focusing Attention on Safety Transparency and Effective Recalls Act" or the "FASTER Act".

1 **SEC. 2. FAST TRACK RECALLS OF CONSUMER PRODUCTS.**

2 Section 2064 of title 15, United States Code, is
3 amended by inserting at the end the following:

4 "(k) FAST TRACK RECALLS.—

5 "(1) IN GENERAL.—If a manufacturer, dis-
6 tributor, or retailer notifies the Commission in writ-
7 ing of its intention to carry out a fast track recall
8 plan to address a potential substantial product haz-
9 ard at no charge to consumers by repairing the af-
10 fected products, replacing the affected products with
11 like or equivalent products, or refunding the pur-
12 chase price of the products (less a reasonable allow-
13 ance for use for products that are more than one
14 year old at the time of the notification to the Com-
15 mission), the Commission shall promptly post the
16 notice provided by the manufacturer, distributor, or
17 retailer on the Commission's website. The Commis-
18 sion may publicize the information contained in the
19 notice by other means at its discretion.

20 "(A) The Commission's posting of the no-
21 tice on its website shall constitute notification
22 to the public for purposes of section 19(a)(5).

23 "(B) The manufacturer, distributor, or re-
24 tailer carrying out the fast track recall plan
25 shall include in its notice to the Commission the

1 following information, which shall be included
2 in the public website posting:
3 "(i) A clear description of the prod-
4 uct, including the volume of products af-
5 fected in the United States.
6 "(ii) A clear description of the safety
7 risk being addressed.
8 "(iii) How a consumer can obtain a
9 remedy offered by the manufacturer, dis-
10 tributor, or retailer.
11 "(iv) A statement that the remedy will
12 be provided without charge to the con-
13 sumer.
14 "(v) The earliest date on which the
15 remedy will be available to consumers.
16 "(vi) The schedule for notifying pur-
17 chasers, distributers, and retailers of the
18 fast track recall plan.
19 "(C) The manufacturer, distributor, or re-
20 tailer carrying out the fast track recall plan
21 may include additional information with its no-
22 tice to the Commission, which additional infor-
23 mation may include confidential business infor-
24 mation. The public notice along with any other

1 information provided to the Commission shall
2 constitute the fast track recall plan.
3 "(D) The Commission shall not delay the
4 posting of the public notice of the fast track re-
5 call plan for any reason related to reviewing the
6 adequacy of the remedy or reviewing the public
7 notice content or format, except that the Com-
8 mission may reject a public notice that does not
9 include the content specified in subparagraph
10 (B) of this paragraph.
11 "(E) The filing of a fast track recall plan
12 with the Commission shall not constitute an ad-
13 mission that the affected products contain a de-
14 fect or present a substantial product hazard
15 within the meaning of this section.
16 "(2) ADEQUACY OF REMEDY.—If the Commis-
17 sion obtains information that a remedy provided in
18 a fast track recall plan under paragraph (1) is inad-
19 equate to address the potential product hazard iden-
20 tified by the manufacturer, distributor, or retailer
21 carrying out the fast track recall plan, the Commis-
22 sion may commence a proceeding under subsection
23 (c) or (d) to determine whether the product contains
24 a substantial product hazard and, if so, to order the
25 manufacturer, distributor, or retailer to take one or

more of the actions specified in either of those subsections.

"(3) ACCELERATION OF SCHEDULE.—If the Commission determines that a fast track recall plan for which notice was provided under paragraph (1) is not likely to be capable of making remedies available to consumers within a reasonable time, the Commission may commence a proceeding under subsection (c) or (d) to determine whether the product contains a substantial product hazard, and, if so, shall order the manufacturer, distributor, or retailer to accelerate the remedy part of the fast track recall plan.

"(4) NO EFFECT ON OTHER PROVISIONS.—Nothing in this subsection shall be construed to alter the obligations of a manufacturer, distributor, or retailer to provide a report required under subsection (b).".

6/13/2019

Hearing on Dangerous Consumer Products
House Subcommittee on Consumer Protection and Commerce
Congressman Mike Thompson CA-5

Chair Schakowsky, Ranking Member McMorris Rodgers and members of the Consumer Protection and Commerce Sub Committee, thank you for the opportunity to offer this statement.

I met Margrett Lewis Priest, a resident of Sonoma California, more than three years ago. Her story of survival and advocacy on behalf of burn survivors has inspired H.R. 806, the Portable Fuel Container Safety Act of 2019. In June 2014, Margrett used her bare hands and body to extinguish flames from a flashback explosion, which had engulfed her child while using a portable fuel container. Margrett went on to support her daughter through more than 50 reconstructive surgeries.

Flammable or combustible liquids, like the ones used by Margrett's family, cause over 160,000 fires per year, causing $1.5 billion in property damage, almost 4,000 injuries and 454 deaths annually. These accidents can happen in any community, and the results can be devastating. Flame Mitigation Devices (FMD), such as flame arresters, can help prevent accidents caused by flammable vapors igniting within liquid containers, causing an explosion or flash fire. While workplace safety regulations govern the use of approved flame arresters in flammable liquid containers for industrial use, there is no requirement for consumer containers used in homes, camp sites, and schools across the country.

The Portable Fuel Container Safety Act would address this gap by directing the Consumer Product Safety Commission to establish a standard for requiring FMDs to be used in these containers and reduce the risk of catastrophic accidents. This bipartisan solution is supported by a broad coalition including the American Burn Association, the Congressional Fire Services Institute, the International Association of Fire Fighters, the National Association of State Fire Marshalls, International Association of Fire Chiefs, National Volunteer Fire Council, National Fire Protection Association, Phoenix Society for Burn Survivors, and the Portable Fuel Container Manufacturers Association

I want to thank the Committee for its consideration of this extremely important issue and I strongly urge this committee to support this bill, a commonsense, bipartisan public safety solution.

Before the House Committee on Energy and Commerce
Subcommittee on Consumer Protection and Commerce
"Keeping Kids and Consumers Safe From Dangerous Products"
Thursday, June 13, 2019
Testimony of Torine Creppy, President, Safe Kids Worldwide

I submit this testimony on behalf of Safe Kids Worldwide and appreciate the leadership of Chairwoman Schakowsky for holding this hearing, and for her career-long dedication to preventing child injuries because of defective and dangerous products placed in the stream of commerce.

For 31 years, the mission of Safe Kids Worldwide has been preventing injury. This is so important because preventable injury is the number one cause of death of children 19 and under in the United States. Around the world, a child dies every 30 seconds from an injury that could have been prevented. Unintentional injury death happens under a number of tragic scenarios whether they are car crashes in which a child is not properly buckled into their car seat, or when kids are left behind in a hot car, trapped under a piece of furniture which tips over, or when a child swallows and chokes on a piece of a toy which easily breaks off.

Safe Kids is a go-to resource to help parents keep kids safe from car crashes, fires, falls, drowning, poisoning and more. Through more than 400 grass roots coalitions in the U.S. and partners in more than 30 countries, Safe Kids works with children's hospitals, trauma centers, first responders and public health experts to provide life-saving information to families.

Based on our experience, we have developed an expertise on how the nature of small children can put them at risk and this is especially true when the risk involves a defective product. It is why products in a child's environment must be produced with special care. It is why federal consumer product law has evolved to consider the special circumstances involving children around their products.

As soon as a child can reach and grab, and then crawl, they become a natural explorer. They use their hands, fingers and mouth to investigate and this can expose a child to deadly risk. That's where smart consumer product safety policy is indispensable. Based on this reality and expertise, the following are among Safe Kids' consumer product policy priorities:

Furniture, Television Tip-Overs: Thankfully, Kayli Shoff's twin boys Brock and Bowdy survived a furniture tip-over, but a home surveillance video caught the boys jumping on a dresser and hanging from its drawers. The furniture came crashing down on them and they received clean bills of health from a pediatrician.[1] They were so fortunate. Just in 2016, at least six children died in tip-overs involving IKEA Malm dressers.[2]

Safe Kids became engaged in the tip-over issue in 2014 prompted by large, old-fashioned CRT television sets falling on children with fatal results. Often, the televisions were placed on furniture unsecured and would fall on to children who were playing on the furniture. We provided awareness to parents on how they could secure their televisions, furniture and televisions on the top of furniture.

We strongly support legislation introduced this year by Chairwoman Jan Schakowsky, the Stop Tip-overs of Unstable, Risky Dressers on Youth (STURDY) Act, HR2211.[3] The bill would require the Consumer Product Safety Commission (CPSC) to set a mandatory furniture standard on dressers to prevent their

tip-over. Our support letter cited CPSC data and an article in *Consumer Reports* which said, "The tip-over problem is epidemic: Someone in the U.S. is injured every 17 minutes by a furniture, television, or appliance tip-over."[4]

We urge Congress to consider and pass the STURDY Act.

Recall Process: It is vital that parental consumers have the best information about recalled products. Unfortunately, the federal product recall system is behind the times in a world in which new technology is introduced at a "blink-and-you-missed-it" pace. The recall process is fragmented and the reach of the information is ineffective.

Often, the only sources of information about recalled products are the websites of the federal agencies which work with the private sector on recalls. News coverage of recalls is scant, reserved for those involving a large number of units or a particularly controversial product defect. Safety advocacy organizations like Safe Kids and the Consumer Federation of America also provide consumers with recall information, but, again, the reach is tiny compared to the size of the market. In some cases, the company will negotiate with the CPSC to initiate more aggressive outreach efforts, which was the case in the recall of IKEA dressers.

Because of the ineffective reach, only a small percentage of consumers react to a recall by taking advantage of the recourse provided by the company, such as getting a refund or a non-defective replacement, or way to repair or ameliorate the defect. It is believed that IKEA's recall of Malm dressers was the largest furniture recall in history. When it was originally announced, IKEA said there were 29 million Malm dressers in homes and later that was adjusted down to 17.3 million units. But according to one report, even with the heightened IKEA public campaign, fewer than 2 percent of the dressers were returned for a refund, 7.5 percent of the recalled furniture.[5] Further, a 2018 Consumer Reports survey found that only one-quarter of families have anchored furniture.[6]

Another defect in the recall process is that four different federal agencies have jurisdiction for identifying and announcing the withdrawal of defective and dangerous products. Most consumer products are under the purview of the CPSC, but motor vehicles, auto systems and child restraint systems are handled by the National Highway Traffic Safety Administration (NHTSA). Medications, medical devices and impure and unsafe food products are examined by the Food and Drug Administration, while the job of ensuring the safety of the commercial supply of meat, poultry, and egg products is within the authority of the Food Safety and Inspection Service (FSIS), of the U.S. Department of Agriculture. The Centers for Disease Control and Prevention (CDC) leads federal efforts involving tainted food from foodborne illnesses such as salmonella. It gets even more confusing because while medications are FDA recalls, their containers and packaging are under CPSC jurisdiction.

Thus, a consumer wanting to keep up with recalled products must travel through a confusing maze. Safe Kids believes there should be a single federal clearinghouse for recalled products from which parental consumers can get automated alerts.

Finally, the reliance of the CPSC on corporate manufacturers receives strong criticism, along with section 6(b) of the federal consumer product law, which requires the agency to get permission from manufacturers about a defective product before releasing their names or information revealing the manufacturer's identity. We agree with the recent testimony of Kids in Danger: "Parents

should not have to wait until a full recall effort is complete before learning their child is sleeping in a deadly crib, playing with a lead-tainted toy, or riding in a stroller prone to losing a wheel."[7]

The delay and lack of transparency is the case even when a product is linked to injuries and fatalities.[6] The negotiations between manufacturers and the CPSC lead to significant delays.

Timeliness was one of several reasons why Fisher-Price and the current state of the consumer product safety system were subject to criticism in the 2019 recall of the company's Rock 'n Play sleeper. The popular product was not removed from the market even after *Consumer Reports* documented that at least 32 small children died in them.[8]

Begun in the 1990's, the national "Back to Sleep" campaign is based on American Academy of Pediatrics (AAP) research and expertise. "Infants should always sleep on their back, on a separate, flat and firm sleep surface without any bumpers or bedding," said Rachel Moon, who leads the AAP's Task Force on Sudden Infant Death Syndrome.[9] [10] Fisher-Price sleepers, enabling children to sleep in an incline position, were marketed despite these long-established best practices. Dr. Benjamin Hoffman, MD, FAAP, was a member of the AAP committee that recommended recalling the Fisher-Price sleepers. He dismissed the company's claims that the incline position helps small children sleep by preventing gastrointestinal issues which disturb infant and toddler sleep. Dr. Hoffman said, "I can't think of a safe way to have an infant sleep in a product like that regardless of the use or non-use of the buckle."[8]

The bottom line is that the recall process must be recalled and revamped.

Medicine Poisoning: Another product which draws the attention of curious children are containers of medicines. Safe Kids has conducted research and awareness on this issue for about ten years. The containers rattle and contain products which look like they may be candy. The Poison Prevention Packaging Act requires medicines to be kept in containers which are supposed to be "child-resistant."[11] But children are still able to get into the containers and are poisoned, sometimes fatally. Data involving medicine exposures invites concern even though calls to poison control centers have declined by 20 percent between 2010 and 2016.[12]

- Every nine minutes a child under age 6 visits an ER because of accidental medicine poisoning.
- Every hour a child under age 6 is hospitalized because of accidental medicine poisoning.
- Every 12 days a child under age 6 dies because of an accidental medicine poisoning.[12]

There are at least two issues involving medicine containers. First, they are "child-resistant," meaning that it is "significantly difficult for children under five years of age to open within a reasonable time, and not difficult for normal adults to use properly." It does not mean "childproof." Research tells us that 45 to 55 percent of accidental medicine poisonings involve child-resistant packaging.[12]

Second, there is confusion about the legal requirements and the difference between the two terms "child-resistant" and "childproof." Our research found that almost half of parents surveyed incorrectly believed that child-resistant packaging means a child won't be able to get into it at all, and 1 in 3 agreed that medicine in child-resistant packages can be safely stored somewhere visible and handy.

Based on the foregoing, Safe Kids Worldwide and 70 of its state and local coalitions urged the Consumer Product Safety Commission to conduct a public awareness campaign on "the meaning of 'child-resistant,' and on the vital importance of the 'up, away and out of reach and sight' message."[13] We

reiterate the need for such public awareness. In fact, it is all the more pressing today because of the opioid crisis.

Resources for Product Safety: Safe Kids has commended the Consumer Product Safety Commission for what it is able to accomplish with minimal resources and many of the priorities discussed above would require more funding, perhaps substantially more. We believe additional resources are important because so many of the issues involve children and, since the Consumer Product Safety Improvement Act's passage ten years ago, the focus of federal consumer product safety was readjusted to focus on kids.

Some of our discussion here involves providing awareness to parents and caregivers. This is something which the CPSC has excelled at. Safe Kids was deeply involved in passage of the Virginia Graeme Baker Pool and Spa Safety Act, part of which required an annual awareness campaign. Under the law, the CPSC has run the Pool Safely campaign which has been effective. When the agency marked the 10th anniversary of the law, it was noted that there had been zero drain entrapment deaths since the law's enactment. The law was inspired by the entrapment and drowning of an 8-year-old girl.[14]

The federal government and taxpayers need not bear all the cost for these efforts; this is an area where public-private partnerships can be key. In addition to the issues discussed above, the following are among the issues which deserve attention and appropriate resources.

- **Carbon Monoxide Poisoning:** For several sessions, we have strongly supported the Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act of 2019, HR 1618, which would establish a grant program for states to purchase and install carbon monoxide detectors in homes and promote awareness efforts.[15] We appreciate the leadership of Reps. Anne Kuster (D-NH) and Buddy Carter (R-GA) in their sponsorship of the bill along with the decade-long commitment of Senator Amy Klobuchar (D-MN), as well as Senator John Hoeven (R-ND).
- **Crib Bumpers:** As stated above, we are deeply involved in the tragic loss of the lives of the smallest children to infant suffocation, and one of the principle aspects of the "Back to Sleep" campaign is the imperative that infants and toddlers sleep in a crib without stuffed toys or bedding which can cause suffocation. We are supportive of Rep. Schakowsky's bill to prohibit the sale of crib bumpers, the Safe Cribs Act of 2019, HR 3170.
- **Product Registration Process**: In addition to our hope that the CPSC will spotlight more attention on medicine safety, we believe resources should be available and dedicated to promoting awareness about the product registration process for infant and toddler products, as well as saferproducts.gov so that parents and caregivers know how to report defective products.
- **Age Grading for Toys**: Safe Kids was happy to be included in an awareness effort at the end of 2018, during the holiday shopping season, about the importance of age grading for toys.[16] The age grades help parents keep small objects out of a child's mouth and button batteries from burning through a child's intestinal system. This needs greater attention and reach.
- **Chemicals in Products**: The risk posed by lead in products, paint and water has received a great deal of attention, but there are other chemicals which parents should know more about such as crumb rubber, phthalates, flame retardants and others.
- **Products at the Border and Ports**: We commend the collaboration of the CPSC and the Customs and Border Protection in seizing products at the border and at our ports. Many of the seized products are unique to a child's environment: toys painted with lead; toys with small parts that

can be detached and swallowed; pajamas and similar products which violate federal flammability; counterfeit goods, including child restraint systems. It is vital that this program receive effective funding.

- **Long-Standing High-Risk Issues**: Finally, there are long-standing products which have put children in jeopardy. It is time for safety issues around these products to be resolved. They include cords of window coverings, ATVs and high energy density batteries (lithium). And, just as there are outstanding issues, there are emerging risks and products all the time.

Conclusion: We deeply appreciate the devotion to these important issues by the Committee. Why are these issues so critical? We must do better at protecting our most vulnerable populations. Children, especially small ones, cannot make the decisions to protect themselves from dangerous products or make decisions about their use. Preventable tragedies happen in a split second. Everyday dangers result from a child thinking a pill looks like candy, that an unsecured swimming pool looks irresistible and inviting, that a cord from a window blind becomes a swing, and a device causing strangulation.

Moreover, when you consider the challenges faced by stressed parents, constantly having to multitask, our job becomes even more vital. This is why we believe the above-stated priorities are so important, as are the jobs of the regulatory agencies—including the CPSC—and strong oversight from this Committee. Thank you for your leadership.

Contact: Anthony Green, Safe Kids Worldwide, 202.662.0606, agreen@safekids.org

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Graham Owens
Director, Legal & Regulatory Policy

June 13, 2019

The Honorable Janice D. Schakowsky
Chairman
Subcommittee on Consumer Protection & Commerce
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Subcommittee on Consumer Protection & Commerce
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Schakowsky and Ranking Member McMorris Rodgers,

On behalf of the National Association of Manufacturers, the largest manufacturing association in the United States representing manufacturers in every industrial sector and in all 50 states, we appreciate your Subcommittee's willingness to consider a range of legislative proposals to improve the U.S. Consumer Product Safety Commission's (CPSC) effectiveness in discharging its critical mission of protecting consumers. In particular, manufacturers urge you to give special consideration to H.R. 3169, introduced by Ranking Member McMorris Rodgers (R-WA), which would reform and codify the CPSC's "fast-track" product recall program.

Manufacturers of consumer products, their suppliers, retailers and other key stakeholders are committed to providing safe products. Manufacturers use the so-called "fast-track" process available at the CPSC to voluntarily remove products from the market in light of safety incidents or potential defects. Created in 1995, the fast-track recall program eliminates certain procedural steps from the more traditional and adversarial recall process, such as CPSC staff preliminary determinations that may otherwise take several months to complete. 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.[1]

Despite best intentions, our members have become increasingly concerned that the fast-track program has begun to slow down to the detriment of manufacturers, retailers, and consumers alike. The most effective product safety regime is one that is based on a cooperative relationship between the Commission and stakeholders in the private sector, which enables companies to quickly execute voluntary recalls. This cooperative relationship has become hampered by bureaucratic disagreements over the wording of press releases and other non-substantive concerns that create new hurdles to ensuring safe products on the market.

[1] *See* Press Release, U.S. Consumer Prod. Safety Comm'n, Fast-Track Recall Program Wins Award (Feb. 14, 2013), *available at* https://www.cpsc.gov/Business--Manufacturing/Recall-Guidance/Innovations-in-American-Government-Award-Fast-Track-Recall-Program.

H.R. 3169 would alleviate bureaucratic and non-substantive red tape by codifying the fast-track program into law, and by preventing the Commission from delaying the posting of public notices of recall plans. These simple steps would immediately speed up voluntary recalls to the benefit of consumers, manufacturers, and even the Commission itself.

Manufacturers stand ready to work with Congress and the CPSC to improve the agency's effectiveness in discharging its critical mission in an efficient, collaborative, and effective manner. Consumer safety is a nonpartisan issue and, as such, we commend the Subcommittee for focusing on common sense reforms. Ultimately, we all share the common goal of ensuring that products on the market are safe, and that consumers can trust the products they purchase.

Sincerely,

Graham Owens
Director, Legal & Regulatory Policy
National Association of
Manufacturers

June 13, 2019

The Honorable Jan Schakowsky Chairwoman
Subcommittee on Consumer Protection and
Commerce Committee on Energy and Commerce
2367 Rayburn House Office Building
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Subcommittee on Consumer Protection and
Commerce
Committee on Energy and Commerce
1035 Longworth Building
Washington DC, 20515

Dear Chairwoman Schakowsky and Ranking Member McMorris Rodgers:

On behalf of BreathableBaby, LLC, I am submitting this letter as a statement for the record for the hearing "Keeping Kids and Consumers Safe from Dangerous Products."

One of the bills the Subcommittee is considering at this legislative hearing, the Safe Cribs Act of 2019, would prohibit the manufacture, sale, distribution or importation of crib bumpers in the United States. In so doing, the bill explicitly includes mesh liners in the definition of a crib bumper. While I support the proposed ban on crib bumpers given the safety risks they pose, I respectfully submit that mesh liners are a very different and safe alternative to crib bumpers and should not be included in this legislation.

A ban on mesh liners would be unprecedented. I am unaware of any product that has ever been prohibited under section 19(a)(1) of the Consumer Product Safety Act (CPSA) without *any* evidence of risk to consumers. Furthermore, it would be similarly unprecedented to ban such a product for failing to affirmatively prove its safety in the absence of that negative evidence.

For nearly 20 years, BreathableBaby has been manufacturing mesh liners for cribs to protect infants from limb entrapment. Our product provides protection from the safety hazards and injuries posed by limb entrapment, such as dislocations and fractures. Furthermore, our mesh liners also provide a much needed degree of relief to sleep deprived parents who rush to their infants' rooms in the middle of the night – often multiple times – because their child is screaming from being entrapped in the crib slats.

BreathableBaby has sold over 4.5 million mesh liners. Throughout the nearly 20 years that BreathableBaby has sold its mesh liners, there has not been a single report or incident that our product – or any similar mesh liner product – was the cause of any injury or posed any risk. The company's track record is impeccable. As a result, millions of parents have turned to our mesh liners as a safe and reliable alternative to crib bumpers.

Unlike mesh liners, crib bumpers are typically filled with a padded polyester type material up to 2-inch thick that can restrict breathing and contribute to death or injury due to suffocation if an infant were to be wedged between a mattress or other object in the crib and the crib bumper. Mesh liners pose no such danger to babies. Because mesh liners have no padding and are highly permeable, infants can still easily breathe even if their faces were to be pushed up against our mesh liner.

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The evidence, or lack thereof, is straightforward:

1) A forensic analysis of the four major U.S. Consumer Product Safety Commission hazard monitoring databases (National Electronic Injury Surveillance System (NEISS), Injury and Potential Injury Incidents (IPII), In-Depth Investigation (INDP) and the Death Certificates File (DTHS) by Econometrica, a Washington DC based data analytics firm concluded:

    a. With respect to limb entrapment data, the forensic analysis supports the contention that there is a safety need for products that prevent limb entrapments. The analysis of the 2009-2015 IPII database records shows that more than half of all injury incidents that consumers reported to CPSC (288 of 544, or 53 percent) associated with cribs involved arm or leg entrapments.[1]

    b. The NEISS data also confirms that mesh crib liners provide a safety benefit by reducing the rate of limb entrapments in crib slats or rails. Limb entrapments associated with cribs account for an estimated 280 emergency department treated injuries annually. The two largest categories of these injuries were fractures and dislocations.[2]

    c. Based on this analysis of all of the CPSC incidents reports since 2009, the study concluded that mesh crib liners appear to provide a potentially substantial safety benefit in the form of reduced numbers of limb entrapment injuries without posing a potential suffocation risk.[3]

2) Testing conducted by Bureau Veritas of the air permeability of 10 traditional crib bumpers and BreathableBaby's four mesh crib liners utilizing ASTM D-737 (Standard Test Method for Air Permeability of Textile Fabrics) confirmed the following:

    a. BreathableBaby's mesh crib liner products tested between a range of 384.6 to 1013.1 CFM (cubic feet per meter) of airflow. On average, BreathableBaby's four crib liner products were over ten times as permeable to air as the ten traditional crib bumpers that were also tested.[4]

    b. BreathableBaby's most permeable mesh liner was 46 times more permeable to air than the least permeable traditional crib bumper and was over 14 times more permeable to air than the most permeable traditional crib bumper tested.[5]

3) An independent research study on the suffocation hazards of mesh liners by a leading pediatric pulmonary researcher concluded:

    a. "the combination of laboratory and epidemiologic data make a compelling argument for the safety of the BreathableBaby products. These mesh crib liners do not appear to present a significant restriction to infant breathing airflows, and there is no reason to believe that they would increase the risk of suffocation hazards for infants."[6]

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[4] Air Permeability Testing of Crib Bumpers and Mesh Crib Liners, Bureau Veritas (April 2016).
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4) To date, every State that has banned the sale of crib bumpers or has proposed legislation to ban the sale of crib bumpers, has explicitly excluded mesh liners from such a ban or potential ban. These States include Maryland, Ohio, New York, Vermont and Missouri.

5) Parents want a solution to prevent limb entrapment. A 2015 survey of over 1,000 mothers across the U.S. confirmed that 74.4% used padded crib bumpers or mesh liners, and over 50% of these mothers reported that they used them to prevent arms/legs from getting stuck between slats. If mesh liners were to be included in the ban, there is a high likelihood of unintended consequences and risk to infant safety as parents look to provide makeshift solutions.[7]

6) **BreathableBaby has sold over 4.5 million mesh liners since 2002 to satisfied parents without a single incident of injury or death.**

Given the complete lack of any evidence that mesh liners pose any risk to infants, and given the clear safety benefits of preventing limb entrapment, I respectfully submit that including mesh liners in a ban on crib bumpers would be counterproductive and could needlessly expose infants to harm. This position is also supported by Dr. Jonathan Midgett, the Senior Science Advisor to CPSC Commissioner and Former Chairman Elliot Kaye, who recently published a paper stating, in part:

> "Actively prohibiting the use of crib bumpers without some alternative may cause some consumers experiencing repeated limb entrapments to resort to makeshift bumpers such as using rolled up blankets, pillows or other cushions. But, if the Commission were to regulate bumpers in such a manner that allowed for mesh liners or other designs with high levels of airflow, as was done in Maryland and Chicago, the market would retain a product that prevents limb entrapments."[8]

Thank you again for your consideration of this statement for the record. I stand ready to provide any further information to Members of the subcommittee as may be helpful as they deliberate on this bill.

Sincerely,

Jennifer Loesch
Chief Executive Officer
BreathableBaby, LLC

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Statement for the Record

American Home Furnishings Alliance
House Subcommittee on Consumer Protection and Commerce
Hearing Entitled *"Keeping Kids and Consumers Safe from Dangerous Products"*
June 13, 2019

Re: ***STURDY Act [H.R. 2211] and SOFFA [H.R. 2647]***

The ***American Home Furnishings Alliance*** (hereafter AHFA) is the largest and most influential trade association serving the U.S. home furnishings industry. AHFA's 400-member companies operate both domestic and overseas manufacturing facilities and comprise an extensive global supply chain that provides home furnishings in every price point and style category to American consumers. Member companies provide approximately 50,000 manufacturing jobs throughout the U.S. and contribute to a $35 billion segment of the nation's economy. AHFA member companies have operations in 31 states and 7 foreign countries.

Within this global network of manufacturers, importers and retailers of home furnishings products, AHFA is the sole source of industry specific education and guidance on regulatory compliance issues. This is at the core of AHFA's mission. In fact, gaining access to timely and accurate education and guidance on regulatory issues is the primary reason companies join AHFA. Our first responsibility in this area is to our membership; but, within our limited resources, we provide education and guidance to the industry at large.

H.R. 2211 - The STURDY Act

The American Home Furnishings Alliance (AHFA) supports a mandatory stability standard that holds all manufacturers to a rigorous safety standard for clothing storage furniture.

AHFA welcomes and supports the Consumer Product Safety Commission's (CPSC) recent moves to expedite a Notice of Proposed Rulemaking for a mandatory furniture stability standard under Sections 7 and 9 of the Consumer Product Safety Act. AHFA believes CPSC should expend the necessary resources on this effort in 2019-2020 to ensure the goal is met.

CPSC's Notice of Proposed Rulemaking makes the STURDY Act unnecessary. In addition,

- CPSC and its staff of consumer safety technical experts, working in collaboration with child safety advocates and technical experts from the home furnishings industry, are best equipped to identify the requirements of an effective mandatory standard;
- As proposed, STURDY mandates specific technical provisions that have not been clearly defined, researched, nor even shown to be feasible; and,
- Because the proposed technical requirements of STURDY are ambiguous, there can be no clear pathway to compliance, and this could render the resulting standard unenforceable.

However, AHFA understands the tremendous resources that are necessary for CPSC to develop a mandatory standard and believes STURDY could assist the effort if these critical flaws are addressed. AHFA proposes that STURDY be amended to meet the following goals:

1. Align the definition of clothing storage unit with the current version of ASTM F 2057-17 and provide language that would automatically update this definition to any subsequent revisions.

2. Apply the current proposed STURDY Act requirements found in Section 2 (b)(1)(B) to 'Children's Products' only as defined by Section 3(a)(2) of the Consumer Product Safety Act [15 U.S.C. § 2052].

3. Mandate the current requirements of ASTM 2057-17 for clothing storage units that are typical of the bedroom, not defined as 'children's products', and intended for general use.

This can be accomplished with these potential amendments:

- Replace Section 2(a)(1) with the ASTM definition for CSU and delete Section 2 (a)(2).

- Revise Section 2 (b)(1)(B) to read as follows: (B) in accordance with Section 553 of Title 5, U.S.C., promulgate a final consumer product safety standard for free-standing clothing storage units designed or intended primarily for children 12 years of age or younger to protect children from tip-over related death or injury that includes ...

- Add a Sec. 2 (b)(2) that reads as follows: (2) ADOPTION OF ASTM 2057-17 - Beginning on the date that is 180 days after the date of enactment of this Act, and except as

provided in in Paragraph (1), the ASTM 2057-17 standard shall be treated as a consumer product safety rule promulgated under Section 9 of the Consumer Product Safety Act (15 U.S.C. 2058)

These amendments place increased scrutiny on those products intended for use by children and will allow consumers to identify products that meet this additional level of safety, while also mandating the proven and effective ASTM 2057-17 standard for those clothing storage units intended for general use. This will effectively address the identified and critical issue of non-compliance.

H.R. 2647 – The Safer Occupancy Furniture Flammability Act (SOFFA)

The AHFA supports H.R. 2674, The ***Safer Occupancy Furniture Flammability Act*** (SOFFA) and its prompt passage. The threat of unworkable regulations related to residential upholstered furniture flammability continues at both the state and federal level. SOFFA would mandate a proven and effective solution at the federal level while eliminating the potential for a patchwork of state regulations.

The industry has made tremendous strides in manufacturing products that reduce the threat of fires associated with residential upholstered furniture. SOFFA mandates a proven standard and provides a pragmatic solution to nearly 40 years of rulemaking efforts at CPSC. SOFFA unites fire fighters and first responders, environmental NGOs, and industry and is:

- A bipartisan/bicameral legislative effort
- Adopts a proven and effective standard [TB 117-2013] that was developed with broad stakeholder input and is currently the ***'de facto'*** national upholstered furniture flammability standard Under Section 4 of the Flammability Fabrics Act (15 U.S.C. 1193).
- Provides a level national playing field that applies to both domestic and imported residential upholstered furniture.
- Effectively addresses the vast majority of residential upholstered furniture fire related deaths, injuries, and property loss.
- Endorsed by a broad coalition of stakeholders including industry, fire fighters, fire scientists, environmentalists, and consumer groups.
- Does not require the use of flame-retardant chemicals.
- Provides a workable solution to a 40-year project at the Consumer Product Safety Commission, freeing up valuable staff time and resources.
- Does not prohibit CPSC from future rulemaking if new technologies become available.

Conclusion

We appreciate the opportunity to provide comments on these critical consumer protection issues. AHFA member companies have been industry leaders in complying with ASTM F2057 since its adoption in 2000. Through involvement on the ASTM Subcommittee for Furniture Safety (F15.42), we have worked in collaboration with CPSC staff and child safety advocates on the subcommittee to adopt significant improvements to the voluntary standard. We look forward to working with the Chairwoman and Ranking Member to achieve similar results on a federal solution for furniture tip overs and upholstered furniture flammability concerns.

FACTS ABOUT FURNITURE TIP-OVER

May 2019

Between 2000 and 2017, CPSC data reports 542 tip-over fatalities involving televisions, furniture and appliances.

77% (420) were children age 6 and under

44% (237) were toddlers (age 12 to 36 months)

60% (323) involved furniture

30% (165) involved furniture only

29% (158) involved furniture + a TV

Of all tip-over fatalities involving children <u>under age 18</u> (450 total):

94% occurred in the home (423)

At least 51% occurred in a bedroom (229)

At least 37% involved children climbing furniture or an appliance (165)*
(In 40% of the child fatalities, the circumstances surrounding the furniture tip-over is unknown.)

Of tip-over fatalities involving children <u>age 6 and under</u>:

36% involved clothing storage furniture (153)

In 82 of these incidents (54%), a TV + furniture fell

The remaining 71 incidents involved clothing storage furniture alone.

It is these 71 incidents alone that are addressed by the voluntary ASTM furniture stability standard, by STURDY, and by a proposed mandatory stability standard. All other fatalities involve factors or age groups that cannot be addressed by furniture stability.

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On average, between 2000 and 2017, about **9 children** age 6 and under died each year – or about one **every 6 weeks** – in an accident involving clothing storage furniture. More than half these fatalities involved a TV that also fell. From 2011 to 2016, the number of fatalities involving children age 6 and under caused by falling furniture, with or without a TV, has ***declined 40%,*** from 20 in 2011 to 8 in 2016, although the fatality count for 2016 may still be incomplete.

SOURCES: October 2018 CPSC report, "Product Instability or Tip-Over Injuries and Fatalities Associated with Televisions, Furniture and Appliances," and Adam Suchy, Oct. 24 CPSC report to AHFA Regulatory Summit.

The Washington Post

Business

Fisher-Price invented a popular baby sleeper without medical safety tests and kept selling it, even as babies died

By Todd C. Frankel May 30, 2019

Fisher-Price thought it had a hit on its hands.

It was 2009, and a small team of engineers at the toy company outside Buffalo seemed to have solved one of the most vexing problems for new parents: getting babies to sleep. Their invention was an inclined sleeper. They named it the Rock 'n Play. It held babies on their backs in a padded frame at a 30-degree angle, like a recliner. There was nothing else like it. Cribs and bassinets lie flat. The difference was spelled out right on the box: "Baby can sleep at a comfortable incline all night long!"

"There was no product on the market that safely did that," was how the Fisher-Price employee who dreamed it up put it, according to a later court deposition.

Over the next decade, Fisher-Price would sell 4.7 million Rock 'n Play Sleepers at $50 to $80 each.

But Fisher-Price developed its revolutionary product based on faulty beliefs about infant sleep, with no clinical research into whether it was safe, and, rather than seeking the advice of pediatricians, consulted just a single doctor — a family physician from Texas whose expertise had already been doubted by judges and who would eventually lose his medical license, according to a review by The Washington Post of thousands of pages of court depositions, emails and medical studies, along with interviews of doctors and regulators.

In fact, the first time Fisher-Price hired a pediatrician to evaluate the Rock 'n Play was eight years later, as part of the company's defense in a product liability lawsuit, according to records.

"That's shocking. It would never cross anyone's mind that it wasn't tested for safety," said Nancy Cowles of the consumer advocacy group Kids in Danger. Cowles also sits on a committee that sets voluntary safety standards for infant sleep products, including the Rock 'n Play.

Last month, the Rock 'n Play was recalled by Fisher-Price after a series of infant deaths. The Consumer Product Safety Commission (CPSC), which helped coordinate the recall, said more than 30 babies died in the product after they turned over while unrestrained or "under other circumstances." But regulators did not definitively blame the product for the deaths. The recall followed a report by Consumer Reports magazine days earlier that was the first to document concerns about the product's development and pushed for the recall after it obtained agency records about the deaths. Two weeks later, another 700,000 inclined sleepers made by another firm, Kids II, were recalled in relation to five more deaths.

And the death toll could still rise. Recalls are notoriously ineffective at removing products from the market, and fatality reports have come into the CPSC since the April 12 recall, according to a senior agency official.

The roots of the recent recall and subsequent outcry over why it took regulators so long to act can be traced back to critical decisions Fisher-Price made a decade ago that first allowed the inclined sleeper into people's homes, illustrating how the nation's product safety system relies heavily on manufacturers — rather than regulators — to protect against dangers in new products.

"People assume we bless a product before it comes to market," longtime CPSC commissioner Robert Adler said. "That isn't the case."

Yet consumers trust that infant products, in particular, face scrutiny before hitting store shelves.

“It never crossed our mind it could be dangerous,” said Sara Thompson, a mother from Reading, Pa., whose 15-week-old son Alex died in a Rock ‘n Play in 2011.

Fisher-Price’s owner, Mattel, declined to respond to a detailed list of questions about the Rock ‘n Play and its creation. The company said in a statement: “Safety is priority number 1 for Fisher-Price” and the company “has a long, proud tradition of prioritizing safety as our mission. We at Fisher-Price want parents around the world to know that we have every intention of continuing that tradition.” Kids II said its “first priority is the safety of babies and parents who use our products.”

Fisher-Price also pointed out that the Rock ‘n Play met all applicable U.S. regulations and safety standards.

But those safety standards didn’t prevent Fisher-Price from selling a product that — despite a lack of evaluation by medical experts — dealt with one of the riskiest situations in an infant’s life. Unexpected sleep deaths are the leading cause of accidental fatalities for children younger than 1 in the United States, killing 3,600 infants annually. While the causes of these deaths often remain medical mysteries, experts say they do know how to make sleep safer.

Yet the Rock ‘n Play’s design appeared to conflict with longtime American Academy of Pediatrics guidelines on what constitutes safe infant sleep. These guidelines have recommended since the mid-1990s that babies sleep faceup in an empty crib or bassinet to avoid accidental suffocation. The Back to Sleep campaign — supported by U.S. medical authorities — also says babies should not sleep for long periods in inclined devices such as car seats or infant swings for the same reasons. Studies credit this advice with slashing U.S. infant sleep deaths in half over the past two decades.

“There was no reason for this thing to be out there,” said Benjamin Hoffman, a pediatrician in Portland, Ore., who chairs the American Academy of Pediatrics’ Committee on Injury, Violence and Poison Prevention. “It never should’ve been.”

So how did it get there?

'That's not my job'

The first sketch of an inclined sleeper came from a Fisher-Price industrial designer named Linda Chapman.

Her story of dreaming up the product was used by Fisher-Price for years to market the Rock ‘n Play. And Chapman retold that story in greater detail during a deposition last year in a lawsuit against Fisher-Price. The lawsuit had been filed by a Georgia couple whose 7-week-old son survived after being found blue and lifeless in the product in 2014. The boy’s grandmother, attorney Jan Hinson, ended up being the driving force behind the legal case against Fisher-Price — which was dismissed late last year by a judge who found a lack of evidence to support a product liability claim.

But the case — plus a Texas court case involving a baby’s death in a Rock ‘n Play in 2013 — led to transcripts of Fisher-Price workers laying out, in their own words, how the company created the inclined sleeper.

Chapman said the product’s original design was based on what she remembered from her interactions with her son’s doctor years earlier, when her newborn was suffering from reflux, a common issue that can cause spitting up and bouts of crying, according to a deposition transcript.

“I was recalling what my pediatrician recommended when my son was little,” she said.

“And what did he recommend?” she was asked.

“To elevate his head when sleeping. He said you could put a pillow underneath the mattress, or he didn’t really have a good way to do it.”

Many parents — and a few doctors — still contend an incline helps babies who have reflux, which often causes them to spit up. But medical studies have shown little support for this. In 2009, the same year the Rock ‘n Play debuted, two leading groups of pediatric gastroenterologists, building on accumulating evidence, released international consensus guidelines on managing stomach problems in babies, finding that elevating an infant’s head actually worsens gastric reflux. The American Academy of Pediatrics adopted the findings.

Still, elevating a baby’s head was one of the core beliefs behind the Rock ‘n Play’s development. The company used that claim in a 2010 letter to the CPSC as the agency first looked at regulating inclined sleepers.

In its letter, Fisher-Price wrote, “Doctors often advise letting such colicky infants sleep in an inclined supine position, of as much as 30 degrees.” Fisher-Price, which declined to comment on the letter, appeared to be using “colicky” — a term used by pediatricians to describe a baby who cries excessively — to mean a baby who cries because of reflux.

The company supported its claim by citing “a newsletter made available by the American Academy of Pediatrics” and quoting its suggestion for infants who regurgitate of “elevating the head of the crib and diaper changing table to 30 degrees so they never lay flat.”

That argument aligned perfectly with the 30-degree Rock ‘n Play.

But that newsletter, written by the North American Society for Pediatric Gastroenterology, Hepatology and Nutrition, was based on the society’s old treatment guidelines from 2001 — when inclining infants was still recommended. By 2010 — when Fisher-Price wrote its letter — that advice had been changed to say inclining babies was harmful.

“What changed? The data,” said Benjamin Gold, a pediatric gastroenterologist and president-elect of the medical society that helped craft the guidelines. Inclined positioning “was no longer recommended for infants.”

But Chapman, who did not respond to a request for comment, said in her deposition she never checked her recollection of her doctor’s suggestion against up-to-date medical advice on infant sleep safety.

“That’s not my job,” Chapman said.

That was the job of the safety committee, she said, which was led by Kitty Pilarz, a Fisher-Price engineer working as a product safety manager. Today, she’s vice president of product safety and regulatory compliance for Fisher-Price. She did not respond to a request for comment.

In her deposition, Pilarz said Fisher-Price didn’t have medical professionals on staff.

“Once I saw the concept and we started working on the concept,” Pilarz said, according to a transcript, “I did talk with our medical consultant about the concept.”

“Dr. Deegear?” she was asked.

“Yes.”

'The only one'

Gary Deegear of San Antonio had been consulting on Fisher-Price products for years, according to depositions. Fisher-Price declined to talk about his work for the company.

Deegear specialized in family medicine and treated patients for a few years after graduating from the medical school at the University of Texas at San Antonio in 1988, according to court records

and his online résumé. He then moved on to consulting, often in product liability lawsuits, where he was an expert witness focused on power tool injuries, according to records in other cases.

He also testified as a defense expert in a 2004 federal lawsuit resulting from a police shooting in La Porte, Tex. The judge excluded Deegear's theory of what happened because it did not appear to be accepted by scientists: "In fact, the scientific community is not even aware of the theory," according to court records.

This was not the only time Deegear had his theories doubted. In 1998, another judge excluded Deegear's expert testimony in the case of a man who lost four fingers in a radial arm saw accident, court records show. The judge ruled that Deegear's work was untested and subjective.

Deegear's medical license expired in 2015, according to Texas records. Last year, the Texas Medical Board filed a cease-and-desist order against him for allegedly practicing medicine without a license at a medical spa and for conducting unsafe practices.

Deegear could not be located for comment for this story, despite multiple attempts to find him through family members and former employers. Attorneys looking to take his testimony about his role in the Rock 'n Play's development also have not been able to find him.

Emails between Deegear and Fisher-Price workers detail his work on the Rock 'n Play.

In a February 2009 email, Pilarz recounted a phone call she had with Deegear about his reaction to a baby sleeping all night at an angle, according to emails contained in court records.

"Dr. Deegear stated pediatricians recommend babies with reflux sleep at 30 degrees, this is just fine, or sleep in a car seat overnight for months or even a year. The Back to sleep campaign places children on their backs, and elevated positions of the head is fine. He is Not aware of research on this. He will do a quick search. I explained that we are also researching this issue," she wrote.

She also said in her email that she had called a local group of pediatricians to get their opinion.

But Pilarz later said in her 2018 deposition that she could not recall researching the issue. She said she never talked to local doctors or the American Academy of Pediatrics.

"He's the only one I recall talking to," she said.

Deegear did send two pieces of research to Pilarz, according to court records.

One was a link to a 1997 study abstract showing that preterm infants had fewer breathing problems during nursing when their heads were slightly elevated.

The second was a two-page brochure titled "A Parent's Guide to Safe Sleep" from the American Academy of Pediatrics.

"Always place babies to sleep on their backs during naps and at nighttime," it read, with an illustration of a baby sleeping in a flat, non-inclined crib.

Sleeping at an incline

The sleep guidelines sent to Fisher-Price by Deegear captured the basics of the Back to Sleep campaign: The best sleep position for infants is on their backs, rather than on their stomachs, in an empty crib to avoid suffocation.

The American Academy of Pediatrics recommends "flat and firm" sleep surfaces, said Rachel Moon, a pediatrician at the University of Virginia School of Medicine, who studies factors in infant sleep deaths and is considered the academy's topic expert.

"Inclined can cause a problem," Moon said, "because young infants have poor head control and can easily get into positions in which their airway is compromised."

Parents sometimes let babies sleep in inclined devices — car seats, for example. But those are required to carry warnings against using them for prolonged sleep because of potential dangers. Sitting in an infant car seat — which usually holds a baby at a 40- to 50-degree incline — has been shown in studies to potentially inhibit a baby's ability to breathe. The risk of what's called positional asphyxia is so well-known that many hospitals require preterm infants to pass a "car seat test," sitting in a car seat for a period while their breathing is assessed, before being allowed to go home.

Most car seats have a steeper incline than the Rock 'n Play's 30-degree angle.

Pilarz, in her deposition, argued the Rock 'n Play still allowed babies to sleep in the recommended "supine" position, despite being at an incline.

But Pilarz also said she didn't research how different inclines affected a baby's ability to breathe.

"I'm not aware that we did specific research at this time about incline angles," she said, according to a transcript, "other than talking with Dr. Deegear."

In June 2009, four months before the Rock 'n Play hit store shelves, Deegear suggested Fisher-Price bring a prototype to a physician's conference to show other doctors, according to an email in court records.

That never occurred, according to Pilarz in her deposition.

Against the guidelines

Pediatricians learned about the Rock 'n Play only after it was on the market — and by chance.

Hoffman, the pediatrician in Oregon, first saw it when a friend brought it over to his house. He said he was so worried by the inclined surface he refused to let his friend use it for his baby.

Natasha Burgert, a pediatrician in Kansas City, Mo., heard so many parents raving about the Rock 'n Play that she decided she needed to go to a store to see one herself. She was surprised to see a device that, in her view, went against "safe sleep" guidelines. In August 2012, she published an open letter to Fisher-Price on her doctor's blog urging the company to stop marketing it as a sleeper. She said she also printed out her letter to give to parents during office visits.

"This is not something I'd recommend using," Burgert said. "But parents see that it's from Fisher-Price and think, 'They wouldn't be able to sell anything that isn't safe.' "

In 2013, Roy Benaroch, a pediatrician outside Atlanta, called and wrote an email to Fisher-Price's manager of risk management, warning that he thought the product was unsafe and providing links to various studies, according to documents shown to The Post. Benaroch said he never heard back.

In 2017, because of the Georgia product liability case, Fisher-Price hired two experts to assess the Rock 'n Play. William Fox is a neonatologist who directs the Children's Hospital of Philadelphia's Infant Breathing Disorder Center. Thomas Shaffer, an expert in pediatric breathing problems, heads the Center for Pediatric Research at the Nemours/Alfred I. duPont Hospital for Children. The doctors did not reply to requests for comment.

Working for Fisher-Price, the two doctors placed six infants in Rock 'n Plays for 45 minutes while the doctors measured blood oxygen concentrations for signs of breathing difficulties, according to court records. The test did not replicate overnight sleeping, the purpose for which the product was marketed. But, the doctors wrote in a report filed with the court, "there was no suggestion from our observation of the infants that such positioning could induce respiratory risk."

The doctors also noted that newborns in the Philadelphia hospital's neonatal intensive care unit "are regularly placed on their backs on inclines up to 30 degrees."

But many neonatal intensive care units have moved away from that practice, said Sunah Hwang, a neonatologist at the University of Colorado.

For example, all the units in Massachusetts began in 2015 to push “safe sleep practices” that include a flat crib or bassinet with no incline.

“It really should be standard of care,” said Hwang, who conducted a study of the practice.

That’s true even at the Children’s Hospital of Philadelphia, said David Munson, a neonatologist who is the medical director for the hospital’s neonatal intensive care unit.

Inclines are used only with the most critically ill infants, such as a baby needing a mechanical ventilator or with facial deformities, Munson said. Babies sleep flat on their backs in the unit as soon as possible.

It’s the safest way for babies to sleep, he said.

Shouting 'into the wind'

Since 2008, when Congress overhauled the nation’s product safety laws, the Consumer Product Safety Commission has been required to write federal safety rules for durable infant products — things like cribs and highchairs.

These rules must be at least as stringent as the voluntary safety standards set by ASTM International — formally known as the American Society for Testing and Materials — an organization made up of manufacturers, consumer advocates and government officials.

But each new standard and rule can take years to pass, and products can still be sold in the interim.

So far, the commission has passed mandatory safety rules for 23 of 25 infant product categories. The only two left: baby gates and inclined sleepers.

Fisher-Price designed the Rock ‘n Play in 2009 to fit under the ASTM standard for bassinets, according to court records. That standard was silent on angle. No one had made an inclined bassinet before.

“Our product was tested to [the standard] and met all the requirements,” Mike Steinwachs said during a deposition about his role as a Fisher-Price quality engineer who worked on the Rock ‘n Play and served on the ASTM committee that wrote the bassinet standard. Steinwachs, who retired from Fisher-Price last year, did not respond to a request for comment.

But Fisher-Price faced a problem shortly after the Rock ‘n Play’s launch. Federal regulators were drafting their safety rule for bassinets and wanted to limit inclines. The agency was worried about infant hammocks, another product covered by the bassinet standard, after some hammock models were recalled for suffocation hazards.

But limiting the angle could have banned the Rock ‘n Play.

So Fisher-Price wrote its 2010 letter to regulators asking them to create a separate standard for inclined sleepers, arguing that a ban could have unintended consequences.

“The restriction could even increase children’s risk of injury, as parents reach for substitutes,” the letter said.

The agency agreed to allow a separate standard.

But the agency’s leader at the time, Chairwoman Inez Tenenbaum, didn’t appear to think of inclined sleepers as a place where babies would sleep for long periods, according to deposition transcripts — despite Fisher-Price’s marketing of the Rock ‘n Play.

Tenenbaum said she agreed with pediatricians that babies should sleep in cribs with firm mattresses. But, she said, it was "not inconsistent" for a child to fall asleep in an inclined sleeper — like babies do in car seats — and then need "to be removed from the product and placed supine in a crib."

Tenenbaum declined to comment when contacted by The Post.

Her view of how inclined sleepers should be used is similar to how the product is marketed in Canada, where the Rock 'n Play is not sold as a sleeping device. In Canada, it's a "soothing seat." And the Canadian version carries a warning: "This product is not intended to replace a crib or bassinet for prolonged periods of sleep," according to court records.

No deaths or injuries involving the Rock 'n Play "soothing seat" have been reported since it was introduced in 2011, according to Health Canada. And the "soothing seat" was not included in the recent recall by the CPSC. But a small number of Rock 'n Plays sold and labeled as sleepers in Canada were recalled, adding to the confusion.

In the United States, it took the ASTM five years to pass a voluntary standard for inclined sleepers, defined as having angles of 10 to 30 degrees. Consumer advocates and the American Academy of Pediatrics objected to the standard. But they were outnumbered by industry representatives, including Steinwachs of Fisher-Price, who made up more than half of the committee's membership.

"We shout into the wind a lot," said Cowles of Kids in Danger, who sits on the committee.

Cowles was back at it in 2017, as regulators started working on a federal rule based on the ASTM standard. The American Academy of Pediatrics joined in, writing to the agency that "we are concerned that a safety standard could give parents and caregivers the mistaken impression that these products have been proven safe."

The commission's work on the safety rule was continuing this year, just as problems with the Rock 'n Play exploded into view. That work has been put on hold, the agency said.

The agency's long-term failure to address inclined sleepers has been criticized by safety consultants, including Sean Kane and Ellen Liberman at Safety Research & Strategies, who recently wrote a blog post titled "Who Does the CPSC Protect?"questioning how regulators handled the product.

The complicated nature of infant sleep deaths creates unique challenges for regulators. Agency staff members had been worried about the Rock 'n Play for more than a year before the April 12 recall, according to two people who spoke on the condition of anonymity to discuss internal agency discussions. Last May, the CPSC issued a "consumer alert" about the hazard of not strapping an infant into inclined sleepers, although the Rock 'n Play was not named. The agency also took the unusual step of hiring an outside expert to study the issue.

But several of the fatalities in the Rock 'n Play had confounding factors, such as added blankets or — in at least one case — a baby improperly placed face down in the product, according to data described to The Post by one person and confirmed by another person.

"It was hard to isolate the issue," said one senior agency official.

The mystery was deepened by the lack of safety testing before the Rock 'n Play hit the market in 2009, leaving investigators to evaluate potential hazards only in hindsight.

Eliot Kaye, an agency commissioner, said he believes all inclined sleepers should be banned and that the agency made a mistake in allowing the ASTM to write a separate inclined sleeper standard in 2015.

"I'm sympathetic to what parents want," Kaye said, "but it's not worth the risk."

A world made more safe?

The industry is not convinced that the recall has made infant sleep any safer.

Several companies still sell their versions of inclined sleepers. One of them, Summer Infant, said it has not received any reports of deaths or injuries, and the product meets ASTM standards.

The future of inclined sleepers came up at a ASTM meeting earlier this month. Dozens of representatives from companies, regulators and consumer advocacy groups gathered outside Philadelphia. The recall of the Fisher-Price and Kids II products hung over the discussion. Cowles argued against the standard. So did Consumer Reports and the American Academy of Pediatrics.

"We don't see any way to create a safe standard for the product," said Zach Laris, a director of federal advocacy for the pediatric group.

But Rick Locker, an attorney for the Juvenile Products Manufacturers Association, which represents many of the biggest companies making products for children, urged the committee to slow down and wait until more data is gathered.

That argument seemed to win over many in the room.

"I factor in what the AAP says, but I am also very data driven," said Carol Pollack-Nelson, a former regulator who works as a safety consultant, but not on inclined sleeping products.

"I'm not sure the world is a safer place without them," Bob Coughlin, a former executive at Kids II, said of inclined sleepers. He added that he worried about parents improvising riskier solutions.

The committee decided to talk about the topic again in October.

The recalls, too, are not expected to stop people from using the Rock 'n Play.

Some parents greeted last month's recall by vowing to keep the product.

"I couldn't believe it," said Sara Thompson, whose son died in the product in 2011.

Alexis Dubief, a sleep consultant and author, said she's sympathetic to exhausted parents who are suddenly faced without any option except a crib.

Cribs are the safest place for infants, Dubief said. Yet she struggles with how that advice plays out in the real world. The Rock 'n Play was so popular because it worked.

"Parents," Dubief said, "don't have a good Plan B."

Mattel, Fisher-Price's parent company, estimated the recall would cost it $27 million, plus at least $30 million more in lost sales for the rest of the year. But Mattel's chief financial officer, Joseph Euteneuer, downplayed the impact during an earnings calls late last month, saying damage from the Rock 'n Play — considering Mattel is a $1 billion business — "is roughly a couple low percentage points."

Cowles, too, doubted the recall's impact — on preventing deaths. Many parents continue to believe the Rock 'n Play is safe.

"There's going to be a black market for these products," she said, "for years."

Todd C. Frankel is an enterprise reporter on The Washington Post's Financial desk, covering people and policy. He joined The Washington Post in 2014 and previously worked as a reporter at newspapers in St. Louis; Everett, Wash.; and Charleston, W.Va.

June 13, 2019

To: Chairwoman Jan Schakowsky and Ranking Member Cathy McMorris Rodgers, House Subcommittee on Consumer Protection and Commerce
Fr: Nancy Cowles, Dev Gowda and Rachel Weintraub for Kids In Danger and Consumer Federation of America
Re: Focusing Attention on Safety Transparency and Effective Recalls Act (FASTER Act) H.R.3169

The U.S. Consumer Product Safety Commission (CPSC) established the Fast Track program in 1997 to give companies a way to act more quickly on recalls but relied on the CPSC not making a determination of a hazard, with the goal of getting a product off the shelves and out of homes.

Recalls in the United States are not a success by numerous measures. We know that there have been fewer of them[1], we know that they take a long time[2], we know that the remedies are not adequate to encourage participation in the recall[3], and we know that consumers are not aware of recalls and not taking actions to remove recalled products from their homes[4].

A greater percentage of children's product recalls were fast-tracked in 2018 (52%), compared to 2017 (41%).[5] Therefore, this bill would have a negative impact on half of all recalls of children's products, leaving our most vulnerable consumers, children, unprotected with untested remedies and little to no outreach by companies. The Focusing Attention on Safety Transparency and Effective Recalls Act or FASTER Act isn't seeking to remedy any of the significant problems occurring as part of CPSC's recalls. Rather, the proposed bill fails to require recalling companies to share critical information with the CPSC, that is required under the current Fast Track program such as: "sufficient information about product design, incidents, and testing information to allow the staff to determine whether the proposed action corrects the identified problem and whether the problem is limited to the model(s) and production dates identified by the company. Such information should include, but is not limited to: consumer complaints, test data, engineering drawings, material specifications, samples of product, and/or component parts, as needed. If the needed information and documentation are being compiled, but not yet available, the company must provide the date it expects to forward the information to the CPSC. The

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[1] Kids In Danger 2019 Recall Report, https://kidsindanger.org/wp-content/uploads/2019/03/KID-2019-Recall-Report.pdf
[2] In 2015, CPSC announced an information campaign with IKEA after numerous deaths from furniture tip-overs. (https://www.cpsc.gov/newsroom/news-releases/2015/ikea-offers-free-wall-anchoring-repair-kit-for-chests-and-dressers). A recall wasn't announced until after one additional death. (https://www.cpsc.gov/Recalls/2016/Following-an-Additional-Child-Fatality-IKEA-Recalls-29-Million-MALM-and-Other-Models-of-Chests-and-Dressers). The same pattern of delay can be seen with infant inclined sleep products with a general warning in 2018 (https://www.cpsc.gov/Newsroom/News-Releases/2018/CPSC-Consumer-Alert-Caregivers-Urged-To-Use-Restraints-With-Inclined-Sleep-Products), only followed by a recall of the Fisher Price Rock 'n Play a year later after additional deaths came to light (https://www.cpsc.gov/Recalls/2019/fisher-price-recalls-rock-n-play-sleepers-due-to-reports-of-deaths).
[3] Note the limited vouchers for products over 6 months old and the 14-16 delay to even determine what the remedy is for the consumer's product: https://service.mattel.com/us/recall/BJD57_ivr.asp
[4] https://www.parents.com/baby/safety/toy/five-dangerous-products-to-get-out-of-your-house/
[5] https://kidsindanger.org/wp-content/uploads/2019/03/KID-2019-Recall-Report.pdf

CPSC staff must have sufficient time to review the information and respond within the 20 working day time limit."[6]

H.R. 3169 Contains Numerous Shortcomings:

1. The legislation fails to ensure an adequate outreach plan to consumers. The bill does not include a requirement to develop a plan to reach consumers with news of the recall. Announcing the recall and providing a remedy to those who somehow find out about the recall are the only responsibilities for companies – similarly, there is no provision requiring efforts to conduct an effective recall.
2. The legislation removes any authority from the CPSC to make sure that recalls announced on their site and through the agency have an adequate remedy, cover all affected products, or are designed with the consumer in mind. There is no ability for the CPSC to remove victim shaming, excuses or even false information from the public release. This legislation allows companies to pressure the CPSC to accept a substandard remedy or bypass the CPSC altogether. The bill does not give the CPSC authority to ascertain or object if the remedy, repair, or outreach to their distribution chain is not adequate since they are prohibited from rejecting the proposed recall except if it does not include the content specified in subparagraph 8 (B) of the legislation.
3. While the legislation provides for cases where CPSC can begin a proceeding under subsection (c) or (d) to determine whether the product contains a substantial product hazard, that is only after the CPSC suspects that the recall effort is inadequate.
4. The legislation provides no extra funding for the CPSC to adequately protect consumers with this new system that eliminates consumer protections.
5. The Britax jogging stroller non-recall settlement shows the impact of what this law could do and the resulting new class of recalls with no oversight: no notice to consumers of the recall, so minimal response, and a faulty remedy that broke and created new hazards.

<u>Requirements under current Fast Track Program that are not in FASTER Act</u>

Currently, the Fast Track Program requires the following information from reporting companies[7]: product samples (if feasible), a Full Report, testing data for repair or replacement remedies, information on the number of incidents and injuries associated with the product, and a proposed Corrective Action Plan, all of which would not be required under the FASTER Act. Only certain elements of the currently-required Full Report would be required under the FASTER Act.

The current Fast Track Program requires a Corrective Action Plan which must include the following[8], all of which would *not* be required by the FASTER Act: a CPSC-approved remedy (either a full refund or fully tested replacement or repair supported by technical documentation)[9]; joint news release with CPSC; point-of-purchase poster; a CPSC-approved reverse logistics plan; website notification on Firm's homepage; letters to the distribution chain; and social media announcements modeled after the news release.

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[6] https://www.govinfo.gov/content/pkg/FR-1997-07-24/pdf/97-19554.pdf

[7] https://www.cpsc.gov/Business--Manufacturing/Recall-Guidance/CPSC-Fast-Track-Recall-Program
[8] https://www.cpsc.gov/Business--Manufacturing/Recall-Guidance/CPSC-Fast-Track-Recall-Program
[9] The FASTER Act would not require the replacement or repair be fully tested and supported by technical documentation.

Under the current Fast Track Program, the requisite Full Report mandates the following[10] which would *not* be required under the FASTER Act:

(1) The name, address, and title of the person submitting the "full report" to the Commission.

(2) The name and address of the manufacturer (or importer) of the product and the addresses of the manufacturing plants for that product.

(3) Retail prices, model numbers, serial numbers, and date codes. Any identifying marks and their location on the product. A picture or a sample of the product.[11]

(4) If technical drawings, test results, schematics, diagrams, blueprints, or other graphic depictions are available, attach copies.

(5) The nature of the injury or the possible injury associated with the product defect, failure to comply, or risk.

(6) The manner in which and the date when the information about the defect, noncompliance, or risk (e.g., complaints, reported injuries, quality control testing) was obtained. If any complaints related to the safety of the product or any allegations or reports of injuries associated with the product have been received, copies of such complaints or reports (or a summary thereof) shall be attached. Give a chronological account of facts or events leading to the report under section 15(b) of the CPSA, beginning with receipt of the first information which ultimately led to the report. Also included may be an analysis of these facts or events.

(7) The dates when products and units were manufactured, imported, distributed, and sold at retail.

(8) The number of products and units in each of the following: in the possession of the manufacturer or importer, in the possession of private labelers, in the possession of distributors, in the possession of retailers, and in the possession of consumers.[12]

(9) An explanation of any changes (e.g., designs, adjustments, and additional parts, quality control, testing) that have been or will be effected to correct the defect, failure to comply, or risk and of the steps that have been or will be taken to prevent similar occurrences in the future together with the timetable for implementing such changes and steps.

(10) Information that has been or will be given to purchasers, including consumers, about the defect, noncompliance, or risk with a description of how this information has been or will be communicated. This shall include copies or drafts of any letters, press releases, warning labels, or other written information that has been or will be given to purchasers, including consumers.

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[10] "Full Report" requirements under 16 C.F.R. § 1115.13(d). Available at https://www.law.cornell.edu/cfr/text/16/1115.13#d

[11] The FASTER Act only requires "a clear description of the product, including the volume of products affected in the United States.

[12] The FASTER Act would only require reporting the volume of products affected in the U.S., but no more details about the number of units distributed.

(11) The details of and schedule for any contemplated refund, replacement, or repair actions, including plans for disposing of returned products (e.g., repair, destroy, return to foreign manufacturer).[13]

(12) A detailed explanation and description of the marketing and distribution of the product from the manufacturer (including importer) to the consumer (e.g., use of sales representatives, independent contractors, and/or jobbers; installation of the product, if any, and by whom).

(13) Upon request, the names and addresses of all distributors, retailers, and purchasers, including consumers.

(14) Such further information necessary or appropriate to the functions of the Commission as is requested by the staff.

Since this bill weakens consumer protections, minimizes the CPSC's ability to strengthen a company's proposed Fast Track plan, eliminates critical information that must be included in recall announcements, and weakens rather than improves the fast track recall system, we oppose H.R. 3169 and urge opposition to this bill.

[13] The FASTER Act would only require "the schedule for notifying purchasers, distributers, and retailers of the fast track recall plan."

April 11, 2019

The Honorable Ann Kuster
U.S. House of Representatives
320 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Kuster,

On behalf of the Security Industry Association (SIA), I would like to express its strong support for your legislation, H.R. 1618, the "Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act of 2019." SIA represents nearly 1,000 companies specializing in safety and security technology solutions, including manufacturers and installers of carbon monoxide alarm and detection devices.

Carbon monoxide (CO) is an odorless, colorless gas that is produced when fossil fuel is incompletely burned and can cause serious health complications if exposed in high concentrations. Side effects include cognitive impairment, loss of consciousness, coma and often death. CO poisoning is one of the leading causes of accidental death in the United States, and the U.S. Centers for Disease Control and Prevention report that every year approximately 20,000 Americans seek medical attention due to carbon monoxide poisoning.

SIA supports the goals outlined in H.R. 1618, which provides assistance for the purchase and installation of carbon monoxide detectors in residential homes and dwelling of elderly persons, childcare facilities, public schools, and student housing owned by public universities. Additionally, the proposed grant program will allow states and local governments greater ability to purchase necessary equipment and implement carbon monoxide poisoning prevention activities.

Thank you for your leadership in introducing this important piece of legislation. SIA appreciates the priority placed on this legislation and looks forward to working with you to ensure its passage.

Sincerely,

[redacted]

Don Erickson
CEO
Security Industry Association

March 20, 2019

Honorable Ann Kuster
U.S. House of Representatives
320 Cannon House Office Building
Washington, DC 20515

Honorable Earl Carter
U.S. House of Representatives
2432 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Kuster and Carter:

On behalf of Safe Kids Worldwide and 24 Safe Kids coalitions from 13 states across the country, we write to thank you and express our support for your proposed legislation, the "Carbon Monoxide Poisoning Prevention Act". This important legislation will help states prevent tragedies involving carbon monoxide (CO) poisoning, a hazard to which young children and pregnant women are especially vulnerable. We write as Safe Kids Worldwide coalitions from areas prone to cold weather in the winter and natural disasters such as hurricanes—areas where the risk of carbon monoxide poisoning is especially acute.

Carbon monoxide is called the "silent killer" because it is colorless, odorless and undetectable without the aid of a CO detector. CO exposure can cause cognitive impairment, loss of consciousness, coma and death. Over 20,000 people per year are admitted to U.S. emergency rooms for unintentional CO poisoning, and over 2,300 are hospitalized.[1] The risk of CO poisoning is heightened in states with cold-weather winters and areas prone to natural disasters, where many families rely on gas-fired heating systems, generators and appliances that can emit CO.

We can prevent CO poisoning. The most effective way is to install carbon monoxide detection devices in places where people—especially children—live, work, sleep, and learn. An average of over 400 people die of unintentional CO poisoning per year, but only a little over 40 percent of homeowners report having a working CO detector.[2] [3] Your legislation will help prevent these tragedies from happening.

Safe Kids Worldwide is a grassroots nonprofit organization working to prevent childhood injury, the number one cause of death for children in the United States. We work with an extensive network of more than 400 coalitions in the U.S. More than 100 of our coalitions are based at pediatric and medical institutions, and also at firehouses, police stations and health departments. As a trusted, go-to resource for parents, we educate on how to prevent injury and advocate for smart public policy. Working together, we can do much more for kids everywhere.

Sincerely,

Safe Kids Alaska
Safe Kids Kenai Peninsula
Safe Kids Central California
Safe Kids Santa Clara/San Mateo
Safe Kids Larimer County
Safe Kids Miami-Dade
Safe Kids Illinois
Safe Kids Illinois

Safe Kids Chicago
Safe Kids Edwards County
Safe Kids Bartholomew County
Safe Kids Minnesota
Safe Kids Northwest Metro Minneapolis
Safe Kids New York
Safe Kids Otsego County
Safe Kids Grand Forks

Safe Kids Minot
Safe Kids Fargo-Moorhead
Safe Kids Bismarck-Mandan
Safe Kids Utah
Safe Kids Thurston County
Safe Kids Wisconsin
Safe Kids Southeast Wisconsin
Safe Kids Wood County
Safe Kids Worldwide

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[1] Raub JA, Mathieu-Nolf M, Hampson NB, Thom SR. Carbon monoxide poisoning—a public health perspective. Toxicology. 2000; 145:1–14. [PubMed: 10771127]

[2] *Sircar K, Clower J, Shin MK, Bailey C, King M, Yip F. Carbon monoxide poisoning deaths in the United States, 1999 to 2012. Am J Emerg Med 2015;33:1140–5*DOI: http://dx.doi.org/10.15585/mmwr.mm6608a9.

[3] U.S. Census Bureau and U.S. Department of Housing and Urban Development, 2011 American Housing Survey.

Subcommittee on Consumer Protection and Commerce
Legislative Hearing on
"Keeping Kids and Consumers Safe from Dangerous Products"
June 13, 2019

Captain Chris Parsons, President, Minnesota Professional Fire Fighters,
Response to the Additional Questions for the Record

The Honorable Michael C. Burgess, M.D. (R-TX)

1. Captain Parsons, July 4th is quickly approaching and Americans across the country are already stocking up on fireworks to celebrate our nation's 244th Birthday. While fireworks can be a fun activity for children and adults alike, I have concerns regarding firework injuries and how the CPSC investigates the safety of fireworks.

    a. **As a firefighter, what do you think is the best way of reducing the likelihood of firework related injuries?**

Parsons Response: According to the National Fire Protection Association, in 2017, at least eight people lost their lives in fireworks mishaps and nearly 13,000 people visited a hospital for care of fireworks-related injuries. More than two-thirds of the injuries occurring from the use of consumer-grade fireworks result in wounds or burns to the head, face, eyes, ears, or hands. Sadly, children ages 5 to 14 account for the most significant number of fireworks-related injuries. Frankly, there is no safe way to use consumer fireworks. The IAFF supports a total ban on consumer-grade fireworks. Fireworks displays should only be conducted by trained pyrotechnic professionals. Public displays conducted by pyrotechnic professionals account for less than one percent of all injuries.

    b. **Have you heard reports about defective firework products?**

Parsons Response: Anecdotally, I have heard reports indicating that up to one-third of the fireworks imported into the United States are defective. I understand the American Pyrotechnics Association in partnership with the American Fireworks Standards laboratory is engaged in testing fireworks. These organizations have identified a significant number of defective fireworks are originating from China.

    c. **What is the CPSC's process to evaluate the safe use of consumer-grade fireworks?**

Parsons Response: I do not have any insight into the process CPSC uses to evaluate consumer-grade fireworks.

    d. **If Americans are injured by imported fireworks, does the CPSC make any review of how it conducts inspections and clearances of products?**

Parsons Response: As stated above, I do not have any insight in to how the CPSC conducts inspections or clears products for use in the United States. However, anecdotally I am aware the CPSC is partnering with the US Customs and Border Protection to carry out selective enforcement activities to prevent unapproved fireworks from entering the United States through our shipping ports. However, given the massive amount of consumer products coming through this method, it is highly likely unapproved fireworks are finding their way to the American consumer.

Additional Questions for the Record

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Mr. Charles A. Samuels, Member, Mintz

The Honorable Michael C. Burgess, M.D. (R-TX)

1. Mr. Samuels, in your testimony you pointed out that the part of the fast track process that most often derails the expedited recall of a product is the CPSC press release.

   a. Why is it the press release that causes such delays? First, thank you Mr. Burgess for your questions. I also want to thank the Subcommittee for the opportunity to testify about this important subject. I want to emphasize that the fast-track program is valuable and productive and the aim of any legislation should be to recognize that statutorily and improve it, not dilute its value, in protecting consumers by notifying them on as timely a basis as possible of a corrective action or recall. CPSC and its capable career staff support this program, but as I noted in my testimony it has become overly bureaucratic and inflexible over time. It can be improved and one of these improvements would be to eliminate the sometimes lengthy internal time periods in which a variety of CPSC offices input and make revisions to press releases before they can be used publicly. This is a two-way street and sometimes it is the company that causes the delay on communications releases. If a reasonable statutory framework can eliminate the internal press- release- by -committee process while ensuring that critical information is provided to the CPSC and the public and that the corrective action entails the proper product scope as well as a technically sound fix, then such legislation will allow public notification to be expedited. Consumers will be safer.

   b. There are reports that some press releases are delayed due to only one or two words. In your view, is this reasonable? This is not reasonable where disagreements and internal delays over press release wording have more to do with the need for bureaucratic uniformity or concern about the agency making a mistake than expediting communications to the public.

   c. In addition to Representative McMorris Roger's legislation, what else can congress do to improve the speed and efficiency of this program? Is more oversight necessary? The Commission has compliance staff dedicated to Fast-Track but that does not appear to be the case throughout the other offices in the agency. Other aspects of the review, such as technical and communications,

appear to be handled in the normal course sometimes causing delays. Whether or not this legislation is advanced, the Subcommittee should require a report from the Commission on relevant time periods associated with Fast-Track and with a detailed description of the resources devoted and internal coordination procedures.

d. Many of the products reviewed by the CPSC are manufactured by small businesses that cannot afford high legal fees or a heavy-handed punitive action by federal regulators. In your view, what other options do regulators have to incentivize voluntary recalls? This is a critical point because, as you note, many smaller US businesses, whether manufacturers, assemblers, importers, distributors or retailers, are covered by and get caught up in the CPSC regulatory system, often through no fault of their own when, for example, they are entirely reliant on suppliers. Often, retaining specialized legal counsel is not practical. The Commission has a Small Business Ombudsman who with very limited resources does an excellent job. This function should be significantly enhanced and this office should assist smaller businesses when they are going to be involved with a corrective action. At the same time, the online resources of the Commission explaining practically what a small business will need to do in its involvement with the recall are useful but limited and could be enhanced based on decades of experience. The Commission should reach out to small businesses and their representatives and learn how these materials can be improved. Finally, and this is true across the corrective action spectrum, there are too many recalls of minor hazards in which the same format and procedure is applied as for significant product hazards. Greater use of hazard classification and tiers and appropriate corrective action responses related to the hazardousness of the product would reduce the burden on regulated industry, small or large, as well as Commission staff. The Commission is start to look at this issue but should be required to provide much greater focus and take appropriate action in the future.

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