

**American Academy of Pediatrics * Consumer Federation of America *
Consumer Reports-Consumers Union * Kids In Danger * Public Citizen**

October 5, 2018

The Honorable Ann Marie Buerkle, Acting Chairman
The Honorable Robert Adler, Commissioner
The Honorable Elliot Kaye, Commissioner
The Honorable Dana Baiocco, Commissioner
The Honorable Peter Feldman, Commissioner

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

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

The undersigned groups write regarding the U.S. Consumer Product Safety Commission's (CPSC or Commission) Fiscal Year (FY) 2019 Operating Plan, which the agency will use to implement its priorities over the next 12 months. We are concerned by several ways in which this plan diverges from the CPSC's FY 2019 Performance Budget Request to Congress and previous Operating Plans adopted in recent years.

While we support many of the elements of the new Operating Plan, we oppose changes to the agency's plans that would de-emphasize or abandon essential CPSC staff work on several mandatory safety standards. Prior to adopting the FY 2019 Operating Plan, we strongly urge the Commission to amend the plan to address these concerns.

The CPSC plays a critical role in protecting individuals from harm from unsafe products. The agency, however, lacks sufficient funding and staff to fully carry out its mission. Given the agency's limited resources, the CPSC must evaluate its work to ensure that it prioritizes projects that would have a meaningful impact and would help eliminate or substantially reduce product-related deaths and injuries. In this letter, our groups highlight the following issues to urge that they be a top priority for the Commission in FY 2019: Portable generators, furniture tip-overs, safe sleep, lithium-ion and coin cell batteries, ATVs, magnet sets, window coverings, SaferProducts.gov, and liquid nicotine poisoning prevention.

Furniture Tip-overs: We remain very concerned about injuries and deaths associated with tip-over incidents, particularly those involving dressers and other clothing storage unit (CSU) furniture. Kids In Danger, Shane's Foundation, and Consumer Reports have conducted testing of furniture and published articles and research. Collectively, this research has found that the voluntary industry standard ASTM F2057-17 is inadequate, and it is feasible for manufacturers to meet a significantly stronger standard that protects more children and addresses more CSUs. We are very concerned that the status of work on a mandatory safety standard for CSUs in FY 2019 has been downgraded from a final rule to data analysis and/or technical

review. While we urge the Commission to continue prioritizing staff work to strengthen the voluntary standard, it is also critical for the Commission to require significant staff work that directly relates to the establishment of strong, binding CSU performance requirements in a CPSC mandatory standard, so that the agency may issue a notice of proposed rulemaking, at a minimum, in FY 2019.

Portable Generators: We support the implementation of a mandatory safety standard for portable generators to address the risk of carbon monoxide poisoning and other safety risks associated with the products. Such a standard would apply across the marketplace, make it easier to recall noncompliant products, and more effectively protect consumers. We are concerned that the status of the portable generators rulemaking in FY 2019 has been downgraded from a final rule to a briefing package. With an average of about 70 deaths and several thousand non-fatal injuries annually—and with at least 16 carbon monoxide poisoning deaths and several hundred injuries related to just one 2017 storm, Hurricane Irma—performance requirements are needed, and the CPSC should keep moving forward on its development of a mandatory safety standard.

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

Safe Sleep: Our organizations support the proposed work to evaluate and analyze hazards associated with infant and children’s sleep environments. Critically, the Centers for Disease Control and Prevention has found that sleep-related deaths in infants are growing, many of them due to unsafe sleep environments including additional, unnecessary padding, coverings, and bedding. The CPSC should integrate the “Bare Is Best” message in more of their consumer communications to further alert parents to this easy to follow, lifesaving message.

Lithium-Ion and Coin Cell Batteries: We support the CPSC’s goal “to address the emerging and ongoing hazards associated with high-energy density batteries.” The use of lithium-ion batteries in consumer products has grown exponentially in the past few years. Hoverboards, laptops, and smartphones are just three examples of consumer products using lithium-ion batteries. In 2015, there were eight battery-related recalls conducted by the CPSC, and in 2016, there were more than 20. Half of the lithium-ion batteries recalled in 2016 involved hoverboard and smartphone recalls due to fire hazards. We support the Commission’s commitment to engage in enforcement; voluntary and mandatory standards work; import surveillance and compliance; industry, interagency, and intergovernmental collaboration; and its other work related to these batteries. We urge the Commission to build on previous years’ work to address the fire hazards posed by these batteries.

In addition, we urge the CPSC to continue its work to strengthen the relevant voluntary standards so that they include a provision to enclose securely all coin cell batteries, and to work

in support of design changes that would eliminate the serious health hazard posed by their ingestion.

All-Terrain Vehicles: We support the CPSC’s all-terrain vehicle work involving projects to test commercially available rollover occupant protection devices, as well as design, prototype development, and testing of new occupant protection devices that would improve rider protection during an ATV rollover event. We hope that these important projects will be used to support the timely completion of the CPSC’s ATV Rule, which—under the FY 2019 Operating Plan—is not expected to advance in the coming year.

Magnet Set Rulemaking: We urge the CPSC to take strong action to ensure that consumers and doctors are educated about hazards associated with high-powered magnets and, specifically, the risk of injury and death associated with ingestion. We also support vigilant monitoring of internet sales by the CPSC and enforcement action against those who offer to sell magnet products that present a substantial product hazard.

In addition, on the basis of a market survey to evaluate the number of firms selling high-powered magnet sets and the number of magnet sets being sold to consumers, as well as an evaluation of in-depth investigations (IDIs) involving high-powered magnets, we urge the CPSC to use the information collected to quickly finalize a new, strong mandatory safety standard for magnet sets. We are very concerned that progress on this rulemaking is not included in the FY 2019 Operating Plan.

Window Coverings: We are very concerned that the FY 2019 Operating Plan envisions discontinuing rulemaking activity on corded window coverings, by removing the relevant item from the *Other Ongoing or Potential Rulemaking-Related Activities* category in the mandatory standards summary table. The FY 2019 Performance Budget Request included a briefing package on window coverings, but now, no related mandatory standards activity is proposed for FY 2019. Given the deaths and injuries associated with these products that occur every year, and the current voluntary standard’s failure to include custom window coverings within its scope, it is critical that the CPSC continue to work on a mandatory safety standard related to this issue. This continued activity also is essential for the Commission to be consistent with its decision, in 2014, to grant the petition by several of our groups for the CPSC to initiate a rulemaking to develop a mandatory safety standard for window coverings to address the risk of strangulation to young children on cords. We urge the Commission to finalize a briefing package on window coverings in FY 2019.

SaferProducts.gov: We support the FY 2019 priority activity to “evaluate www.SaferProducts.gov and develop a proposal for possible usability improvements based on stakeholder recommendations.” SaferProducts.gov is a useful tool that can be made even more useful with key updates and upgrades. We urge the CPSC to engage in an open and balanced process as it seeks stakeholder recommendations and considers possible improvements.

Liquid Nicotine Poisoning Prevention: As you are aware, in 2015, Congress directed the CPSC to enforce the Child Nicotine Poisoning Prevention Act. Liquid nicotine comes in a variety of strengths, containing upwards of 36 mg of nicotine per milliliter of liquid. A standard-

sized eye dropper bottle of liquid nicotine at this strength would be enough to kill four toddlers. Liquid nicotine for e-cigarettes comes in a variety of bright colors and in flavors that are appealing to children, such as berry and gummy bear, increasing the likelihood that curious children will come in contact with the liquid. The need for the law is clear, and we are eager to see the CPSC exercise its full authority to enforce the law. We are disappointed that the FY 2019 Operating Plan does not include mention of the agency's planned efforts to ensure compliance with the law. In addition, while we are appreciative of the August 2, 2018, Liquid Nicotine Packaging Guidance letter from the Office of Compliance and Field Operations to liquid nicotine companies, we strongly urge the CPSC to enforce compliance to ensure not just that secondary caps are child resistant, but also that all liquid nicotine packaging includes flow restrictors, as required by the 2015 law.

Rulemaking: As discussed, our organizations are concerned that several rulemaking efforts would slow under the FY 2019 Operating Plan. The status of work on furniture tip-overs, portable generators, infant bedding, gates, and infant inclined sleep products have been downgraded from final rules, as indicated in previous CPSC priority documents, to either a notice of proposed rulemaking, a data analysis and/or technical review, or a briefing package. Activities on window coverings are no longer listed under rulemaking. In some cases, we understand that delays reflect additional research and analysis by CPSC staff that we have called on CPSC to complete. Nevertheless, the overall shift is unmistakable: in its FY 2019 Operating Plan, the CPSC is planning to retreat on mandatory safety standards activities in several areas. We urge you to keep moving forward, especially with the Section 104, Danny Keysar Child Product Safety Notification Act, rules and other hazards such as tipping furniture and the strangulation hazard posed by corded window coverings. We understand the importance of the voluntary standards process in the CPSC's work, however the development of mandatory standards is fundamental to the CPSC's safety mission.

Thank you for your consideration of our comments. We look forward to the timely completion of work related to the priority issues we raise, and the use of this work to support rulemaking and other concrete steps to substantially reduce product-related deaths and injuries.

Sincerely,

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