



**MEMORANDUM**

**April 5, 2019**

**To: Subcommittee on Consumer Protection and Commerce Members and Staff**

**Fr: Committee on Energy and Commerce Staff**

**Re: Hearing on “Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?”**

On **Tuesday, April 9, 2019, at 10:15 a.m. in room 2322 of the Rayburn House Office Building**, the Subcommittee on Consumer Protection and Commerce will hold a hearing entitled, “Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?”

**I. BACKGROUND**

The Consumer Product Safety Commission (CPSC) is an independent agency responsible for protecting consumers from unreasonable risk of injury or death from consumer products.<sup>1</sup> The Commission carries out its mission by: (1) developing voluntary standards with industry; (2) issuing and enforcing mandatory standards or bans on hazardous consumer products; (3) investigating potential product hazards; and (4) recalling unsafe products or arranging for their repair.<sup>2</sup> The CPSC is empowered to protect consumers from dangerous products through three major statutes: (1) the Consumer Product Safety Act (CPSA);<sup>3</sup> (2) the Federal Hazardous Substances Act (FHSA);<sup>4</sup> and (3) the Consumer Product Safety Improvement Act (CPSIA).<sup>5</sup> Of the agencies within the Subcommittee’s jurisdiction, the CPSC is the smallest, with an appropriation of \$127 million for Fiscal Year 2019.

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<sup>1</sup> Consumer Product Safety Commission, *About CPSC* ([www.cpsc.gov/en/About-CPSC/](http://www.cpsc.gov/en/About-CPSC/)) (accessed Mar. 27, 2019).

<sup>2</sup> Consumer Product Safety Commission, *Who We Are - What We Do for You* ([www.cpsc.gov/en/Safety-Education/Safety-Guides/General-Information/Who-We-Are---What-We-Do-for-You/](http://www.cpsc.gov/en/Safety-Education/Safety-Guides/General-Information/Who-We-Are---What-We-Do-for-You/)) (accessed Mar. 27, 2019).

<sup>3</sup> Pub. L. No. 92-573 (1972).

<sup>4</sup> Pub. L. No. 86-613 (1960).

<sup>5</sup> Pub. L. No. 110-314 (2008).

## II. FISCAL YEAR 2020 BUDGET REQUEST

CPSC has requested \$127 million for Fiscal Year 2020. This funding level is the same as what was enacted for Fiscal Year 2019. CPSC identifies several initiatives that would allow it to identify emerging risks and develop a better understanding of product dangers, such as gathering injury data from urgent care centers in addition to emergency departments and including e-commerce platforms in its marketplace analysis.<sup>6</sup> These particular activities, however, would not be funded under the proposed budget.

## III. NOTABLE TOPICS SUBJECT TO CPSC OVERSIGHT

### A. Furniture Tip-Over

Furniture tip-overs are a significant hazard, particularly for households with children. According to CPSC data, a falling television, piece of furniture, or appliance kills a child every two weeks and sends approximately 17,300 children to emergency rooms each year.<sup>7</sup> In 2016, following at least 8 fatalities, CPSC and IKEA recalled 17 million dressers.<sup>8</sup> In 2017, an IKEA dresser that had not been recalled fell onto a toddler and killed him – a dresser that remains on the market.<sup>9</sup> CPSC currently has no mandatory standards to prevent furniture tip-overs.

### B. Window Coverings

Despite several voluntary standards adopted by industry, window blind cords continue to be a persistent danger for children, resulting in an average of approximately 10 deaths each year.<sup>10</sup> The most recent voluntary standard requires inaccessible cords for stock products, but does not include custom products, which account for 20 percent of the market.<sup>11</sup> CPSC began

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<sup>6</sup> Consumer Product Safety Commission, *Fiscal Year 2020 Performance Budget Request to Congress* (Mar. 18, 2019).

<sup>7</sup> Consumer Product Safety Commission, *Product Instability or Tip-Over Injuries and Fatalities Associated with Televisions, Furniture, and Appliances: 2016 Report* (Aug. 2016).

<sup>8</sup> Consumer Product Safety Commission, *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* (Nov. 21, 2017) ([www.cpsc.gov/Recalls/2017/ikea-reannounces-recall-of-malm-and-other-models-of-chests-and-dressers-due-to-serious](http://www.cpsc.gov/Recalls/2017/ikea-reannounces-recall-of-malm-and-other-models-of-chests-and-dressers-due-to-serious)).

<sup>9</sup> *Ikea Still Sells a Hemnes Dresser Linked to a Child's Death*, Consumer Reports (Jan. 9, 2019) ([www.consumerreports.org/furniture/ikea-still-sells-hemnes-dresser-linked-to-childs-death/](http://www.consumerreports.org/furniture/ikea-still-sells-hemnes-dresser-linked-to-childs-death/)).

<sup>10</sup> Bridget Onders et al., *Pediatric Injuries Related to Window Blinds, Shades, and Cords*, Pediatrics (Jan. 2018) (based on reported deaths and injuries from 1996 to 2012).

<sup>11</sup> *Cordless Standard for 'Stock' Window Blinds to Proceed*, Bloomberg BNA (Feb. 18, 2017) ([www.bna.com/cordless-standard-stock-n57982084071/](http://www.bna.com/cordless-standard-stock-n57982084071/)).

work in 2014 on a mandatory standard to require all window coverings to be cordless or have inaccessible cords, but there has been little progress.

### **C. Portable Generators**

On average, 73 people die each year from carbon monoxide exposure to generator exhaust.<sup>12</sup> CPSC began work on a mandatory standard for portable generators in 2016.<sup>13</sup> Two voluntary industry standards have been subsequently implemented, however, CPSC's mandatory standard has yet to be finalized. Some argue that relying on voluntary standards with different safety requirements may result in more dangerous products remaining in the marketplace than if a single, enforceable standard were in place.<sup>14</sup>

### **D. Section 6(b) Disclosure Requirements**

Section 6(b) of the Consumer Product Safety Act restricts CPSC's ability to publicly disclose certain information by requiring it to provide manufacturers notice and an opportunity to review the information prior to its publication.<sup>15</sup> Other federal agencies are not subject to the same statutory restrictions. CPSC Commissioner Robert Adler criticized the rule stating, "Section 6(b)'s cumbersome procedures and unnecessary delays put consumers' lives and limbs at risk by requiring CPSC to restrict the flow of critical safety information to the public."<sup>16</sup>

### **E. E-Commerce**

E-commerce platforms have created new purchasing and distribution channels for consumer products, as well as new challenges for ensuring a safe marketplace. Online classified sites allow consumers to buy and sell used products, but these sites may not prevent recalled products from being sold.<sup>17</sup> Direct-to-consumer sales, in which a product is shipped directly from a manufacturer to an individual consumer, may escape inspection at ports, allowing

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<sup>12</sup> Consumer Product Safety Commission, *Incidents, Deaths, and In-Depth Investigations Associated with Non-Fire Carbon Monoxide from Engine-Driven Generators and Other Engine-Driven Tools, 2005-2017* (June 2018).

<sup>13</sup> Consumer Product Safety Commission, *Safety Standard for Portable Generators*, 81 Fed. Reg. 83556 (Nov. 21, 2016) (proposed rule).

<sup>14</sup> Letter from American Academy of Pediatrics et al. to Consumer Product Safety Commission (Oct. 5, 2018).

<sup>15</sup> 15 U.S.C. § 2055(b).

<sup>16</sup> Consumer Product Safety Commission, *Statement of Acting Chairman Robert S. Adler on the Notice of Proposed Rulemaking Regarding an Amendment to the Regulation on Information Disclosure Under Section 6(b) of the Consumer Product Safety [Act]* (Feb. 14, 2014) ([www.cpsc.gov/about-cpsc/commissioner/robert-bob-s-adler/statements/statement-acting-chairman-robert-s-adler-0](http://www.cpsc.gov/about-cpsc/commissioner/robert-bob-s-adler/statements/statement-acting-chairman-robert-s-adler-0)).

<sup>17</sup> *Recall Roulette*, ABC News ([abcnews.go.com/2020/fullpage/recall-roulette-flawed-product-recall-system-27086286](http://abcnews.go.com/2020/fullpage/recall-roulette-flawed-product-recall-system-27086286)) (accessed Apr. 1, 2019).

dangerous products to enter the country illegally.<sup>18</sup> Additionally, e-commerce sites can serve as platforms for counterfeit goods: a recent Government Accountability Office (GAO) report found that 20 of 47 products it had purchased from third-party sellers on e-commerce sites were counterfeit, raising questions about their safety.<sup>19</sup>

#### **F. Internet of Things**

Many consumer products are being developed with internet connectivity, linking them to the internet of things (IoT). IoT devices raise numerous policy questions relating to cybersecurity, which in turn raise concerns about product safety. Connected consumer products can be susceptible to physical safety hazards that result from hacking or faulty software. For example, malware on a connected toaster could cause it to overheat and catch fire. Earlier this year, security researchers were able to hack an electric scooter and control its acceleration and braking.<sup>20</sup> CPSC has recently begun to study IoT safety issues.<sup>21</sup>

#### **G. Recalls and Enforcement**

Over the last three years, CPSC recall actions have diminished. CPSC issued 258 recalls in 2018, 280 recalls in 2017, and 332 recalls in 2016.<sup>22</sup> At the same time, a survey of children's product recalls found that more incidents were reported prior to a recall being issued, suggesting a longer timeline for CPSC to investigate and act on recalls.<sup>23</sup>

CPSC has emphasized improving recall effectiveness to get dangerous products out of the marketplace.<sup>24</sup> To be successful, a recall must reach consumers who own the recalled product. In addition to issuing fewer recalls in 2018, CPSC also publicized fewer of those recalls on its social media channels than in previous years.<sup>25</sup> CPSC has also faced criticism from its own

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<sup>18</sup> Consumer Product Safety Commission, *Potential Hazards Associated with Emerging and Future Technologies* (Jan. 18, 2017).

<sup>19</sup> Government Accountability Office, *Intellectual Property: Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeits Market* (Jan. 2018) (GAO-18-216).

<sup>20</sup> *A Popular Electric Scooter Can Be Hacked to Speed Up or Stop*, Wired (Feb. 12, 2019) ([www.wired.com/story/xiaomi-scooter-hack/](http://www.wired.com/story/xiaomi-scooter-hack/)).

<sup>21</sup> Consumer Product Safety Commission, *Statement of Commissioner Elliot F. Kaye Regarding a Framework of Safety for the Internet of Things* (Jan. 31, 2019) ([www.cpsc.gov/s3fs-public/A\\_Framework\\_for\\_Safety\\_Across\\_the\\_Internet\\_of\\_Things\\_1-31-2019\\_0.pdf](http://www.cpsc.gov/s3fs-public/A_Framework_for_Safety_Across_the_Internet_of_Things_1-31-2019_0.pdf)).

<sup>22</sup> Consumer Product Safety Commission, *Recall List* ([www.cpsc.gov/recalls/](http://www.cpsc.gov/recalls/)) (accessed Mar. 28, 2019).

<sup>23</sup> Kids in Danger, *A KID Report: 2018 Children's Product Recalls* (Mar. 2019) ([kidsindanger.org/wp-content/uploads/2019/03/KID-2019-Recall-Report.pdf](http://kidsindanger.org/wp-content/uploads/2019/03/KID-2019-Recall-Report.pdf)).

<sup>24</sup> Consumer Product Safety Commission, *Recall Effectiveness* ([www.cpsc.gov/Recall-Effectiveness](http://www.cpsc.gov/Recall-Effectiveness)) (accessed Mar. 27, 2019).

<sup>25</sup> See note 22.

commissioners for allowing companies to remove dangerous products from the marketplace without using the term “recall.”<sup>26</sup>

CPSC enforcement has scaled back in other areas as well. CPSC has imposed fewer civil penalties in each of the last four years; the three penalties that were imposed in 2018 amounted to be the fewest assessments in decades.<sup>27</sup>

#### **IV. WITNESSES**

The following witnesses have been invited to testify:

##### **PANEL ONE**

**The Honorable Ann Marie Buerkle**  
Acting Chairman  
Consumer Product Safety Commission

**The Honorable Elliot F. Kaye**  
Commissioner  
Consumer Product Safety Commission

**The Honorable Robert S. Adler**  
Commissioner  
Consumer Product Safety Commission

**The Honorable Dana Baiocco**  
Commissioner  
Consumer Product Safety Commission

**The Honorable Peter A. Feldman**  
Commissioner  
Consumer Product Safety Commission

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<sup>26</sup> Consumer Product Safety Commission, *Dissenting Opinion of Commissioner Robert S. Adler and Commissioner Elliot F. Kaye in the Matter of Britax Child Safety, Inc. CPSC Docket 18-1* (Nov. 2018) ([www.cpsc.gov/s3fs-public/050--2018-11-09-Dissenting-Opinion-of-Commissioners-Adler-and-Kaye.pdf](http://www.cpsc.gov/s3fs-public/050--2018-11-09-Dissenting-Opinion-of-Commissioners-Adler-and-Kaye.pdf)).

<sup>27</sup> Consumer Product Safety Commission, *News Releases* ([www.cpsc.gov/Newsroom/News-Releases/](http://www.cpsc.gov/Newsroom/News-Releases/)) (accessed Mar. 27, 2019).

**PANEL TWO**

**Rachel Weintraub**

Legislative Director and General Counsel  
Consumer Federation of America

**Nancy Cowles**

Executive Director  
Kids in Danger

**Remington A. Gregg**

Counsel for Civil Justice and Consumer Rights  
Public Citizen

**Mike Gentine**

Counsel  
Schiff Hardin LLP