



June 4, 2021

The Honorable Carolyn Maloney
Chair
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable James Comer
Ranking Member
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, DC 20515

Re: Consumer Groups Applaud Hearing on “Fisher-Price’s Rock ‘n Play Sleeper and Failures in Infant Product Safety”

Dear Chairwoman Maloney and Ranking Member Comer,

As organizations dedicated to protecting consumers from unsafe products, we write both to applaud your convening this hearing and highlight weaknesses in the U.S. Consumer Product Safety Commission’s statutory authority that should be strengthened to prevent additional tragedies associated with infant sleep and other consumer products.

As an initial matter, it is important to note that the U.S. Consumer Product Safety Commission (CPSC) took an important step on June 2, 2021, when it voted to adopt a mandatory safety standard that would regulate products marketed or intended to be sleep products for infants up to five months old. As the Rock ‘n Play situation showed, these products are currently unregulated and have led to at least 94 infant deaths in inclined sleep products alone.¹ The CPSC estimates that one in three families with newborns own one or more of the items that would have been regulated by the rule.² When this rule is fully in effect, it will make it easier for families to know that the sleep products they purchase and use for their babies have been tested for safety. Had it been in place earlier, the Rock ‘n Play would never have made it to market.

As you deliberate on how best to strengthen the consumer product safety system, we believe the following legislative solutions would make the agency work more effectively to protect consumers.

First, the CPSC is hamstrung by Section 6(b) of the Consumer Product Safety Act. Section 6(b) is a secrecy provision, unique to the CPSC, that restricts the agency’s ability to release timely

¹ See *Infant Inclined Sleepers: The Rise and Fall of a Dangerous Baby Product*, Consumer Rep. (June 4, 2021) <https://www.consumerreports.org/product-safety/inclined-sleeper-safety/>.

² See U.S. Consumer Product Safety Commission, Briefing Package on “Final Rule: Safety Standard for Infant Sleep Products,” (May 12, 2021) https://cpsc.gov/s3fs-public/FinalRuleSafetyStandardforInfantSleepProducts.pdf?7s3LjLkZ4Vm_0GWP2.vstoEzBylG8xg.

safety information to the public. Under Section 6(b), the CPSC is required to give a company an opportunity to comment on a proposed disclosure of information that names said company—or even information that would allow the public to “readily ascertain” the manufacturer or product. If the company has concerns about the wording or the substance of the disclosure, it can object. The CPSC must either accommodate the company’s concerns or inform them that they plan to disclose the information over its objections. The company can then sue the Commission to stop it from disclosing the information. Thus, Section 6(b) creates a time-consuming process between CPSC and the affected company that often delays or stops the release of important consumer safety information. Since the procedures outlined in Section 6(b) pertain to any type of information disclosure, the agency must undergo the same process before releasing information through other mechanisms than a press release or safety advisory, such as through a Freedom of Information Act (FOIA) request.

Section 6(b) made news in 2019 when it was disclosed that the Fisher Price Rock ‘n Play and infant inclined sleep products from other companies were linked to infant deaths and injuries, but the CPSC was slow to release helpful information about the product, which led to additional deaths.³ While the CPSC and companies negotiated the wording of the press release, consumers unknowingly continued to place their infants in an unsafe product. Consumer advocacy groups have sought the repeal of Section 6(b) for years and the tragic consequences from the Fisher Price Rock ‘n Play exemplifies why repeal of this provision is so vital. A June 2019 report by Public Citizen explains in greater detail the dangerous consequences of Section 6(b) in June of 2019.⁴

Second, Congress should revise Section 15(b) of the Consumer Product Safety Act (CPSA). Section 15(b) includes an affirmative obligation to report death and injuries to the CPSC. However, the Rock ‘n Play incident illustrates that companies are not immediately and effectively reporting deaths and injuries associated with their products to the Commission. And even when they do, the information is slow to emerge, thereby endangering the public who are unaware of the safety hazard. Section 15(b) must be strengthened so that the consequences for failing to report under this provision are more significant, thereby giving companies a greater incentive to abide by the letter of the law. Civil penalties, levied by the CPSC under CPSA Section 20(b) should not have a cap that arbitrarily limits the amount that the CPSC can assess against an offending company.

Third, the CPSC needs vastly more resources to effectively fulfill its mission to protect consumers from hazards posed by unsafe products. We support the request made by CPSC Acting Chair Bob Adler to increase the agency’s funding to receive at least \$281 million and an additional one-time allocation of \$89 million.⁵ The increased funding would enable the CPSC to expand its testing capabilities, modernize testing and data collection infrastructure, and increase

³ See Rachel Rabkin Peachman, *While They Were Sleeping: How a Product Tied to 73 Infant Deaths Came to Market and Stayed for a Decade, as Government and Industry Know the Risks*, CONSUMER REPORTS (Dec. 29, 2019) <https://www.consumerreports.org/child-safety/while-they-were-sleeping/>.

⁴ See Remington A. Gregg, *Delay and Secrecy: How Section 6(b) of the Consumer Product Safety Act Keeps Consumers in the Dark*, PUB. CITIZEN (June 24, 2019), https://mkus3lurbh3lbztg254fzode-wpengine.netdna-ssl.com/wp-content/uploads/6b-Report-2019-06-24_FINAL.pdf.

⁵ Letter from Robert Adler, Acting Chair, CPSC, to Rosa DeLauro, Chairwoman, U.S. House of Representatives Comm. on Appropriations 1, 2 (Mar. 1, 2021) (www.cpsc.gov/s3fs-public/Reinventing_CPSC_-_DeLauro.pdf).

its presence at major U.S. ports, among other things. Additional funding would also provide the CPSC with the resources necessary for improved oversight of recalls, which would increase the number of recalled products that are removed from the marketplace and homes.

Thank you for your consideration of these legislative solutions. We look forward to working with Congress to strengthen the CPSC and prevent product related deaths and injuries.

Sincerely,

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