



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 them¹, we know that they take a long time², we know that the remedies are not adequate to encourage participation in the recall³, and we know that consumers are not aware of recalls and not taking actions to remove recalled products from their homes⁴.

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

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 day 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.

Requirements under current Fast Track Program that are not in FASTER Act

Currently, the Fast Track Program requires the following information from reporting companies⁷: 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 following⁸, 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.

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 following¹⁰ 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.

¹⁰ “Full Report” requirements under [16 C.F.R. § 1115.13\(d\)](https://www.law.cornell.edu/cfr/text/16/1115.13#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, distributors, and retailers of the fast track recall plan."