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Written Testimony of
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For the
U.S. Consumer Product Safety Commission
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Public Citizen appreciates the opportunity to submit testimony with our recommendations for priorities that the U.S. Consumer Product Safety Commission (CPSC or Commission) should add to its agenda for Fiscal Years 2021 and 2022.¹ Public Citizen is a national non-profit organization with more than 500,000 members and supporters. We represent the public interest through legislative and administrative advocacy, litigation, research, and public education on a broad range of issues that include product safety and consumer rights in the marketplace.

Public Citizen is eager to see the CPSC increase transparency through less reliance on Section 6(b) of the Consumer Product Safety Act, increase the use of technology to advance the agency's mission, swiftly finalize rulemaking on important issues that have languished at the agency, and advocate strongly for more funding for the agency to carry out its important mission.

I. **The Commission should begin documenting how Section 6(b) of the Consumer Product Safety Act contributes to the agency's lack of transparency and places the public at risk.**

Section 6(b) of the Consumer Product Safety Act (herein 6b) restricts the CPSC from publicly disclosing any information from which the public can readily ascertain the identity of a manufacturer or private labeler of a consumer product unless certain criteria are met. This often slows the flow of pertinent information from getting to the public. As a result, 6(b) has restrained the CPSC's ability to proactively disclose safety hazards to the public. Section 6(b) is outdated, anti-consumer, and intended solely to protect the reputation of businesses that put harmful products on the market.

¹ Notice of Public Hearing, Commission Agenda and Priorities, 86 FR 12908 (March 5, 2020).

When the CPSC seeks to release information about product safety hazards in which the public can readily identify the product or manufacturer, it must first notify the company and allow it to agree to release the information. If the company objects, and the agency decides to overrule the company and release the information, Section 6(b) gives the manufacturer the right to go to federal court to stop the release, which forces the agency into lengthy and expensive litigation, and delays the release of safety information to the public still further. The inevitable result: the CPSC is forced to issue vague warnings that fail to prevent avoidable injuries and deaths or issue no information at all.

Section 6(b) frustratingly ties the hands of the CPSC, which has had tragic real-world consequences. Last year, Consumer Reports found that the CPSC knew that the Fisher Price Rock ‘n Play and similar products were linked to infant deaths, but failed to inform the public about the risks of these specific products.² If the agency had sought to “name names,” under existing law, it could have been pulled into protracted litigation, which could have further delayed the release of safety information to parents. Rather than risk these delays, in May 2018, the CPSC issued a “consumer alert”—essentially a press release—that cautioned parents against the hazards of allowing babies to sleep unrestrained in “inclined sleep products.”³ Normally, such a generic name would not provide enough information to a consumer to know that a specific product may be in their home, but that is especially true for busy, sleep-deprived parents. As of March 2020, these infant inclined sleep products have been linked to 73 deaths.⁴

The 6(b) provision not only muzzles the CPSC from releasing specific safety information, it prevents journalists, consumer advocates, and government watchdogs from obtaining information about the agency’s unfortunately all too frequent failures to get dangerous products out of our homes. A recent Public Citizen report found that 6(b)’s restrictions are time consuming and waste money that could be better spent keeping consumers safe.⁵

Earlier this year, U.S. Rep. Bobby Rush (D-Ill.) introduced the Safety Hazard and Recall Efficiency (SHARE) Information Act. This legislation would repeal the problematic provision of Section 6(b), which gives product manufacturers an effective veto-power over the CPSC by allowing them to go to court to stop the release of critical health and safety information.

² Rachel Rabkin Peachment, *How a Product Tied to 73 Infant Deaths Came to Market and Stayed for a Decade, As Government and Industry Knew the Risks*, CONSUMER REPORTS (December 29, 2019), <https://www.consumerreports.org/child-safety/while-they-were-sleeping/>.

³ Remington A. Gregg, *Delay and Secrecy: How Section 6(b) of the Consumer Product Safety Act Keeps Consumers in the Dark* (June 24, 2019), available at <https://www.citizen.org/article/delay-and-secrecy/?eType=EmailBlastContent&eId=69ca5714-d2bf-46ad-af54-a518ed13b9ad>

⁴ *Infant Inclined Sleepers: The Rise and Fall of a Dangerous Baby Product*, CONSUMER REPORTS, <https://www.consumerreports.org/product-safety/inclined-sleeper-safety/>.

⁵ *Id.* at 3.

While we will work with Congress to repeal or at the very least reform 6(b), the Commission can play a role in increasing transparency into how often companies invoke 6(b) in order to prevent the release of critical health and safety information. We urge the Commission to: better track the use of this provision through yearly detailed reports on the number of times 6(b) has been invoked by a company and if that prevented the agency from releasing information; how many times 6(b) litigation has occurred; and whether the same companies repeatedly invoke 6(b) to avoid information disclosures.

II. The Commission must collaborate with technologists to more effectively carry out its responsibilities.

We are pleased that Congress required the Commission to create the Saferproducts.com database. The database serves a dual purpose. It gives consumers more information to enable them to avoid buying or continue to use dangerous products. The database also helps close the time gap between a manufacturer learning of a hazard and the information reaching consumers. While we continue to applaud the creation of the Saferproducts.gov, the website can become a more effective tool to avert death or injury to the public. Public Citizen has continuously urged the Commission to collaborate with technologists and innovators, including those who have experience in the private sector, to implement the recommendations that we have made to the Commission that include a non-exhaustive list of ideas we believe would make Saferproducts.gov more effective.⁶

In addition to implementing those recommendations, creating a more effective database requires expertise that we do not believe is currently housed at the Commission. We applaud Sen. Jerry Moran (R-KS) for introducing the CPSC CIO Parity Act,⁷ which would require the agency to hire a chief technologist who would help address this important issue among others, such as improving recall effectiveness rates, as well as transforming the Commission into a nimbler agency for our complex society.

III. The Commission should quickly finalize rulemaking that protect infants.

While we believe that most federal agencies should suspend rulemaking unrelated to the COVID-19 crisis for the duration of national emergency declaration, we believe that the below rules, which have the unanimous support of the entire Commission, should be finalized with all deliberate speed to protect the safety of our nation's infants.

⁶ Remington A. Gregg, *Comments on the Request for Information on Possible Improvements to Saferproducts.gov* (March 5, 2020)(on file with author) (We believe the CPSC's social media presence, for example, it's highly popular @twitter handle, shows that the agency can use technology effectively).

⁷ S. 1858, 116th Cong. (2019).

Inclined Sleep Products and Gates and Enclosures

Section 104 of the Consumer Product Safety Improvement Act (CPSIA) required the Commission to promulgate standards for durable infant and toddler products. Public Citizen strongly supports the Commission quickly finalizing the remaining Section 104 standards for infant sleep products and gates and enclosures.

The infant sleep proposed rule limits the incline of infant sleep products to a maximum of 10 degrees for products that are not already addressed by another safety standard. We are troubled that thirty-four months passed between the posting of the initial rule and the submission date for the revised proposed rule. During that timeframe, infants have been injured and died.⁸ We hope that the Commission's laudable decision to revise the 2017 rulemaking proposal will serve as a lesson learned in the future for it to heed the calls from the consumer protection advocacy community to propose adequately protective safeguards from the start. Moreover, we noted in comments submitted by Consumer Federation of America, Consumers Union (now Consumer Reports), Public Citizen, and U.S. PIRG (Consumer Groups) in response to the 2017 notice of proposed rulemaking that "Canada only allows up to a 7-degree angle in their sleep products."⁹ While we are heartened that the Commission has accepted Dr. Erin Mannen's recommendation to prohibit infant sleep products to an incline of no more than ten degrees, we urge you to not consider your job complete. We urge the Commission to add to its priorities studying the impact and efficacy of adopting Canada's more protective standard in order to determine whether further rulemaking is warranted.

The proposed rule for gates and enclosures was primarily developed by ASTM International with input from consumer advocates, industry, and the public. This noncontroversial rule should be immediately finalized.

Crib Bumpers

In 2016, the Commission directed staff to initiate rulemaking for crib bumpers, which was not included in the definition of what is considered a durable infant or toddler product in the CPSIA. In March 2020, the Commission unanimously agreed to advance rulemaking for a final crib bumper safety standard. Public Citizen urges the Commission to quickly finalize this rule.

⁸ Rachel Rabkin Peachman, *Inclined Sleeper Deaths Rise to 50 as Industry Continues to Sell the Products*, CONSUMER REPORTS (June 20, 2019), <https://www.consumerreports.org/child-safety/inclined-sleeper-deaths-rise-to-50-as-industry-continues-to-sell-the-products/> (according to Consumer Reports, four families "filed a joint lawsuit, alleging that their infants suffocated while in the Rock 'n Play Sleeper, with three of those deaths occurring between January and March 2019, just before Fisher-Price recalled the product.").

⁹ Consumer Groups Comments, June 21, 2017, *available at* <https://www.regulations.gov/document?D=CPSC-2017-0020-0006>.

IV. The Commission should become stronger advocates for increased agency funding.

CPSC has jurisdiction over more than 15,000 consumer products. Its staggeringly low budget—at less than \$130 million—makes it difficult for the agency’s dedicated staff to carry out its mission. We believe that every Commissioner has an obligation to strongly advocate for more funding. Without more substantially more funding, the agency will continue to struggle to meet all the demands that statutory requirements and the public place on it.

V. Conclusion

The Commission faces many challenges and we know that agency staff work tirelessly to carry out its mission to protect the public from unreasonable injury or death. However, the Commission must do more, including promulgating robust rules and standards to protect consumers, proactively working to get ahead of product safety hazards, and engaging with consumer advocates early and often on issues that they are seeing are problematic. Most importantly, we urge every Commissioner—current and those who may join the Commission in the future—to put science, consumer safety, and commonsense safeguards before politics and unbending ideology.

We believe that only if the Commission proceeds with a mandate to prioritize consumer safety above all else—including above the interests of business and industry—can it truly fulfill its decree to advance product safety and protect the lives and health of Americans.

Thank you for the opportunity to provide comments and we look forward to continuing to work together to improve consumer safety. If you have questions, please do not hesitate to contact me at rgregg@citizen.org or 202.454.5117.