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Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, Maryland 20814

**Comments of Nancy A. Cowles, Executive Director, Kids In Danger
To the U.S. Consumer Product Safety Commission on Agenda and Priorities for FY 2022**

Thank you for the opportunity to submit comments on the U.S. Consumer Product Safety Commission's (CPSC) agenda and priorities for Fiscal Year 2022. Kids In Danger (KID) is dedicated to protecting children by fighting for product safety. Our mission is to save lives by enhancing transparency and accountability through safer product development, better education, and stronger advocacy for children.

I would like to present KID's recommendations for the coming fiscal year agenda and priorities in three groupings: Ensuring **safer products, accountability** for products already in the marketplace and **transparency** to provide all possible information to consumers, the regulated industry, and groups such as standard setting bodies, working for the same goal as the CPSC: safer products.

But first, the overwhelming issue for the CPSC is responding to COVID-19 and assuring that Americans are safe from dangerous products, both those unique to the pandemic, and those everyday items that may pose new dangers now or be overlooked during such a stressful time. We urge the CPSC to continue to find ways to assess and evaluate injury patterns, such as the recent report on COVID-19, *Effect of the Novel Coronavirus Pandemic on Preliminary NEISS Estimates*.

In addition, with the support from the one-time appropriation of \$50,000,000, the CPSC should develop an effective response for increasing coverage of the ports, and the needed updates in compliance and laboratories to respond to those increased findings. I have also included throughout this testimony other related projects that would improve the CPSC's ability to keep children and all consumers safe – in the pandemic and afterwards too.

Ensuring Safe Products in the Marketplace

First, we must work to improve the safety of products as they enter the marketplace and our homes. This includes standards development, resources for industry who want to comply with requirements, data and analysis to spot emerging hazards, and a robust engagement with consumers and industry to address new areas including connected products, AI and machine learning integrated into products, as well as products that might meet current standards, but have potentially hazardous features that have yet to be addressed.

Since 2010, through the implementation of the Consumer Product Safety Improvement Act (CPSIA) and **Danny's Law or Section 104**, the CPSC has successfully developed strong mandatory standards for 25 types of durable infant and toddler products. That is a little behind the goal in the legislation of two standards every six months, but far ahead of any previous attempt by the agency to create strong safety standards. We applaud the CPSC for the commitment to this process and the amount of time, energy, research, and knowledge that CPSC staff dedicates to this task. We urge the CPSC to continue to prioritize this work, giving staff the time, resources and support they need to develop strong standards that will reduce injuries and deaths from children's products. This includes the two vital standards currently in development, **Crib Bumpers/Liners, and Infant Sleep Products** as well as continuing to monitor the market as new products, not covered by standards, enter the field. Because the CPSC chose to develop standards rather than ban products known to be unsafe such as padded crib bumper pads and infant inclined sleepers, it is imperative that the resulting standards keep these products out of homes and off store shelves. A standard that doesn't fully address the risk and gives a false sense of safety to parents is more dangerous than no standard.

The Notice of Proposed Rulemaking (NPR) on **Infant Sleep Products**, published in 2019, when finalized, will expand protection for infants by covering all products intended for infant sleep that are not covered by an existing rule. Parents already believe that all infant products are tested to a strong standard and yet new sleep products enter the market continuously without any standard. Having a standard in place that eliminates hazards such as inclines over 10° is a great step forward for safety. We hope that in FY 2022, with the new standard in place, the CPSC will prioritize eliminating remaining inclined sleep products. The CPSC should recall any that remain in homes or on the market. In addition, guidance should be added to the CPSC's Small Business Guidance webpage to discourage small companies from entering this market, unaware of the research that has found this type of product unsafe. Despite suggesting correcting this this last year, when a user selects "infant inclined sleep product" today as the type of product in the Regulatory Robot, the information shares the proposed rule for infant inclined sleep product from 2017 rather than the 2019 proposed rule for infant sleep products that prohibits inclines.

We urge the CPSC to continue add new products and draft standards under the Section 104 rulemaking process. This will require the CPSC to evaluate new products as they enter the marketplace or preferably, develop standards that would apply before new untested products could be sold.

The CPSC is also at work on a standard to **prevent furniture tip-overs**. You have heard today from parents who have lost children to this hazard and now tragically, have new parents joining their ranks. It is heartbreaking and inexcusable that delays from industry have avoided major needed changes to the standard for over 20 years. We urge CPSC to prioritize their work on a strong standard to be enacted as soon as possible.

Parents are usually aware of choking hazards. **Ingestion hazards** are less understood but present clear dangers. These include button cell batteries, laundry packets, small powerful magnets, liquid nicotine, and certain polymer balls that expand with fluid. Serious internal injuries, poisoning, and death can be

the result. The CPSC should encourage manufacturers to use technologies that eliminate or further ameliorate the ingestion risk of these hazards.

The week I was introduced to Krista Hamsmith and heard Reese's story; I knew action was needed now to prevent button batteries from killing more children. I had heard just the week before from a colleague of our founder Linda Ginzler whose toddler daughter had similarly swallowed a battery that fell out when a cheap party favor her older daughter had gotten at a birthday party fell apart. Unfortunately, these finger lights, despite their popularity with children, are not considered toys so didn't have to meet the toy standard. And another parent called KID and the CPSC Consumer Ombudsman to report a little girl's tutu filled with tiny sparkling lights – and a battery case that fell apart and released a battery. Both of these children are ok, but not because the batteries were safe.

One other topic I would like to raise as a new priority for CPSC involves drowning prevention. The CPSC has been a leader in this area addressing pool and spa drain hazards and other drowning issues through Pool Safely. I have recently become aware of another drowning hazard that I would like to raise with you today. That is the proliferation of 'learn to swim' devices that might have the opposite effect. KID met Nicole Hughes in 2019. Her son Levi drowned in June 2018, the same day that Bode Miller's daughter Emmy drowned. The two families work together to reduce the risk of drowning. Nicole began to notice that the children who had drowned in pools, outside of times when they were expected to be near water, had almost always been wearing a device such as a Puddle Jumper in the hours or days before. When worn in water, it positions children upright. Parents may use it for extra security when at the pool. But it has two properties that may cause it to lead to drowning – it holds the child upright in the water and gives a false sense of security. For toddlers who have no concept of floatation or drowning, it encourages them to see the water as safe and removes a healthy fear of water that might keep them from jumping in when they are unattended. This product is certified as a floatation device but is being marketed as a learn to swim device, which it is not. We know that safety devices sometimes have unintended consequences and I believe that might be the case here. I know it is hard to address a product as a hazard when it is not present at the injury or death, but I urge CPSC to look into the use and labeling of this product and other 'learn to swim' devices. Your own Consumer Ombudsman Jonathan Midgett has spoken with Nicole and others addressing this issue and can be an asset to CPSC's understanding and action on the issue.

The CPSC's report on injuries during COVID-19, *Effect of the Novel Coronavirus Pandemic on Preliminary NEISS Estimates* showed that ingestion injuries from these batteries rose 93% for young children from the same period in 2019. Australia recently adopted a national standard, similar to the requirements in ASTM F963 Toy Standard, that all casings for button batteries require a tool to open. The CPSC could expand that protective requirement to all children's products under Section 104 and should work with industry to take similar action for any products containing these batteries.

Like COVID-19, new challenges to product safety can arise seemingly out of nowhere. But the CPSC needs to be ready and nimble to respond. The CPSC should continue to build their capacity for addressing hazards with connected products, including those with AI and machine learning capabilities. The Regulatory Robot, which can be a great tool for small companies should continue to be prioritized with updates and improvements. And while meeting the CPSC's regulations is critical, additional focus

on hazard analysis, human factors and end user focused design should be provided to avoid new hazards or well-known hazards appearing in new products.

Accountability for Product Safety

Once products are on the market, the CPSC has the tools to hold companies accountable to keep consumers safe. This includes the ability to conduct mandatory recalls when necessary and assessing civil penalties when companies fail to comply with the agency's regulations. While there are barriers in this area, such as Section 6(b) of the Consumer Product Safety Act, more often it appears the agency holds back the use of these tools while waiting for the company to agree to a voluntary recall. We urge the CPSC to make greater use of the tools it has today. Relying on education campaigns or vague warnings of hazards while waiting for companies to voluntarily do what is right has led to unnecessary injuries and deaths. We applaud actions the CPSC has begun to take such as beginning action on mandatory recalls when needed and using civil penalties. We hope to see that continue into FY 22.

Since 2001, KID has been reporting on **children's product recalls**. Last month, we released our report on 2020 recalls. We found that children's product recalls have seen a downward trend over the past eleven years. The last three years – 2018 to 2020? are the lowest number of recalls since at least 2001. Our research found a rise in recalls of unstable dressers and other furniture in 2020. Fourteen out of 63 recalled children's products (22%) were furniture items. Eleven products of the furniture category were recalled due to tip-over hazard. We also found a spike in the number of lead recalls – nine in 2020 compared to one in 2019.

The CPSC only posted 49% of children's product recalls on its Facebook page, 49% on Twitter, and 10% on Instagram. Although the 10% rate for Instagram is higher than the previous year which was a mere 5%, the rates for Facebook and Instagram decreased slightly since 2019, which were 52% and 59%, respectively. KID recommends that the CPSC post all recalls on social media in order to increase recall effectiveness.

The goal of a recall is to remove unsafe products from consumer use.

Innovation is needed in the area of recall effectiveness. Right now, much of the burden from recalls falls on consumers – listening to the news, filling out forms, waiting for and installing repairs. However, consumers are not the ones responsible for recalled products. The CPSC should work with stakeholders to build on past efforts and keep moving the needle towards effective recalls.

Some Monthly Corrective Action Plan Reports are aggregated and posted on the CPSC website but posting is voluntary and most recalls are not included. It provides little insight into recall effectiveness.

The CPSC should use all the tools available to remove dangerous products from the market through recalls and require companies to use stronger efforts to reach consumers with the news of the recall and adequate incentives to participate and remove the dangerous products from homes.

Transparency to improve product safety

One of the most innovative tools required by the CPSIA is a product database for consumers' incident reporting. **SaferProducts.gov** has great potential to educate consumers on hazards and recalls as well as provide vital information to the CPSC and manufacturers about product hazards. Unfortunately, we have seen the number of reports drop precipitously since its launch in 2011. Reports published on the site have dropped 55% from 2012 to 2019 – the first and last full years KID has reviewed. Our recent analysis for instance showed 3,058 reports of incidents with nursery products. Yet in 2019, CPSC reported through its annual nursery product report that there were 60,600 emergency room visits involving nursery products that year alone. That is a huge gap and just one potential source of reports. In addition, while many reports are processed in a timely matter, others take more than a year to be published. And, because of transparency limitations, we don't have the exact number, we do know that as many as half of the reports made to SaferProducts.gov never get published. The CPSC should prioritize this database, meet the obligations of the underlying legislation, and make all efforts to increase consumer awareness and use of the site. The agency should also use the data to provide reports and postings on social media for consumers, both to increase awareness and to educate the public on the hazards posed by the particular products.

Perhaps the biggest barrier to transparency is Section 6(b) of the Consumer Product Safety Act. Section 6(b) restricts the CPSC's ability to warn the public about product hazards and keeps consumers in the dark about dangerous products they have in their homes and use daily with their families.

The shadow of the provision, amplified by the 2019 report of a data breach, is much larger than the Act itself. Businesses use the cover of 6(b) to withhold already public information and for information the Act was never intended to cover. We urge the CPSC, while waiting for Congress to repeal the provision, to look closely at the way Section 6(b) is implemented at the agency – from the FOIA office to the communications or compliance divisions and bring it more in line with the law itself. This can weaken its negative impact on public safety.

Adequate Funding to Fulfill Mandate

This is a very full list of priorities and I know the CPSC has also been aggressive in planning to bolster the agency's budget to better meet its mission. All stakeholders agree -- the CPSC does not have adequate resources to fulfill its mandate of protecting consumers from unreasonable risk of harm. To oversee imports at our ports, follow up on reports of harm, develop and enforce strong standards, conduct robust recall activities, and reach consumers with important safety information, we would urge the CPSC to request and Congress to grant a budget of no less than \$350 million. We believe that for too long this agency has been forced to compromise on the safety of consumers, especially children, based on funding. For too long, presenters at this hearing have listed the many areas that should be priorities. A fully funded CPSC can act on those that meet its mission and strengthen the safety of children and consumers in the United States.

Conclusion

Again, thank you for the opportunity to provide comments. We look forward to working with the CPSC in addressing these concerns and others that may arise.

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