

# Held Back

Unfinished Consumer Product Safety  
Commission Rules, Class of 2007

| <b>SAFETY RULE</b>       | <b>DUE</b> | <b>STATUS</b> |
|--------------------------|------------|---------------|
| GENERATOR WARNING LABELS | 2007       | ON TIME       |
| CRIB SLAT ENTRAPMENT     | 1998       | DELAYED       |
| BED RAIL STRANGULATION   | 2001       | DELAYED       |
| BABY BATH SEATS          | 2002       | DELAYED       |
| FURNITURE FLAMMABILITY   | 2005       | DELAYED       |
| NONFUNCTIONING LIGHTERS  | 2006       | DELAYED       |
| MATTRESS FLAMMABILITY    | 2002       | ARRIVED 2002  |
| FOOTWEAR FLAMMABILITY    | 2003       | DELAYED       |
| CLOTHES FLAMMABILITY     | 2006       | DELAYED       |
| ROCARBON PACKAGING       |            |               |



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## **Acknowledgments**

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Public Citizen's Congress Watch  
215 Pennsylvania Ave. S.E.  
Washington, D.C. 20003  
P: 202-546-4996  
F: 202-547-7392  
<http://www.citizen.org>

## Introduction

Among the chief responsibilities of the Consumer Product Safety Commission is to “develop uniform safety standards for consumer products.”<sup>1</sup> But the agency rarely attempts to create safety rules that it has the power to enforce. In the rare instances in which the CPSC seeks to create these rules, it typically moves at a creeping pace.

By the CPSC’s own accounting, the seven unfinished rules that the agency has worked on at least since 2004 – some dating to the 1990s – cover hazards that cause more than 900 deaths and more than \$460 million in property losses annually. The CPSC has been considering these rules for an average of nearly a decade (9.6 years). An average of nearly six years has lapsed since the agency took its first formal rulemaking step, the Advance Notice of Proposed Rulemaking. The statute governing the CPSC calls on the agency to approve a final rule within 14 months of issuing this notice, except in unusual circumstances.

|   | When CPSC Began Studying Hazard | Years Elapsed Since Agency Began Studying Hazard* | Date ANPR Issued | Years Elapsed Since ANPR* |
|---|---------------------------------|---|------------------|---------------------------|
| Upholstered furniture                         | 1994                            | 13.2  | 10/2003          | 4.3                       |
| Bedclothes Flammability                       | 10/2001                         | 6.3   | 1/2005           | 3.1                       |
| Mechanical Malfunction of Cigarette Lighters  | 11/2001                         | 6.2   | 4/2005           | 2.8                       |
| Amendments to the Clothing Textile Standard** | 9/2002***                       | 5.4   | 9/2002           | 5.4                       |
| Bed Rail Strangulation                        | 2/1998                          | 10.0  | 10/2000          | 7.4                       |
| Crib Slat Entrapment                          | 3/1995                          | 12.9  | 12/1996          | 11.2                      |
| Baby Bath Seats                               | 1994                            | 13.2  | 8/2001           | 6.5                       |
| Average                                       |                                 | 9.6   |                  | 5.9                       |

\* Years lapsed calculated from the end of the month listed (or year listed in cases in which month of action is not available) through the end of February 2008.

\*\* In February 2008, the CPSC announced that a Final Rule had been approved. The rule had not been published at month’s end.

\*\*\* Date agency began studying the rule is unavailable. The date of the ANPR is used here.

Some of the delays likely owe to the CPSC’s limited resources and to provisions in the law that encourage the agency to defer to voluntary standards adopted by industry groups. But, as the following examples illustrate, the CPSC also appears simply to lack a sense of urgency.

- **Bed Sheets/Blankets** (page 7-8 of this report). Fires involving bed sheets and blankets are responsible for an estimated 440 deaths, 2,230 injuries and \$273.9 million in property damage each year. The CPSC acknowledges that the failure to address this issue limits the effectiveness of its rule on mattress flammability, which the agency finally produced in 2007, after 11 years of deliberation. The CPSC’s pursuit of a bedclothes rule should be aided by the state of California’s groundbreaking work to set standards in this area. But the agency’s staff missed its own deadline to propose a final rule for Commission approval in early 2006, and still

has not proposed one. According to the CPSC's annual report, the agency did nothing in 2007 but "monitor the progress of California's efforts" and provide a "draft status report on project related activities."<sup>2</sup>

- **Cigarette Lighters** (pages 8-9). The cigarette lighter industry requested in 2001 that the CPSC adopt a mandatory rule to address the widespread non-compliance with an existing voluntary standard. Indeed, the agency subsequently found that at least 60 percent of all lighters fail to meet the voluntary standard, a problem it blames for two deaths, nearly 1,000 injuries and \$38 million in damage each year. But seven years after the industry's initial request, the agency still has not created a rule. Its 2007 annual report explains that staff in 2007 planned to "take action as directed by the Commission." The next sentence states, "[i]n 2007, no activities were directed by the Commission."<sup>3</sup>
- **Clothing Flammability** (pages 9-10). Widespread consensus exists among industry and consumer groups on the need to update the rule to reduce the flammability of clothing, which is implicated in 122 deaths and 3,822 injuries per year. The current rule – over fifty years old – is so obsolete that it requires testing the clothing-flammability implications of a dry-cleaning technique that the Environmental Protection Agency has banned. More than five years after the agency took its first formal step to create a rule, the public is still waiting. The CPSC disclosed in late February of this year that it has approved a Final Rule for clothing flammability, but the rule has not yet been published.

## **Cumbersome Procedures Stymie CPSC Safety Rulemakings and Create Bias Toward Weaker Industry Standards**

Ordinary federal rulemaking procedures require only that an agency issue a Notice of Proposed Rulemaking (NPR), receive written comments on the proposed rule, then publish a final rule with a concise explanation and response to comments.<sup>4</sup> By contrast, the CPSC's rulemaking procedures are much more cumbersome – and structured to favor industry.

To begin a rulemaking, the CPSC must issue an Advance Notice of Proposed Rulemaking (ANPR) before it issues an NPR. This means it must propose each rule and seek public comment not once, but twice. Moreover, the ANPR must summarize all regulatory options under consideration, explain why any existing relevant standards are insufficient, invite notice of any relevant existing voluntary standard, and invite notice of any mere “intention” to develop a voluntary standard.<sup>5</sup> If the agency learns of a voluntary standard that is “likely” to be “adequate” and to garner “substantial compliance” from industry, the agency must terminate its rulemaking.<sup>6</sup>

Next, the CPSC must publish an NPR within 12 months of the ANPR. The NPR must include a cost-benefit analysis of the proposed rule, an explanation why any existing or proposed voluntary standard is not likely to be adequate, and another description of all reasonable alternatives to the proposal – this time with a cost-benefit analysis of each alternative and an explanation why the agency is not proposing it.<sup>7</sup> In addition to soliciting written comments, the agency must give any interested person the opportunity to make an “oral presentation.”<sup>8</sup>

Within 60 days after issuing the NPR, the agency must issue a final rule or withdraw the NPR.<sup>9</sup> But before it issues a final rule, the agency must make findings on several issues: the degree and nature of the risk at issue, the approximate number of products subject to the rule, the “need of the public” for those products and the rule's effect on their cost, utility and availability, and any means of achieving the agency's objective while minimizing harm to competition and disruption of manufacturing. In addition, the final rule must be accompanied by a “regulatory analysis” providing another cost-benefit analysis and yet another description of alternatives to the rule with a summary of the costs and benefits of each and explanations why each was not adopted. As if these steps were insufficient, the agency also must issue findings that the rule is reasonably necessary, that it is in the public interest, that compliance with any existing voluntary standard is unlikely to address the risk at issue adequately, that the rule's benefits bear a reasonable relationship to its costs, and that the rule is the “least burdensome” requirement that adequately reduces the risk at issue.<sup>10</sup>

These requirements are not just burdensome. They effectively put industry in charge of CPSC rulemakings. The CPSC bears the burden of explaining repeatedly why its proposals are better than any alternative and why it is not adopting industry's voluntary standards. And industry is given multiple opportunities to force the agency to respond to new proposals and information. Perhaps the clearest indication of deference to industry in CPSC rulemakings is the requirement that each CPSC rule be the “least burdensome” means of protecting health and safety. This test is typically used to protect *free speech rights* from government infringement.

The effects of encumbering CPSC rules is borne out in plain numbers. During the administration of President George W. Bush, the Commission has only once met the 14-month timeline from issuance of an ANPR to adoption of a Final Rule. (In addition, a search of the Federal Register indicates that the agency only once formally extended a deadline by publishing notice of its “good cause” for the extension.)<sup>11</sup> Moreover, the CPSC created only 38 mandatory rules between 1990 and 2007 but participated informally in the creation of 390 voluntary rules. This ratio grew starker between 2004 and 2007, when the agency participated in the creation of 141 voluntary rules and created only three mandatory rules.<sup>12</sup>

Establishing voluntary standards in place of mandatory safety rules harms public health and safety in at least two ways. First, voluntary standards are often weaker than agency rules. The CPSC must terminate a rulemaking and rely on a voluntary standard if it finds simply that the standard is “likely” to be “adequate,”<sup>13</sup> a remarkably weak showing compared to what the agency must prove to justify its own rules.

Second, even when the CPSC formally “relies on” a voluntary standard instead of promulgating a mandatory rule, it still has no power to enforce the standard. Its reliance triggers only the modest requirement that companies report their noncompliance with the standard,<sup>14</sup> a notoriously under-enforced self-reporting requirement that the CPSC actually weakened in a 2006 rulemaking.<sup>15</sup>

In practice, the CPSC has gone even further than the law requires in deferring to voluntary standards. The law requires CPSC to issue a formal pronouncement when it decides to “rely on” a voluntary standard.<sup>16</sup> But the agency has taken that legal step only twice in its history.<sup>17</sup> In the hundreds of other cases in which the CPSC has deferred to voluntary standards, it has done so informally, leaving itself with no enforcement power whatsoever.

## Unfinished CPSC Rulemakings Begun in 2004 or Earlier

### Upholstered Furniture Flammability

**Date CPSC Began Studying Need for a Rule:** 1994<sup>18</sup>

**Advance Notice of Proposed Rulemaking:** October 23, 2003<sup>19</sup>

**Notice of Proposed Rulemaking:** The CPSC voted to approve an NPR on February 1, 2008, but no NPR has yet been issued<sup>20</sup>

**Damage:** An estimated 360 addressable deaths, 740 addressable injuries, and \$150 million in addressable property damage per year<sup>21</sup>

The CPSC has struggled since 1994 to develop a mandatory standard to minimize the flammability of upholstered furniture. The stakes are high. The CPSC's 2007 Performance and Accountability Report said that "ignitions of upholstered furniture account for more fire deaths than any consumer product under CPSC's jurisdiction."<sup>22</sup> The CPSC estimates that upholstery fires are responsible for 360 preventable deaths a year and have caused more than \$1 billion in avoidable property losses since the agency began working on creating a rule. CPSC Acting Chairman Nancy Nord recently underscored the need for a rule, stating: "Fires involving upholstered furniture are a leading cause of fire-related deaths in U.S. homes. Stopping a furniture fire in its tracks or slowing its spread would buy consumers precious time to get out of their homes."<sup>23</sup>

The agency's delay has resulted in part from a lack of definitive health safety information about the use of certain chemicals to retard flammability.<sup>24</sup> But deference to industry also has contributed significantly. The CPSC made "a misguided attempt, beginning in about 2002, to forge a consensus standard with the various components of the industry and other stakeholders," Commissioner Thomas H. Moore wrote. "That attempt ate up a number of years and gave the impression that our paramount concern was to find a politically acceptable alternative as opposed to one that focused on saving lives."<sup>25</sup>

CPSC commissioners voted to approve an NPR on February 1, 2008, but the agency still has not issued the notice. Even after the proposed rule is issued, the public will not realize any safety benefits until the agency approves a final rule. Under the CPSC's typical timelines, that step will take years, if it occurs at all.

### Bedclothes Flammability

**Date CPSC Began Studying Need for a Rule:** About October 2001<sup>26</sup>

**Advance Notice of Proposed Rulemaking:** January 13, 2005<sup>27</sup>

**Notice of Proposed Rulemaking:** None

**Damage:** An estimated 440 deaths, 2,230 injuries and \$273.9 million in property damage per year<sup>28</sup>

The CPSC began developing a standard to retard the flammability of bedclothes, such as sheets and blankets, in 2001 in response to studies that showed they were the first items to ignite

in more than 19,000 residential fires between 1995 and 1999.<sup>29</sup> The agency estimates that these fires are responsible for an estimated 440 deaths, 2,230 injuries and nearly \$275 million in property losses every year.

Shortly after publishing an ANPR on mattress flammability in October 2001, the CPSC concluded that a failure to address the flammability of bedclothes would undermine any standard to combat mattress fires.<sup>30</sup>

Despite the CPSC's view that a rule is urgently needed, the agency has failed to issue one over six years since it began its rulemaking process.

In a 2004 statement in support of an ANPR on bedclothes, Commissioner Moore wrote, "California is ahead of us in implementing a mandatory standard in this area."<sup>31</sup>

But California's pioneering efforts have not hastened the agency's rulemaking process. In 2005, the CPSC reported that "a briefing package with a draft final rule and supporting documents for Commission consideration" was "planned for early 2006."<sup>32</sup> But there is no record indicating that briefing occurred in 2006, or in the time since then.

According to its most recent annual report, the CPSC in 2007 "continued to monitor the progress of California's efforts and provided a draft status report on project related activities."<sup>33</sup>

No Noticed of Proposed Rulemaking has been issued.

## **Mechanical Malfunction of Cigarette Lighters**

**Date CPSC Began Studying Need for a Rule:** November 2001<sup>34</sup>

**Advance Notice of Proposed Rulemaking:** April 11, 2005<sup>35</sup>

**Notice of Proposed Rulemaking:** None

**Damage:** An estimated two deaths, 990 injuries, and \$38 million in costs per year<sup>36</sup>

The CPSC began working on a safety rule for cigarette lighters in 2001 at the request of a trade group representing lighter manufacturers. The group said that "unreasonable risks of injury" were caused by imported lighters that did not comply with the voluntary standard.<sup>37</sup> The CPSC agrees. It has reported that "inexpensive and disposable lighters had conformance rates [to the voluntary standards] at or below 40 percent,"<sup>38</sup> and it blames malfunctioning lighters for causing an average of two deaths and nearly 1,000 injuries per year.<sup>39</sup>

By promulgating a rule, the agency would gain enforcement authority that it lacks under the voluntary standard. Up to 776 million imported lighters, 55 percent from China, were sold in the United States in 2003, according to the U.S. Census Bureau. They accounted for about 86 percent of sales in the nation.<sup>40</sup>

This rulemaking should have moved quickly because the current voluntary standard and the compliance problems provide both a blueprint and a justification for a rule – and because the rulemaking has industry's blessing.

But the rule languished.

Not until November 2004 – three years after the lighter industry asked the agency for help – did the CPSC even instruct its staff to begin working on a mandatory rule based on the existing voluntary standard.<sup>41</sup> An ANPR was issued in April 2005.

Then, the remaining months of 2005 passed without evident progress – as did all of 2006 and 2007.

The CPSC’s 2007 annual report states that its goal for the year had been to “take action as directed by the Commission.” The next sentence reveals that “[i]n 2007, no activities were directed by the Commission.”<sup>42</sup>

In January 2008, the CPSC’s acting general counsel sent the Commissioners a ballot asking for a decision on whether the agency should “rely on” the voluntary standard.<sup>43</sup> Availing itself of that option would trigger only the modest requirement that non-compliant manufacturers report their noncompliance.<sup>44</sup>

The proposal was rejected when Commissioner Moore, one of two current CPSC commissioners, voted against it, in part because he believes the problem deserves a full-fledged rule.<sup>45</sup>

## **Amendments to the Clothing Textile Standard**

**Date CPSC Began Studying Need for a Rule:** Unknown

**Advance Notice of Proposed Rulemaking:** September 12, 2002<sup>46</sup>

**Notice of Proposed Rulemaking:** February 27, 2007<sup>47</sup>

**Damage:** An estimated 122 deaths and 3,822 injuries per year<sup>48</sup>

In September 2002, the CPSC issued an ANPR to amend the flammability standard for clothing because the existing standard, which dated to 1953, had become obsolete. In addition to measuring the flammability of clothes when they are new, the standard aims to ensure that clothes retain resistance to flammability after being laundered or dry-cleaned several times. But the existing standard does not address modern laundering techniques and instead seeks to measure the effects of methods that are no longer in use, including a dry-cleaning process that is “no longer allowed under EPA regulations.”<sup>49</sup>

Industry and consumer groups that submitted comments on the ANPR “generally agreed that the standard needed to be updated,” the CPSC reported.<sup>50</sup>

Despite widespread support for a new rule, more than four years passed between the CPSC’s initial rulemaking notice and its issuance of a NPR, the next stage on the path to a binding rule.

The CPSC voted 2-0 to approve a Final Rule on January 18, 2008,<sup>51</sup> but the rule has not yet been issued.

## Bed Rail Strangulation

**Date CPSC Began Studying Need for a Rule:** February 1998<sup>52</sup>

**Advance Notice of Proposed Rulemaking:** October 3, 2000<sup>53</sup>

**Notice of Proposed Rulemaking:** 3-0 vote of support on October 30, 2001; no NPR yet issued<sup>54</sup>

**Damage:** 14 fatalities between 1990 and 2001, 11 involving children under two years of age (no more recent data is available)<sup>55</sup>

No standard for bed rails existed in February 1998, when the CPSC began trying to address the problem of rail designs that permit infants to become entangled and, as a result, become suffocated or strangled.<sup>56</sup> A decade later – after years of foot-dragging by the industry – the agency evidently still believes that the public lacks adequate protection but has yet to issue a rule to address the problem.

During the late 1990s, the agency tried to compel the industry to craft a voluntary standard “to address the hazard of entrapment-related deaths.”<sup>57</sup> In May 1999, the CPSC sent a proposed standard to ASTM International, a standard-setting organization. ASTM did not vote on the proposal. The CPSC subsequently submitted a modified version of the standard to ASTM, but the standard-setting group still declined to act.<sup>58</sup>

ASTM’s inaction prompted the CPSC to initiate a rulemaking by publishing an ANPR in October 2000. This action was approved even by a commissioner who usually opposed initiating rulemakings while industry was considering voluntary standards, Commissioner Mary Sheila Gall:

I usually oppose mandatory rulemaking while the voluntary standard setting process is in operation, because I believe that it tends to predispose the Commission to a mandatory standard, whereas our governing statutes and my own regulatory philosophy favor voluntary standards. In this case, however, I noted a lack of progress on the part of industry in developing a voluntary standard. Thus, I am today supporting the beginning of rulemaking.<sup>59</sup>

The CPSC then moved with uncharacteristic speed and voted unanimously to issue an NPR 12 months after the ANPR, in October 2001.

“We acted because of industry’s inaction,” Chairman Ann Brown wrote. “Without success, our technical experts tried to get the industry to develop new designs for portable bed rails that would reduce the deaths and injuries caused by the current designs.”<sup>60</sup>

Faced with the prospect of a mandatory rule, the industry finally discovered enthusiasm for a voluntary standard. In 2003, ASTM voted to approve a voluntary standard, which halted the CPSC rulemaking.<sup>61</sup>

Years later, in its annual report for 2007, the CPSC suggested that it is not satisfied with the voluntary standard’s effectiveness in protecting the public. According to the CPSC’s 2007

annual report, agency staff plans to present a briefing packet with recommendations for the mandatory rulemaking to the CPSC's commissioners sometime in 2008.<sup>62</sup>

## **Crib Slat Entrapment**

**Date CPSC Began Studying Need for a Rule:** March 1995<sup>63</sup>

**Advance Notice of Proposed Rulemaking:** December 16, 1996<sup>64</sup>

**Notice of Proposed Rulemaking:** None

**Damage:** 138 incidents from 1985 to 1996, including 12 fatalities and 5 injuries<sup>65</sup>

In March 1995, the CPSC told ASTM that it was concerned about the hazards that crib slats posed to infants. The following October, it informed ASTM that it found the existing voluntary standard inadequate and asked ASTM to improve the standard. But crib manufacturers disagreed. They argued that crib slat incidents – implicated in 12 deaths between 1985 and 1996 – were the result of poor quality control, not faulty design, and ASTM declined the CPSC's request to improve the standard.<sup>66</sup>

The CPSC responded by issuing an ANPR in December 1996. Chairman Ann Brown wrote:

The existing provisions in the voluntary standard appear to be inadequate to address the risk. Although the Commission staff has asked the crib industry to amend its voluntary standard to address the hazard of crib slat disengagement, the industry has declined to do so. Indeed, this industry generally has refused to recognize there is a problem with crib slat disengagement or the inadequacies of the existing voluntary standard to address the hazard.<sup>67</sup>

In 1999, under threat of a mandatory rule, ASTM reversed course and issued a revised voluntary standard. That move halted the CPSC's rulemaking, and the agency has spent most of the current decade evaluating the effectiveness of the new voluntary standard. CPSC staff was scheduled to present a status report to the commissioners in 2004, but never did.<sup>68</sup>

The scant evidence that is publicly available suggests that the CPSC does not believe the voluntary rule has resolved the public hazard from crib slats. The agency's latest annual report noted, "[i]n 2007, testing and development of information regarding the causes for the *continuing incidents* will continue. [Emphasis added] The most recent information indicates that this work will take longer than the staff originally anticipated. Therefore, the briefing package originally scheduled for completion in 2007 will be delayed."<sup>69</sup>

## Baby Bath Seats

**Date CPSC Began Studying Need for a Rule:** 1994<sup>70</sup>

**Advance Notice of Proposed Rulemaking:** August 1, 2001<sup>71</sup>

**Notice of Proposed Rulemaking:** December 29, 2003<sup>72</sup>

**Damage:** 78 deaths and 110 non-fatal incidents between January 1983 and May 2001<sup>73</sup>

In 1994, CPSC staff examined baby bath seats that present a risk of drowning, and recommended that the commissioners approve an ANPR. The commissioners voted against this recommendation, but reversed their position the Consumer Federation of America and eight other consumer and safety groups petitioned the agency in 2000. Commissioners approved an ANPR in 2001 and issued an NPR in December 2003.<sup>74</sup>

ASTM had adopted a voluntary standard in April 2003 that was similar to the CPSC's proposed rule in many respects. Paul Ware, chairman of ASTM's subcommittee on bath seats, strongly urged the CPSC to terminate its rulemaking, arguing that every aspect of the proposed rule was either addressed by the ASTM standard or would be soon.<sup>75</sup>

The CPSC's 2005 Performance and Accountability report indicated that it would prepare recommendations on the rule in 2007.<sup>76</sup> But subsequent annual reports have not even mentioned the rulemaking.

"The baby bath seats not meeting the new standard have never been recalled, thus they are still posing serious harm to babies," Rachel Weintraub, director of product safety of the Consumer Federation of America, stated in testimony before the House Subcommittee on Commerce, Trade, and Consumer Protection in May 2007. "The new bath seats also caused at least nine deaths from May 2004 to May 2006. However, despite this information, CPSC has not taken broader action on baby bath seats."<sup>77</sup>

## Endnotes

<sup>1</sup> 15 U.S.C. § 2051(b)(3).

<sup>2</sup> U.S. Consumer Product Safety Commission (hereinafter “CPSC”), “2007 Performance and Accountability Report,” November 2007, p. 21. Available at [www.cpsc.gov/cpsc/pub/pubs/reports/2007par.pdf](http://www.cpsc.gov/cpsc/pub/pubs/reports/2007par.pdf).

<sup>3</sup> CPSC, “2007 Performance and Accountability Report,” November 2007, p. 22. Available at [www.cpsc.gov/cpsc/pub/pubs/reports/2007par.pdf](http://www.cpsc.gov/cpsc/pub/pubs/reports/2007par.pdf).

<sup>4</sup> Administrative Procedures Act, 5 U.S.C. § 553.

<sup>5</sup> 15 U.S.C. § 2058(a).

<sup>6</sup> 15 U.S.C. § 2058(b).

<sup>7</sup> 15 U.S.C. § 2058(c).

<sup>8</sup> 15 U.S.C. § 2058(d)(2).

<sup>9</sup> 15 U.S.C. § 2058(d)(1).

<sup>10</sup> 15 U.S.C. § 2058(f).

<sup>11</sup> CPSC, “Cigarette Lighters; Extension of Time To Issue Proposed Rule,” Federal Register, April 10, 2006. Available at <http://www.cpsc.gov/businfo/frnotices/fr06/ciglit.pdf>.

<sup>12</sup> CPSC, “2007 Performance and Accountability Report,” November 2007, p. 3. Available at [www.cpsc.gov/cpsc/pub/pubs/reports/2007par.pdf](http://www.cpsc.gov/cpsc/pub/pubs/reports/2007par.pdf); CPSC, “2003 Annual Performance Report,” February 2004, p. ii. Available at [www.cpsc.gov/about/gpra/03perfprt.pdf](http://www.cpsc.gov/about/gpra/03perfprt.pdf).

<sup>13</sup> 15 U.S.C. § 2058(b).

<sup>14</sup> 15 U.S.C. § 2064(b)(1).

<sup>15</sup> Public Citizen’s Congress Watch, “Congress Should Reject Nomination of Michael Baroody for Safety Agency,” May 8, 2007. Available at [www.citizen.org/congress/govtaccount/articles.cfm?ID=16542](http://www.citizen.org/congress/govtaccount/articles.cfm?ID=16542).

<sup>16</sup> 15 U.S.C. § 2058(b).

<sup>17</sup> CPSC, “Comments of Commissioner Thomas H. Moore to the PRISM Proposal,” July 2007. Available at [www.cpsc.gov/pr/moore\\_prism.pdf](http://www.cpsc.gov/pr/moore_prism.pdf).

<sup>18</sup> Press Release of CPSC, “CPSC Takes Major Step Toward Reducing Upholstered Furniture Fires,” February 1, 2008. Available at [www.cpsc.gov/cpsc/pub/prrel/prhtml08/08182.html](http://www.cpsc.gov/cpsc/pub/prrel/prhtml08/08182.html).

<sup>19</sup> CPSC, ANPR, Federal Register, October 23, 2003. Available at [www.cpsc.gov/businfo/frnotices/fr04/upholst.html](http://www.cpsc.gov/businfo/frnotices/fr04/upholst.html).

<sup>20</sup> Press Release of CPSC, “CPSC Takes Major Step Toward Reducing Upholstered Furniture Fires,” February 1, 2008. Available at [www.cpsc.gov/cpsc/pub/prrel/prhtml08/08182.html](http://www.cpsc.gov/cpsc/pub/prrel/prhtml08/08182.html).

<sup>21</sup> Based on the most recent data available, 1999-2002. CPSC, “Status Report: Peer Reviewed CPSC Staff Research Reports on Upholstered Furniture Flammability,” December 29, 2006. Available at [www.cpsc.gov/library/foia/foia07/brief/ufurn1.pdf](http://www.cpsc.gov/library/foia/foia07/brief/ufurn1.pdf).

<sup>22</sup> CPSC, “2007 Performance and Accountability Report,” November 2007, p. 21. Available at [www.cpsc.gov/cpsc/pub/pubs/reports/2007par.pdf](http://www.cpsc.gov/cpsc/pub/pubs/reports/2007par.pdf).

<sup>23</sup> Press Release of CPSC, “CPSC Takes Major Step Toward Reducing Upholstered Furniture Fires,” February 1, 2008. Available at [www.cpsc.gov/cpsc/pub/prrel/prhtml08/08182.html](http://www.cpsc.gov/cpsc/pub/prrel/prhtml08/08182.html).

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> CPSC, ANPR, Federal Register, January 13, 2005. Available at [www.cpsc.gov/businfo/frnotices/fr05/openflame2.html](http://www.cpsc.gov/businfo/frnotices/fr05/openflame2.html).

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> CPSC, “Statement of the Honorable Thomas H. Moore on Open Flame Flammability Standards for Mattresses, Mattress and Foundation Sets and Bedclothes,” December 21, 2004. Available at [www.cpsc.gov/library/foia/foia05/fedreg/mattresses.pdf](http://www.cpsc.gov/library/foia/foia05/fedreg/mattresses.pdf).

<sup>31</sup> *Ibid.*

<sup>32</sup> CPSC, “2005 Performance and Accountability Report,” November 2005, p. 22. Available at [www.cpsc.gov/about/gpra/05perfrpt.pdf](http://www.cpsc.gov/about/gpra/05perfrpt.pdf).

<sup>33</sup> CPSC, “2007 Performance and Accountability Report,” November 2007, p. 21. Available at [www.cpsc.gov/cpscpub/pubs/reports/2007par.pdf](http://www.cpsc.gov/cpscpub/pubs/reports/2007par.pdf).

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