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VIA ELECTRONIC SUBMISSION

Consumer Product Safety Commission

Attn: Secretary, Consumer Product Safety Commission
Subject: Corded Window Coverings; Request for Comments and Information, 80 Fed. Reg. 2327 (Jan. 16, 2015)
Docket No. CPSC-2013-0028

The Institute for Policy Integrity at New York University School of Law¹ (“Policy Integrity”) respectfully submits the following comments on the Consumer Product Safety Commission’s (“CPSC” or “Commission”) advance notice of proposed rulemaking regarding a potential mandatory rule to address the strangulation risk posed to young children by corded window coverings. Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

In response to a petition from consumer groups, CPSC is considering a rule to (1) prohibit window covering cords where a feasible cordless alternative exists, and (2) require that cords be made inaccessible through the use of passive guarding devices where a feasible cordless alternative does not exist. When it assesses the potential costs and benefits of this and other regulatory alternatives, as required by the Consumer Product Safety Act, CPSC should consider the following recommendations:

- **CPSC should conduct a comprehensive analysis of costs that manufacturers can expect to *avoid* as a result of a safety rule.**

As the petitioners acknowledge, a full or partial ban on corded window coverings would increase manufacturing costs for the window covering industry, because cordless blinds and shades are more expensive to fabricate than corded varieties. By significantly reducing or eliminating the risk of child strangulation on window coverings, however, a ban would also allow manufactures to avoid certain other costs that result from the current, voluntary safety standard for window coverings, such as those associated with recalls and product liability actions. These avoided costs should

¹ No part of this document purports to present New York University School of Law’s views, if any.

be quantified and either added to the expected benefits of any rule proposed by CPSC, or subtracted from the expected compliance costs of such a rule.

- **CPSC should consider the prevention of parental grief as an unquantified benefit of a safety rule.**

Significant but hard to quantify benefits are routinely considered as part of cost-benefit analysis. At least one other agency has concluded that a rule that prevents death or serious injury to young children in their own homes generates a benefit that is not adequately captured by the traditional measure of the value of a statistical life—namely, the avoidance of situations in which parents feel responsible for serious harm to their own children. Because a mandatory safety standard for window coverings would similarly prevent accidental deaths and injuries suffered by children in their own homes, CPSC should consider the prevention of parental grief as an unquantified benefit of any proposed rule.

- **CPSC should conduct a separate cost-benefit analysis for each major category of window covering when developing a safety rule.**

The cost of shifting to a cordless operating mechanism is greater for some types of window coverings than for others. Similarly, different covering types pose different degrees of strangulation risk to young children. As a result, a safety standard that is not cost-benefit justified for all covering types may nevertheless be justified for some. To determine the appropriate scope and stringency of any proposed rule, CPSC should conduct separate cost-benefit analyses for each major category of window covering.

- **CPSC should independently estimate the average product life of window coverings.**

Rather than relying solely on manufacturer estimates, CPSC should independently gather more information about the rate at which homeowners and tenants replace their window coverings.

- **CPSC should continue to use a 3% discount rate when estimating the benefits of a safety rule, as the Commission did in its preliminary analysis.**

While a 3% discount rate is at the low end of rates recommended by the Office of Management and Budget, it is an appropriate choice for a rule that focuses on consumer goods and the costs and benefits of making those goods safer.

I. CPSC should conduct a comprehensive analysis of costs that manufacturers can expect to *avoid* as a result of a safety rule.

A full or partial ban on corded blinds and shades would increase manufacturing costs for the window covering industry.² But the regulatory status quo—a voluntary safety standard—carries its own costs for manufacturers. For one, the window covering industry has issued at least 16 recalls for corded products since 2007.³ In 2010, the world’s largest furniture retailer, IKEA, recalled approximately 3.36 million roller blinds, roman shades, and roll-up blinds that were sold between 1998 and 2009 for retail prices ranging from \$5 to \$55.⁴ The costs of such massive recalls can include not only post-sale consumer refunds or replacements, but also the logistics of tracking the recalled products and the lost value of unsold stock.

Strangulation-related product liability actions brought against window covering manufacturers are also common.⁵ (While estimates of the total number of such suits brought in recent years do not appear to be publicly available, Section 37 of the Consumer Product Safety Act requires manufacturers of consumer products to report information about some settled or adjudicated lawsuits to CPSC.⁶) Manufacturers can incur significant costs litigating these cases, including attorneys’ fees and any settlements paid or damages awarded by juries.

The current, voluntary standard leaves manufacturers vulnerable to the recalls and product liability actions described above for two reasons: (1) manufacturers do not always comply with the voluntary standard, and (2) even when satisfied, the voluntary standard fails to address the causes of a majority of child strangulation incidents.⁷ Imposing a stronger, mandatory standard would presumably address the first problem in full (because compliance with the standard would no longer be optional) and at least partially address the second problem (because a more stringent standard would prevent a larger number of

² Consumer Product Safety Commission, Staff Briefing Package in Response to the Petition CP 13-2, Requesting Mandatory Safety Standards for Window Coverings 151(October 1, 2014), *available at* <http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/PetitionRequestingMandatoryStandardforCordedWindowCoverings.pdf> [hereinafter “Staff Briefing Package”] (noting that petitioners and industry representatives both acknowledge that “the cost of producing cordless window covering products is higher than for similar products with cords”).

³ Staff Briefing Package at 18.

⁴ Press Release, Consumer Product Safety Commission, IKEA Recalls Roller Blinds, All Roman Blinds and All Roll-Up Blinds Due to Risk of Strangulation (June 10, 2010), *available at* <http://www.cpsc.gov/en/Recalls/2010/IKEA-Recalls-Roller-Blinds-all-Roman-Blinds-and-all-Roll-Up-Blinds-Due-to-Risk-of-Strangulation>.

⁵ *See, e.g.*, Rick Schmitt, *The lethal hazard to our children consumer protection refuses to fix*, SALON, May 3, 2015, http://www.salon.com/2015/05/03/the_lethal_hazard_to_our_children_consumer_protection_refuses_to_fix_partner (noting that one attorney had filed and settled over 50 cases in 23 states related to strangulation incidents).

⁶ 15 U.S.C. § 2084.

⁷ Staff Briefing Package at 18 (noting that, of 16 recalls between 2007 and 2012, half included products that did not comply with the voluntary standard); *id.* at 5 (noting CPSC staff’s conclusion that 57% of strangulation incidents investigated by the Commission would not have been prevented by the 2014 version of the voluntary standard).

strangulation incidents, if not eliminate them altogether). Thus, CPSC should estimate the extent to which any mandatory standard it proposes would, by reducing the frequency of strangulation incidents, reduce the frequency of recalls and product liability actions and, in turn, the costs associated with such actions. The estimated value of this reduction should then be added to the expected benefits of the proposed rule or subtracted from its expected compliance costs.

II. CPSC should consider the prevention of parental grief as an unquantified benefit of a safety rule.

In 2014, the National Highway Traffic Safety Administration (NHTSA) finalized a rule designed to reduce the risk of backover crashes involving young children and other vulnerable populations by, in effect, requiring all new motor vehicles to come equipped with rearview video systems.⁸ While the monetized benefits of the rule did not outweigh its monetized costs, NHTSA found that the rule was nevertheless justified due, in part, to “significant benefits” that could “not be quantified in monetary terms.”⁹ Among these was a reduction in the risk that parents would “be responsible for the death of or serious injury to their own children,” either “at their own place of residence or that of a relative or close friend.”¹⁰ In NHTSA’s view, the prevention of this “horrible outcome . . . [was] not fully or adequately captured in the traditional measure of the value of a statistical life.”¹¹

Like the NHTSA rule, a mandatory safety standard for corded window coverings would prevent death and severe injury to young children at their own residences. Furthermore, while the strangulation deaths and injuries avoided by a mandatory standard would not be directly caused by parents in the manner of backover crashes, parents might nevertheless feel responsible for the accidents, either because they chose to install the window coverings in the home or because the accident in question occurred during a period when the child was left unsupervised. Accordingly, CPSC should consider the prevention of parental grief as an unquantified benefit of any proposed rule that would reduce the risk of death or injury from corded window coverings.

CPSC can incorporate unquantified benefits into its cost-benefit analysis by using break-even analysis.

The NHTSA rule is hardly the only example of an agency considering unquantified benefits as part of a cost-benefit analysis. Indeed, the executive orders that set the framework for review of most federal agencies’ regulations provide that “[c]osts and benefits shall be understood to include...qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider,”¹² and that agencies “may consider (and

⁸ Federal Motor Vehicle Safety Standards; Rear Visibility, 79 Fed. Reg. 19,178, 19,178 (Apr. 7, 2014).

⁹ *Id.* at 19,239.

¹⁰ *Id.* at 19,236.

¹¹ *Id.*

¹² Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (Oct. 4, 1993).

discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.”¹³

As for *how* agencies should take into account benefits that cannot be quantified, the Office of Management and Budget (OMB) recommends the use of break-even analysis.¹⁴ Engaging in such analysis can help avoid an anti-regulatory bias that results if agencies decide not to regulate because costs are more easily quantified than benefits.¹⁵ A break-even analysis essentially asks, “How high would the unquantified benefits have to be in order for the rule’s costs to be justified?”¹⁶ For example, the NHTSA rule had a monetized “net cost per equivalent life saved . . . [that] range[d] from \$15.9 to \$26.3 million.”¹⁷ Thus, the unquantified benefits identified by the agency—including, but not limited to, the prevention of parental grief—were presumably worth at least \$15.9 million per life saved in the eyes of the agency.

While break-even analysis is useful in the short term, in the longer term CPSC should invest in developing methods for quantifying the benefit of avoided parental grief.¹⁸ Many agencies would benefit from such research; the Commission, however, is particularly well suited to lead a quantification effort for benefits of this type, because many of its rules aim to protect young children from suffering accidental death or injury in the home.

III. CPSC should conduct a separate cost-benefit analysis for each major category of window covering when developing a safety rule.

The cost of shifting to cordless technology or installing passive cord guards is different for different types of window coverings. The petitioners report, for example, that the incremental manufacturing cost of cordless technology is \$2 to \$3 for a set of one-inch vinyl or aluminum blinds, but \$7 to \$9 for a set of two-inch faux wood blinds.¹⁹ Additionally, different types of coverings present different degrees of strangulation risk to young children. In a preliminary estimate, CPSC staff found that eliminating the risk of death or injury from vertical blinds would yield \$1.20 in benefits per unit, while eliminating the risk from shades would generate less than half the per-unit benefit, at \$0.50 per shade.²⁰

¹³ Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 21, 2011). While independent regulatory agencies like CPSC are not formally subject to the executive orders on cost-benefit analysis, recent Presidents have urged them to apply voluntarily the principles articulated therein. *See* Administrative Conference of the United States, Adoption of Recommendations, 78 Fed. Reg. 41,352, 41,355 (July 10, 2013).

¹⁴ Office of Management and Budget Circular A-4, p. 2 (2003), *available at* https://www.whitehouse.gov/omb/circulars_a004_a-4 (“If the non-quantified benefits and costs are likely to be important, you should carry out a threshold analysis to evaluate their significance.”).

¹⁵ *See* Richard L. Revesz, *Quantifying Regulatory Benefits*, 102 Cal. L. Rev. 1423, 1425 (2014).

¹⁶ Office of Management and Budget Circular A-4, *supra* note 14, at 2.

¹⁷ 79 Fed. Reg. at 19,181.

¹⁸ Revesz, *supra* note 15, at 1425 (“The movement from nonquantifiable to quantified is not a random event. Instead, it is often the product of a government intervention—whether the funding of private studies or more direct government action. So the question of how to deal with nonquantifiable benefits inevitably leads to the consideration of the optimal governmental role in providing incentives for quantification.”).

¹⁹ Staff Briefing Package at 151.

²⁰ *Id.* at 158.

As a result of this significant variation in both the strangulation risk associated with different type of window coverings and the cost of eliminating that risk, CPSC should conduct a separate cost-benefit analysis for each major category of covering. Disaggregating its analysis will enable the Commission to vary the stringency of any safety rule by product type and fulfill its statutory mandate to “impose[] the least burdensome requirements which prevent[] or adequately reduce[] the risk of injury.”²¹

IV. CPSC should independently estimate the average product life of window coverings.

The social cost of a corded window covering is, in part, a function of the length of its useful life. The longer a particular covering remains in a home, the greater the accumulated risk it presents to any children therein and the greater the social benefit of a safety standard that would eliminate that risk.

In its preliminary analysis of the social costs associated with deaths and injuries caused by corded window coverings, CPSC assumes an average product life of 7 years across all covering types.²² This estimate is based on information that member companies of the Window Covering Manufacturers Association submitted in connection with a 2013 report prepared by the environmental consulting firm D&R International for the Department of Energy.²³ Anecdotal evidence from building managers, students, and staff at New York University School of Law, however, suggests that window blinds are often used for much longer periods of time. For future analyses, the agency should undertake an independent effort to ascertain how long consumers typically keep window coverings—perhaps by surveying residential building managers or major landlords—rather than relying solely on information submitted by manufacturers.

CPSC could also engage in a type of break-even analysis using the average lifespan of window coverings. This would involve calculating what the average lifespan of window coverings would have to be for the benefits of a proposed standard to equal its costs.

Finally, when disaggregating its cost-benefit analysis by type of window covering as recommended in the previous section, CPSC should take into account that different covering types will have different average lifespans. The D&R International report, for instance, estimated an average life of 10 to 16 years for roman shades, but only 4.25 years for metal or vinyl horizontal blinds.²⁴

²¹ 15 U.S.C. § 2058(f)(3)(F).

²² Corded Window Coverings; Request for Comments and Information, 80 Fed. Reg. 2327, 2347 (Jan. 16, 2015); Staff Briefing Package at 157.

²³ D&R INTERNATIONAL LTD., RESIDENTIAL WINDOWS AND WINDOW COVERINGS: A DETAILED VIEW OF THE INSTALLED BASE AND USER BEHAVIOR 76 & n.36 (2013), *available at* http://energy.gov/sites/prod/files/2013/11/f5/residential_windows_coverings.pdf.

²⁴ *Id.* at 58.

V. CPSC should continue to use a 3% discount rate when estimating the benefits of a safety rule, as the Commission did in its preliminary analysis.

In its initial assessment of the costs and benefits of eliminating exposed cords from window coverings, CPSC followed the general federal practice of discounting future benefits.²⁵ According to OMB guidance, when a rule “primarily and directly affects private consumption,” as a safety standard for window coverings would, a 3% discount rate is warranted.²⁶ As a result, CPSC’s use of a 3% discount rate in its preliminary analysis was appropriate, and the Commission should continue to use that rate in subsequent analysis of any proposed rule.

Respectfully submitted,

Institute for Policy Integrity

²⁵ 80 Fed. Reg. at 2348; Staff Briefing Package at 157.

²⁶ Office of Management and Budget Circular A-4, *supra* note 14, at 33.