



September 4, 2025

VIA ELECTRONIC TRANSMISSION

The Honorable Peter Feldman, Acting Chairman  
U.S. Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, MD 20814

**Re: Comments on Request for Information Reducing Regulatory Burdens [Docket No. CPSC-2025-0009]**

Dear Chairman Feldman:

On June 12, 2025, the U.S. Consumer Product Safety Commission (CPSC) published a Request for Information (RFI) in the *Federal Register* seeking comments on ways to reduce regulatory burdens without compromising safety. The Office of Advocacy appreciates the opportunity to comment on behalf of small entities and supports CPSC's review of outdated, unnecessary, or overly burdensome requirements. Advocacy views this initiative as a valuable step in ensuring consumer product safety rules remain effective, balanced, and responsive to small business needs, and respectfully submits the following comments.

This letter addresses several recent CPSC rules and practices that impose significant burdens on small businesses often in ways not fully acknowledged during rulemaking. In many cases, the CPSC rules are overly broad, capturing products that pose minimal risk alongside those that fall within Congress' statutory intent to regulate. Regulatory burdens that are not carefully tailored often lead to higher costs for small manufacturers, which is likely passed on to consumers and families who rely on those products. This results in fewer options, higher prices, and diminished access to safe, innovative, and affordable products.

The CPSC should rescind or revise rules and practices consistent with the Regulatory Flexibility Act, ensuring that regulatory alternatives are fully considered so that safety objectives are met without imposing undue burdens on small businesses or reducing families' access to safe, affordable, and innovative products.

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## **I. Background**

### **A. Office of Advocacy**

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA). As such, the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),<sup>1</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>2</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.<sup>3</sup> If a rule is not expected to have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of the factual basis to Advocacy for such a determination that adequately supports its certification.<sup>4</sup>

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>5</sup> The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.<sup>6</sup>

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."<sup>7</sup>

### **B. Consumer Product Safety Commission**

The U.S. Consumer Product Safety Commission is an independent federal agency created by the Consumer Product Safety Act (CPSA) in 1972.<sup>8</sup> Its mission is to protect the public from unreasonable risks of injury or death associated with consumer products.<sup>9</sup> The CPSC's jurisdiction extends to thousands of types of consumer products used in homes, schools,

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<sup>1</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

<sup>2</sup> Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

<sup>3</sup> 5 U.S.C. § 603.

<sup>4</sup> *Id.* § 605(b).

<sup>5</sup> Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

<sup>6</sup> *Id.*

<sup>7</sup> Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

<sup>8</sup> U.S. Consumer Prod. Safety Comm'n, *Statutes*, <https://www.cpsc.gov/Regulations-Laws--Standards/Statutes> (last visited Sept. 2, 2025).

<sup>9</sup> U.S. Consumer Prod. Safety Comm'n, *Regulations, Laws & Standards*, <https://www.cpsc.gov/Regulations-Laws--Standards> (last visited Sept. 2, 2025).

recreation, and childcare.<sup>10</sup> Congress has vested the agency with broad authority to conduct research, collect and analyze injury data, develop safety standards, enforce product recalls, and issue regulations to reduce or eliminate hazards.<sup>11</sup>

Under Sections 7 and 9 of the CPSA, the CPSC may issue mandatory consumer product safety standards.<sup>12</sup> However, the law directs the CPSC to rely on voluntary consensus standards developed by recognized standards organizations, such as Advancing Standards Transforming Markets (ASTM) International or Underwriters Laboratories (UL), whenever such standards are likely to adequately reduce the risk of injury and are likely to be substantially complied with. In these cases, the CPSC works collaboratively with industry stakeholders, small businesses, consumer groups, and standards bodies to improve and adopt voluntary standards.

If the CPSC deems a voluntary standard insufficient to address a significant hazard, the CPSC can, by majority vote of its commissioners, choose to implement mandatory rulemaking.<sup>13</sup> This process typically begins with an advance notice of proposed rulemaking (ANPRM), followed by public comment, a notice of proposed rulemaking (NPRM), further public comment, and finally the publication of a final rule. Each stage requires the CPSC to evaluate costs, benefits, and potential impacts on small entities, consistent with the RFA and other applicable statutes.

The CPSC also enforces a range of safety requirements mandated by other laws under its jurisdiction, including the Federal Hazardous Substances Act (FHSA), the Poison Prevention Packaging Act (PPPA), the Flammable Fabrics Act (FFA), and the Consumer Product Safety Improvement Act (CPSIA). Across all these authorities, the CPSC's decisions can have significant financial and operational implications for small businesses.

## **II. The CPSC's Request for Information**

In recent years, small entities have faced increasing challenges from the cumulative effects of federal regulations and administrative requirements. In response, there has been a government-wide effort to identify and reduce unnecessary regulatory burdens to promote economic growth while maintaining essential protections. Advocacy works closely with federal agencies to review existing rules and evaluate their impact on small entities. Since the enactment of the RFA, agencies have also been required to conduct retroactive reviews of their regulations to ensure they remain necessary, effective, and not unduly burdensome.<sup>14</sup> In furtherance of these objectives, the CPSC's RFI invites public input on ways to reduce the burdens and costs of its

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<sup>10</sup> U.S. CONSUMER PROD. SAFETY COMM'N, CONSUMER PRODUCT SAFETY ACT, [https://www.cpsc.gov/s3fs-public/pdfs/blk\\_media\\_cpsa.pdf?epslanguage=en](https://www.cpsc.gov/s3fs-public/pdfs/blk_media_cpsa.pdf?epslanguage=en) (last updated Aug. 12, 2011).

<sup>11</sup> *Id.*

<sup>12</sup> 15 U.S.C. §§ 2055-2056 (2021).

<sup>13</sup> *Id.*

<sup>14</sup> 5 U.S.C. § 610.

existing rules, regulations, guidance, interpretations, and practices without increasing the risk of death or injury.

### III. Advocacy Outreach and Summary of Small Entity Issues

Given Advocacy’s statutory role in representing the views and interests of small entities before federal agencies, we convened a small business roundtable on July 16, 2025, to hear directly from stakeholders regarding the impact of the CPSC’s regulatory requirements. The roundtable brought together small businesses, their representatives, and other interested parties to share their perspectives and experiences. Advocacy acknowledges that different small entities may have varying viewpoints on certain issues, and this diversity of perspectives is an important part of understanding the real-world effects of regulation. Participants identified specific rules, guidance documents, and enforcement practices that impose disproportionate burdens on small entities relative to their resources, without a commensurate improvement in consumer safety. The feedback summarized below reflects these real-world experiences and is intended to assist the CPSC in prioritizing areas where regulatory reform can reduce costs, improve clarity, and promote innovation while maintaining robust safety procedures.

#### A. Paperwork Burdens

**Issue:** The Paperwork Reduction Act (PRA) was enacted specifically “to minimize the paperwork burden for individuals, small businesses, educational and non-profit institutions, federal contractors, state, local, and tribal governments’, and other persons” resulting from federal information collections.<sup>15</sup> The PRA requires agencies, including the CPSC, to obtain Office of Management and Budget (OMB) approval for each information collection and to reduce unnecessary burden wherever possible. Despite this mandate, the CPSC’s current information collection load is substantial.

**Small Business Impacts:** Small businesses are often disproportionately impacted by paperwork burdens. Large manufacturers may be able to absorb compliance costs with dedicated staff and automated systems, but a small firm typically must divert owner or employee time from other duties to comply with paperwork requirements.

According to OMB data, the CPSC currently has several dozen active information collection requirements that impose significant paperwork burdens on the public, resulting in over eight million annual burden hours and more than \$50 million in annual costs.<sup>16</sup> The requirement to issue a Children’s Product Certificate (CPC) for every product style and batch is the most

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<sup>15</sup> See Paperwork Reduction Act of 1995, 44 U.S.C. § 3501(1).

<sup>16</sup> See Off. of Info. & Regul. Aff., Inventory of Currently Approved Information Collections, <https://www.reginfo.gov/public/do/PRAMain> (choose “Consumer Product Safety Commission” from dropdown under “Current Inventory”; then click “Submit”) (last accessed September 2, 2025).

significant paperwork burden for children's toy manufacturers and importers. Each CPC must be based on third-party testing by a CPSC-accredited lab and include detailed compliance information. In practice, this creates hundreds of certificates and test records that small firms must generate, track, and store for at least five years.

Because the rules also require periodic and "material change" re-testing, businesses must constantly update certificates and paperwork whenever they change suppliers, materials, or designs. For small toy firms with limited staff, the recordkeeping often takes more time than the testing itself. Small business stakeholders suggest that third-party testing costs average \$1,500-\$2,500 per toy style, and the related paperwork can add dozens of hours per year just to maintain compliance. Every hour spent on forms, recordkeeping, and reporting is an hour not spent on product development, safety improvements, or other productive work. Unchecked paperwork demands can stifle small business growth and innovation, contrary to the PRA's intent to relieve unnecessary burdens on the public.

**Small Business Recommendation:** The CPSC should undertake a thorough review of its information collection requirements and streamline or eliminate those that are not necessary for public health and safety. By making paperwork reduction a priority in its commitment to sound regulation, the CPSC will deliver relief to regulated small entities, aligning the agency's practices with the letter and spirit of the PRA.

## **B. New eFile Rule for Certificates of Compliance**

**Issue:** On January 8, 2025, the CPSC published a final rule that requires importers to electronically file (eFile or eFiling) Certificates of Compliance (CoC) for imported consumer products and substances that are subject to a mandatory CPSC rule, ban, standard, or regulation, including small shipments under \$800 and products that are delivered directly to U.S. consumers. Enforcement of the eFile rule begins July 8, 2026.<sup>17</sup> Ideally, an eFile system should be a positive development for small businesses and the CPSC. However, as designed by the CPSC, the eFile system increases the burden on small businesses instead of decreasing the burden.

Currently, importers of CPSC regulated products must create and maintain CoCs attesting to a product's compliance with applicable mandatory requirements. If the CPSC or U.S. Customs and Border Patrol (CBP) flags a shipment for examination, the CPSC or CBP may request the CoC. Importers must promptly provide the CoC, typically in PDF or paper format. Under the new eFile rule, before a shipment reaches CBP, the importer must electronically upload CoC data for each CPSC regulated product into the CPSC's new Product Registry system (CPSC Registry). The required data includes:

1. Information identifying and describing the product (a separate CoC is required for each product).

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<sup>17</sup> 90 Fed. Reg. 1800 (Jan. 8, 2025).

2. Name, mailing address, and telephone number of importer or domestic manufacturer.
3. List of all applicable safety rules the product must comply with.
4. Party certifying the compliance.
5. Date and location the finished product was manufactured.
6. Date and location the finished product was most recently tested for compliance.
7. Name, mailing address, and telephone number of third-party lab for required testing.
8. Name and contact information for the person maintaining test records.

Once the required CoC data is uploaded, the CPSC Registry will generate a unique Reference ID for each CoC. When the shipment arrives at the U.S. border, the importer (or their customs broker) must then file a PGA Message Set (PGA Set) using CBP's Automated Commercial Environment system (ACE). The PGA Set includes the Reference ID from the CPSC Registry, the product type, and other compliance information. The ACE system will automatically cross-check the CPSC Registry to verify that a valid CoC exists for the product and all CoC data matches the shipment details. If the Reference ID is correctly inputted and all the CoC data matches the shipment details, ACE clears the shipment to move through customs. If the Reference ID is not there, is input incorrectly, or the CoC data does not align with the product details, ACE flags the shipment for additional review, which can result in delays, storage fees, rejection, or seizure.

**Small Business Impacts:** To achieve compliance with the eFiling requirements, small importers of products requiring either a Children's Product Certificate (CPC) or General Certificate of Conformity (non-children's product) (GCC) could possibly incur costs from several activities including: (1) the costs of inputting and filing certificate information with CBP through a PGA Message Set; (2) the one-time conversion costs of updating technology; and (3) broker fees.

In its regulatory flexibility analysis, the CPSC certified that the eFile rule would not have a significant economic impact on a substantial number of small entities. The CPSC estimated that small importers would incur an average cost of \$1,104 per firm in first-year costs in connection with the eFile rule's new requirements. The CPSC estimated the cost per small importer of non-children's products will be on average \$1,137, while the cost per small importer of children's products will be \$1,099. However, several small importers and manufacturers advised Advocacy that the CPSC significantly underestimated the rule's impact. Using CPSC's analysis in the final rule, Advocacy's estimates this rule will cost small businesses \$261.5 million total over ten years.

### *New Compliance Costs*

The eFile rule imposes new compliance costs and operational burdens that significantly affect small businesses. The CPSC estimates that as many as 43,061 small firms import regulated non-children's consumer products and substances annually and will be required to eFile GCCs, while 211,148 firms annually import regulated children's products and will be required to eFile CPCs. These businesses span numerous industries such as toys, children's apparel, nursery products, furniture, and electronics, many of which rely on high-volume, low-margin imports and operate with limited compliance infrastructure.

Startup and recurring costs will be substantial for small businesses. The CPSC estimates that each small business will incur an average of \$1,086 in internal labor costs to prepare for the eFile rule, not including more complex system integration expenses. Small entities choosing to automate the filing process through third-party software may face initial costs up to \$9,750 and recurring fees of \$5,000 to \$10,000 annually. For those without the resources to invest in automation, filing will require working with customs brokers, who charge fees that may range from \$50 to \$150 or more per entry for a basic entry, depending on the product and broker. For small importers with frequent, low-value shipments, these costs can quickly become unsustainable.

### *Operational Burdens*

In addition to compliance burdens, the eFile rule introduces significant operational risks. Errors in the CoC data or delays in transmission to the CPSC or CBP can lead to import holds, shipment rejections, or customs penalties. Small businesses are particularly vulnerable to these disruptions, as many lack dedicated compliance staff and cannot afford interruptions on the inventory flow. Seasonal businesses, such as small toy companies and promotional product firms, may be unable to recover from missed sales windows caused by customs delays.

Furthermore, the eFile rule expands recordkeeping obligations by extending the retention period for GCC records from three years to five years. This added administrative burden disproportionately affects small firms that manage compliance documentation manually or without centralized systems.

Small business representatives have expressed concern that the additional requirements imposed by the eFile rule may result in small firms unintentionally falling out of compliance or exiting the market altogether due to the cumulative burden. For example, one small manufacturer of juvenile products informed Advocacy that it anticipates incurring at least \$145,000 in additional annual costs as a result of the eFile rule. This includes approximately \$30,000 for document preparation, \$75,000 in broker filing fees for submitting PGA Sets, and \$40,000 in additional factory staffing costs to manage documentation. The company emphasized that these are conservative estimates, and the actual estimates could be higher depending on shipment volume and compliance complexity. The company noted that this financial burden may force it to reduce its product

offerings, delay growth plans, or pass costs onto consumers, undermining its ability to remain competitive.

### *Learning Curve and Training*

Beyond direct dollars, the eFile rule creates procedural hurdles that will be difficult for small entities to manage. First, small business owners and employees will have to learn the intricacies of the CPSC's requirements for eFilings. The data fields are technical, and ensuring this information is correctly formatted and submitted will likely require training. A large company can send its compliance team to webinars or hire consultants. However, a five-person company might have one person doing this in addition to many other duties. Even with the CPSC's guidance materials, the time spent on regulatory familiarization is significant. Every hour a small entrepreneur spends deciphering government filing codes is an hour not spent on product development, marketing, or sales.

### *Risk of Shipment Delays, Seizures, and Lost Business*

Perhaps the most severe impact is the increased risk that small businesses' shipments could be held up or seized at the border due to eFiling issues. For small businesses, the eFile rule is not just one extra inconsequential step. It requires use of two different systems that must coordinate for every shipment: 1) logging into the CPSC Registry to upload and maintain CoC data and 2) ensuring brokers correctly enter the Reference IDs into ACE. Any mistake, such as missing a digit or miscommunication between the two systems, can cause the shipment to be held, adding costs that small firms cannot afford.

The CPSC has made it clear that failure to properly eFile the CoC data can lead to enforcement action. In fact, the CPSC stated that while it may initially refrain from automatically denying entry for missing or faulty e-filings, it fully intends to enforce eFiling requirements by working with CBP to seize non-compliant imports. This is a grave and expensive consequence for a small business.

For example, if a small importer or broker makes a mistake in the electronic submission (e.g. a typo in the Certificate ID), or the submission is missing one of the required data elements, the shipment will likely get flagged for inspection or denied entry. Under these circumstances, the best-case scenario is that there is a delay until the error is corrected. However, the worst case is the shipment is seized and impounded. Unlike a large corporation, a small business likely cannot absorb a lengthy port delay or the seizure of an entire shipment. Their orders tend to be smaller but represent a large portion of their inventory or personal stock. A missed week or two could mean lost sales that the small business cannot recover.

One small toy company told Advocacy that it imports 50 different types of educational toys from abroad in modest batches throughout the year and has approximately \$500,000 in sales annually. The owner imports approximately 200 shipments a year of various toy models. Under the new



eFile rule, the small business owner must input CoC data in the CPSC Registry for every shipment. This means 200 CoC filings. The owner states he will likely opt to pay a broker to input the PGA Set into the ACE system. Even if the broker charges on the lower end, \$50 extra per filing, this is an extra \$10,000 a year in filing fees. Further, whenever the owner updates or adds a new product, he will also have to spend time uploading new CoC's to the Product Registry, which he estimates will take 10 to 20 hours annually. For a business of its size, these added costs and lost hours make a noticeable dent in profitability. The stakeholder voiced concerns that if one of his shipments arrives and any of the required CoC data is missing or incorrect, the shipment could be held. Shipment delays result in lost sales, missed seasonal or promotional opportunities, higher storage and port fees, and disruptions to cash flow. Delays can also damage relationships with retailers and consumers, trigger contract penalties, and erode a company's reputation for reliability.

Advocacy also spoke with the owner of a small children's boutique that designs organic cotton children's pajamas, which are manufactured overseas. Because children's sleepwear must comply with strict flammability standards, each product requires third-party testing and certification. The small business owner bears those testing costs. Under the eFiling rule, every time she imports a batch of pajamas, she must also enter the testing information and other CoC details electronically for every shipment and every product in the shipment.

To save on the additional fees that customs brokers may charge for inputting the PGA Set into Ace, after entering the CoC data for each pajama style in the shipment and obtaining reference IDs, the owner will input the PGA Set into ACE for each product. This extra step is prone to errors, and if the owner makes any mistakes, the shipment can be delayed or flagged which, as previously discussed, can lead to a range of financial, operational, and reputational problems for this small business owner.

The knowledge that paperwork errors could result in losing merchandise may have a chilling effect on small entities. Some small entrepreneurs might decide importing regulated products is no longer worth the risk. For instance, one small manufacturer who designs children's products told Advocacy he may not expand his business via imports due to the fear of running afoul of eFiling and seeing his capital investment (the shipment) confiscated. In this way, the e-File rule may inadvertently favor larger players who have the legal and compliance teams to ensure everything is done accurately. Small firms are by nature less equipped to handle legal penalties or the sudden loss of inventory.

These real-world examples demonstrate that the eFile rule imposes far greater burdens on small businesses than the CPSC's cost analysis suggests. While the CPSC assumed minimal compliance costs and uniform technological readiness, the experiences of small importers show otherwise. Expenses tied to new software, training, third-party fees, and recordkeeping are neither minor nor easily absorbed. These hidden costs fall disproportionately on small firms with fewer employees and limited cash flow, often forcing them to divert resources away from growth, hiring, or innovation. By overlooking these realities, the CPSC's assumptions understate

the true economic impact and risk creating compliance barriers that threaten the survival of small businesses. A more accurate assessment must account for these costs and provide flexible pathways to compliance that protect safety without unfairly disadvantaging America's smallest enterprises.

**Small Business Recommendations:** In its initial and final regulatory flexibility analyses, the CPSC grossly underestimated the impact the eFile rule would have on small businesses. The eFile rule imposes new compliance costs on importers, manufacturers, and small distributors by requiring advance electronic filing, ongoing recordkeeping, and coordination with brokers and the CPSC Registry. Many small firms have limited compliance staff and rely on third-party customs brokers, making these new obligations disproportionately costly compared to larger competitors who can spread compliance across broader operations. Moreover, the CPSC did not adequately consider indirect effects on supply chains, including shipment delays, duplicate entry requirements, and fees passed down from customs brokers.

Small business stakeholders support modernizing data collection and improving supply chain visibility. However, requiring compliance before certain milestones are achieved would place an undue burden on small businesses and increase the risk of eFiling errors, shipment delays, and financial harm. Accordingly, the CPSC should rescind the current eFile rule and propose a new rule that meaningfully reduces the burden on small businesses by incorporating flexibility, phased compliance, and streamlined reporting requirements. Alternatively, the CPSC should delay the effective date of the current eFile rule until it has completed the necessary adjustments to ensure small entities are not disproportionately harmed. When proposing a new rule or modifying the current rule, the CPSC should ensure that the rule can be implemented and complied with in a manner that reduces the rule's burden on small businesses. Specifically, the CPSC should ensure:

- 1) Its technical systems are proven to work reliably and can handle the amount of certificate data being submitted through U.S. Customs and Border Protection.
- 2) Small businesses receive adequate outreach, training, and onboarding, including detailed guidance and user support to comply with the rule's requirements.
- 3) Interagency reporting processes, particularly between the CPSC and CBP, are coordinated and streamlined to eliminate duplicative or inconsistent filing requirements.
- 4) There is a phased-in implementation for small entities.
- 5) There are exemptions or simplified filing options for low-volume importers;
- 6) Consolidated filing options are available for multiple regulated products in the same shipment; and

- 7) Targeted technical assistance and outreach are available to small entities.

Absent these adjustments, the eFile rule will raise the costs, increase risk, and reduce competitiveness for small importers, contrary to the RFA's mandate to minimize economic burden on small entities.

### **C. Section 6(b) and Recalls**

**Issue:** Section 6(b) of the Consumer Product Safety Act (CPSA) places limits on the CPSC's disclosure of product-specific information to the public.<sup>18</sup> Before publishing information that identifies a manufacturer or product, Section 6(b) requires the CPSC, to the extent practicable, to provide the manufacturer with advance notice, an opportunity to comment, and to take reasonable steps to ensure that the disclosure is accurate and fair. These procedural safeguards are designed to prevent premature or unfair harm to businesses while preserving the CPSC's ability to inform the public when necessary to address safety risks. Small businesses believe that Section 6(b) protections are critical to their survival, as even a single adverse public statement can have immediate and lasting economic consequences.

Advocacy is concerned that Section 6(b) protections can be undermined, particularly when small entities decline to agree to a voluntary recall. While most recalls under the CPSA result from negotiated agreements between the CPSC and the affected company, some businesses, particularly small entities, refuse to agree to a recall when they believe the hazard determination is flawed, unsupported by adequate data, or the proposed corrective action is unnecessarily burdensome. When this occurs, the CPSC may initiate formal enforcement proceedings to compel a recall, a process that can take years, impose substantial legal and administrative costs, and create prolonged uncertainty in the market. Before or during this time, the CPSC may issue public hazard communications before the adjudicatory process is complete. Although such announcements are intended to inform and protect consumers, when they occur prior to final resolution, they can have the practical effect of a recall, inflicting economic and reputational harm without the full due process Section 6(b) was designed to guarantee. For small businesses, this can mean immediate loss of sales, canceled distribution contracts, and damage to brand goodwill, outcomes from which recovery may be difficult or impossible.

Advocacy has heard from small businesses and other stakeholders who shared examples showing the serious consequences for small entities when the CPSC issues public communications before or during disputed enforcement actions. Stakeholders suggest that in these instances, the CPSC or individual commissioners have issued unilateral public warnings about specific products without the full notice-and-comment required by the statute and before any determination has

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<sup>18</sup> 15 U.S.C. § 2055(b).

been made regarding whether the product constitutes a substantial product hazard. Below are some notable instances.<sup>19</sup>

### **Small Business Impacts:**

#### *Magnets Sets*

In 2014, the CPSC adopted a final rule banning the sale of small, high-powered magnet sets alleging the magnets constituted a substantial product hazard due to the risk of ingestion injuries if multiple magnets were swallowed. One small manufacturer filed a lawsuit challenging the CPSC rule, arguing its magnets, when used as intended and in accordance with its clear warnings and labels, were safe for adult consumers. A federal court vacated the CPSC rule, finding that the CPSC had failed to meet its burden of proving that the products constituted a substantial hazard. Despite the court ruling, the CPSCs pursued administrative actions to force the small manufacturer to recall its products. Throughout the legal proceedings, the CPSC issued broad public communications about magnet hazards, which prejudiced the market and damaged the company's reputation prior to a final adjudication. Retailers ceased carrying the manufacturer's products, revenue plummeted, and inventory was destroyed. The manufacturer continued to fight recalls, arguing that the CPSC overstepped its authority by issuing press releases warning against its products before adjudication. After years of litigation, the small manufacturer ceased operations, citing the unsustainable burden of defending against ongoing CPSC actions and the irreversible harm that its business incurred as a result of CPSC's public communications.

This case highlights how CPSC overreach can impose existential burdens on small entities. It further illustrates how, even when a small business succeeds in vacating a CPSC rule in federal court, the CPSC can still pursue parallel enforcement actions that can effectively drive a company out of business.

#### *Infant Loungers*

Another significant dispute arose over infant loungers produced by a small manufacturer. The CPSC viewed the lounger as a suffocation hazard following two infant deaths. In January 2022, the CPSC issued a press statement warning parents to immediately stop using this brand of infant loungers.<sup>20</sup> The CPSC stated the warning was issued because the manufacturer refused to

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<sup>19</sup> Some of the matters discussed in this section involve companies that are subject of current or ongoing litigation or administrative proceedings. The descriptions provided herein are based on publicly available information and are intended solely to illustrate small business concerns regarding the CPSC's implementation of Section 6(b) of the CPSA. No statement in this comment letter should be construed as a legal conclusion or as expressing any view on the ultimate merits of any pending case.

<sup>20</sup> U.S. Consumer Prod. Safety Comm'n, *CPSC Warns Consumers: Stop Using the Leachco Podster, Podster Plush, Bummie and Podster Playtime Infant Loungers Due to Suffocation Hazard; Two Infant Deaths Investigated* (Jan. 20 2022), <https://www.cpsc.gov/Warnings/2022/CPSC-Warns-Consumers-Stop-Using-the-Leachco-Podster-Podster->

conduct a voluntary recall of the product. However, the CPSC did not initiate formal enforcement proceedings to compel a recall, as required by Section 6(b).<sup>21</sup> The CPSC invoked the public health and safety exception to act quickly, explicitly stating it “found that the public health and safety require this notice to warn the public quickly of the hazard.”<sup>22</sup>

The manufacturer, a small family-owned business, strongly objected to the CPSC’s actions and maintained that its loungers were safe when used as intended. The manufacturer argued that the product was intended and advertised for supervised awake time, not unsupervised infant sleep, and the harm only occurred when the loungers were used contrary to the safety instructions. In February 2022, the CPSC filed an administrative complaint against the manufacturer to force a recall of the loungers. An administrative law judge (ALJ) denied the recall, finding the CPSC had not met its burden to prove a substantial product hazard.<sup>23</sup> The ALJ wrote that the CPSC “exists to protect the public...from unreasonable risk of injury, not to eradicate any risk.”<sup>24</sup>

Though the ALJ ruled in favor of the manufacturer, by then, much of the commercial damage, including loss of customer trust and diminished market position, was irreversible. The CPSC’s stop use warning was issued before a formal recall order, yet major retailers and online marketplaces quickly removed the product from sale. This resulted in an immediate collapse in sales, loss of key distribution channels, and long-term reputational harm. The manufacturer spent over two years defending itself in an administrative proceeding, incurring significant legal and compliance costs. Effectively, the CPSC pronounced a product dangerous and urged consumers to stop use, even though no safety standard prohibited the product, and the deaths involved misuse.

### *Weighted Infant Sleep Products*

Another example involves weighted infant sleep products, such as weighted swaddles and wearable blankets. There is currently no voluntary or mandatory safety standard for these products. In 2023, CPSC Commissioner Richard Trumka Jr. proposed that the CPSC adopt a mandatory safety standard to address risks from weighted infant sleep garments.<sup>25</sup> In November 2023, CPSC rejected that proposal in a 3-1 vote.<sup>26</sup> The majority felt there was not enough data to regulate these products. Despite losing that vote, in April 2024, Commissioner Trumka sent a

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[Plush-Bummzie-and-Podster-Playtime-Infant-Loungers-Due-to-Suffocation-Hazard-Two-Infant-Deaths-Investigated.](#)

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> New Civ. Liberties All., *NCLA Sues CPSC, Trumka, HHS, CDC, NIH for Illegal, Unfounded Attacks on Weighted Infant Sleep Products* (Nov. 20, 2024), [https://nclalegal.org/press\\_release/ncla-sues-cpsc-trumka-hhs-cdc-nih-for-illegal-unfounded-attacks-on-weighted-infant-sleep-products/](https://nclalegal.org/press_release/ncla-sues-cpsc-trumka-hhs-cdc-nih-for-illegal-unfounded-attacks-on-weighted-infant-sleep-products/).

<sup>26</sup> *Id.*

letter on official CPSC letterhead directly to major retailers, urging them to halt sales of all weighted infant sleep products.<sup>27</sup>

Additionally, despite voting against a mandatory standard for lack of information, the CPSC posted the following on its official website:

“Don’t use weighted blankets or weighted swaddles.”<sup>28</sup>

There is no evidence that the CPSC voted to add this “safety warning” to the website nor had the CPSC made any factual determinations about the products’ safety.

Weighted infant sleep products are primarily manufactured by two U.S. small businesses. Advocacy spoke with both manufacturers who said they received no advance warning of Commissioner Trumka’s April 2024 statement and thus were not given an opportunity to comment. They learned of the statement when it went public, and their subsequent pleas for retraction were rebuffed. Both businesses contend the CPSC’s actions, through Commissioner Trumka, pronounced their products dangerous without any formal investigation, hearing, or scientific evidence, which bypassed all the procedural safeguards of Section 6(b) and the CPSA.

As a result of Commissioner Trumka’s campaign, major retailers including Target, Walmart, Amazon, and Nordstrom quickly pulled weighted sleep sacks and swaddles from their stores. The two small manufacturers suffered immediate and significant harm. One reported that its relationships with key retailers were severed almost immediately after the warnings, resulting in halted sales and lasting reputational damage. The other manufacturer experienced similar harm, with reported sales declines exceeding 50% following retailer removals and lay-offs of almost 90% of her workforce. In each case, the effect was swift and severe. Market access was lost, sales collapsed, and brand reputations were damaged, without the procedural safeguards that 6(b) was intended to ensure.

These examples demonstrate why it is essential for the CPSC to balance its safety mission with the statutory due process protections of Section 6(b), particularly for small entities who often lack the resources to absorb sudden market losses, fund prolonged legal defenses, or repair damaged reputations when procedural safeguards are not observed.

**Small Business Recommendation:** These examples underscore the need for the CPSC to exercise restraint and fairness in its public communications during active enforcement matters, especially when small businesses are involved. Unilateral disclosures, whether press releases,

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<sup>27</sup> U.S. CONSUMER PROD. SAFETY COMM’N, STATEMENT OF COMMISSIONER RICH TRUMKA JR., TARGET, WALMART, NORDSTROM, AND BABYLIST COMMIT TO STOP SELLING WEIGHTED INFANT PRODUCTS (Apr. 26, 2024), [https://www.cpsc.gov/s3fs-public/Trumka\\_Statement\\_Weighted\\_Infant\\_Products\\_4\\_26\\_24\\_with\\_attachments.pdf?VersionId=iK5EDmatuGu9\\_z2jKt8t8BaWndFKwWCh](https://www.cpsc.gov/s3fs-public/Trumka_Statement_Weighted_Infant_Products_4_26_24_with_attachments.pdf?VersionId=iK5EDmatuGu9_z2jKt8t8BaWndFKwWCh).

<sup>28</sup> Prior to this letter being published, the safety warning was removed from the CPSC website.

safety alerts, or broad hazard warnings, can remove products from the market before a final determination is reached, effectively functioning as de facto recalls without the due process protections guaranteed under the CPSA and Section 6(b). For small businesses, the harm is often immediate and disproportionate. The loss of retailer support, consumer trust, and sales revenue, coupled with the absence of any meaningful correction or retraction mechanism, can devastate small firms that lack the resources of larger competitors to recover or respond. To safeguard against these risks and ensure fairness, the CPSC should strengthen its adherence to Section 6(b) procedures when disclosing product-specific information in contested enforcement matters including:

1. Refraining from issuing public communications identifying a company or its products until a final hazard determination has been reached, except in cases where there is a demonstrable and imminent threat to consumer safety.
2. In circumstances requiring urgent communication, providing a company with adequate notice and meaningful opportunity to review and respond prior to public disclosure.
3. Establishing a clear correction or retraction process to mitigate harm if information is later determined to be inaccurate or incomplete.

These measures would preserve due process, maintain public trust, and ensure small entities are not unduly disadvantaged in the marketplace while disputes remain unresolved.

#### **D. Safety Standard for Infant Support Cushions**

**Issue:** On November 4, 2024, the CPSC published a final rule establishing a mandatory standard for infant support cushions.<sup>29</sup> In the final rule, the CPSC cites 79 infant deaths and over 124 nonfatal incidents from 2010 through 2022, often involving infants three months or younger, frequently where the product was used in an unsafe sleep setting such as an adult bed, crib, bassinet, or couch.<sup>30</sup> The final rule added infant support cushions to the list of “durable infant and toddler products,” triggering both product registration card requirements and mandatory third-party testing and certification before sale or import.<sup>31</sup> The rule sets limits on factors such as firmness and incline of the cushion, requires the product to maintain the shape and stability during use, and mandates clear warning labels against unsafe use like unsupervised sleep. Specifically, the safety standard requires all infant support cushions to have restraints, adequate seam strength, an incline of no more than 10 degrees in foreseeable use, compliance with firmness and sidewall-angle requirements, durable safety warnings, ANSI-formatted instructions, and no hazardous openings.

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<sup>29</sup> 89 Fed. Reg. 87467 (Nov. 4, 2024).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

The standard covers any cushion, pillow, or similar item filled with foam, fiber, or other soft media designed to support an infant in a reclining or lying position.<sup>32</sup> This includes dedicated infant loungers, some nursing pillows with lounging functions, tummy-time props, and other semi-enclosed support products.

**Small Business Impacts:** Several small business stakeholders have expressed concern that the infant support cushion rule is drafted too broadly, applying uniform requirements to a wide range of products with vastly different risk profiles. By failing to clearly distinguish between high-risk products (such as dedicated infant loungers) and low-risk items (such as multipurpose nursing pillows or supervised activity cushions), the rule captures products not meaningfully associated with the hazards it seeks to address. The one-size-fits-all approach forces some small businesses to bear significant compliance costs, covering testing, labeling, design changes, and inventory write-ups, for products that are unlikely to contribute to the injuries or fatalities the rule is intended to prevent. The overbreadth of the final rule can create a chilling effect on innovation and market participation. Small-scale manufacturers, custom product makers, and niche brands, already operating on thin margins, may scale back their offerings or exit the market entirely rather than absorb disproportionate compliance costs. Small business stakeholders cite several burdens imposed by the infant support cushion rule and how these burdens can significantly hinder their ability to operate, compete, and grow. According to Advocacy's estimates using CPSC's final rule analysis, this rule will cost small businesses \$32.2 million over ten years.

#### *Costly Redesigns*

In most cases, compliance with the new firmness, geometry, and fill material requirements will require complete product redesigns, which are especially costly for small manufacturers. A small family-owned manufacturer of specialty nursing pillows told Advocacy that to comply with the new firmness and geometry requirements, they would need to retool their sewing patterns, alter fill density, and source new foam inserts. These changes require both engineering time and prototype production runs, costing an estimated \$18,000 to \$25,000 per stock keeping unit (SKU), a cost that scales with every variation in shape or size. Since the manufacturer offers multiple models, the total will quickly reach six figures. For this small business and many others, redesign costs can be fatal to profitability, forcing them to either pass costs to consumers, reduce product variety, or withdraw from the market altogether.

#### *Mandatory Third-Party Testing*

Regulations requiring third-party testing can be disproportionately expensive for low-volume producers. For example, a handmade baby cushion seller may produce only a few dozen units each month, but that seller still faces the same fixed costs for accredited laboratory testing as a mass-market manufacturer producing thousands of units. Additionally, the final rule's testing triggers are so broad that minor cosmetic changes can force small businesses into repeated third-

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<sup>32</sup> *Id.*



party testing. Under the new rule, modifications such as switching to a seasonal fabric print require retesting if the cover affects firmness or dimensions. One infant accessory shop importing limited-edition prints calculated that third-party lab fees would add roughly \$400 per variation, essentially doubling their compliance budget. For small businesses operating on tight margins, these expenses can consume a significant share of revenue, deterring innovation and limiting the ability to offer unique, customized products.

### *Compliance and Labeling*

Many small businesses face waste and unexpected costs from existing packaging and materials rendered noncompliant by new labeling requirements. One small online seller told Advocacy that they had already printed a year's worth of branded boxes without the new warning labels. They expect to destroy and replace over \$12,000 in packaging inventory, diverting funds from marketing and product development. This business is now worried that this unplanned expense could deplete cash reserves and reduce their ability to weather slow sales periods or respond to market opportunities. For many small businesses, new packaging requirements divert resources away from core operations, erode margins, and can force them to raise prices beyond what their customer base can afford.

### *Administrative and Recordkeeping Requirements*

Compliance obligations often extend beyond product design to significant administrative burdens, including detailed recordkeeping, batch tracking, and document retention. Even seemingly simple compliance requirements such as adding registration cards can create ongoing administrative and financial burdens for small sellers. Adding product registration cards, along with maintaining a database for contact information, has significant costs for small-scale sellers. A home-based business selling through Etsy estimated the initial setup for printing cards, envelopes, and database software at \$4,000, with ongoing postage costs of \$1.50 per card for mailed forms. Additionally, for a small manufacturing company with a minimal staff, fulfilling these requirements means dedicating hours each week to paperwork instead of production or sales. In cases where businesses must invest in software or hire compliance personnel, costs multiply further. For small entities, these administrative demands reduce productivity, increase overhead, and limit the time they can devote to growing their business.

### *Inventory Losses and Market Disruptions*

Tight compliance deadlines risk forcing small businesses to discount or dispose of non-compliant inventory, creating immediate and substantial financial loss. Several small businesses told Advocacy they were forced to liquidate noncompliant stock by the May 2025 effective date in the form of deep discounts or unsellable returns. One small importer of tummy-time support cushions valued the total at \$20,000 in lost inventory, equivalent to nearly a quarter of their annual gross revenue. For this small business and many others, sudden inventory write-offs can

disrupt cash flow, damage customer relationships, and undermine the financial stability necessary to remain in operation.

Collectively, these burdens demonstrate the compounding effect of the infant support rule on small businesses. While each requirement may seem manageable in isolation, the cumulative impact can overwhelm small entities that lack the economies of scale, in-house compliance resources, or market reach of larger competitors.

**Small Business Recommendation:** The CPSC should rescind the current rule and work collaboratively with industry stakeholders, small businesses, consumer groups, and standards bodies to improve or adopt voluntary standards for these products. However, if the CPSC determines a mandatory standard is necessary, the CPSC should propose a new rule that gives meaningful consideration to less burdensome regulatory alternatives including but not limited to:

1. Narrow the scope of the rule to focus only on products with substantiated, documented safety hazards, avoiding an overbroad application that unnecessarily captures low-risk items.
2. Provide extended compliance deadlines, allowing small businesses adequate time to deplete existing inventory, adjust manufacturing processes, and update labeling without catastrophic financial loss.
3. Adopt tiered or conditional testing requirements so that cosmetic changes, such as fabric print variations, do not automatically trigger expensive repeat third-party testing when underlying safety characteristics remain unchanged.
4. Enhance small business outreach and technical assistance, including clear, non-technical guidance and training, to help smaller entities meet safety objectives efficiently and without excessive administrative burdens.

These reforms would preserve essential safety protections while aligning regulatory requirements with the operational and financial realities for small businesses. By adopting a more targeted, flexible approach, the CPSC can reduce unnecessary costs, prevent market contraction, and maintain a competitive, diverse supply of safe infant products.

## **E. Flame Mitigation Devices**

**Issue:** Congress passed the Portable Fuel Container Safety Act of 2020 (PFCSA) to reduce the risk of explosions and flash fires caused when flammable vapors inside portable fuel containers ignite.<sup>33</sup> The PFCSA requires that all portable fuel containers with a capacity of five gallons or less be equipped with a flame mitigation device (FMD) designed to prevent flames from

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<sup>33</sup> 15 U.S.C. § 2056d (2020).

spreading into the container. A FMD is a small piece of technology, usually a mesh screen or disk, that sits inside the spout of a fuel container. Its primary function is to stop a flame from traveling back into the container if gasoline vapors ignite outside of it. Without such device, there is a risk of a dangerous “flashback” explosion.

Pursuant to the PFCSA, the CPSC issued a direct final rule that created a mandatory safety standard requiring FMDs in all portable fuel containers sold, manufactured, or imported in the U.S.<sup>34</sup> The CPSC’s safety standard applies to the familiar red gasoline cans used for lawn equipment and generators as well as to a broad range of other containers intended for transporting, storing, or dispensing fuels with a flash point below 140 degrees Fahrenheit, including gasoline, kerosene, ethanol blends, methanol, and certain biofuels.

While the PFCSA’s safety objectives are well-intended, the scope of the CPSC’s mandatory standard has extended far beyond traditional gas cans. Under the CPSC’s interpretation, even pre-filled fuel additive bottles and other “fuel-adjacent” products fall within the definition of a portable fuel container if the liquid inside meets the statutory definition of “fuel.” This broad interpretation has brought many low-volume specialty products such as octane boosters, fuel system cleaners, and small camping fuel bottles under the mandatory standard, even though they are typically not handled in the same conditions or pose the same explosion hazards as traditional fuel cans.

**Small Business Impacts:** Small business stakeholders have raised significant concerns about the CPSC’s implementation of the PFCSA. While they support the goal of preventing flashback explosions in portable gasoline cans, they emphasize that Congress enacted the PFCSA to address this well-documented hazard, not to regulate every product containing flammable liquids. Fuel additives in particular are rarely exposed to ignition sources in the same way as portable gas cans. Nevertheless, due to an expansive statutory interpretation, pre-filled fuel-additive containers and other low-risk products have been swept into the mandatory standard. Small business representatives have formally urged the CPSC to exclude these products, arguing that their inclusion exceeds the PFCSA’s legislative intent and imposes disproportionate burdens on small entities. This concern has gained legislative attention, with Representative Chip Roy introducing the Gas Can Freedom Act of 2025, which would prohibit flame mitigation requirements for any portable fuel container, highlighting the seriousness of industry objections.<sup>35</sup>

### *Technical and Engineering Challenges*

Small businesses face substantial engineering and design challenges in meeting the CPSC’s mandatory standard for fuel-adjacent containers, particularly pre-filled fuel additives and other

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<sup>34</sup> 89 Fed. Reg. 34102 (Apr. 30, 2024).

<sup>35</sup> H.R. 1345, 119th Cong. (2025).

small-neck bottles. Many of these containers cannot accommodate a compliant FMD without a complete redesign. Currently available FMDs either do not fit narrow dispensing spouts or substantially reduce flow rates. In some cases, flow is reduced to the point of frustrating consumers, which creates incentives to remove the device altogether, undermining the intended safety benefit. Industry representatives have emphasized there are no commercially available devices that fit these containers and function without impairing usability, making compliance impractical for many small entities.

### *Supply Chain Disruption*

Industry feedback indicates that immediate enforcement of the CPSC's flame mitigation requirements for fuel-additive containers could force small producers to halt sales or withdraw products entirely, depriving consumers of essential specialty fuels and additives. The process of redesigning, retesting, and relaunching compliant containers is both costly and time-consuming, and many small businesses lack the resources to manage these transitions without significant downtime. The seriousness of this risk is reflected in the CPSC's repeated decisions to delay enforcement for pre-filled additive containers, most recently extending compliance to January 12, 2026, to allow for further technical and feasibility review.<sup>36</sup> Under this mandatory standard, potentially thousands of small businesses could face abrupt product discontinuations, resulting in lost revenue, diminished market share, and long-term harm to competitiveness.

### *Concerns with Direct Final Rulemaking Process*

Advocacy is also concerned about the process by which the CPSC implemented the PFCSA. Rather than using the traditional notice-and-comment rulemaking process, the CPSC issued the regulation as a direct final rule. This approach allowed the CPSC to bypass conducting an RFA analysis, which is designed to identify and reduce burdens on small businesses before rules take effect.

Had the CPSC followed full notice-and-comment procedures, small businesses could have raised critical concerns earlier in the process such as the lack of commercially viable flame mitigation devices for certain additive containers or the disproportionate compliance costs for small producers. These burdens are only now becoming apparent through repeated enforcement delays and petitions for exemptions.

**Small Business Recommendation:** The CPSC should rescind the direct final rule and instead proceed through the standard rulemaking process by issuing a notice of proposed rulemaking (NPRM), soliciting public comment, and preparing a full RFA analysis. A direct final rule avoids

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<sup>36</sup> Letter from Robert Kaye, Director, Off. of Compliance & Field Operations, U.S. Consumer Prod. Safety Comm'n, *Extension of Enforcement Discretion for Pre-Filled Portable Fuel and Fuel Additive Containers Subject to the Portable Fuel Container Safety Act Regulation* (July 3, 2024), <https://www.cpsc.gov/s3fs-public/Pre-filled-Portable-Fuel-Containers-Enforcement-Discretion-Extention-Letter.pdf>.

procedural safeguards Congress put in place to ensure meaningful stakeholder input. Without public comments, the CPSC lacks the benefit of perspectives from small entities most directly affected by the rule. Moreover, bypassing an RFA analysis deprives small businesses of the statutory protections designed to ensure that regulatory alternatives are considered and that disproportionate burdens are avoided. By initiating an NPRM with an accompanying initial regulatory flexibility analysis, the CPSC can identify less burdensome approaches, solicit data from affected industries, and ensure compliance with its statutory obligations under both the CPSA and the RFA.

## **F. Button Cell and Coin Cell Battery Safety Standard**

**Issue:** In 2022, Congress enacted Reese’s Law to address the serious hazards posed when children ingest small, round button cell or coin batteries.<sup>37</sup> These batteries, often found in toys, remote controls, key fobs, and other household items, can cause severe internal burns or death within hours if swallowed. On August 13, 2024, the CPSC published an NPRM to address risks of death and injury associated with children ingesting button cell or coin cell batteries obtained from toys by adding performance and labeling requirements for battery-operated toys containing such batteries.<sup>38</sup> Specifically, the proposed rule requires that the products:

1. Include clear warning labels on the packaging as well as the product;
2. Contain battery compartments that have two independent actions or a tool to open, making them child-resistant; and
3. Undergo safety testing to prove compliance with these requirements. Product owners must also certify compliance using appropriate forms.

**Small Business Impacts:** The rule’s broad scope and technical requirements will create significant burdens for small businesses. Many small manufacturers and importers of toys, electronics, novelty goods, and household devices report they must redesign products, modify packaging, purchase new labels, contract for additional laboratory testing and navigate new compliance paperwork. These changes carry high costs and often require extended lead times, especially for companies with limited engineering capacity or small production runs.

These burdens are magnified when products have multiple variations (colors, designs, or seasonal themes), as each variation may require separate testing and updated labeling. Small businesses state they already have difficulty securing timely testing slots at accredited laboratories, which creates supply chain delays and missed sales opportunities. The new requirement will further compound that burden.

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<sup>37</sup> Reese's Law, Pub. L. No. 117-171, 136 Stat. 2093 (2022).

<sup>38</sup> 89 Fed. Reg. 65791 (Aug. 13, 2024).

### *Costly Redesign and Testing Requirements*

Adding secure battery compartments and children-resistant features often requires redesigning housing and locking mechanisms, requiring engineering services and costly tooling updates. Small firms may lack in-house engineers or resources for these changes. One small specialty toy company told Advocacy that redesigning one of its educational devices to accommodate a compliant battery compartment would require custom tooling estimated at over \$25,000, costs that they will not be able to recoup in a limited market. One independent electronics retailer noted that many overseas suppliers are often unprepared for CPSC compliance, forcing the importer to either bear the expense of the costly retrofits or discontinue certain products altogether.

### *Packaging and Labeling Overhaul*

New warning labels for packaging and products must meet American National Standards Institute (ANSI) formatting and include specific hazard messaging. For small makers printing small batches, this means discarding previously produced packaging or labels and reprinting, often at high expense per unit. A novelty gift provider highlighted that required label space on small packages will force a complete packaging redesign, which will not only increase costs, but it will also diminish the product's visual appeal and competitive edge.

### *Recordkeeping and Certification Burden*

Each product requires a Children's Product Certificate (CPC) or General Certificate of Compliance (GCC), confirmed by testing. Even if a product previously met voluntary standards, the new regime requires updated paperwork and testing, adding administrative time and possible testing costs. Moreover, testing fees to certify compliance can range from \$800 to \$1,200 per SKU, especially when each model variation must be tested separately. This duplicative expense is particularly burdensome when product lines include 10-20 variations.

### *Supply Chain Delays and Compliance Uncertainty*

Businesses report confusion over whether a product "designed to use" a button battery but sold without one is still covered (it is), or whether zinc-air batteries are exempt. These uncertainties can delay production and shipment, hurting cash flow for small businesses.

The combined effect of design updates, testing, packaging redesign, and compliance paperwork creates significant barriers for small businesses. These costs often delay shipment schedules and may compel small businesses to limit their product offerings, all while competing against larger firms that can more easily absorb such expenses.

**Small Business Recommendation:** In its initial regulatory flexibility analysis, the CPSC states the rule, if adopted, will not have a significant economic impact on a substantial number of small

businesses. However, based on the feedback Advocacy received from multiple small business stakeholders, the CPSC has significantly underestimated the costs of this rule on small businesses. The CPSC should withdraw the current rule and work collaboratively with industry stakeholders, small businesses, consumer groups, and standards bodies to improve or adopt voluntary standards for these products. However, if the CPSC determines a mandatory standard is necessary, the CPSC should carefully evaluate small business feedback and propose a new rule that gives meaningful consideration to less burdensome regulatory alternatives. Without adjustments, the compliance costs and operational disruptions may force some small businesses to withdraw products from the market entirely, reducing consumer choice and harming competitiveness against larger firms that can absorb such expenses. Encouraging flexibility would help small businesses remain viable and innovative while ensuring consumer safety.

### **G. Portable Generators**

**Issue:** On April 20, 2023, the CPSC published a supplemental notice of proposed rulemaking (proposed rule) for portable generators to protect consumers from deadly carbon (CO) inhalation.<sup>39</sup> The purpose of the proposed rule is to ensure generators stop running before they release harmful levels of CO.<sup>40</sup> Specifically, the CPSC proposed two main safety features: 1) generators must keep CO emissions below a set limit when running, and 2) they must automatically shut off if CO levels get too high.<sup>41</sup> The proposed rule would apply to all portable generators sold in the U.S.

**Small Business Impacts:** In our ongoing engagement with the CPSC’s portable generator rulemaking, Advocacy has previously emphasized that this proposed regulation presents complex compliance challenges for small manufacturers and importers. In our April 2017 comments on the proposed rule, we discussed the significantly disproportionate impact the proposed rule would have on small businesses and encouraged the CPSC to expand the alternatives in its RFA analysis.<sup>42</sup> In a June 2023 letter, Advocacy formally requested a 60-day extension of the public comment period, noting that small entities require additional time to review the complex engineering requirements, consult with industry experts, and evaluate compliance costs.<sup>43</sup> Advocacy stressed that without such additional time, many small businesses would be unable to provide fully informed input, limiting the CPSC’s ability to craft a balanced, effective rule. Advocacy’s concerns about regulatory feasibility and small business capacity remain relevant as the rulemaking advances.

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<sup>39</sup> 88 Fed. Reg. 24346 (Apr. 20, 2023).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> U.S. Small Bus. Admin, Off. of Advoc., Comment Letter on Proposed Safety Standard for Portable Generators (Apr. 24, 2017), <https://www.regulations.gov/comment/CPSC-2006-0057-0073>.

<sup>43</sup> U.S. Small Bus. Admin, Off. of Advoc., Comment Letter on Proposed Safety Standard for Portable Generators (June 17, 2023), <https://www.regulations.gov/comment/CPSC-2006-0057-0184>.

### *Significant Redesign and Engineering Expense*

Generations of small companies, such as local hardware suppliers or niche equipment makers, must redesign their generators to include CO sensors and auto-shutoff systems. That means new parts, electronic controls, and updated manufacturing lines, all requiring engineering and tooling investment. These costs can run into the tens or even hundreds of thousands of dollars, a major burden for businesses operating on tight margins.

### *Testing and Certification Costs*

To prove compliance, every model must pass new CO emissions and shutoff performance tests. A small workshop producing 5 or 10 models faces staggering lab fees, potentially upwards of \$50,000-\$100,000, which can overwhelm annual sales for specialty or low-volume lines.

### *Administrative Overhead and Compliance Management*

The proposal anticipates broad applicability and detailed compliance documentation. Small businesses may need to hire outside consultants, invest in compliance software, or hire part-time staff, adding burden over and above testing and design costs.

### *Competitive Pressure*

Large manufacturers may absorb compliance costs across extensive production runs, but smaller entities simply cannot. The rule risks shrinking competition, limiting consumer choice, and driving boutique or local brands out of the market.

In its initial regulatory flexibility analysis, the CPSC acknowledged there are over 40 generator suppliers, including many small businesses that import or assemble generators from components. The CPSC provided per unit costs of \$34.22 per portable generator (discounted at 3 percent).<sup>44</sup> Small firms will bear the redesign, testing, and labeling costs, and these costs are anything but trivial. Small business representatives confirm that many small businesses in the portable generator sector are ill-equipped to absorb sudden cost increases without scaling back operations or limiting product offers.

**Small Business Recommendation:** The CPSC should withdraw the current rule and work collaboratively with industry stakeholders, small businesses, consumer groups, and standards bodies to improve or adopt voluntary standards for these products. However, if the CPSC determines a mandatory standard is necessary, the CPSC should carefully evaluate small business feedback and propose a new rule that gives meaningful consideration to less burdensome regulatory alternatives including but not limited to:

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<sup>44</sup> 88 Fed. Reg. 24346 (Apr. 20, 2023).



1. Provide at least 24 months for small businesses to comply, allowing redesigns without derailing operations.
2. Permit modular certification, testing the CO sensor/shutoff module once for all models it is used in, to reduce costs.
3. Publish clear compliance templates for labeling and testing to reduce the need for outside consultants.
4. Consider enforcement flexibility for small entities acting in good faith during the transition period.

These adjustments would preserve critical safety improvements while avoiding disproportionate harm to small businesses and ensuring consumers still have access to a variety of generator options.

## **H. Table Saws**

**Issue:** The CPSC proposed a new safety rule for powered table saws that would require all models to include active injury-mitigation (AIM) technology. This technology is designed to detect when the spinning blade touches skin and immediately stop or retract the blade to prevent severe injury. Under the proposal, the blade must be able to limit a cut to less than 3.5 millimeters deep during testing. The rule, published on November 1, 2023, would apply to all manufacturers, importers, and companies that sell table saws under their own brand, covering both homeowner and professional-grade models.

**Small Business Impacts:** Small business manufacturers and importers have expressed serious concerns about the impact of this proposal. Many table saw makers are small or family-owned companies that do not have in-house engineering teams to redesign products or absorb the high costs of adding AIM technology. Industry feedback and data submitted to the Office of Advocacy in prior comment letters have indicated that retrofitting existing designs could require full reengineering of saw components, new safety testing, and licensing or developing proprietary AIM systems. Estimated compliance costs can range from hundreds of thousands to millions of dollars, costs that large corporations may absorb but that could force smaller firms out of the market.

Several small businesses have also noted that AIM technology is currently patented by one company, raising competitive concerns. This could leave small saw manufacturers with limited options for sourcing compliant technology and potentially expose them to high licensing fees or restrictive supply agreements. In addition, businesses that import and manufacture private table saws have warned that these costs would inevitably be passed on to consumers, raising retail prices and reducing product variety in the market.

These impacts are not hypothetical. For example, a small importer with five to seven benchtop or cabinet saw models could face a total redesign cost in the low-to-mid seven figures. A small U.S. manufacturer without access to affordable licensing could be forced out of the table saw market entirely.

Advocacy has previously commented on this rule, recommending that the CPSC consider less costly alternatives and explore voluntary standards before imposing a mandatory requirement that could disproportionately harm small manufacturers.<sup>45</sup> We continue to urge the CPSC to work closely with industry, particularly small entities, to identify safety solutions that improve injury prevention while preserving competition and consumer choice.

**Small Business Recommendation:** The CPSC should withdraw the current rule and work collaboratively with industry stakeholders, small businesses, consumer groups, and standards bodies to improve or adopt voluntary standards for these products. However, if the CPSC determines a mandatory standard is necessary, the CPSC should carefully evaluate small business feedback and propose a new rule that gives meaningful consideration to less burdensome regulatory alternatives including but not limited to:

1. Phasing in implementation by product type and risk level, providing extended compliance timelines for small businesses.
2. Maintaining a performance-based standard that recognizes functionally equivalent AIM designs to encourage innovation and avoid a single-technology monopoly.
3. Targeted exemptions or extended sell-through periods for low-volume models where redesign is impracticable, paired with enhanced labeling or guarding to mitigate risk.

Without such adjustments, the proposed standard risks forcing many small manufacturers and importers out of the market, reducing consumer choice, and consolidating production among a few large firms with the resources to absorb the costs.

#### **IV. Conclusion**

Advocacy appreciates the CPSC's willingness to engage stakeholders in this important review. We encourage the agency to give full consideration to the feedback provided by these small entity stakeholders and to take meaningful action to address regulatory burdens they have identified. By prioritizing reforms that reduce unnecessary costs, clarify compliance obligations, and encourage innovation, without compromising consumer safety, the CPSC can foster a

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<sup>45</sup> U.S. Small Bus. Admin, Off. of Advoc., Comment Letter on Proposed Safety Standard Addressing Blade Contact Injuries on Table Saws (Jan. 26, 2024), <https://www.regulations.gov/comment/CPSC-2011-0074-1405>; U.S. Small Bus. Admin, Off. of Advoc., Comment Letter on Proposed Safety Standard Addressing Blade Contact Injuries on Table Saws (July 26, 2017), <https://www.regulations.gov/comment/CPSC-2011-0074-1292>.

regulatory environment that better supports small business growth and competitiveness. Advocacy looks forward to continued collaboration with the CPSC in advancing these shared goals.

Please feel free to contact me or Shanerika Flemings at (202) 205-6111 or [shanerika.flemings@sba.gov](mailto:shanerika.flemings@sba.gov) if you have any questions or require additional information.

Sincerely,

/s/

Dr. Casey Mulligan  
Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

/s/

Shanerika M. Flemings  
Assistant Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

Copy to: Mr. Jeffery B. Clark, Sr., Acting Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget