

## CPSC Meeting Log: Association of Home Appliance Manufacturers

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<b>CPSC Attendees</b>	Alex Hoehn-Saric Anna Laitin
<b>Date of Meeting</b>	3/22/2024
<b>Date of Log Creation</b>	3/26/2024
<b>Log Creator</b>	Annie Campbell

<b>ATTENDEES</b>
Kelly Mariotti, President & CEO, AHAM Jennifer Cleary, Vice President, Regulatory Affairs, AHAM Randy Cooper, Vice President, Technical Operations & Standards, AHAM Chuck Samuels, AHAM General Counsel, Mintz

### MEETING NOTES:

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*AHAM provided the following meeting summary and attached documents to the Chair's office after the meeting:*

Representatives from AHAM thanked the Chair for his time and summarily noted AHAM's long history of working with CPSC to advance product safety. Mr. Cooper highlighted AHAM's recent work with CPSC technical staff on voluntary standard development. AHAM has submitted over 120 proposals in 10 years to improve safety standards across a wide range of product categories. Most recently, AHAM and its members have been diligently working on addressing washer stability, portable heater safety, batteries, cooktop knobs, and air fryers. Mr. Cooper also noted AHAM's ongoing work with range hoods and ventilation. AHAM values its great working relationship with CPSC's technical staff and thanked the chair for dedicating resources towards consensus standard development.

AHAM briefly shared concerns from the industry regarding transparency and communications between CPSC and the manufacturing community. Ms. Mariotti's keynote speech at the ICPHSO Annual Meeting & Symposium this past February addressed those concerns and a copy of the speech was provided for the Chair. The group also discussed challenges surrounding the implementation of the Direct Final Rule on Safety Standards for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries. Lastly, Ms. Birkhead expressed AHAM's continued interest in partnering with CPSC on joint communications on important issues such as counterfeits, portable heater safety, and ventilation. In regard to portable heaters in particular, AHAM is already looking at partnering with online and, possibly other retailers to ensure that safety related information on portable heaters is accurate and to communicate safety tips to consumers. AHAM welcomes the Commission's engagement on this effort as well.

The meeting ended at 2:31 p.m. ET



October 5, 2023

Alberta E. Mills  
Office of the Secretary  
U.S. Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, MD 20814

RE: Consumer Product Safety Commission Direct Final Rule;  
Safety Standards: Button Cell or Coin Batteries and Consumer  
Products Containing Such Batteries; Docket No. CPSC-2023-0004

Dear Ms. Mills:

The Association of Home Appliance Manufacturers (AHAM), The Power Tool Institute (PTI), and Retail Industry Leaders Association (RILA) (collectively, the Joint Commenters) respectfully submits these comments on the Consumer Product Safety Commission's (CPSC or Commission) Direct Final Rule on Safety Standards for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries; Docket No. CPSC-2023-0004; FR 2023-20333 (September 21, 2023).

The Joint Commenters collectively produce and sell hundreds of millions of products each year. We and our members know how much consumers rely on our products. Our top priority is to design and sell products that are as safe as they are useful. As such, we and our members have demonstrated a commitment to strong safety design, labeling, and testing. The Joint Commenters support the goals of Reese's Law and appreciate the Commission's leadership in protecting young children from the hazards associated with ingestion of button cell or coin batteries. It is, however, critical that implementation of the requirements is on a realistic timeframe. Accordingly, the Joint Commenters respectfully request that the Commission reconsider the implementation of this Direct Final Rule as the 180-day compliance date is unacceptable and will make it exceedingly difficult, if not impossible, for the rule's reforms to be implemented effectively.

**I. An Immediate Effective Date And 180-Day Enforcement Discretion Is Unacceptable And Does Not Allow Sufficient Time For Effective Implementation.**

The Joint Commenters support the Commission's incorporation of UL 4200A-2023 in its direct final rule. Section 2(e) of Reese's Law states that the requirements of a voluntary standard the Commission determines to meet section 2(a) of Reese's Law shall be treated as a consumer product safety rule promulgated under section 9 of the CPSA (15 U.S.C. 2058) beginning on the

date that is the later of either the date the Commission makes the determination under section 2(d), or the effective date in the voluntary standard.

A. UL 4200A-2023 Was Not Well-Established When The Final Rule Was Approved.

The intent of this clause is for the CPSC final rule to become effective as soon as possible if the voluntary standard in question is well-established and already in use, or conversely, when the voluntary standard becomes effective if the standard is new to the marketplace and not well-established. The latest referenced UL standard, 4200A-2023, was published on August 30, 2023 and does not include an effective date. In ipse dixit style, the direct final rule states that because the CPSC is codifying its incorporation of UL 4200A-2023, a voluntary standard that was published in advance of the direct final rule, manufacturers will have adequate time to comply. This is a fallacy and undermines the timelines established by Section 2(e) of Reese's Law. While publication of UL 4200A-2023 did technically occur before publication of the Commission's determination, there were just nine days between the voluntary standard's publication date of August 30, 2023 and the Commission's vote on September 8, 2023. The assumption that manufacturers had already made significant strides in complying with UL 4200A-2023 within that timeframe is neither reasonable, supported by substantial evidence, nor consistent with the facts.

The Joint Commenters are also concerned about the feasibility of a 30-day lead-in period to comply with this rule and standard. We recognize that the Commission indicated it will grant enforcement discretion for 180 days from publication to allow more time for implementation. But both the 30- and 180-day timeframes are unrealistic, thereby making the direct final rule unacceptable and ineffective. The Commission has not justified the need for such aggressive timeframes, as it is bound to do under the law. As such, issuance of the direct final rule is arbitrary and capricious and will present a significant burden on the regulated community without any reasoned basis.

B. Industry And CPSC Staff Agree That 180-Days Is Insufficient.

Significant work must be done in order to ensure compliance with the requirements. A 180-day implementation timeline is not sufficient for the industry to redesign, source new materials and component parts, update production processes, have the products third-party tested as would be required by the end product standard certification, manufacture products, update and reprint labels and manuals for products and their packaging, and complete testing and certification. Moreover, there are significant concerns about the ability of third-party test laboratories to conduct this testing on such a short timeframe. Typical for a single product certification with third-party agencies require six to twelve weeks to obtain approval. No testing laboratories of which we are aware have indicated that they are able to perform this testing now. Therefore, it is highly likely that there will be insufficient global laboratory capacity, considering the sheer number of products needing to be tested and the likely very few labs that will be able to do so. The Commission has no contrary analysis. In fact, the CPSC staff analysis *supports* this conclusion and the need for a later effective date.

These concerns are not new. Numerous commenters *and CPSC’s own staff* recognized the many challenges associated with such a short timeframe. More than half of the comments posted to the public docket on the March 2023 Notice of Proposed Rulemaking (NPRM) recommended an extended timeline in response to the CPSC’s request for comment on “whether a later or an earlier effective date would be appropriate to comply with the proposed requirements...”.<sup>1</sup> In light of the comments submitted by stakeholders, CPSC staff recommended that the effective date of the Final Rule be extended from six months after publication, as proposed in the NPRM, to 18 months after publication, “to ensure availability of safe, compliant products and accommodate an expected high volume of laboratory product testing for a variety of product types that use button cell or coin batteries.”<sup>2</sup> CPSC staff again emphasized the need for an extended timeline in the briefing package stating: “CPSC staff now recommend an effective date of 18 months to minimize potential disruption in availability of safer *button battery powered products*.”<sup>3</sup>

The direct final rule, unfortunately, goes against the preponderance of the evidence and the recommendations of CPSC’s own staff and implements not only a 30-day timeline for compliance, but an inadequate measure of enforcement discretion. A direct final rule that disrupts such a broad range of consumer product manufacturing and testing with an effective date of 180 days is unacceptable and unfortunately, ineffective at ensuring that safe and compliant button battery powered products are available on the market, as argued by CPSC staff. Fortunately, it is within the Commission’s discretion to extend the deadline.

The Commission should withdraw the direct final rule and reissue a proposed final rule with a more acceptable effective date based on the guidance from stakeholders and CPSC staff. Ideally, a final rule would provide sufficient time for compliance—i.e., at least 18 months—rather than rely on enforcement discretion so that companies are not concerned about being out of compliance and left to rely on government discretion. At a minimum, however, CPSC should follow staff recommendations and extend the enforcement discretion to 18 months rather than six.

## **II. CPSC’s Direct Final Rulemaking Authority Is Not Clear In This Case.**

In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments.<sup>4</sup> ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553 (b):

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<sup>1</sup> Notice of Proposed Rulemaking on Safety Standards for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries; Docket No. CPSC-2023-0004; FR 2023-02356 (Feb. 9, 2023).

<sup>2</sup> Staff Briefing Package: Draft Final Rule to Establish a Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries (Staff’s Final Rule Briefing Package); August 31, 2023.

<sup>3</sup> *Id.*

<sup>4</sup> Notice of Adoption of Recommendations from the Administrative Conference of the United States; 60 Federal Register 160 (August 18, 1995); p. 43108-43113.

“when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, **unnecessary**, or contrary to the public interest.” (emphasis added)

The direct final rule adopts a voluntary standard, UL 4200A-2023, that was published and made publicly available just days in advance of the rule’s publication. There were also significant changes to the requirements proposed in the NPRM as compared with the direct final rule, including to the labeling and performance requirements, based on stakeholder feedback. To be clear, the Joint Commenters support adoption of UL 4200A-2023. But, given the direct final rule’s reference to this new, revised standard and various changes from what was originally proposed, CPSC is wrong to consider normal notice and public procedure for this final rule as unnecessary before creating the burden and uncertainty of this direct final rule.

Ample time to review the revised voluntary standard, UL 4200A-2023, as well as the proposed changes between the NPRM and final rule, is necessary and appropriate in order for stakeholders to thoughtfully comment on the matter and for manufacturers to appropriately comply. Therefore, the Commission’s decision to pursue direct final rulemaking in this case was unjustified and the rule should be reissued as a proposed rule to provide adequate time for review and comment. Failing to allow this opportunity for comment prior to issuance of a final rule means that the current direct final rule is lacking in adequate rationale and is arbitrary and capricious; thus, it must be withdrawn and revised. Any such proposal should include at least an 18-month compliance date, as supported by the existing record in this rulemaking and these comments.<sup>5</sup>

### **III. Additional Considerations**

The Joint Commenters would also like to recommend further improvements to direct final rule. The current labeling requirements severely limit the available space on product packaging for other relevant, timely or important safety information. Additionally, the current labeling requirements fail to take into account a manufacturer’s need or desire to include multiple languages. Many of the Joint Commenters conduct business in both the United States and Canada, including Quebec, which has various French language requirements for businesses including language parity requirements, at a minimum effectively doubling the footprint of any safety labeling.

Furthermore, the definition of “product display panel” specifies that “For consumer products with nonreplaceable button cell or coin batteries, the product display panel is visible upon access to the battery compartment.” This definition is problematic because in most cases when the button cell or coin battery is nonreplaceable, the consumer does not have access to the battery compartment, rendering a warning label completely ineffective and unnecessary. This makes the direct final rule ineffective and further supports the argument that it is arbitrary and capricious, with no rational basis for creating additional burdens on the regulated community. The proposed final rule should revise the term “product display panel” to exclude consumer products with

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<sup>5</sup> As a less desirable alternative, CPSC could also issue an enforcement policy that changes the six month enforcement discretion period to 18 months.

nonreplaceable button cell or coin batteries as the panels themselves are inaccessible to consumers by definition.

Lastly, the direct final rule defines a button cell or coin battery in different terms than the voluntary standard that it references, UL 4200A. The direct final rule defines button cell or coin batteries as (1) a single cell battery with a diameter greater than the height of the battery; or (2) any other battery, regardless of the technology used to produce an electrical charge, that is determined by the Commission to pose an ingestion hazard. In contrast, UL 4200A defines a button/coin cell battery as a single cell battery having a diameter of 32 mm (1.25 in) maximum, and diameter greater than its height. The Joint Commenters recommend that the direct final rule align with the voluntary standard in order to avoid third-party testing lab and manufacturer confusion.

The Joint Commenters appreciate the opportunity to submit these comments on the CPSC's Direct Final Rule on Safety Standards for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries. We support effective implementation of Reese's Law, and we encourage the CPSC to provide for more realistic compliance with UL 4200A-2023. We would be glad to discuss these matters in more detail should you so request.

#### **IV. The Joint Commenters**

The Association of Home Appliance Manufacturers (AHAM) represents more than 150 member companies that manufacture 90% of the major, portable and floor care appliances shipped for sale in the U.S. Home appliances are the heart of the home, and AHAM members provide safe, innovative, sustainable and efficient products that enhance consumers' lives. The home appliance industry is a significant segment of the economy, measured by the contributions of home appliance manufacturers, wholesalers, and retailers to the U.S. economy. In all, the industry drives nearly \$200 billion in economic output throughout the U.S. and manufactures products with a factory shipment value of more than \$50 billion.

The Power Tool Institute (PTI) represents the market-leading brands in the areas of portable and stationary power tools. Founded in 1968, PTI's primary objectives are to encourage high standards of safety in the manufacture of power tools (and lithium-ion batteries); to prepare and distribute information about safe use of power tools; to promote the common business interests of the power tool industry; to represent the industry before government; and to educate the public as to the usefulness and importance of power tools.

Retail Industry Leaders Association (RILA) is the U.S. trade association for leading retailers. RILA convenes decision-makers, advocates for the industry, and promotes operational excellence and innovation. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

(signatures on next page)

Respectfully Submitted,

Jennifer Cleary  
Vice President, Regulatory Affairs  
Association of Home Appliance Manufacturers

Heather Darrah  
Technical Director  
Power Tool Institute, Inc

Susan Kirsch  
Vice President, Regulatory Affairs  
Retail Industry Leaders Association

February 1, 2024

Alberta E. Mills  
Office of the Secretary  
Consumer Product Safety Commission  
4330 East-West Highway, Room 820  
Bethesda, MD 20814

Re: Direct Final Rule on Safety Standards for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries; Docket No. CPSC-2023-0004; 88 Fed. Reg. 65274 (Sept. 21, 2023)

Dear Ms. Mills:

We, the undersigned trade associations, representing thousands of companies across the economy, write to provide these comments in response to the U.S. Consumer Product Safety Commission's (Commission or CPSC) Direct Final Rule on Safety Standards for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries.

We support the goals of Reese's Law and appreciate the Commission's leadership in protecting young children from the hazards associated with ingestion of button cell or coin batteries. It is, however, critical that implementation of the law's requirements is clear and takes place on a realistic timeline. The use of a Direct Final Rule in this case deprived stakeholders, especially regulated entities, of the opportunity to seek clarity and/or provide comment on certain provisions of the rule, and thus, there are several areas of ambiguity that still require clarification.

Additionally, as companies have worked to comply with the law's requirements, additional questions about implementation have arisen. We write, therefore, to seek clarification on these areas. Moreover, though we greatly appreciate the statement of the Commission's intent to exercise its enforcement discretion on the compliance date for 180 days, it will be very difficult for manufacturers to comply even within that timeframe given the complexity of the new standards and the ongoing need for clarity on certain facets of the rule. Accordingly, we request that the Commission extend either the compliance date or the enforcement discretion to allow companies more time to comply.

#### **I. The Compliance Date Causes Several Challenges.**

The Commission's decision regarding the compliance date with a 30-day lead-in period has led to several consequences.

We appreciate that the Commission provided enforcement discretion for 180 days from the publication date with the stated intent to allow more time for compliance. But the intent to provide more time for companies to comply with the rule may not be fully carried out for several reasons.

First, some retailers have made the decision to require products and packaging to comply with the rule by the compliance date, effectively disregarding the Commission's enforcement discretion. Some laboratories have taken a similar position. While that decision is theirs to make, it creates a hardship for manufacturers given that it is impossible for many products to be compliant on that timeline.



Second, certification labs were not immediately prepared to do the testing, and their templates for compliance have not been updated. Labs were only able to put out their plans close to the compliance date. It is only within recent weeks that labs have indicated readiness to complete this testing.

Finally, the ambiguity surrounding many of the rule's provisions, further discussed below, is an additional roadblock to compliance. These collective bottlenecks will impede manufacturers' ability to timely comply with the rule—whether by the compliance date or by the end of the 180-day enforcement discretion period, which will soon close on March 19, 2024.

Given these challenges, we respectfully request that the Commission provide additional time, preferably an additional 6-months, for compliance.<sup>1</sup> Any additional time the Commission can provide would be useful to our members who are working diligently to comply with the rule's requirements.

## **II. The Commission Should Issue Immediate Guidance To Clarify Ambiguity In The Implementation Of The Rule.**

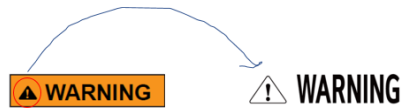
Compliance with the rule's requirements is difficult, especially on the accelerated timeline, because there are several areas of ambiguity that were either raised during the comment period and/or have come to light as companies have worked to comply. We respectfully request that the Commission issue guidance or otherwise clarify the following areas as soon as possible and provide additional time for companies to comply once public guidance is provided.

1. It is unclear how refurbished products should be handled.
2. It appears that the compliance date is the date of manufacture or the date of import, but the Direct Final Rule is somewhat unclear on this point. Our understanding is that already produced and imported products need not have stickers placed over them with the new labeling requirements and warnings, and we seek confirmation of that interpretation.
3. In some cases, the warnings required will be larger than the product packaging. This is especially true for smaller items where the instructions are incorporated into the packaging, because there are several warning statements required. CPSC needs to address this conflict.
4. It is unclear whether the rule impacts the use of button cell batteries regardless of their placement or whether only user-replaceable batteries are impacted. For example, some products may use button cell batteries to assist with programming and internal memory. These batteries are not accessible and are not intended to be replaced. Our understanding is that these batteries are subject only to sections 6.2-6.4. We seek confirmation that non-user-replaceable batteries are not subject to the other provisions in the rule given that they are not accessible to consumers.
5. The Commission should clarify whether commercial products not offered for sale in retail stores and installed only in public spaces (e.g., hospitals, shopping centers) where children are not likely to have access to the product are subject to the rule's requirements.

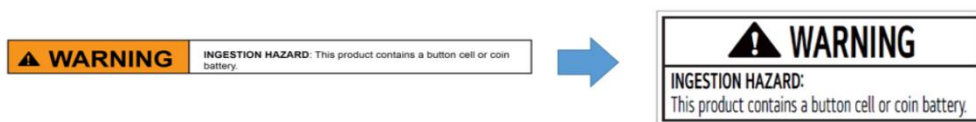
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<sup>1</sup> See, e.g., Petition of Consumer Technology Association to Amend the Direct Final Rule, Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries, filed Jan. 5, 2024 (seeking extension of the compliance date or the enforcement discretion period until September 21, 2025).

6. Even with the Alternative Principal Display Panel in Figures 7B.3 and 7B.4<sup>2</sup> for small products, the Packaging Marking occupies more than 60-70 percent of both the primary and secondary display panels. We ask the Commission to indicate that it is acceptable to provide the packaging marking in the manual and to instead use the Figure 7C.2 icon on the packaging.
7. We ask CPSC to indicate that the display colors of the marking in clause 7C.1 can be inverted per the below example (i.e., appear in black and white).



8. We ask CPSC to indicate that the warning display may be displayed vertically as shown below in order to assist with space constraints where needed.



9. There is a drop test for portable devices in clause 6.3.2. We ask the Commission to clarify whether the impact test is also required for portable devices.
10. The Commission should indicate whether it plans to modify the current medical device exemption for in home use thermometers.
11. For literature such as an owner's manual or use and care guide, we request that the Commission indicate that a "slip sheet" with the warning label and required text can be added as a loose sheet or stapled. If the Commission requires a particular size or color of paper, we request that be clearly specified.

We ask that the Commission immediately provide public guidance on these issues. We also request that the Commission provide a transparent procedure for requesting additional guidance as further implementation issues arise. Similarly, the Commission should adopt a process by which companies can request additional time for compliance if necessary due to exigent circumstances.

We support the goals of Reese's Law and we look forward to working with the Commission to ensure that manufacturers have the clarity and time necessary to comply with its important requirements.

Sincerely,

American Apparel & Footwear Association  
 Association of Home Appliance Manufacturers  
 Juvenile Products Manufacturers Association  
 National Association of Manufacturers  
 Portable Generator Manufacturers' Association  
 Power Tool Institute, Inc.  
 Retail Industry Leaders Association  
 Window Coverings Manufacturers Association

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<sup>2</sup> Standard for Products Incorporating Button Batteries or Coin Cell Batteries First Edition February 10, 2015, revisions through August 30, 2023, ANSI/UL 4200A.

**Kelly Mariotti**  
**President & CEO, AHAM**  
**ICPHSO Speech – February 21, 2024**



Thank you so much to ICPHSO for inviting me to share lunch and speak with you today. This Maya Angelo quote nicely sums up my philosophy on product safety. My views have evolved over several decades of working in the field in a variety of capacities. My remarks today reflect that history and should not be considered the policy positions of AHAM or of any other organization with which I've worked.

Ironically, the only time in my career when I didn't work in product safety was when I practiced law. At the beginning of my career my area of practice was M&A and securities law. In 1996 I founded Green Frog Art which was a manufacturer of a branded line of baby and children's products. We manufactured, among other things, drop side cribs at a time when that construction was the most common and desired way of building a baby crib. We did so without incident. And then times changed, and we found another way. The industry went through a period of learning better and so, ultimately, we did better.

After selling Green Frog Art in the 2010's I spent some time as CEO of an NGO - First Candle - which along with government partners developed one of the most successful consumer education campaigns of all time – the "back to sleep" campaign, where parents and caregivers are encouraged to put babies on their backs, rather than their tummies, to sleep. Implementation of this simple philosophy measurably reduced the incidents of unexplained infant death in this country. But it did not eradicate SIDS. During my time at First Candle research increasingly



showed that accidental suffocation was also a significant – and often preventable – cause of death among infants. It sometimes resulted when small children are brought into an adult bed, or allowed to sleep in other adult environments, but sometimes it was connected to a baby’s interaction with a consumer product. The people in this room often engage with the issue of safe sleep when a product is negatively implicated, but we must acknowledge that knowing more about infant behavior and sleep has led to advancements in products such as car seats, cribs and play yards which have had a positive impact and have indeed saved lives. We learned better, and so we did better.

Now I proudly head the home appliance association. We have always led the way in improving consensus standards where needed to protect consumers. After conducting a review several years ago, we recognized that an uncomfortable number of appliance related allegations were reported to the CPSC through saferproducts.gov even given the limitations of the quality and credibility of that data. In response, over ten years and through a focused special engineering task force we have developed and presented over 120 safety proposals to UL, CSA and NEC, advancing not just our reputation for safety, but safety itself. We learned better, and so we did better.

With these examples and the many, many more that each of you could contribute, we establish proof points that we are endeavoring to do the best we can. Doing the best we can in terms of product safety starts with robust design for safety, rigorous testing, and quality control measures during the manufacturing process. Doing our best means conducting thorough risk assessments to identify potential hazards and implementing effective mitigation strategies. It involves adhering to strict consensus and regulatory standards and staying up to date with the latest advancements in safety technology.

Maya Angelou reminds us however, that as a community of product safety professionals, we are on a journey of constant improvement. Although our shared goal of a world where no consumer is ever injured by or while using a product may be unattainable, we should all rejoice in the advancements we have made. In the injuries we have prevented and in the lives we have saved – in some cases we are protecting people not so much from products, but from themselves. This is life work of the best kind – where we leave the world a better place than we found it.

But being in a state of continuous improvement means we cannot rest on our laurels for long. What does “knowing better” and then “doing better” look like in product safety today? It means being proactive rather than reactive. It means learning from mistakes and continuously striving for improvement. It means investing in research and development to innovate safer products and manufacturing techniques. It also means fostering transparency and open communications with regulators, and educating consumers about potential risks and how they can be minimized.

Reflecting on our community as a whole, at this point in history, are we embracing the tenants of continuous improvement? Are the systems and practices we have in place truly working to advance safety? Certainly, there is a lot of activity related to safety, but there also seems to be a lot of frustration. There are a lot of well-meaning people and organizations dedicated to advancing safety, most represented in this room, but instead of working together toward the common good, it seems like factions of us are more and more at odds with one another. Government entities, private industry, NGO’s, standards setting bodies, and the media each play a vital role in “knowing better and doing better” and inherent tension between these groups can be a good thing – ensuring a variety of approaches are considered and that no one entity stops putting safety first. But let’s not confuse activity with progress. Are the current actions of the consumer product safety community actually making consumers safer? Are we looking at the highest risk activities and

products with a long view of how to satisfy consumer demand AND make those same consumers safer? Or are we playing whack-a-mole in order to claim short-term wins that are a proxy for safety, and not safety itself?

Fundamentally I believe that the best outcomes are attained when a group of experts with diverse accountabilities come together in pursuit of a common objective. We have the essentials – we have the common objective, and we are the experts. My challenge to all of us today is to work together to break free of the mindset of short-term individual wins and come together to truly, advance safety. Right now, today, I'm not sure if we are doing the best we can – in some cases we know better and, in many cases, we have the tools to know better – so let's do better. Maya Angelo's wise words are about progress, not perfection. How can we make progress and do better?

I'm about to share a laundry list of personal observations on what seems to be working and possible areas of improvement. Conferences are about taking in information, but I'd like to suggest that you find just one thing that you can grab on to and create an action plan around. Just one. If everyone in this room does that, we will make hundreds of advancements in the coming months. This is how we will make "do better" come to life.

- First, as noted, we must work together. Products are complex, supply chains are complex, safety testing is complex and on and on. This is exacerbated by the shift in our work from acute hazards to chronic hazards. Government regulators, politicians, industry, advocates, designers, trade associations – we all hold a piece of the puzzle, and we must come together to share what we know, engage in healthy dialogue, and work together to find solutions to problems. What end is served by refusing to meet or engage with others working toward the same objective? I do not understand regulators who refuse to meet with industry, or advocates who take to the press to condemn without offering solutions other than to ban products, or manufacturers which don't invest in safety-related R&D or share non-competitive safety advances. Progress is so much easier when there is collaboration rather than division.
- We must establish new systems and processes related to our work. Technological advancements are happening faster than we can blink so the old way of doing things may not be the best way in our current world. Let's not keep doing things the same way expecting different results.
- We must applaud and embrace the advocates – people who often have experienced unimaginable things and turned their suffering into good – education and advocacy. Calling for tort reform in a room full of lawyers is likely a speech for another day, but imagine if every person who filed a personal injury lawsuit related to a consumer product, or my new favorite – joining a class action because somehow a product purportedly is worth less because I might have been harmed by it - what if these individuals became consumer advocates instead. To the advocates in the room – THANK YOU, for turning your experience into good and selflessly giving back by helping complete strangers not experience what you did. Thank you for educating yourselves on how products are designed and built. A special thank you to the advocates who lean into the long, methodical, technical process of creating consensus standards, who show



up at those meetings and listen as much as they speak. Your input is valuable, and your stories remind us that we are designing products for real people.

- We all need to support ICPHSO, the forum we created to enable us to come together. People should be flocking to this conference and other ICPHSO events. There are so many reasons to be here – the content, networking with old and new connections, engaging with the vendors who are bringing practical solutions for us to learn about, the opportunity to learn from the experience of others so that we might “know better in order to do better”. When you go home, please share something you learned here with a colleague. Next year, when you are having the “who is going to ICPHSO this year” internal conversation, instead of limiting it to those who work in product safety in your organization, recognize that everyone works in product safety. The content some of us consider imbedded in our DNA is brand new to someone else who will benefit from it. Next year, please bring a colleague to this conference who has never been here before and who works in safety without evening knowing it.
- To Don Kornblet and the Society for Product Safety Professionals who are committed to providing educational opportunities for those who work in this space. Attend these programs, send someone in your organization or, if you have knowledge to share, give back by instructing. Help others get smarter about safety! Become an evangelist.
- The consensus standards process. Get involved! This is where collective learning actually moves the needle and can often be quicker and more effective than the regulatory process. There will never be enough government standards to fill the safety void but good, truly consensus standards can. If you aren't an engineer, being in the room still allows you to hear the limits of what is possible today and the priority of problems. It allows companies to understand what may be coming so they can proactively work on acceptable and perhaps even innovative solutions. The scenario we hear so often, when a new government or consensus safety standard is published and companies are caught wrong-footed because they didn't know, and retailers are scrambling to remove product listings or actual products from their shelves should never happen. The consensus standards process works and there is no excuse for a business not to be engaged with it. And we must fight to keep representatives from CPSC and Health Canada involved with consensus standards as well. We need that representation to ensure we are on the right path, to ensure we are all working from the same data set, and mostly, because of the incredible expertise of agency staff. Not having those bright minds in the room is a loss for the process and does not support the goal of us collaboratively working together to advance safety. And when we are in that room, open dialogue, even brainstorming, is desirable. Media or advocates who break the confidentiality of those sessions, name names and point fingers after the fact should not be tolerated. Collaboration is critical.
- Lead times – Even if everyone is engaged in the standards-setting process and has the foresight to know the parameters of what may be coming, whether dictated by standards, government regulation or retailer requirements, we must have adequate, reasonable, and consistent implementation timelines. Requesting an extension is not a ploy by manufacturers to delay the inevitable. It is a statement of the time needed for an orderly market transition. Respect that standards makers. And while we are at it, find a



way to coordinate so that implementation schedules are consistent among government bodies, retailers, and other de-facto regulators.

- Media – More and more we see safety issues playing out in the media. There are such tremendous risks here. The media can easily get ahead of a science and data-based analysis of safety risks. Economically, their motivation is interest in the news itself, not the ultimate goal of safety. In our soundbite society, saying something is unsafe on X, Instagram, or ticktock can become a truth. The increased use of the unilateral press release by the Commission in cases where they are in contact with the company has become a way to get around the proper process of rule of law, regulating and compliance and advocates taking to the media to highlight a purported safety risk are not good tactics. Threats of bans and fearmongering does not advance safety.
- Recalls are broken. We hear about this all the time. Consumers have recall-fatigue and don't pay attention. Even taking into account that the Commission's methodology for determining recall effectiveness is flawed, in many cases too few products are returned, or repair kits ordered. I don't know the answer, but we need to look this problem squarely in the face and find a better way to truly remove dangerous products from the marketplace. Maybe we need more prioritization on truly significant defects.
- Unintended consequences are a real thing. Sometimes I feel like this is something industry always puts in comment letters and regulators roll their eyes. On one hand, rightfully so because unintended consequences are hard to establish on a predictive basis. And once they occur, challenging to measure especially if they involve something that is not a similar consumer product. As we focus more and more on chemicals and other chronic hazards, when we "know better" and move away from one substance, we must provide sufficient time to consider the alternative substances and their impact. Sometimes there is a desirable gap between knowing better and doing better especially in cases where we don't know what we don't know.
- Data matters but not just raw data – statistics and the denominator matters – here I will share a story. I was working on a consensus standard for a product category that had several new innovations, and the discussion was about what should be covered and what shouldn't be under the standard. A common enough conversation that unfortunately, or sometimes fortunately, can lead to some innovative products being excluded and therefore unable to be sold in the future. In a hallway conversation the representative of one such small, entrepreneurial company making a product that pretty much everyone else in the room considered a bad idea said to me "I don't understand why my product is frowned upon by all the others in the room, I've never had an incident". When I inquired how many units she had sold, she told me proudly, "over 300". Don't get me wrong, I love entrepreneurs, I was one myself, and I applaud innovation, but as I shared with this business-owner at the time, if there were incidents with a data set of that size, alarm bells would be clanging. The lack of incidents does not mean your product is safe.

This happened a long time ago, when retailers were still storefronts and catalogs, and small companies still had to be vetted by buyers to get coveted floor space. Now, any

company of any size can get to market quickly via a marketplace. And many of these products are effectively unregulated. We all have files on products that are a bad idea but because they are not sold in large quantities and may not have incidents associated with them or reported incidents until it is too late. E-commerce must step up even beyond its current efforts and stop selling products which undermine the safety record built by legitimate manufacturers who care about consumers.

Another real example of how this plays out. Company X is the market leader in a product category, having a very large market share, mostly through online sales. Company X is driven out of the market due to publicity on several incidents resulting in a recall. Company X can show through data that their leaving the space did not reduce demand for the product, or sales, at all. Instead, hundreds of small companies filled in the void. Statistically, if the product is virtually identical which in this case it is, the same number of incidents will occur over time. Likely, instead of all being with one large company they will be one at a time with smaller companies. Companies that do not have a relationship with the Commission, use and abuse the de minimus importing rule and which can shutter and reopen under another name before the end of the day today. And in my example these smaller companies do not have the same safety warnings, manufacturing protocols, or investment in education as Company X so for this product category there is more confusion over its proper use, not less. Has safety been advanced? Certainly not.

My final comment on the denominator mattering. I'm not going to get into the statistics because we've all been through that exercise. We don't want people to get hurt using products, but big companies sell a lot of units of products. If the bar is set to zero accidents or injuries, what motivations does that create for industry? The type of incident matters, the use pattern matters, and the number of units being used successfully and without incident in the marketplace matters. If a company sells millions of units, used properly with no incidents, to force a recall, redesign, public shaming or all of the above for a minimal number of incidents resulting from misuse, is that really advancing safety?

What if we adopted a risk-based approach to regulation that focuses resources on the highest risk products while minimizing burdens on low-risk products or entities? This could help streamline compliance efforts and ensure that the regulatory requirements are proportional to the level of risk posed by a given product. It would acknowledge that the denominator matters.

What if incentives were provided to manufacturers to proactively invest in product safety measures that exceed regulatory requirements? Provide a carrot instead of a stick? This could include recognition programs, fast track imports, or other incentives for companies with strong safety records.

- Consumers must share some accountability. Hazard analysis has come so far yet people will still do crazy things with their products. Just watch TikTok! Product reviews that promote the misuse of a product must be addressed. I understand that the integrity of social media requires essentially a free flowing, un-censored conversation, but we all know that reviews are given a high amount of credibility and when a manufacturer says, "don't do something" and a fellow consumer says "no, really, I used it this way and it was fabulous" misuse is going to happen. If a brand-owner identifies comments or a review



advocating misuse, there needs to be a process for those comments to be removed or at a minimum, identified as a potential misuse of the product.

- Incident reports – we should all be working from the same incident reports, especially when working on consensus standards or when a company is investigating its own products. We may have lively dialogue on how to interpret them, but the conversations that start with “I have reports on 3 incidents” “well my records show 6” are not helping anyone and certainly not advancing safety. Incident reports should not be a closely guarded, begrudgingly revealed government secret and we can do this while still being consistent with 6b-type protections.
- Causation matters in the safety conversation. It may not mean everything if a product and another product or the circumstances of the use of that product are so closely linked that they cannot be separated in assessing the hazard, but our work is about products, and some causal link between the harm and the product must be established. Causation is critical when discussing chemicals and other chronic or environmental hazards.
- Civil penalties. I’m not going to argue against the use of non-reporting/late reporting civil penalties generally, but assuming many civil penalties are intended to be a punishment and a deterrent, there must be clarity on when they will be applied and how they are calculated. I believe most in the business community would agree that clear, concise regulation is far superior to regulation that cannot be predicted. Without that predictability, civil penalties are nothing more than a big stick that incites fear. Fear does not promote transparency or incentivize candor between regulated entities and the government. Inciting fear in companies does not advance product safety; it stagnates it.
- Harmonization – Safety should be universal and in working together we should learn from one another. The current state of affairs is not only differing safety requirements among countries, but now among states as well. One of my favorite people and safety mentors Rick Locker uses the phrase “Regulation by One-Upmanship”. We see this happening in the states all the time – a law is passed based on the desire to do “more than that other state” and often for political reasons without data or science backing it. The world is getting smaller, not larger and keeping up with this patchwork of regulation is diverting valuable resources from innovation. Preemption is our friend and global harmonization should be an objective that is always top of mind. Reminder – the “I” in ICPHSO is “International”.
- We must understand larger political objectives and safety’s role in them. Working with and alongside other agencies on their issues is important and we should do more of that. The right to repair is a hot issue right now. Are we weighing in sufficiently as a safety community to ensure that some repairs are best left to professionals in order to protect consumers? Gas cooking is a great example of how any issue can be made a safety issue to accomplish political aims, especially if we allow it to play out in the media. But it is also a great example of how we need to intervene when broad issues such as climate



change and energy efficiency are allowed to force design changes at a speed that potentially compromises safety features or mechanisms within a product.

It is possible to advance safety. But we must all work together, and address some of the problems I've highlighted today. I've challenged each of you to pick one and think about it differently to effect change. We must ensure we are doing the best we can today, strive to research, learn, and know better and then apply that knowledge with room for innovation and creativity to do better. In that way, we will indeed make the world a safer place for all. Thank you.