

**\* Consumer Federation of America \* Consumer Reports \* Kids In Danger \* U.S. Public Interest Group \* National Center for Health Research \***

November 28, 2023

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Joint Comments to the  
Consumer Product Safety Commission on the  
Proposed Rule for Disclosure of Interests in Commission Proceedings  
Docket No. CPSC-2023-0038**

Consumer Federation of America, Consumer Reports, Kids In Danger, U.S. Public Interest Research Group, and National Center for Health Research welcome the opportunity to submit comments to the U.S. Consumer Product Safety Commission (CPSC, Commission, or agency) regarding the proposed rule for disclosure of interests in commission proceedings.<sup>1</sup> Our organizations support the CPSC's proposed rule and offer the following comments.

Founded in 1972 as an independent federal agency, the CPSC works to save lives and keep families safe by reducing the unreasonable risk of injuries and deaths associated with consumer products. Transparency is integral to this work. To that end, the agency proposed to establish disclosure requirements for persons and organizations seeking to make certain appearances before the Commission. The proposed rule will promote transparency and fairness, help to better identify potential conflicts of interest, ensure the agency's decisions and actions are in the public's best interest, and address unreasonable risks consumer products may pose. Recently, participants testified before the Commission representing themselves as a parent-focused group without disclosing that their association also included representatives from regulated industry and urged the agency to refrain from engaging in any regulatory action. This instance is just one example that demonstrates the need for this proposed rule to ensure greater transparency. It is important for the Commission and the public to know if regulated industry is financing or writing the testimony or presentation of a proposed participant.

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<sup>1</sup> Consumer Product Safety Commission, "Proposed Rule for Disclosure of Interests in Commission Proceedings" (Sept. 2023) (online at: [www.regulations.gov/docket/CPSC-2023-0038](http://www.regulations.gov/docket/CPSC-2023-0038)).

Importantly, the CPSC's mission is to protect and advance product safety for *consumers*. Consumer voices and lived experiences are central to the agency's ability to carry out its mission. As the CPSC staff and Commissioners are aware, each parent and consumer story is unique and valuable; each story has the ability to shed light on the real-world implications of unsafe consumer products in the marketplace. Thus, the proposed requirements should never be used in a way that limits, discourages, or burdens the participation of affected families, consumers, or consumer organizations in agency proceedings. While we support the proposed requirements and the CPSC's effort to make its work more transparent, our organizations strongly urge the agency to take every step necessary to ensure that victims, parents, and others are not dissuaded from providing testimony.

## **II. The CPSC's proposed rule reflects current practices that are designed to promote transparency and identify potential conflicts of interest.**

Our organizations support the proposed changes that would require (1) disclosure of any party, other than the submitter, who authored or contributed monetarily to oral presentations, adjudicative testimony, or petitions for rulemaking; (2) disclosure of existing business relationships expected to receive a financial benefit in connection to an oral presentation or the Commission's subsequent work; and (3), in the context of request to intervene in adjudicative proceedings, certain disclosures about authorship, monetary contributions, and corporate affiliations. Based on Rule 29 of the Federal Rules of Appellate Procedure (FRAP) and Supreme Court Rule 37.6, the historical context for these rules supports the CPSC's endeavor to deter circumvention of agency requirements and strengthen its commitment to transparency.<sup>2</sup> For example, the Committee Notes on amendments to FRAP 29 indicate that the disclosure requirements serve to deter parties from using amicus briefs to circumvent party brief page limits.<sup>3</sup> Similarly, here, the CPSC's proposed changes would require disclosures about potential participants' special interests, funding, and business relationships that impact the CPSC's work. Importantly, the requirements do not implicate associational rights because there is no broader requirement for membership information or general donor disclosures.

We also support the CPSC's proposed rule to require the disclosure of certain corporate affiliations, much like FRAP 26.1(a). FRAP 26.1(a) requires nongovernmental corporations that are a party or who seek to intervene in a court proceeding to file information about any parent corporation and any publicly held corporation that owns 10% or more of its stocks. As the Notes from the Advisory Committee indicate, the purpose of the disclosure statement rule is to assist judges in ascertaining whether they have an interest that warrants recusal from the case.<sup>4</sup> Similarly,

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<sup>2</sup> Federal Rules of Appellate Procedure, Rule 29 and Supreme Court Rules, Rule 37.6 concern amicus curiae briefs and set disclosure requirements related to authorship, monetary contributions, and business relationships.

<sup>3</sup> Fed. R. App. P. 29 committee notes on rules 2010 amendment.

<sup>4</sup> Fed. R. App. P. 26.1 advisory committee notes.

the agency's proposed changes would provide CPSC Commissioners with information about potential conflicts of interest, thus strengthening transparency and fairness in the CPSC's work.

### **III. The CPSC should ensure that consumer voices are protected and supported.**

Consumer voices and experiences are integral to the CPSC's work and their participation must be protected at all costs. Often, affected families or injured consumers have pertinent information about their experience using products or suffering from product-related injuries. For most consumers, testifying and sharing their stories, which often include some of the hardest, most intimate, and traumatic moments of their lives, is new, difficult, and intimidating. As such, the proposed rules that are aimed at increasing transparency and accountability should not impose any additional barriers or deterrents, administrative or otherwise, for affected parents and impacted consumers to share their stories with the CPSC. Our organizations recommend the following changes to the CPSC's proposed rule to minimize any potential or perceived burden on consumers.

- A. The CPSC should ensure that consumer participation in hearings remains as accessible as possible.

We urge the CPSC to make its instructions exceedingly clear that these proposed changes are not intended to and shall not impede parents, other family, and consumers from speaking to other advocates while they prepare their testimony or presentations. Furthermore, the CPSC should consider ways to simplify and streamline the process so that parent and consumer advocates are not deterred from participating. These instructions should also include examples of disclosure language that can serve as templates for consumers to use and meet the proposed requirements.

- B. Empower the CPSC Consumer Ombudsman to support consumers and guide them through the process.

The CPSC's processes and procedures can be confusing to the average consumer. The CPSC's Consumer Ombudsman plays a critical role in demystifying agency operations, and helping the public understand how the CPSC functions. Our organizations recommend that the CPSC explicitly empower the Consumer Ombudsman to help parent and consumer advocates navigate the disclosure requirements so that no consumer is deterred from providing valuable testimony due to a lack of procedural understanding.

- C. Clearly state that this requirement is not intended to limit the participation of consumers.

We urge the CPSC to consider all options to ensure the rule is not used to deter consumer stories, including stating in the final rule and elsewhere that the disclosure requirements will not be used to prevent consumers from speaking. Further, the CPSC rule should make clear that parent and consumer advocates are not required to disclose their personal injury or wrongful death settlements, as well as unrelated business and advocacy affiliations.

Our organizations also urge the CPSC to make the requirements as straightforward and easy to follow as possible. Parents and consumer advocates should not feel the need to consult a lawyer to comply with the financial disclosures. In the event a parent or consumer does not understand the requirements, the CPSC should clearly direct consumers to the Consumer Ombudsman.

#### **IV. Conclusion**

Our groups appreciate the opportunity to comment on this proposed rule. We support the agency's proposals, which would promote transparency and fairness in the CPSC's important work. As the agency works to finalize the rule, we urge the CPSC to take every step to ensure that the participation of consumers and affected families is not limited in any way. The requirements should be clear and as simple as possible. The Consumer Ombudsman would need to play a critical role in helping potential participants navigate the required processes and should be empowered to do so. We support the Commission and public having this additional information about potential participants in CPSC proceedings.

Thank you for your consideration of our comments.

Respectfully submitted,

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