

AMY KLOBUCHAR, MINNESOTA
RICHARD BLUMENTHAL, CONNECTICUT
BRIAN SCHATZ, HAWAII
EDWARD MARKEY, MASSACHUSETTS
GARY PETERS, MICHIGAN
TAMMY BALDWIN, WISCONSIN
TAMMY DUCKWORTH, ILLINOIS
JON TESTER, MONTANA
KYRSTEN SINEMA, ARIZONA
JACKY ROSEN, NEVADA
BEN RAY LUJAN, NEW MEXICO
JOHN HICKENLOOPER, COLORADO
RAPHAEL WARNOCK, GEORGIA

ROGER WICKER, MISSISSIPPI
JOHN THUNE, SOUTH DAKOTA
ROY BLUNT, MISSOURI
TED CRUZ, TEXAS
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
DAN SULLIVAN, ALASKA
MARSHA BLACKBURN, TENNESSEE
TODD YOUNG, INDIANA
MIKE LEE, UTAH
RON JOHNSON, WISCONSIN
SHELLEY MOORE CAPITO, WEST VIRGINIA
RICK SCOTT, FLORIDA
CYNTHIA LUMMIS, WYOMING

MELISSA PORTER, MAJORITY STAFF DIRECTOR
JOHN KEAST, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <https://commerce.senate.gov>

November 30, 2021

Honorable Alexander Hoehn-Saric, Chair
U.S. Consumer Product Safety Commission
4330 East-West Hwy
Bethesda, MD 20814

Dear Chair Hoehn-Saric,

I am writing to express my concern about the dangers of recalled, counterfeit, and otherwise unsafe consumer goods in homes, and to ascertain whether the Consumer Product Safety Commission (“CPSC”) has the tools, resources, and data it needs to protect Americans, particularly families with young children.

While the holidays are a time of celebration, we know they can quickly turn tragic when children are hurt by unsafe consumer goods, toys, or household decorations. These accidents are all the more senseless when they involve products that have been subject to a recall.

I am deeply troubled by the very low efficacy of product safety recalls and by the fact that an unknown number of toys and consumer goods remain in circulation in spite of having been recalled. It is well known that recalls are far from completely effective, but the true scope of the problem remains unknown, especially as many consumers turn to platforms like Facebook Marketplace, eBay, and Craigslist to resell or upcycle used goods and find items at a discount. At the CPSC’s recall efficacy workshop in 2017, the agency reported that, on average, consumers participate in corrective actions at a rate of only roughly 6 percent for all product types—consumer participation in corrective actions is approximately 4 percent for products that retail for less than \$20, and still only roughly 32 percent for products with a retail price of \$10,000 or higher.¹

In a November 2020 report aimed at addressing these challenges, the Government Accountability Office (“GAO”) recommended changes to improve CPSC processes for prioritizing resources, overseeing firms’ compliance, measuring recall effectiveness, and managing the timeliness of product defect cases.² According to the GAO, the CPSC generally

¹ Transcript: “Recall Effectiveness Workshop (Early Session),” United States Consumer Product Safety Commission, July 25, 2017, available at https://www.cpsc.gov/s3fs-public/Recall_Effectiveness_Workshop-Transcripts-2018.pdf?DANfPWVdXLz6jk.lAn9rzT3dX6ZQXQa0, pg. 39-41.

² GAO-21-56 Report, “Consumer Product Safety Commission: Actions Needed to Improve Processes for Addressing Product Defect Cases,” U.S. Government Accountability Office, November 19, 2020, available at <https://www.gao.gov/assets/gao-21-56.pdf>.

agreed with the report's findings and supported the accompanying recommendations.³ At this time, the status of the CPSC's response to the GAO recommendations remains "open," meaning the agency has yet to fully satisfy the intent of the recommendation.⁴

If we hope to increase the return rate of consumer product recalls and improve recall efficacy, we need strong, enforceable agreements setting out the details of the recall; better incentives for manufacturers, retailers, and consumers to participate in recalls; and more data and improved means of tracking recall efficacy.

To that end, I request your response to the following questions.

- 1) In the 2019, 2020, and 2021 calendar years, respectively, please identify the children's products (e.g., toys, bassinets, playpens, etc.) reported to the CPSC that required corrective action. For each product, please list:
 - a. The number of items recalled;
 - b. The number of deaths reported and the number of injuries reported;
 - c. The details of the corrective actions, including:
 - i. The type of remedy included in the corrective actions—whether replacement (of the same or another product), repair, full refund, and/or partial refund.
 - ii. The outreach plan—specifically, (I) what type and form of outreach was required from the recalling firm; (II) whether the corrective action required a dedicated webpage explaining how to participate in the recall; (III) whether the corrective action required use of social media; and (IV) whether the corrective action required a firm to contact customers who purchased the recalled product.
 - iii. Efficacy check—whether the corrective action included a specific response or return rate before reevaluating the corrective action or closing the recall.
 - d. The number of recall effectiveness checks conducted;
 - e. Whether the firm met each of its monthly progress report requirements; and
 - f. An estimation of the number of products that were not remedied and may still be in homes.
- 2) For each of the products above, does the CPSC believe the recall was effective? Why or why not?
- 3) What information are firms required to provide the CPSC by statute or regulation pursuant to a voluntary corrective action and what penalties do firms face, if they fail to comply with voluntary corrective action plans?

³ "Consumer Product Safety Commission: Actions Needed to Improve Processes for Addressing Product Defect Cases," U.S. Government Accountability Office, November 19, 2020, available at <https://www.gao.gov/products/gao-21-56>.

⁴ *Ibid.*, see 'status.'

- 4) What steps is the CPSC taking to safeguard the public from the products above that have not been remedied and may still be in homes or in circulation?
- 5) How should manufacturers and retailers—both online and brick-and-mortar businesses—leverage modern technology and information they acquire in the course of business to contact consumers of recalled products?
- 6) What potential incentives or penalties for private actors, or authorities for the CPSC, should Congress consider to improve the recall process?
- 7) Which of the GAO's November 2020 report recommendations, including diversifying recall effectiveness metrics, does the CPSC intend to adopt? For those recommendations, when does the CPSC expect to complete the recommended policy change?

Please provide your written response to the Committee no later than Friday, December 24, 2021.

Sincerely,

A handwritten signature in blue ink that reads "Maria Cantwell". The signature is fluid and cursive, with the first name "Maria" and last name "Cantwell" clearly legible.

Maria Cantwell
Chair