
ORAL ARGUMENT NOT YET SCHEDULED

No. 22-1300

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WINDOW COVERING MANUFACTURERS ASSOCIATION,
Petitioner,

v.

UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION,
Respondent.

On Petition for Review of a Final Rule of
the United States Consumer Product Safety Commission

**Opposition of Amici Curiae Consumer Reports,
Kids In Danger, Parents for Window Blind Safety, and
Public Citizen to Petitioner's Motion for a Stay Pending Review
or Remand and Vacatur**

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INTERESTS OF AMICI CURIAE¹

Consumer Reports, Kids In Danger, Parents for Window Blind Safety, and Public Citizen are non-profit organizations that are concerned about the strangulation risks posed to young children by accessible window covering cords. The amici were all signatories to a 2013 petition asking the Consumer Product Safety Commission (CPSC) to promulgate a mandatory standard that eliminates the hazard posed by accessible cords in window coverings.² They also all participated in the rulemaking process that resulted in the final rule at issue in this case, 87 Fed. Reg. 73144 (Nov. 28, 2022) (Final Rule), which establishes a safety standard for operating cords on custom window coverings.³ Amici are

¹ All parties have consented to the filing of this document. This document was not authored in whole or in part by counsel for a party. No person or entity other than amici curiae or their counsel made a monetary contribution to the preparation or submission of this document.

² See Petition for Rulemaking, CP 13-2 (2013), CPSC-2013-0028-0002. Documents with a number beginning with CPSC-2013-0028 are part of the administrative record accessible to the public on www.regulations.gov by searching for Docket No. CPSC-2013-0028.

³ See, e.g., CPSC Public Hearing: Safety Standard for Operating Cords on Custom Window Coverings (March 16, 2022), CPSC-2013-0028-3136 (including statements from Consumer Reports, Kids In Danger, and Parents for Window Blind Safety); Comments of Consumer Reports (March 23, 2022), CPSC-2013-0028-3618; Comments of Parents for

filing this opposition to Petitioner's motion for a stay or vacatur and remand of the Final Rule because a stay or vacatur would allow hazardous custom window covering cords to remain on the market for longer, posing a safety risk to young children.

INTRODUCTION

For over 35 years, CPSC has recognized the risk of child strangulation due to window covering cords. During that time, the Commission has worked with the window covering industry to develop voluntary standards that would address the risk. Despite going through numerous revisions, however, the voluntary standards have failed adequately to protect young children from injury or death due to accessible window covering cords. There were at least 209 fatal or near-miss strangulation incidents involving window covering cords and young children (eight years old or younger) between 2009 and 2021; in at least 100 of those cases, the child died. 87 Fed. Reg. at 73152.

In 2018, the voluntary standards were updated to establish strong protections against the risks posed by window covering operating cords

Window Blind Safety (March 23, 2022), CPSC-2013-0028-3471; Comments of Public Citizen (June 1, 2015), CPSC-2013-0028-1549; Comments of Kids In Danger (May 29, 2015), CPSC-2013-0028-1495.

on *stock* window coverings. To comply with those standards, stock window coverings must either be cordless, have cords that are inaccessible to children, or have operating cords that are equal to or shorter than eight inches long. *See id.* at 73145. The adoption of these standards did not negatively affect the sales of stock window coverings, which increased after the standards were revised. *Id.* at 73194.

Although accessible window covering cords on *custom* window coverings expose children to the same risk of injury or death as those on stock window coverings, the voluntary standards did not establish similar standards for operating cords on custom window coverings, and custom window coverings with operating cords that pose a risk of injury or death to young children have remained on the market.

Recognizing, based on its 26 years of experience with the voluntary standards, that the voluntary standard process was “unlikely to address the unreasonable risk of injury associated with operating cords on custom window coverings,” *id.* at 73184, CPSC adopted the Final Rule at issue in this case. The rule extends the standards for stock window coverings to custom window coverings. The rule contains a 180-day effective date—the latest effective date allowed by law unless the agency specifically

finds, for good cause shown, that a later effective date is in the public interest. 15 U.S.C. § 2058(g)(1).

Petitioner the Window Covering Manufacturers Association has challenged the Final Rule and has moved for a stay of the Final Rule pending review or for vacatur and remand to the agency. Petitioner's attempt to delay the Final Rule should be denied. The Final Rule is necessary to address the risk of injury or death to young children due to operating cords on custom window coverings, and the public interest strongly supports allowing the Final Rule to go into effect on its effective date.

ARGUMENT

I. The Final Rule is Necessary to Reduce an Unreasonable Risk of Injury and Death.

CPSC reasonably and correctly determined that the Final Rule was “reasonably necessary to eliminate or reduce an unreasonable risk of injury associated” with operating cords on custom window coverings, and that compliance with the voluntary safety standards “is not likely to result in the elimination or adequate reduction” of the risk of injury. 15 U.S.C. § 2058(f)(3)(A) & (D)(i). Young children continue to be injured and killed by cords on window coverings. While data collection is ongoing,

CPSC is already aware of eight fatal strangulations of young children in 2020 and six in 2021. 87 Fed. Reg. at 73152. Although CPSC does not always have sufficient information to identify whether a strangulation incident involved a custom or stock window covering, 42 percent of the incidents between 2009 and 2021 for which CPSC has been able to identify that information have involved custom window coverings. *Id.* CPSC has determined that, had the 2018 voluntary standards “for operating cords on stock products been in effect for custom window coverings, the requirements would have prevented 100 percent of the incidents” known to have involved operating cords on custom window coverings. *Id.* at 73157.

As CPSC explained, “[i]f children can access a window covering cord that is longer than 8 inches, children can wrap the cord around their neck, or insert their head into a loop formed by the cord and strangle.” *Id.* at 73192. “Data show that the strangulation hazard associated with window covering cords is silent, quick, and hidden to consumers.” *Id.* at 73171. “Children can wrap the cord around their neck, insert their head into a cord loop and get injured or die silently in a few minutes in any room, with or without supervision.” *Id.* The administrative record is

replete with comments from parents telling the stories of their young children who were killed by window covering cords and urging the CPSC to protect other children.⁴

Compliance with the voluntary safety standards does not adequately address the risk of injury. The 2018 voluntary standards that were in effect when CPSC issued the Final Rule permit hazardous operating cords to be used on custom window coverings. They allow operating cords long enough for children to wrap around their necks, continuous loop operating systems that lack safety features necessary to prevent strangulation of children, and retractable cord lift systems that

⁴ See, e.g., Comments of Erica Thomas (March 23, 2022), CPSC-2013-0028-3466; Comments of Jessie Hawk (March 23, 2022), CPSC-2013-0028-3420; Comments of Zoe Hoepfner (March 21, 2022), CPSC-2013-0028-2884; Comments of April Finvold (March 21, 2022), CPSC-2013-0028-2852; Comments of Carolyn Eastburn (March 21, 2022), CPSC-2013-0028-2822; Comments of Erin Shero (June 1, 2015), CPSC-2013-0028-1521; Comments of Kimberly Magnuson (June 1, 2015), CPSC-2013-0028-1516; Comments of April Carlson (June 1, 2015), CPSC-2013-0028-1504; Comments of Shavonne Smith (May 11, 2015), CPSC-2013-0028-1455; Comments of Lesley Wyman (April 2, 2015), CPSC-2013-0028-1437; Comments of Harvey Cain (March 18, 2015), CPSC-2013-0028-1352; Comments of Chesshuwa Beckett (March 18, 2015), CPSC-2013-0028-1298; Comments of Lori White (March 11, 2015), CPSC-2013-0028-1081; Comments of Chris Parslow (March 2, 2015), CPSC-2013-0028-0860; Comments of Pratima Sampat-Mar (Feb. 27, 2015), CPSC-2013-0028-0728.

allow operating cords on a custom window covering to be pulled out, without specifying a maximum cord length or a minimum pull force required to operate the system. 87 Fed. Reg. at 73157–58.

The 2022 revisions to the voluntary standard, which had not yet been approved when the Final Rule was issued, likewise do not sufficiently address the safety risk. The Final Rule addresses the balloted draft of the 2022 standards, explaining why the standards would not likely result in an adequate reduction in the risk of injury. In particular, they allow retractable cord lift systems that can be pulled out to 36 inches—a length long enough to allow children to wrap the cord around their necks—and still do not require continuous loop operating systems to have safety features adequate to protect against the risk of strangulation. 87 Fed. Reg. at 73165–68.⁵

Given the severity of the outcomes of child strangulation by window covering cords, the hazards that accessible window covering cords present, and the continued failure of the voluntary standards to address

⁵ See also CPSC-2013-0028-3667 (letter from CPSC staff to Window Covering Manufacturers Association, dated August 15, 2022, explaining negative vote on 2022 standards ballot); CPSC-2013-0028-3668 (letter from founder of Parents for Window Blind Safety explaining negative vote on 2022 standards ballot).

these hazards, CPSC was reasonable and correct to issue the safety standards in the Final Rule.

II. Delaying the Rule's Effective Date is Against the Public Interest.

The public interest strongly supports allowing the Final Rule to go into effect on its effective date, without a stay or remand. The rule affects the safety of young children, who continue to be injured and die due to accessible window covering cords. Although the technology exists to protect young children from the risks of operating cords on custom window coverings, more than 25 years after voluntary standards were first adopted, those standards still do not provide adequate protection.

Each month's delay of the rule allows more hazardous custom window coverings to be installed in homes. Once in place, those hazardous window coverings may remain in the homes for a long time, continuing to pose a risk to young children. *See* 87 Fed. Reg. at 73192 (noting that custom window covering cords “can remain a hazard in the household for one to two decades or longer”). The harm caused by staying the Final Rule could thus extend years into the future, long after the petition for review is resolved.

Petitioner contends that the industry will not be able to produce compliant corded custom window coverings by the effective date. “[C]ordless options are available for nearly all window covering types,” however, and “methods of eliminating the window covering cord hazard have been developed for stock window coverings” that “at a minimum can be adapted to[] custom window coverings.” *Id.* at 73177. Moreover, as CPSC explained, “[w]hen balancing the risk of severe harm and death to young children over the entire service life of noncompliant window coverings, against the possibility that some styles of custom window coverings may be less available during a transition period and stock products or other custom styles might need to be used instead, ... the public interest is better served by protecting the safety of children and families.” *Id.* at 73194.

“The final rule is designed to eliminate the ongoing tragedy of child deaths on corded custom window coverings.” *Id.* at 73144. CPSC and the industry have long known “how to address these deaths and injuries, by removing accessible cords from window coverings.” *Id.* The removal of hazardous window covering cords from the market should not be delayed

any longer, and the Final Rule should be allowed to go into effect on its effective date.

CONCLUSION

This Court should deny Petitioner's motion for a stay of the Final Rule pending review or for vacatur and remand.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding those parts permitted to be excluded under Federal Rule of Appellate Procedure 32(f), it contains 1,906 words.

This document complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it is composed in a 14-point proportional typeface, Century Schoolbook.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Federal Rule of Appellate Procedure 26.1, Circuit Rule 26.1, and Circuit Rule 27(a)(4), counsel for Amici Curiae certify as follows:

A. Parties and Amici

Petitioner is the Window Covering Manufacturers Association. Respondent is the United States Consumer Product Safety Commission.

Consumer Reports, Kids In Danger, Parents for Window Blind Safety, and Public Citizen are amici curiae in support of Respondent.

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, counsel certifies that the amici are non-profit organizations. They have no parent corporations and no publicly traded company has an ownership interest in them. The general purpose of the amici organizations, as relevant to this lawsuit, is to advocate for health and safety.

B. Ruling Under Review

Petitioner seeks review of the Consumer Product Safety Commission's final rule entitled "Safety Standard for Operating Cords on Custom Window Coverings," 87 Fed. Reg. 73144 (Nov. 28, 2022).

C. Related Cases

Amici curiae are not aware of any related cases.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum

CERTIFICATE OF SERVICE

I hereby certify that, on December 27, 2022, this document was served through the Court's ECF system on counsel for all parties.

/s/ Adina H. Rosenbaum
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