



**WINDOW COVERING  
MANUFACTURERS  
ASSOCIATION**

March 23, 2022

VIA Email and Regulations.gov

Ms. Alberta Mills  
Secretary  
Division of the Secretariat  
Office of the General Counsel  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Re: Comments on CPSC-2013-0028 – Safety Standard: Operating Cords on Custom Window Coverings, Notice of Proposed Rulemaking

Dear Ms. Mills,

The Window Covering Manufacturers Association (WCMA) appreciates the opportunity to comment on CPSC-2013-0028 – Safety Standard: Operating Cords on Custom Window Coverings, Notice of Proposed Rulemaking. Attached are WCMA's comments.

Should you have any questions or need for additional information, please do not hesitate to contact me.

Regards,

A handwritten signature in black ink, appearing to read "Ralph Vasami", with a long horizontal stroke extending to the right.

Ralph Vasami  
Executive Director

cc:

The Honorable Alexander Hoehn-Saric, Chairman  
The Honorable Dana Baiocco, Commissioner  
The Honorable Peter A. Feldman, Commissioner  
The Honorable Richard Trumka Jr., Commissioner  
Ms. Rana Balci-Sinha, Director

**Window Covering Manufacturers Association**  
**Docket No. CPSC-2013-0028**

**I. Introduction**

The Window Covering Manufacturers Association (WCMA) provides the U.S. Consumer Product Safety Commission (CPSC or Commission) with the following comments on the Commission's proposed Safety Standard for Operating Cords on Custom Window Coverings (Proposed Standard).<sup>1</sup>

WCMA is the national voice for the window covering industry, representing the interests of the industry's manufacturers, fabricators, and assemblers. WCMA members have significant expertise in the manufacture and distribution of all manner of window coverings, including blinds, shades, shutters, curtains, curtain rods, drapes, drapery hardware, and other window treatments. WCMA is also the American National Standards Institute (ANSI)-accredited standard development organization for window coverings. For this reason, WCMA and its membership have served as a leading resource for policymakers.

WCMA has a long record of working with the CPSC and safety advocates to eliminate hazards and drive innovation related to window covering products.<sup>2</sup> Since the standard was first enacted, WCMA and its members have been leaders in developing innovative solutions to address risks, encouraged by the voluntary standard's performance approach. The result has been an evolving standard that has prioritized addressing scenarios that pose the highest risk first.

Most recently, in 2018, WCMA worked with CPSC, safety advocates, and other stakeholders to publish the 2018 American National Standards Institute (ANSI)/WCMA Standard for Safety of Window Covering Products (ANSI/WCMA-2018). ANSI/WCMA-2018 eliminated corded stock window covering products from the market by requiring that these products be cordless, have only inaccessible cords, or have a short helper cord. ANSI/WCMA-2018 also imposed new requirements on custom products, which are the subject of this rulemaking, by creating a default cordless product, allowing free hanging cords (with length limitations) and/or tilt cords only where the customer explicitly requested them for their custom products, and introducing a new graphic warning label designed to increase its impact with the consumer. By focusing on the elimination of corded stock window coverings, ANSI/WCMA-2018 addressed the largest category of window coverings and potential hazards—stock window covering products make up approximately 80 percent of the market.<sup>3</sup>

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<sup>1</sup> CPSC, Safety Standard for Operating Cords on Custom Window Coverings, Notice of Proposed Rulemaking, 87 Fed. Reg. 1,014 (Jan. 7, 2022).

<sup>2</sup> As the CPSC notes, dating back to 1995, CPSC staff and WCMA have worked together to address the strangulation hazard to young children from accessible cords on window coverings. 87 Fed. Reg. 1,027.

<sup>3</sup> The decision to focus on the elimination of accessible cords from stock products was purposeful in reducing the risk. Stock products represent 80 percent of the market. Consumers often purchase stock products with little to no interaction from window covering professionals to provide warnings regarding the potential dangers of cords. In contrast, consumers purchasing custom products are often better informed on the product selection and the

WCMA continues to be proactive on the voluntary standards process. On May 23, 2021—five months before CPSC staff released its Staff Briefing Package in support of the Proposed Standard—WCMA re-opened the voluntary standard on custom products, a fact that was well-known to CPSC staff.<sup>4</sup> Since then, WCMA has convened multiple meetings of the Technical Committee and Steering Committee (in which CPSC staff is a member and fully participates) with the goal of further reducing potential hazards associated with custom window coverings.

The custom product market, which represents approximately 20 percent of the market,<sup>5</sup> is highly variable and requires flexibility to meet the needs of consumers to serve a variety of size, weight, and location constraints. The custom market is made up of over 20 different product categories that will require multiple and unique engineering solutions to achieve possible compliance.<sup>6</sup> This differs from the stock segment, which is predominantly comprised of horizontal blinds, available within limited size ranges, to which a single solution could be applied to transition to cordless. Although there are cordless options for all custom product categories, there are some applications that currently have no known technical solution due to size, weight, and location of the window. For example, products that are installed with no direct access for consumers to touch and operate, products that use heavy materials like wood and room darkening and other insulating fabric, and products that are designed to cover large expanses of glass, are all ill-suited for cordless operation. Custom products with compliant cords are also needed for segments of the population that are unable to effectively operate a cordless product due to physical restrictions or who are unable to afford a motorized product.<sup>7</sup>

As discussed in these comments, WCMA members strongly believe that the CPSC’s Proposed Standard is fatally arbitrary and in derogation of The Consumer Product Safety Act (“CPSA”), unnecessary and over-reaching, is not supported by CPSC’s own data, and is not technically feasible.

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warnings associated with corded products. In addition, based on WCMA’s incident assessment at the time of ANSI/WCMA-2018, stock products were involved with 75-80 percent of all identifiable incidents.

<sup>4</sup> ANSI requires that voluntary standards be reopened every five (5) years. WCMA reopened the ANSI/WCMA Standard within three (3) years of the previous standard.

<sup>5</sup> In the past, WCMA submitted data from a comprehensive, confidential U.S. retail window covering market study conducted in 2016 that showed the breakdown of unit sales of window covering products by category. That study is the basis for WCMA’s contention that 80 percent of window blinds are stock product, and 20 percent are custom product.

<sup>6</sup> The following is a non-exhaustive list of the various types of custom window coverings, each of which will require its own engineering solution to comply with the Proposed Standard: (1) horizontal blinds made of aluminum; (2) horizontal blinds made of wood; (3) horizontal blinds made of composite material; (4) horizontal blinds made of plastic; (5) vertical blinds; (6) cellular shades; (7) pleated shades; (8) roller shades; (9) woven wood shades; (10) banded shades; (11) vertical panels; (12) horizontal shadings; (13) vertical shadings; (14) multi-functional shadings; (15) cellular roller shades; (16) roman style roller shadings; (17) roman style tiered shadings; (18) insulating shadings; (19) balloon shades; (20) traditional roman shades; and (21) specialty shapes in multiple applications and product styles.

<sup>7</sup> These limitations are discussed in more detail in Section III.E.2.

WCMA encourages the Commission to terminate this rulemaking. Instead, CPSC should collaborate with WCMA and safety advocates on updating the ANSI/WCMA-2018 standard for custom products. Indeed, CPSC staff are already actively engaged in such collaboration on updating the 2018 standard by virtue of its comments to proposed revisions and its participation in all Steering Committee meetings. Updating the voluntary standard is the fastest and most direct way to allow industry, consumer advocates, and CPSC to achieve our common goal of addressing and further reducing the risk to young children of strangulation from window covering cords.

Should the CPSC decide to move forward with finalizing the Proposed Standard, the Commission will need to remedy the numerous flaws in its determination, analysis of relevant incidents, and the costs and benefits of compliance, including development of an accurate assessment of the significant costs to the economy and small businesses associated with widespread elimination of products within 180 days of the final rule, with no marginal benefit to child safety.

## **II. Summary of Comments**

The Proposed Standard is fatally arbitrary and in derogation of the CPSA; is unnecessary and over-reaching; is not supported by CPSC's own data; and is not technically feasible. The following is a summary of WCMA's feedback on the Proposed Standard.

- CPSC should terminate this rulemaking and instead collaborate with WCMA and safety advocates on updates the ANSI/WCMA-2018 standard for custom products.
- The proposed 180-day effective date is not supported by the record, would eliminate the availability of product before the industry can develop new products, and would delay consumer transition to available safer products. If CPSC moves forward with the finalizing a mandatory standard, CPSC should revert to the 2-year effective date proposed by CPSC staff.
- CPSC's assessment of window covering incidents relies on flawed methodology that ignores the clear downward trend in incidents associated with custom window coverings. CPSC fails to provide any valid or credible assessment of the relative risk associated with corded custom window coverings under ANSI/WCMA-2018.
- By relying on the available incident data, CPSC failed to assess the effectiveness of ANSI/WCMA-2018 in reducing the risk of injury (which only went into effect in December 2018). Based on the available incident data, it is clear that the updates found in ANSI/WCMA-2018 and prior standards have adequately reduced the risk of injury.
- CPSC's Proposed Standard fails to recognize the limitations associated with cordless technology; will eliminate the availability of products; and ignores accessibility concerns that are addressed by corded products.

- CPSC’s Preliminary Regulatory Analysis does not justify the Proposed Standard as it relies on data sets that are incomplete, estimates that are not methodologically sound, and extreme assumptions that do not support real world application. These flaws in the foundation of the cost benefit analysis produce distorted results that even by CPSC’s own flawed methodology do not demonstrate that alleged potential benefits offset the significant actual costs to society.
- CPSC’s statutorily required findings are not based on “substantial evidence.” CPSC’s justification and reasoning for the Proposed Standard is flawed at every step, from the estimated number of incidents to the assumptions on corded custom window coverings in use, to the availability of technology to comply with the Proposed Standard. These flaws render the data and justifications underpinning CPSC’s findings and determinations essentially meaningless.
- CPSC failed to consider the impact of proposed testing, certification, and notice requirements.

### III. Comments

#### **A. Updating the ANSI/WCMA-2018 Voluntary Standard is the Most Effective and Efficient Way to Reduce the Potential Risk From Custom Products**

On May 23, 2021, WCMA re-opened the ANSI/WCMA Standard for Safety of Window Covering Products (ANSI/WCMA A100.1-2018) to further address corded custom window covering products. WCMA had determined that revising ANSI/WCMA-2018 was appropriate to further reduce the risk. Window covering technology had sufficiently advanced since 2018 for the standard to add provisions for custom products that would eliminate all free hanging cords and require improved safety mechanisms used in cords under tension.<sup>8</sup>

In order to move the voluntary standard revision process forward promptly, WCMA convened an initial WCMA Technical Committee meeting on November 12, 2021, and a subsequent stakeholder Steering Committee meeting on December 2, 2021 to begin the process of updating the standard. The Steering Committee is comprised of CPSC staff, industry representatives, retailers, test lab representatives, and consumer advocates.<sup>9</sup> The Steering Committee members universally agreed with the goal of eliminating free hanging cords (all standard cord lock systems, cord joiners, and cord tilting systems) from custom window covering

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<sup>8</sup> After several requests from WCMA to CPSC, in September 2020 CPSC staff shared with WCMA the most recent incident data. That data was redacted and incomplete. Despite numerous attempts and requests under the Freedom of Information Act, and for reasons that remain unclear, CPSC has refused to share the incident data in its entirety. Factual data is particularly important to WCMA’s review, because using it to make fact and science-based determinations of the causes of incidents is the best way to improve window covering products through the standards making process.

<sup>9</sup> Participation in the Steering Committee is not limited and there are no caps on the number of representatives from any type of stakeholder group.

products. With the anticipated revisions, it is WCMA’s intention to address the major hazard scenarios identified by the In-Depth Investigations (IDIs) prepared by CPSC and shared with WCMA.<sup>10</sup>

As the CPSC recognizes, the voluntary consensus standards development process is more efficient and effective than the government promulgating a regulation.<sup>11</sup> The WCMA voluntary standard process is open to all interested parties and receives input from manufacturers, CPSC, safety advocates, and other relevant stakeholders. WCMA believes that diverse membership is essential to creating a consensus standard and supports the standard being developed in a fair and transparent manner. The ongoing voluntary standard process will not only save government resources, but, more importantly, create a standard effective at even further reducing the hazard. Should CPSC promulgate a regulation, it is much more difficult and requires a lengthy process to revise the regulation should it be determined a future revision is necessary to accommodate advancements in technology. A voluntary standard will be both effective and provide the flexibility to readily adapt to updated technology.

The window covering industry has worked with CPSC and safety advocates in support of a voluntary standard since 1995. Since the first standard was published in 1996, WCMA has updated the voluntary standard six times based in part by requests from CPSC. These updates were made possible due to the evaluation of new data relating to the root causes of identified hazards and continued advancements in technology.

*1996 ANSI/WCMA Standard* – Established requirements for operating cords, safety warnings and tags, and product testing; eliminated loop-ended pull cords on horizontal blinds, cellular and pleated shades; provided requirements for products subject to the standard that reduce the possibility of injury, including strangulation, to young children from the bead chain, cord, or any type of flexible loop device used to operate the product.

*2002 ANSI/WCMA Standard* – Mitigated looped pull-cords on all types of horizontal blinds and shades and new requirements for lead testing of components and accessible inner cords adding inner cord-stop mechanisms on corded horizontal blinds and shades.

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<sup>10</sup> CPSC identifies three types of cords as the most hazardous scenarios based on fatal incident data: pull cords (44%), continuous loops (26%), and inner cords (8%). Each of these hazards was either eliminated by ANSI/WCMA-2018 (or by prior standard revisions) or will be addressed by the new version of the voluntary standard under development. CPSC, “[Staff Briefing Package: Draft Notices of Proposed Rulemaking for Corded Window Coverings](#)” (“Staff Briefing Package”) Tab A: Fatal and Near-Miss Strangulations Associated with Window Covering Cords, (October 6, 2021), p. 48.

<sup>11</sup> “Voluntary standards are also useful and valuable for saving government resources to create effective requirements. If the government had to create every safety requirement on its own, the government would need to hire many more experts and spend a lot more money to achieve the same level of effectiveness that we currently enjoy with voluntary standards.” CPSC, Voluntary Standards Development FAQ for Consumers, available at <https://www.cpsc.gov/About-CPSC/Consumer-Ombudsman/Voluntary-Standards-Development-FAQ-for-Consumers> (last accessed Feb. 25, 2022).

*2007 ANSI/WCMA Standard* – Required that a tension device be attached to products with continuous cord loops and required a design that would render a product partially inoperable if the tension device was not installed properly; expanded test and parameters for cord release device and cord shear device; enhanced the operational warning hangtags; and provided definitions for free standing loop, inner cords, and multiple cords.

*2009 ANSI/WCMA Standard* – Added requirements for Roman style shades limiting the pleat height, created minimum distance of the cord position to the edge of product to minimize accessibility; established a weighted and ridged requirements for bottom rail to eliminate free standing cord loops; added an operational hang tag for Roman style shades; revised definitions for accessible cords and accessible inner cords.

*2010 ANSI/WCMA Standard* – Eliminated the prescriptive approach of the previous standard and created a performance based standard with specific tests and requirements to determine accessibility of inner cords, rear cords, lift cords and their ability to create a hazardous cord loop; added a roll-up style shade warning tag to inform consumer of inner cord risk; revised requirements for instructions for length adjustable products; revised requirements for cord shroud devices to limit accessibility of inner or operating cords; revised requirements for tension devices.

*2012 ANSI/WCMA Standard* – Addressed all interior corded window coverings products; added and expanded testing requirements for cord accessibility, hazardous loop formation, and durability of safety devices; improved safety instructions and introduced warning requirements for multiple point of purchase areas.

*2018 ANSI/WCMA Standard* – Eliminated corded stock window covering products from the market by requiring that these products be cordless, have only inaccessible cords, or have a short helper cord; imposed new requirements on custom products by creating a default cordless product, allowing free hanging cords (with length limitations) and/or tilt cords only where the customer explicitly requested them for their custom products; at the request of consumer advocates, introduced an extremely graphic warning label to increase its effectiveness; tab and customer education requirements.

Over time, the voluntary standard has become ubiquitous within the industry. In fact, CPSC recognizes that it “has several bases to determine preliminarily that window coverings substantially comply with the requirements for operating cords in ANSI/WCMA-2018.”<sup>12</sup> This is confirmed by D+R International’s 2021 report, which found that all manufacturers interviewed for the report were aware of the voluntary standard and implemented compliance in all stages of the product development process from product design to fabrication.<sup>13</sup> In short, the window

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<sup>12</sup> 87 Fed. Reg. 1039.

<sup>13</sup> D+R International Ltd, Window Covering Market Characterization: Final Report (February 2021).

covering industry has worked with CPSC to improve the safety of window coverings and should not be considered the type of recalcitrant industry where a mandatory standard is warranted.

WCMA encourages CPSC to recognize that the voluntary standard process will address the risk associated with corded custom window coverings more effectively and efficiently than the government promulgating a mandatory standard and to terminate the rulemaking to advance the Proposed Standard.

#### **B. The 180-Day Effective Date Would Delay Consumer Transition To Safer Products and Lacks Justification**

While WCMA believes that the Proposed Standard on custom window coverings is flawed, unnecessary, and would impose an enormous cost on manufacturers, retailers and consumers, the Commission's arbitrary decision to accelerate the effective date to 180 days will create even more unneeded issues and costs for those stakeholders.

The Commission rejected CPSC staff's recommendation of a two-year effective date for its Proposed Standard and instead arbitrarily included a 180-day effective date. Not only is 180 days not supported by the economic analysis prepared for the Proposed Standard, the 180 days is not feasible to allow for industry to respond to the elimination of product categories resulting from the new regulation and would delay consumer transition to available safer products. WCMA strongly encourages the Commission to include a minimum two-year effective date, as originally recommended by CPSC Staff.

As CPSC recognizes, the Proposed Standard would eliminate product options for custom window coverings with no viable replacements at this time.<sup>14</sup> The industry has yet to develop the technology to support custom window coverings that could both comply with the Proposed Standard and replace the existing array of custom products. Size, weight, and location requirements for custom products prevent the use of many of the cordless lift systems offered for stock products, despite CPSC claims to the contrary.<sup>15</sup> Once technology is developed, it needs to be incorporated into supply chains, affecting planning and decision making of manufacturers, distributors, and retailers. From concept to marketing, the timeline to commercially introduce a new product can take up to 48 months. The resources and costs associated with this transition is compounded because the custom category is made up of over 20 totally different product designs that will require multiple and unique engineering solutions to achieve possible compliance.

If industry is not afforded sufficient time to develop and implement new technology there will be a period where the Proposed Standard is in place, product categories are eliminated, and no viable alternative products are available to be sold in the market. This dynamic creates an

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<sup>14</sup> "[E]limination of some product sizes is possible because conversion to cordless operation may not be feasible for some large or unusual sizes." 87 Fed. Reg. 1,045.

<sup>15</sup> The size, weight, and location limitations associated with cordless products are discussed in more detail in Section III.E.1.



incentive for consumers to hold onto older, non-compliant corded window coverings instead of replacing them with window coverings that meet ANSI/WCMA-2018 (or the newer revised voluntary standard on which the industry is currently working). This dynamic will be perpetuated if industry cannot create viable alternatives to meet consumer demand.

The costs associated with the transition to alternative products will be significant and is greatly underestimated by CPSC,<sup>16</sup> as noted in Section III.F.2 of these comments. The costs associated with a 180-day effective date are even greater. The elimination of the product categories resulting from the Proposed Standard will severely impact the industry—product lines will be eliminated, contracted for and purchased product will go to waste, and retailers will not be able to meet consumer requests. This will impose a significant impact on small businesses, which make up the majority of the industry.<sup>17</sup> CPSC estimates that small manufacturers can expect a “potentially significant” impact due to redesign costs and incremental component costs.<sup>18</sup>

The Commission’s acceleration of the effective date to 180 days is not supported by the record. The CPSC’s own economic analysis in support of the Proposed Standard does not contemplate a 180-day effective date but instead considers the impact of a two-year effective date.<sup>19</sup> In support of a two-year effective date, CPSC staff recognized “that there are some issues in redesigning certain window coverings of unusual sizes to accommodate a cordless option.”<sup>20</sup> Because “elimination of some product sizes is possible because conversion to cordless operation may not be feasible for some large or unusual sizes,” CPSC should consider an effective date “longer than two years to mitigate the impact.”<sup>21</sup> CPSC staff states in its report that it is unlikely

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<sup>16</sup> For example, in considering alternatives to the Proposed Standard, CPSC suggests that the cost of transitioning operating cords to an operating wand is \$0 “because using plastic rods for operation is very similar to cords in cost.” 87 Fed. Reg. 1,046. Regardless of whether the costs of the products are the same, the CPSC completely ignores the costs associated with the re-engineering of product lines, sourcing of new materials, and updating of retailer displays, among other costs. Furthermore, WCMA members report that the cost of shipping a product that uses a plastic rod is higher than a product that uses a tilt cord because the package needs to accommodate the rigidity and length of the plastic rod.

<sup>17</sup> CPSC estimates that based on 1,898 firms that were categorized as blinds and shades manufacturers and retailers, 1,840 firms are small. 87 Fed. Reg. 1,046.

<sup>18</sup> CPSC estimates that the Proposed Standard would impose an impact on small businesses of two percent of revenue. WCMA estimates the impact to be significantly higher because CPSC fails to consider many aspects of the supply chain and elimination of product lines. See Section III.F.2 of these comments for more detail. Nonetheless, the CPSC itself considers any impact greater than 1 percent to be “potentially significant.” 87 Fed. Reg. 1,048.

<sup>19</sup> CPSC Staff Briefing Package, Tab K: Preliminary Regulatory Analysis of the Draft Proposed Rule for Custom Window Coverings, (October 6, 2021), p. 189.

<sup>20</sup> Staff Briefing Package, p. 30; see also p. 34.

<sup>21</sup> Staff Briefing Package, p. 30-31; WCMA notes that the challenges associated with cordless technology are not limited to “large” or “unusual” sizes. Cordless technology also is limited for heavy products, even at smaller sizes, and in many locations. See Section III.E.1 of these comments for a more fulsome discussion of the limitations associated with cordless technology.

that any manufacturer would leave the market as a result of the Proposed Standard.<sup>22</sup> These considerations were based on a two-year effective date, not the arbitrary 180-day effective date in the Proposed Standard.

Because the CPSC has not considered the impacts of the 180-day effective date, the CPSC has not made the requisite findings “that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product.”<sup>23</sup> Nor has the CPSC afforded WCMA or other stakeholders the ability to provide meaningful comment on this critical aspect of the rulemaking. Rather, the 180 days was adopted with little to no discussion or analysis—and without any input from industry stakeholders—by CPSC Commissioners at the time they voted to approve the Notice of Proposed Rulemaking.

WCMA urges CPSC to terminate the Proposed Standard and instead continue to collaborate with WCMA and safety advocates on updating ANSI/WCMA-2018. Alternatively, CPSC should go back to the 2-year effective period as originally recommended by CPSC staff.

### **C. CPSC’s Assessment of Window Covering Incidents and Risk is Flawed and Does Not Establish an Unreasonable Risk**

Because of the efforts of all stakeholders including CPSC, industry and safety advocates, fatalities related to window covering products used in the United States are extremely rare.<sup>24</sup> The industry’s collective product development and consumer awareness efforts are producing positive results. Yet the CPSC’s flawed risk analysis continues to ignore positive trends in a reduced number of incidents over time.

#### **1. CPSC’s Methodology in Calculating the Number of Incidents is Flawed**

WCMA retained RIAS Inc., to review the CPSC’s identification and assessments of incidents associated with corded custom window coverings.<sup>25</sup> The RIAS analysis found several problems with CPSC’s methodology in calculating the rate of incidents, which reveal that the Proposed Standard is based on a flawed factual foundation.

*Estimates Using National Center for Health Statistics (NCHS) Data* – Using NCHS data for 2009-2019, CPSC concluded that there are on average nine (9) fatalities per year, which CPSC suggests is a minimum estimate due to the exclusion of two incident codes.<sup>26</sup> RIAS’ review of the

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<sup>22</sup> 87 Fed. Reg. 1045.

<sup>23</sup> 15 U.S.C. § 2058(f)(3)(A).

<sup>24</sup> CPSC estimates there to be 1,014 million window coverings in use. 87 Fed. Reg. 1,020. WCMA believes the number of window coverings is significantly higher and has concerns regarding CPSC’s methodology in developing this estimate. See Section III.F.1.

<sup>25</sup> RIAS Inc. Assessment of CPSC’s Notice of Proposed Rulemaking: “Safety Standard: Operating Cords on Custom Window Coverings,” (March 22, 2022) Attachment 1.

<sup>26</sup> 87 Fed. Reg. 1,027.

excluded codes suggests that they would include minimal if any incidents during the time period that CPSC reviewed and that CPSC has no basis for suggesting its estimate is a minimum.

CPSC estimated the proportion of these incidents attributable to window covering cords by applying a fixed percentage derived from a 2002 study on the percent of strangulation fatalities due to window coverings. There have been six updates to the ANSI/WCMA standard since 2002 (with a seventh in development).<sup>27</sup> CPSC has offered no explanation in support of its continued use of this study nor for its assumption that the percentage of strangulations would remain constant.

The CPSC's estimate is applied to an average annual death figure calculated over the entire period from 2009 to 2019. Using a single annual average estimate over eleven (11) years ignores the downward trend in incidents that occurred from 2009 to 2020 and treats each year equally, despite the fact that CPSC's review of more recent years is more relevant to the question respecting the current hazard. In this respect, the CPSC's "approach" is analogous to trying to draw trends on traffic fatalities by including incidents occurring when seat belts were not required to be worn with data for (more recent) years when the wearing of seat belts is required, and air bags are standard in cars. It is truly mixing "apples and oranges."

In 2015, when responding to the Advanced Notice of Proposed Rulemaking (ANPR), WCMA also had retained an expert to review CPSC's assessment of window covering incidents.<sup>28</sup> That expert identified almost identical errors in the CPSC's methodology and conclusions. WCMA provided these conclusions in its comments on the ANPR. Not only did CPSC staff not respond to or even acknowledge comments challenging CPSC's methodology and conclusions related to incident data, but they have repeated these errors. WCMA is disappointed to have to once again find the same errors in CPSC's methodology and conclusions.

Nonetheless, even with this flawed methodology, CPSC's own estimates demonstrate a marked downward trend in incidents. In 2015, relying on NCHS data from 1999 to 2010, CPSC estimated eleven (11) fatal strangulations related to window covering cords occurred per year.<sup>29</sup> CPSC now estimates nine (9) fatal strangulations per year, a decrease of over 18 percent. CPSC fails to acknowledge or explain this decrease in fatalities, despite this trend being clearly visible. As demonstrated by RIAS and depicted in Figure 1, based on the NCHS data from 2002 to 2019 as collected by CPSC, there is a clear downward trend in the number of incidents attributable to window covering cords.

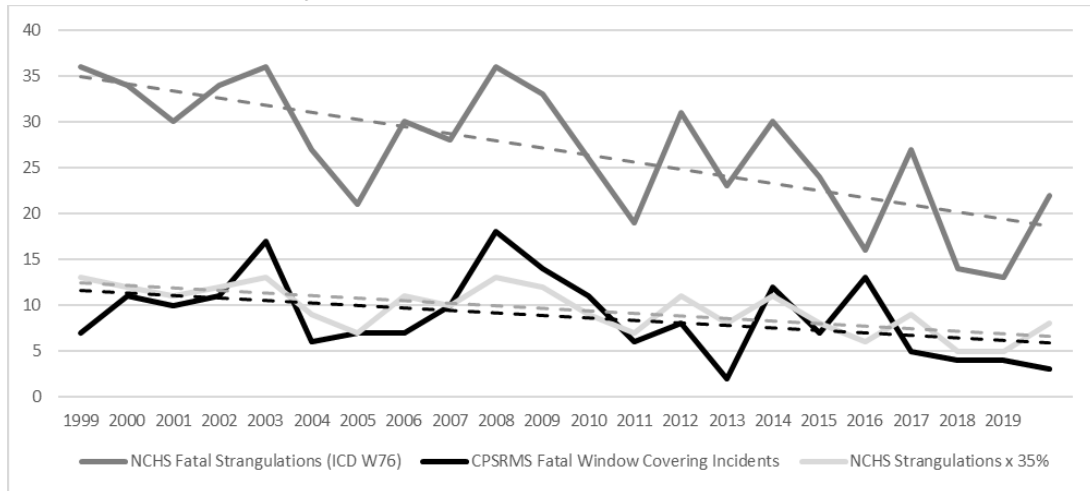
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<sup>27</sup> There have been six updates to the ANSI/WCMA standard with the original being published in 1996 and subsequent updates in 2002, 2007, 2009, 2010, 2012, and 2018.

<sup>28</sup> Heiden & Associates, "Review and Critique of CPSC Hazard Analysis in ANPR and Briefing Package." (June 1, 2015). Attachment 2.

<sup>29</sup> 80 Fed Reg. 2,327 (Jan. 16, 2015), <https://www.federalregister.gov/documents/2015/01/16/2015-00566/corded-window-coverings-request-for-comments-and-information>

**Figure 1: NCHS and CPSMRS Fatality Data, 1999-2020<sup>30</sup>**



*Estimates Using National Electronic Injury Surveillance System (NEISS) Data* - CPSC reviewed data for the aggregated estimated injuries from 2009 through 2020 to children eight (8) years of age and younger who were entangled on window covering cords according to emergency department-treated injury data (NEISS), but “the total numbers were below the NEISS reportable threshold.”<sup>31</sup> However, CPSC states that it combined the 34 injury reports from NEISS “with the anecdotal reports received by CPSC in the incident analysis.”<sup>32</sup> Nowhere in the Staff Briefing or the preamble in support of the Proposed Standard does CPSC explain how the 34 NEISS data injury reports were added to the other incident data, and how CPSC ensured that no double-counting occurred. For any regulatory analysis to be credible, all data and assumptions should be made available so that the common standard of reproducibility can be tested. CPSC’s analysis does not meet this basic threshold, which calls into question the validity of CPSC’s findings.

Notably, in the related rulemaking for stock products and inner cords on custom products, CPSC concludes, based on the same NEISS data, that “the number of pediatric strangulations have declined” and that there is a “slightly declining trend for both fatal and non-fatal pediatric injuries.”<sup>33</sup> The NEISS data does not make a distinction between custom and stock products.<sup>34</sup> Therefore, any observation in the declining trend in pediatric injuries is relevant to custom products in addition to stock and custom product inner cords.

<sup>30</sup> RIAS Inc. “Assessment of CPSC’s Risk and Preliminary Regulatory Analysis,” p. 3. Fig. 1.

<sup>31</sup> 87 Fed. Reg. 1,027.

<sup>32</sup> Staff Briefing Package, p. 53.

<sup>33</sup> Staff Briefing Package, Tab F: Draft Proposed Rule Under Section 15(J) of The CPSC: Operating and Inner Cords on Stock Window Coverings and Inner Cords of Custom Window Coverings Small Business Considerations, p. 97 n. 27.

<sup>34</sup> “National estimates of deaths and injuries involving window covering strangulations among children under 5 years of age are associated with all types of window coverings, because the available information does not allow the CPSC to distinguish product subtypes.” 87 Fed. Reg. 1,022.

*Estimates Using CPSC's Incident Data* – Using incident data from its own databases, CPSC concluded that from January 2009 to December 2020 there were 194 total incidents, with 89 incidents resulting in fatalities with corded window coverings.<sup>35</sup>

First, RIAS notes that CPSC has not explained the spike in incident data presented by CPSC for 2009 and 2010 that is the result of the anomalous number of nonfatal incidents reported in those years, which are 5.2 and 3.1 times greater respectively than the average number of nonfatal incidents over the 1996 to 2020 period. CPSC has never offered an explanation for this drastically inconsistent data associated with nonfatal incidents. A legitimate concern is that the “combining” of NEISS injury data into the CPSC incident data noted above may be the cause of this anomaly.

Based on WCMA’s engagement on these issues, it is likely that the spike can be attributed to Roman shade incidents.<sup>36</sup> During this time period, Roman shades became very popular and there was a dramatic increase in the number of imported Roman shades that were sold as stock product in large big box and mass merchant retailers. They were designed with light weight fabric, extremely long distances between horizontal batons, light weight bottom rails, and exposed rear and inner cords that could form hazardous loops. Recognizing the need to act swiftly to address the potential hazard, WCMA initiated a revision of the Voluntary Standard relying on ANSI’s provisional standard process—a process that had never been used for any other ANSI-supported standard. As a result, and with CPSC’s and consumer advocate’s agreement, a new performance requirement was added to the voluntary standard to eliminate the potential for hazards that occurred with the problematic Roman shades. WCMA reacted swiftly and decisively to address this hazard pattern and to ensure that it could not be repeated. As such, CPSC’s inclusion of this anomalous data cannot support a new mandatory standard for a hazard pattern that has already been addressed.

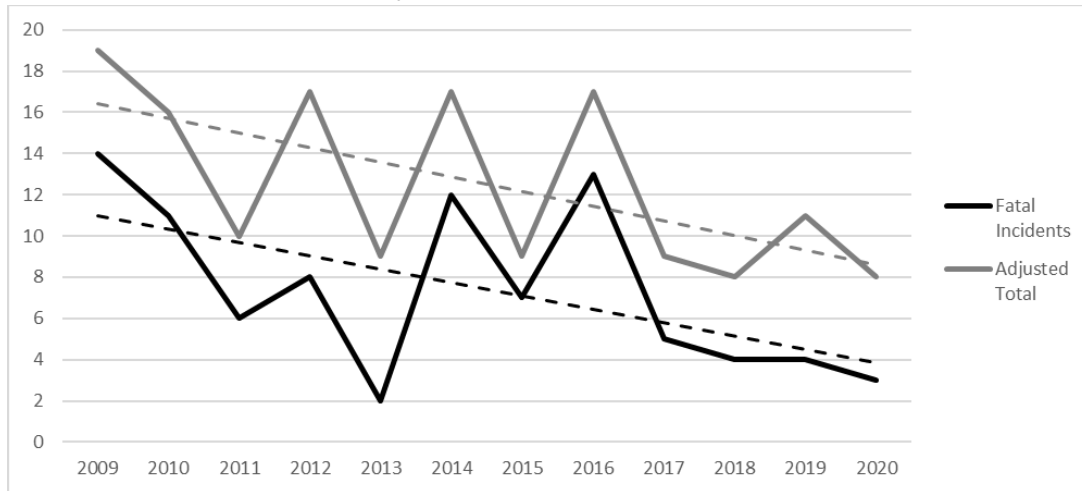
This anomalous incident data for the years 2009 and 2010 skews the examination of trends in incidents by making the 1996 to 2020 trends for nonfatal and total incidents appear less downward trending, and the 2009 to 2020 trends of nonfatal and total incidents more strongly downward trending over time than they would be otherwise. However, even after adjusting for the problematic nonfatal incident datapoints, incidents still show a strong downward trend over the 2009 to 2020 period for CPSC’s analysis, as shown in Figure 2.

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<sup>35</sup> 87 Fed. Reg. 1,052.

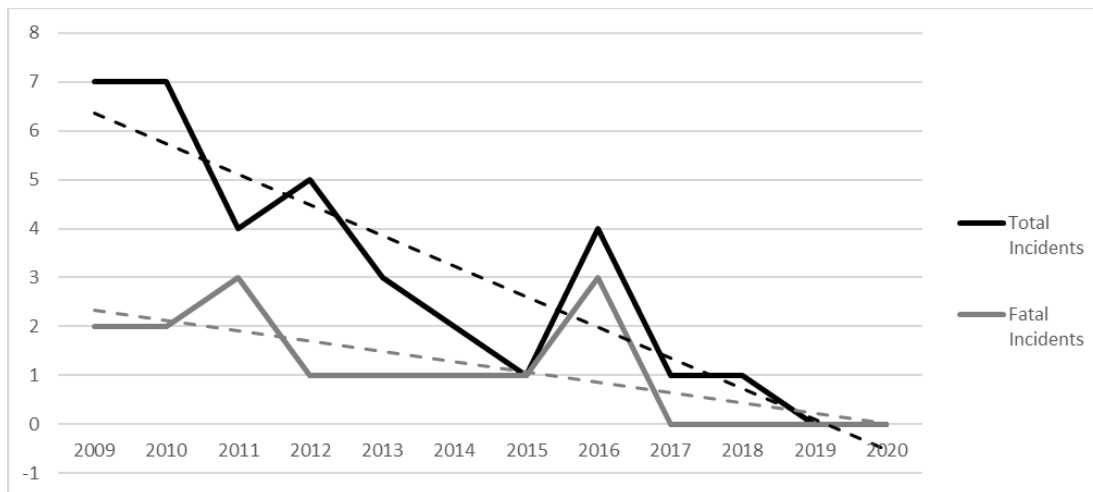
<sup>36</sup> Because CPSC has not fully shared the incident data with WCMA, WCMA is limited in its review of incidents and assessing their root cause. Nonetheless, WCMA member manufacturers were keenly aware of the 2009-2010 Roman shades incident spike, which not only resulted in the referenced standard revision but also extensive “recall to repair” efforts for roman shades products.

**Figure 2: Trends in Incidents, 2009-2020 (adjusted to address anomalous data in 2009 and 2010)<sup>37</sup>**



Second, RIAS concludes that there is a downward trend in incidents over the 2009 to 2020 time period for custom products. In their breakdown of incidents into stock and custom products, CPSC could only identify the window covering type in 109 out of the 194 incidents (56%) presented in their findings, only 35 of which pertained to custom products (18% of incidents). For those products identified as custom products, as depicted in Figure 3, the data clearly show that incidents trend strongly downward over the 2009 to 2020 time period.

**Figure 3: Trends in Known Incidents for Custom Product<sup>38</sup>**

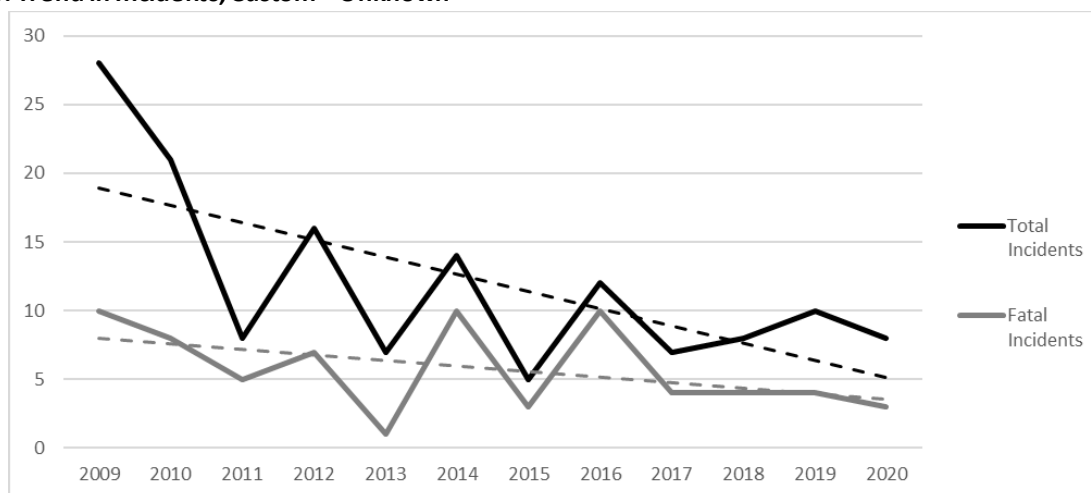


Recognizing that CPSC was limited in their ability to distinguish between stock and custom products for nearly half of the 194 incidents, even if all products in the unknown category are assumed to be custom product, the incidents on custom products still trend strongly downwards over the 2009 to 2020 period as depicted by Figure 4.

<sup>37</sup> RIAS Inc. "Assessment of CPSC's Risk and Preliminary Regulatory Analysis," p. 6. Fig. 3.

<sup>38</sup> RIAS Inc. "Assessment of CPSC's Risk and Preliminary Regulatory Analysis," p. 7. Fig. 5.

Figure 4: Trend in Incidents, Custom + Unknown <sup>39</sup>



CPSC cautions against drawing inferences based on the year-to-year increase or decrease in the reported data.<sup>40</sup> Yet, CPSC offers no other alternative metric or methodology by which to assess the risk associated with these hazards. Furthermore, CPSC itself relies on the existence of these incidents and the breakdown of incidents by product categories to support its own analysis. If the data is anecdotal and cannot support inferences in any increase or decrease, the data also cannot support inferences based on the percentage of incidents attributed to different product types.

Moreover, it is reasonable to expect that the observed downward trend in fatal incidents for custom products will continue. ANSI/WCMA-2018 compliant custom products are now widely available and will continue to replace older products in homes. As future updates to the ANSI/WCMA are implemented, this trend will continue. Separate from the voluntary standard, each year the industry offers new product innovations, further expanding the cordless or cord inaccessible product offerings to consumers.

## 2. CPSC Has Failed to Perform a Risk Analysis and Has Not Established an “Unreasonable Risk”

The CPSC’s authority to promulgate consumer product safety standards is limited to when there is an “unreasonable risk of injury” associated with a product.<sup>41</sup> CPSC risk analysis falls well short of meeting this threshold of proof. Instead, the CPSC uses the existence of incidents to justify its elimination of a perceived hazard, namely the presence of an operating cord. However, the existence of a hazard does not mean there is an unreasonable risk.

<sup>39</sup> RIAS Inc. “Assessment of CPSC’s Risk and Preliminary Regulatory Analysis,” p. 8. Fig. 6.

<sup>40</sup> Staff Briefing Package, p. 40.

<sup>41</sup> 15 U.S.C. § 2056(a).

A proper risk assessment would analyze the underlying causal factors for the trends in incidents, such as changes in exposure to potential hazards (*e.g.*, changes in population of children under five (5) years of age over time, changes in number of window coverings in households over time, and the impacts of continuous improvements in window covering safety under the WCMA/ANSI voluntary standard and the introduction of a greater number of cordless and motorized products by manufacturers) to establish a credible historical baseline that would then be used to provide evidence-based projections of future risk scenarios (expected changes in future incidents with and without CPSC's proposed mandatory standard in place). Normally, such projections should include probabilities and likelihood of occurrence using statistical techniques to analyze uncertainty.<sup>42</sup>

Additionally, CPSC has not acknowledged that incident reporting has changed tremendously since 2009 (the first year of CPSC's data set in support of the Proposed Standard) providing CPSC with greater ability to identify incidents that they previously might not have been aware of. And that despite greater access to incident data, incidents associated with window coverings have consistently declined. It was not until 2011 that saferproducts.gov was established so that consumers can submit reports of harm or risks of harm via the internet, and to search for safety information on products. Prior to saferproducts.gov, CPSC was receiving incident reports from consumers via the CPSC hotline, which was originally introduced in 1975.<sup>43</sup> NEISS was also updated in 2018 to better collect incident data from participating hospitals, allowing for CPSC to obtain better and more incident data. Improvements in internet search functions also provide CPSC greater access to anecdotal data. Even with these advancements in technology, the incidents related to window coverings have continuously declined.

CPSC has failed to perform any sort of analysis, sophisticated or otherwise, of the underlying factors that influence exposure to potential hazards associated with corded window coverings, including changes in population of children under five years of age, changes in the number of window coverings in households over time (WCMA believes CPSC's estimate of more than one billion to be an inaccurate and low estimate), the actual rate of replacement of non-compliant window coverings in households over time, and so on.<sup>44</sup> Instead, CPSC relies on the existence of incidents to support its elimination of cords from custom window coverings. Such lack of analysis cannot be said to be reasoned decision making and surely cannot support a determination that corded custom window coverings pose an "unreasonable" risk under the ANSI/WCMA-2018 Standard.

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<sup>42</sup> See Memorandum For the Heads of Executive Departments and Agencies, Updated Principles of Risk Analysis, Sep. 19, 2007.

<sup>43</sup> CPSC, "CPSC Establishes A Call Diverter System For Reporting Substantial Product Hazards By Manufacturers, Distributors And Retailers" (January 6, 1975), available at <https://www.cpsc.gov/Newsroom/News-Releases/1975/CPSC-Establishes-A-Call-Diverter-System-For-Reporting-Substantial-Product-Hazards-By-Manufacturers-Distributors-And-Retailers>.

<sup>44</sup> For example, CPSC estimates there to be 1,014 million window coverings in use. 87 Fed. Reg. 1,020. WCMA believes these numbers to be significantly higher and has concerns regarding CPSC's methodology in developing these estimates. See Section III.F.1.



#### **D. ANSI/WCMA-2018 Reduces the Risk of Injury Associated With Corded Custom Window Coverings**

In providing the CPSC its authority to promulgate consumer product safety standards, Congress recognized that reliance on voluntary standards is the preferred approach to advancing consumer product safety. Where a voluntary standard is in place and effective at reducing the risk, the Commission “shall rely upon [the] voluntary consumer product safety standard[] rather than promulgate a consumer product safety standard.”<sup>45</sup> This inquiry requires the CPSC to undertake a two-part analysis of the voluntary standard:

- (1) whether compliance with the voluntary standard “would eliminate or adequately reduce the risk of injury addressed[;]” and
- (2) whether it is “likely that there will be substantial compliance with such voluntary standard[.]”<sup>46</sup>

In 2018, working alongside CPSC Staff and safety advocates, WCMA and its members updated ANSI/WCMA-2018, which required that the vast majority of window covering products sold in the United States to be cordless or have inaccessible or short cords. ANSI/WCMA-2018 has been in effect for a little more than three years. CPSC has determined that custom window coverings substantially comply with ANSI/WCMA-2018.<sup>47</sup> Nonetheless, CPSC alleges that the requirements for custom products in ANSI/WCMA-2018 do not adequately address the risk of strangulation to children because the standard “allows” operating cords if window coverings are custom orders.<sup>48</sup> CPSC’s proposal is arbitrary and capricious and not in accordance with law. The Commission should follow its own statute, defer to the voluntary standard, and terminate this rulemaking.<sup>49</sup>

##### **1. CPSC Failed to Evaluate the Effectiveness of ANSI/WCMA-2018**

CPSC’s assessment of the risk associated with corded custom window coverings is predicated on its review of data related to window coverings from 2009 to 2020 across three different databases.<sup>50</sup> Based on CPSC’s databases, CPSC identified 194 fatal and non-fatal incidents, 89 of those incidents were fatal, and 35 were identified as involving custom window

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<sup>45</sup> 15 U.S.C. § 2056(b)(1).

<sup>46</sup> 15 U.S.C. § 2056(b)(1); 15 U.S.C. § 2058(f)(3)(D).

<sup>47</sup> 87 Fed. Reg. 1053.

<sup>48</sup> 87 Fed. Reg. 1,031.

<sup>49</sup> “The Commission shall rely upon voluntary consumer product safety standards rather than promulgate a consumer product safety standard . . . whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards.” 15 U.S.C. § 2056(b)(1).

<sup>50</sup> 87 Fed. Reg. 1,022, 1022 fn. 12; Section III.C.2 of these comments provides a critique of the incident data CPSC has relied upon for its hazard analysis and determination of unreasonable risk.

coverings. Of the 35 incidents involving custom window coverings, CPSC reports that 18 involved pull cords, 12 involved continuous loops, and three (3) involved inner cords (the remaining two (2) involved unknown types of cords).<sup>51</sup>

The incident data presented do not identify the age of the custom window coverings involved in the incidents. Moreover, ANSI/WCMA-2018 only went into effect on December 15, 2018; as such, at most there only would be one year's worth of data where products possibly could have been compliant to be reflected in the incident data. CPSC staff can draw no conclusions about which version of the ANSI/WCMA standard the window coverings complied and, similarly, cannot draw any conclusions whatsoever about the effectiveness of ANSI/WCMA-2018 in reducing the risk of incidents and injuries.

In its assessment of pull cord incidents, CPSC states that “the effects, if any, of the 2018 voluntary standard on these products have yet to be reflected in the data.”<sup>52</sup> Given this admission, there is no way to determine, for example, the extent to which the default cord length requirement (ANSI/WCMA 2018, section 4.4) or default wand tilt requirement (section 4.4.1.1) have reduced or eliminated the risk of strangulation from custom products.

Interestingly, in the context of CPSC's related rulemaking for stock products and inner cords for custom products, CPSC notes that according to NEISS data, “the number of pediatric strangulations has declined as more cordless stock products become available.”<sup>53</sup> CPSC attributes this to changes in ANSI/WCMA-2018 for stock products.<sup>54</sup> It is unclear how CPSC can draw this inference for stock products given the limitations in the data set and the fact that the NEISS data does not make a distinction between custom and stock products.<sup>55</sup> Nonetheless, CPSC makes no attempt to undertake a similar analysis for custom products or, at the least, acknowledge the same trend exists as to custom products. Nor does CPSC's assessment take into account the increasing numbers of cordless and motorized operating systems in the custom segment. It is beyond argument that this trend contributes to reducing risk.

Instead, the CPSC appears to focus solely on the elimination of risk. Because ANSI/WCMA-2018 allows for cords longer than 8” in limited applications, according to CPSC, the standard does not eliminate the risk.<sup>56</sup> While WCMA will continue to work diligently, “elimination” is not the standard by which Congress prescribed CPSC's authority to reject

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<sup>51</sup> 87 Fed. Reg. 1,024, Table 2.

<sup>52</sup> 87 Fed. Reg. 1,025.

<sup>53</sup> Staff Briefing Package, p. 97.

<sup>54</sup> Staff Briefing Package, p. 97 (“Staff notes that many manufacturers began offering cordless stock products before the standard went into full effect.”).

<sup>55</sup> 87 Fed. Reg. 1,022 (“National estimates of deaths and injuries involving window covering strangulations among children under 5 years of age are associated with all types of window coverings, because the available information does not allow the CPSC to distinguish product subtypes.”); *see also id.* at 1,027 (noting that trend analysis of the NEISS data is unfeasible).

<sup>56</sup> 87 Fed. Reg. 1,031.

voluntary standards as it is an impossible standard to meet. As required by the statute, CPSC should undertake an evaluation of ANSI/WCMA-2018 to determine whether it adequately reduces the risk.<sup>57</sup> Absent any meaningful evidence to the contrary, CPSC cannot conclude to the contrary and cannot meet the requirements of the CPSA.

## 2. ANSI/WCMA-2018 Adequately Reduces the Risk

For custom window covering products, the 2018 update to the ANSI/WCMA window covering safety standard required a redesign of custom products to further minimize the potential risk to children. These changes, combined with the fact that custom products make up a relatively small portion of the window covering industry, and CPSC's own incident data, demonstrate that ANSI/WCMA-2018 adequately reduces the risk of injury associated with corded custom window coverings.

*Accessible Operating Cords* – For custom products, ANSI/WCMA-2018 created a default cord length limitation for operating cords and a default to a tilt wand that eliminates tilt cords. These defaults can only be overridden by an explicit decision by the consumer and only after the consumer is exposed to appropriate safety information. The reports from the industry suggest that there is minimal pushback on these product defaults. In addition, an ever-growing segment of the custom product market is selecting cordless products as the product of choice.<sup>58</sup>

As noted above, CPSC staff attributes a decline in pediatric strangulations to the availability of more cordless stock products, but because the data makes no distinction between custom and stock, this decline can also be attributed to the limitations of cords in custom products.<sup>59</sup>

*Continuous Loop Operating System* – ANSI/WCMA-2012 added new requirements for the durability and effectiveness of tension devices, including cycle testing, UV stability and impact testing (these requirements remained in place in ANSI/WCMA-2018). Prior to this standard, tension devices were inconsistently designed and manufactured, with material that sometimes did not withstand the long-term effects of UV rays, impacts from other objects or extended friction from running the cord or chain through the device.

When properly installed, there has been no recorded incident related to cords tensioned with compliant tension devices. This is confirmed by the CPSC, which notes that incidents involving continuous loop cords involved situations where tension devices were not present or were broken, but not in situations where the window covering was compliant with ANSI/WCMA-

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<sup>57</sup> 15 U.S.C. § 2056(b)(1).

<sup>58</sup> RIAS Inc. "Assessment of CPSC's Risk and Preliminary Regulatory Analysis," p. 16.

<sup>59</sup> 87 Fed. Reg. 1,022 ("National estimates of deaths and injuries involving window covering strangulations among children under 5 years of age are associated with all types of window coverings, because the available information does not allow the CPSC to distinguish product subtypes."); see also *id.* at 1,027 (noting that trend analysis of the NEISS data is unfeasible).

2018.<sup>60</sup> As a result, these incidents cannot be considered as incidents where cords were under tension in a manner that would comply with ANSI/WCMA-2012 or ANSI/WMCA-2018. WCMA is committed to improving the use of tension devices and other safety mechanisms to reduce the potential that these mechanisms will fail or be purposefully defeated—either by accident or on purpose—and is committed to working with the Steering Committee on an acceptable solution to enhance the existing requirements for cords under tension.

*Single Retractable Cord Lift System* – Retractable lift systems were developed to provide the consumer with a safe and easy method for operating their product. Millions of dollars and man hours were invested in these systems that were introduced in 1999 and have performed for over 22 years without any known incident. The ANSI/WCMA-2018 requirements provide for cord retraction devices that retract cords when tension is no longer applied, meaning there is no or minimally exposed cord when the window covering is not being actively operated. During operation when the cord is exposed beyond a minimal length, there is tension on the cord and forming a hazardous loop or wrapping the cord around a child’s neck is not possible without substantial manipulation. The CPSC has publicly acknowledged that single retractable cord lift systems have never been involved in any safety incidents.<sup>61</sup> The updated voluntary standard will further enhance this cord under tension operating system by requiring a semi-rigid wand to control the unit versus a cord. This is demonstrated in the video that is linked in the footnote below and the following image.<sup>62</sup>

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<sup>60</sup> Staff Briefing Package, p. 10 (“Children getting caught in continuous looped cords or beaded-chains without a functional tension device also figured as a major fatal hazard, accounting for 23 of the 89 fatal strangulations.”) emphasis added. In subsequent discussions CPSC has suggested that there could be one (1) incident that involved an installed tension device. Because CPSC only provided a narrative description of the incident and withheld the images from WCMA, WCMA cannot make a determination on the information provided. However, based on WCMA’s expertise on this technology, it is suspected that if the tension device was installed, it was not installed properly and allowed for the formation of a hazardous loop.

<sup>61</sup> CPSC Staff made this comment during the Steering Committee meeting on March 2, 2022.

<sup>62</sup> Video of window covering using a retractable wand system, <https://drive.google.com/file/d/1Gzi2ARAAQeP34WRUkC-dbZumchMTWcZQ/view>.

Figure 5: Image of a retractable cord using a semi-rigid wand.



CPSC identifies three types of cords as the most hazardous scenarios based on fatal incident data: pull cords (44%), continuous loops (26%), and inner cords (8%).<sup>63</sup> Each of these hazards was either eliminated by ANSI/WCMA-2018 or will be addressed by the new version of the voluntary standard under development. ANSI/WCMA-2018 eliminated pull cords and continuous loops for stock products and prior versions of the standard addressed potential inner cord hazards for stock and custom products. In the newest version of the standard, which is currently under development, WCMA is committed to eliminating pull cords for custom products and reducing the potential for misuse and failure of tension devices for continuous loops on custom products. As such, CPSC has no justification for moving forward with its Proposed Standard.

*Information and Education* – Because of the lengthy product life of window coverings, and custom window coverings in particular, corded window coverings will remain in homes and will not be impacted by CPSC’s mandatory standard. Consumer education and awareness initiatives are required to make consumers with older products aware of the potential hazard. WCMA was dismayed that CPSC has made no effort to assess the effectiveness of public education campaigns and instead concluded that because incidents still occur these campaigns must not work.<sup>64</sup> ANSI/WCMA-2018 included a change in warning tags to more graphically depict the strangulation

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<sup>63</sup> Staff Briefing Package, p. 48.

<sup>64</sup> 87 Fed. Reg. 1,038 (“Staff has not assessed the effectiveness of these public education campaigns”).

hazard. It is typical for a consumer when purchasing custom products to interact with a salesperson, installation specialist or online information and warnings, which provides window covering safety information, specifically regarding the fact that consumers should not use corded products in homes with young children. These changes were included with the support of consumer advocates and CPSC staff—despite their recent statements that such efforts are ineffective.

In addition, through the Window Covering Safety Council (“WCSC”), which is a coalition of major U.S. manufacturers, importers, and retailers of window coverings, WCMA and its members are dedicated to educating consumers about window covering cord safety. The WCSC website ([www.windowcoverings.org](http://www.windowcoverings.org)) is a great resource of information for consumers and industry. WCSC assists and supports its members in the industry’s ongoing efforts to encourage the use of cordless products in homes with young children, redesign corded products, and to support the national ANSI/WCMA standard for corded window coverings. WCSC sponsors, at times with CPSC, National Window Covering Safety Month each October to specifically concentrate the public’s attention on safety issues. Additionally, WCSC provides free retrofit kits and educational materials on how consumers can successfully retrofit their window coverings in order to make older window coverings safer.<sup>65</sup> To date WCSC has shipped hundreds of thousands of free retro fit kits. WCSC would welcome the CPSC’s meaningful participation and collaboration in these efforts to amplify these messages, reach more households, and prevent incidents.<sup>66</sup>

WCSC’s safety efforts have led to tremendous results. In March 2022, WCSC conducted an online survey among 1,000 U.S. adults, ages 18 and older and found that 90% of adults with children in the home are aware of the strangulation hazard certain window cords may pose to infants and young children.<sup>67</sup> WCSC will continue to educate the public so that as many consumers as possible are aware of the safety hazard of window covering cords.

#### **E. CPSC’s Proposed Standard Is Not Technically Feasible**

The Proposed Standard would require that all custom window coverings be cordless. The CPSC goes to great lengths to describe the cordless window covering technologies that are available to replace corded custom window coverings. In fact, CPSC claims that “[v]irtually every window covering type is available with a ‘cordless’ operating system.<sup>68</sup> CPSC is correct in the observation that (due to industry’s continuous product development efforts) cordless operating

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<sup>65</sup> A more fulsome summary of WCSC’s efforts can be found in Attachment 3.

<sup>66</sup> Over the years, WCSC has routinely invited CPSC participation despite CPSC’s haphazard response and participation. CPSC often has declined to participate and, when it does participate, often delays and limits the initiatives. CPSC’s less-than-robust participation in, and enthusiasm for, WCSC’s efforts is puzzling, especially when the intent of these efforts is to address and reduce child safety risks.

<sup>67</sup> WCSC, National Survey Finds 90% of Adults with Children in the Home are Aware of Window Covering Cord Safety Hazards, March 18, 2022, <https://windowcoverings.org/national-survey-finds-90-of-adults-with-children-in-the-home-are-%e2%80%8eaware-of-window-covering-cord-safety-hazards/>.

<sup>68</sup> 87 Fed. Reg. 1,018.

systems are available for every “type” of window covering product, ranging from wood blinds to sheer shades. But that blanket statement conveniently ignores that, within these product types, there are specific product varieties that—due to size, weight, product location, or other limitations—are not presently available with, or suitable to, cordless or motorized operating systems. For example, for faux wood blinds, a general estimate for the maximum dimensions for cordless is 96 inches wide by 48 inches high and 60 inches wide by 84 inches high. This leaves many larger sizes unavailable in cordless options.

CPSC is forced to admit this fact (albeit hidden in a footnote) that the Proposed Standard would limit the availability of products.<sup>69</sup> Given that the focus of CPSC’s Proposed Standard is the “custom” segment (where, by definition, products are made to suit a consumer’s unique needs and wants), the significance of CPSC’s incorrect blanket statement is even more pronounced.

#### 1. CPSC’s Proposed Standard Ignores the Limits of Cordless Technology

The following provides an overview of the limitations associated with what CPSC considers available cordless products.

*Cordless Motorized Blinds* – CPSC suggests that cordless motorized blinds are an alternative to the cord lift system.<sup>70</sup> However, CPSC fails to recognize that these products have limitations in their use. Cordless motorized products have limited application for larger window openings (both height and width) due to the weight limitations of the motor – bigger window coverings are heavier and require larger motors. Larger motors require larger headrails, which typically elicit consumer complaints. Minimizing headrail size is a constant focus of industry design efforts. Having a family of motors to cover light, medium, and heavy shades is very expensive to develop and inventory, resulting in increased cost for the consumer. The larger sizes particularly need special companion headrails and roller tubes, requiring greater product complexity and manufacturing costs and leading to greater consumer costs. In addition, motors need power supply. Some smaller motors can be powered off batteries; however, changing batteries<sup>71</sup> or recharging them is not convenient for window coverings placed in hard-to-reach locations. A direct power source also can be used to power a motor but, depending on the location of the window and the availability of the power source, long cords and/or the use of an electrician might be required—both costly and possibly impracticable solutions for consumers. CPSC recognizes that product costs could “exceed \$1,000 for just one unusual size and/or shaped window.”<sup>72</sup> While ignoring “impracticable solutions for consumers” with respect to motorized products on the one hand, CPSC then identifies similar types of concerns in their justification for

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<sup>69</sup> 87 Fed. Reg. 1,018 n.2. (“[t]he availability of alternatives to corded window coverings may sometimes be constrained due to size and weight limitations”).

<sup>70</sup> 87 Fed. Reg. 1,032.

<sup>71</sup> WCMA supports the adoption of requirements that prevent access to batteries.

<sup>72</sup> Staff Briefing Package, p. 187. Despite recognizing these extreme costs, CPSC fails to incorporate these costs into its cost benefit analysis.

why it is not practical for customer installation of tension and other safety devices.<sup>73</sup> This sort of selective “pick and choose” approach is improper, illogical, and simply underscores CPSC’s determination to make the “means fit the ends.”

*Cordless Blinds* – CPSC suggests that cordless blinds operated by pushing the bottom rail up or pulling the rail down offer an alternative to corded custom products with heights up to 84 inches and widths of 144 inches.<sup>74</sup> In fact, CPSC suggests, without any support, “custom window covering manufacturers would most likely adopt cordless lift operation systems to comply with the proposed rule.” This suggestion fails to recognize that custom window covering products often are much longer and wider than stock products and are substantially heavier. For example, horizontal blinds, which get heavier as they are lifted, can weigh in excess of 20 pounds. Current cordless systems cannot handle those dimensions or weights.<sup>75</sup> Furthermore, this cordless option only works if the window is accessible, and the consumer can reach the desired location of the rails.

As noted above, although cordless (including motorized cordless) may be available for all product types, not all sizes can be accommodated with cordless technology. Various manufacturers have different limitations of product availability for cordless technology. Figure 6 provides a visual representation of the representative availability of product types (cordless, motorized, retractable, and continuous cord loops with tension devices) for different size configurations. Regardless of the manufacturer, the size and weight of the window covering significantly limits the cordless product options. The width, height, and corresponding weight of a product will limit the cordless operating system applicability, and many product styles would not be available with cordless technology. Those product options would be eliminated if the CPSC’s Proposed Rule were finalized.

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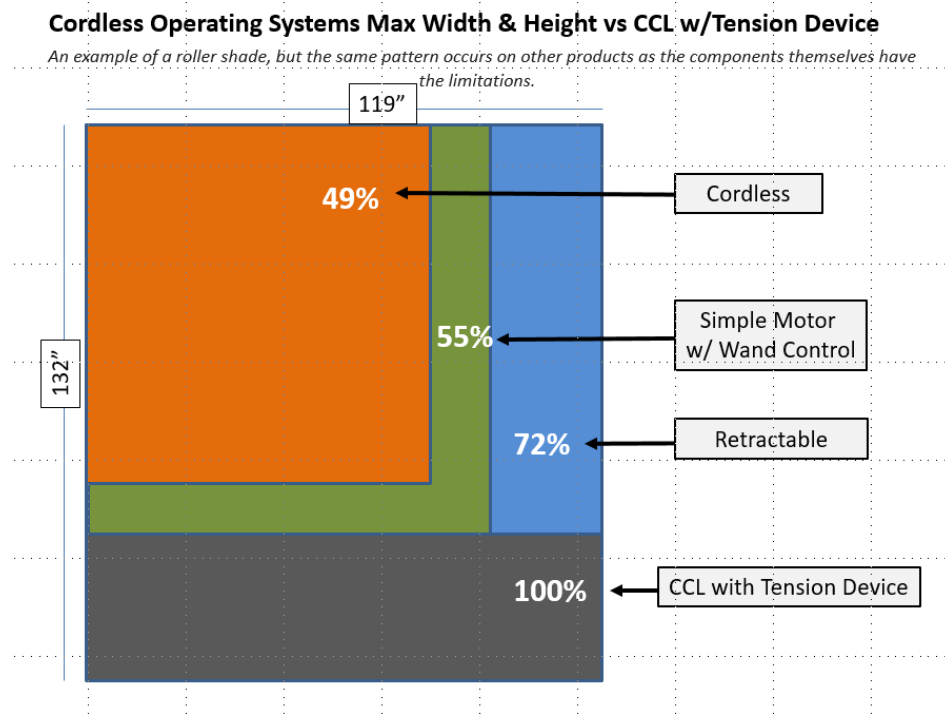
<sup>73</sup> 87 Fed. Reg. 1,035 (“CPSC has concerns with using safety devices to reduce the risk of strangulation for several reasons. Securing safety devices goes beyond the installation of the window covering itself, which increases the ‘cost of compliance’ that is the time and effort to use the product. Also, safety devices, such as tension devices, usually require drilling holes on the wall or windowsill that may not be permissible for renters and may not be desirable by homeowners.”)

<sup>74</sup> 87 Fed. Reg. 1,032; WCMA members report that the availability of products with heights greater than 74 inches is generally extremely limited and often limited to trade shows and displays.

<sup>75</sup> The weight of these products may also limit operation by consumers who may not have the physical capabilities to generate the needed lift force to easily operate these products. These concerns are discussed more in Section III.E.2.



**Figure 6 – General Availability of Cordless Technology on Product Sizes for Cellular Window Coverings**



*Crank Mechanisms* – Crank mechanisms have high gear ratios requiring several turns per inch of window covering travel to be able to lift heavy window coverings. This results in poor usability and very low consumer acceptance. One WCMA member evaluated a sample of a competitive crank system on an average size faux wood blind (42 inches wide by 72 inches high) and it required over 150 revolutions to fully raise and/or lower the blind. Not only is this time consuming (several minutes per blind), but also it requires significant dexterity and endurance to raise or lower a single blind. This option is not suitable for consumers with multiple windows or consumers that have physical limitations. In addition, the gears and crank attachment area require substantially more space than most operating systems and are therefore visually unacceptable and allow too much exterior light to leak in, which reduces the product’s energy efficiency, light control, and privacy functionality, which is unacceptable to consumer seeking a window covering to provide these utilities.

*Rigid Cord Shrouds* – In theory a rigid shroud can cover any cord, and several have been available for years. However, actual use or sale of this product type has been extremely limited due to unacceptable aesthetics, designs that are awkward to use (typically requiring a high number of pulls on a cord or chain due to limited stroke length). The inventory levels and therefore dollar investment for this product run prohibitively high as this product often costs a manufacturer four (4) to six (6) times more than a clutch and tensioned cord or chain. Multiple pre-cut lengths fitted with multiple clutches and operating systems, usually in multiple colors, are required to accommodate the broad range of fabric colors and styles and window sizes and heights. Rigid shrouds also do not universally accommodate headrail systems as they can vary in dimension from two (2) to seven (7) inches and larger, and include round, square and rectangular

shapes, with attachment points in the front or bottom of the headrail. Similar to crank mechanisms, rigid shrouds often increase light gap, which reduces the product's energy efficiency, light control, and privacy functionality.

Recently there have been suggestions that if the window covering industry can comply with Health Canada's Corded Window Coverings Regulations (CWCR) (which prohibits cords), then the window covering industry can comply with the Proposed Standard. The assertion that the window covering industry can comply with CWCR is wrong.

In a March 3, 2022 letter to Canadian Minister of Health, The Honorable Jean-Yves Duclos, PC, MP, WCMA details the significant issues with the Canadian standard and its potential economic impacts on the window covering industry.<sup>76</sup> The CWCR went into effect in May 2021 and will be enforced in May 2022. WCMA has repeatedly informed Health Canada and other policy makers that 88 percent of the window blinds manufactured and sold in Canada will not comply. Home Depot, Bouclair Canada, Kent Building Supplies and other retailers have repeatedly informed Health Canada officials that they will not be able to source compliant product from any Canadian or global supplier based on the current CWCR and as of now there are no viable solutions to replace proven safe products on their shelves.<sup>77</sup>

As a result, manufacturers have started abandoning the Canadian market, closing facilities, or laying off their workforce as product lines are abandoned. Further, it is estimated that under the current CWCR, total losses (direct, indirect, and induced impacts) across the Canadian economy will amount to \$800 million in lost economic output, a \$357 million reduction in value-added, and a loss of over 3,900 jobs and \$214 million in wages for Canadian workers. All of this will occur while Canada is still recovering from the pandemic.<sup>78</sup>

## 2. CPSC's Proposed Standard Fails to Address Accessibility

The Proposed Standard also fails to adequately recognize accessibility concerns with eliminating cords from custom window coverings.<sup>79</sup> According to CPSC, there are "various tools" on the market to make operation of window coverings easier and accessible.<sup>80</sup> However, these types of tools, primarily extension poles and grips, cannot be used in all settings. Furthermore, WCMA notes, that despite assertions to the contrary, the American Disabilities Act ("ADA") does not apply to residential situations.<sup>81</sup> Consumers expect a high level of comfort and convenience in their homes that may not be achieved with a one-size fits all approach considered "ADA-

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<sup>76</sup> WCMA, Letter to Canadian Minister of Health, The Honorable Jean-Yves Duclos, PC, MP, "Health Canada's Failed Leadership on Corded Window Blinds Will Cost Thousands of Jobs" March 3, 2022.

<sup>77</sup> WCMA Letter to Canadian Minister of Health, The Honourable Patricia Hajdu, PC, MP, August 3, 2021.

<sup>78</sup> WCMA, Letter to Canadian Minister of Health, The Honorable Jean-Yves Duclos, PC, MP, March 3, 2022.

<sup>79</sup> CPSC is required to consider "the special needs of elderly and handicapped persons." 15 U.S.C. § 2058(e).

<sup>80</sup> 87 Fed. Reg. 1,037-38.

<sup>81</sup> 42 U.S.C. § 12182 (prohibition of discrimination by public accommodations; *Id.* at § 12181 (definition of public accommodation)).

compliant.” If these products are no longer available, consumers are likely to hold onto existing products that do not adhere to updated safety standards. Therefore, suggestions that cords are not “ADA” compliant has no relevance in this rulemaking.

In December 2021, the CPSC Division of Hazard Analysis and Directorate for Epidemiology released a report titled “Consumer Product-Related Injuries and Deaths Among Adults 65 Years of Age and Older.” In the report, CPSC found that from 2016-2020, adults 65 and older sustained an estimated 14.6 million emergency department treated injuries associated with, but not necessarily caused by consumer products. Nearly two-thirds of these injuries—7.3 million—were due to falls, by far the most common hazard.<sup>82</sup> The blanket elimination of cords—and especially continuous loop cords under tension operating systems—from custom window coverings eliminates a tool for the elderly and those with accessibility challenges to access window coverings in a safe manner. This will increase an already considerable risk profile for significant population segments, without resulting in any significant decrease in the already minimal safety risk associated with these operating systems.

If finalized, the Proposed Standard would eliminate product options for custom window coverings with no viable replacements. CPSC staff reluctantly acknowledges this in its report but fails to acknowledge that if consumers have no alternative, they are far more likely to hold on to older and less safe window covering products for extended periods of time. Obviously, such a result would not contribute to risk reduction.

#### **F. CPSC’s Preliminary Regulatory Analysis Does Not Justify the Proposed Standard**

As the CPSC is aware, its authority to promulgate a mandatory standard is limited. Not only did Congress limit this authority to situations where there is an “unreasonable risk of injury,” but also in exercising this authority, Congress prescribed specific findings and analyses that the Commission is required to perform in order to establish that the mandatory rule is justified. These requirements include a regulatory analysis of the potential benefits and costs,<sup>83</sup> findings on the degree and nature of the risk,<sup>84</sup> the public need for the consumer products,<sup>85</sup> and ways to minimize disruption to the economy,<sup>86</sup> among others. CPSC cannot finalize a mandatory standard unless, based on the foregoing analysis, the severity of the injury and the likelihood of the injury offset the harms imposed on manufacturers and consumers.<sup>87</sup>

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<sup>82</sup> CPSC, “[Consumer Product-Related Injuries and Deaths Among Adults 65 Years of Age and Older](#)” December 2021, pg. 4.

<sup>83</sup> § 2058(c); § 2058(f)(2).

<sup>84</sup> § 2058(f)(1)(A)

<sup>85</sup> § 2058(f)(1)(C)

<sup>86</sup> § 2058(f)(1)(D)

<sup>87</sup> See, generally 15 U.S.C. § 2058(f)(3).

CPSC's evaluation of the costs and benefits is flawed and incomplete, does not support the findings required by Congress, and does not comport with recognized principles for developing a regulatory impact analysis.<sup>88</sup> In its assessment of both the costs and the benefits, CPSC relies on data sets that are incomplete, estimates that are not methodologically sound, and extreme assumptions that do not support real world application. These types of flaws in the foundation of the cost benefit analysis produce distorted results that even by CPSC's own flawed methodology do not demonstrate that the potential benefits offset the significant actual costs to society.

In order to provide a more comprehensive and accurate portrayal of the true costs and benefits of the Proposed Standard, WCMA retained RIAS to provide feedback on CPSC's preliminary regulatory analysis.<sup>89</sup>

### 1. CPSC's Industry and Product Profiles Are Inaccurate

Based on their expert review, RIAS concludes that CPSC's estimates of the industry and product profiles use outdated data, small sample sizes, and flawed assumptions that make CPSC's estimates of market size and product use inaccurate. These estimates serve as a critical foundation for CPSC in its cost benefit analysis. By relying on flawed data as the foundation, the cost benefit analysis is subsequently flawed by the distorted data. The following summarize the RIAS expert conclusions.

*Inaccurate Industry Profile* – The CPSC relied on Census data, a 2021 D+R International study on window covering market characterization, and other market research reports to estimate the total number of firms in window coverings related sectors, and the number of firms that are small businesses. According to CPSC, there are 1,898 firms categorized as blinds and shades manufacturers and retailers and about 1,840 of these firms (302 manufacturers and 1,538 retailers) are small businesses.<sup>90</sup> CPSC estimated total market size to be \$6.6 billion, based on data from a Euromonitor (2021) study for CPSC.<sup>91</sup> CPSC relied on a D+R (2021) study that estimated 139 million residential window coverings were shipped in the United States in 2019, with custom products accounting for approximately 44 percent of unit sales.

By limiting its review to manufacturers and retailers, the CPSC's analysis fails to include significant portions of the window covering industry, including home furnishings merchant wholesalers, other home furnishings stores, and interior design services. In addition, CPSC's analysis does not capture independent wholesaler, retailer, and designer sales of customized window treatments created from fabric and hardware inputs—generally referred to as “custom product workrooms.” CPSC's analysis also excludes larger retailers like big box stores that provide shop-at-home services and design consultants to offer custom products. WCMA

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<sup>88</sup> See, White House Office of Management and Budget Circular A-4 (Sept. 17, 2003).

<sup>89</sup> RIAS Inc. “Assessment of CPSC's Risk and Preliminary Regulatory Analysis,” Attachment 1.

<sup>90</sup> 87 Fed. Reg. 1,019.

<sup>91</sup> CPSC did not make this data available to the public. WCMA purchased this data set directly from Euromonitor.

identified these gaps in CPSC's analysis of the industry in response to the 2015 ANPRM, yet CPSC has made no attempt to correct for them. Most critically, the CPSC estimate of the number of potentially affected small businesses is too low, because it excludes large numbers of small firms in these additional sectors that depend on window treatment sales for a share of revenues and profits. For example, for the industry sectors of home furnishings merchant wholesalers, other home furnishings stores, and interior design services, there are nearly 25,000 businesses that have fewer than 100 employees.

*Stock versus Custom Products* – CPSC's analysis of custom window coverings in use suggests that out of an estimated total 1,014 million window coverings in use in U.S. households, 511.7 million are custom window coverings. WCMA believes the total figure of 1,014 million window coverings is an underestimate, and the 511.7 million custom window coverings is an overestimate. According to these estimates, custom window coverings represent over 50 percent of the total U.S. window coverings market. The source of these figures is the D+R (2021) report prepared for CPSC, which acknowledged that their assumptions could contribute to inaccurate estimates.<sup>92</sup> CPSC chose to employ these estimates from D+R, despite these limitations, and despite past evidence that WCMA has provided. WCMA previously submitted data to CPSC from a comprehensive, confidential U.S. retail window covering market study conducted in 2016 that showed the breakdown of unit sales of window covering products by category. Based on the custom product market shares in that study, RIAS calculated that if the total number of window coverings in use is 1,014 million, the number of custom window coverings would be 272 million, not 512 million as CPSC asserts.

*Corded Custom Window Coverings in Use* – The CPSC estimates there to be 1,014 million window coverings in residential use in 2019, based on estimates of U.S. residential housing units and the number of window coverings in use per house.<sup>93</sup> CPSC derives its estimates of the number of custom window coverings in use by type based on 2019 sales data. CPSC then applies a percentage of 65 percent to estimate the percentage of custom corded products to produce CPSC's estimate of 332.6 million corded custom window coverings in use.

Although the CPSC's estimate of residential housing units is likely an accurate estimate, the remaining steps in estimating the number of corded window coverings in use is at best confusing, and at worst, yields unreliable results.

To estimate the number of window coverings per housing unit, D+R used the assumptions from a 2013 United States Department of Energy (US DOE) market characterization study (that D+R prepared). In their 2021 Report, D+R claims that the average number of windows across all housing units in the United States is approximately 12 windows.<sup>94</sup> Upon further review of the underlying reports, 12 is not the average, but the 75th percentile, which would result in a much

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<sup>92</sup> McCarthy, Rowan and Shannon Christie. Window Covering Market Characterization: Final Report. Prepared for Consumer Product Safety Commission by D+R International Ltd. February 2021.

<sup>93</sup> 87 Fed. Reg. 1,019.

<sup>94</sup> D+R International Ltd, Window Covering Market Characterization: Final Report (February 2021).

higher overall estimate of the total installed base of windows. CPSC’s estimate of the 1,014 million window coverings in use cannot be reproduced based on the D+R 2021 Report.

Further, there is no indication given in the Staff Briefing Package or either of the D+R studies how the number of windows per household may be changing over time, and no way to determine if the 2013 estimates for all window coverings are relevant to custom corded window coverings in 2022.

As the CPSC recognizes, relying on a single year point estimate of sales data “may distort product in use estimates.”<sup>95</sup> It is not clear whether CPSC’s sales data is based on the number of units sold or on sales revenues by product category. Because custom products are generally at a higher price point than stock products, and there is often significant variation in price points among types of custom products, relying on revenue would distort the percentages and would be inapplicable to the number of products in use. The source of the data also is not clear. We assume that the source of these custom product share estimates come from the D+R (2021) study, which conceded that their assumptions could contribute to inaccurate estimates for market size. However, CPSC did not acknowledge or account for these issues either in the Staff Briefing Package, nor in the Preliminary Regulatory Analysis in support of the Proposed Standard. The RIAS Report details the key areas of concern for these assumptions.

More fundamentally, CPSC assumes 2019 sales data is equal to 2019 use data. That assumption fails to recognize the useful life of products. It also fails to capture shifts in sales and use data associated with the implementation of ANSI/WCMA-2018 in December 2018.

Finally, CPSC estimated the number of corded custom products by applying an estimate of 65 percent. CPSC provides no context, explanation, or analysis in support of its estimate that 65 percent of custom products are corded other than that it is from “interviews conducted with retailers and manufacturers” in which “some gave conflicting accounts.”<sup>96</sup> Instead, CPSC is forced to acknowledge that “the actual number of corded custom products could be either higher or lower than the estimate used in the base analysis and we have no basis for stating if we think we have over or underestimated the number.”<sup>97</sup> Therefore, by CPSC’s own admission, it has no basis for knowing the accuracy of the estimates of corded custom window coverings in use that it subsequently utilized in its estimates of both the costs and benefits of the rule.

By contrast, RIAS solicited feedback from WCMA members on the market share of custom product for 2018 and 2021 broken down by corded and cordless products. In 2018, the share of custom products that were corded was 64.6 percent, but that number had fallen substantially to

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<sup>95</sup> Staff Briefing Package, p. 165 n.64.

<sup>96</sup> Staff Briefing Package, p. 29, 183. CPSC does not provide the date or subjects of these interviews, so it is impossible to know whether these statements were made before or after ANSI/WCMA-2018 went into effect nor whether the interviews represent a meaningful sample of industry.

<sup>97</sup> Staff Briefing Package, p. 183.

53.2 percent by 2021. The estimates by product type are shown in Figure 7. The use of static estimates by CPSC ignores these real trends that are taking place in the industry.

**Figure 7: Changing Shares of Custom Product that is Corded and Cordless, by Product Type (2018 and 2021)<sup>98</sup>**

	2018		2021	
	Corded	Cordless	Corded	Cordless
Metal or vinyl horizontal blinds	95.1%	4.9%	91.9%	8.1%
Vertical blinds	70.9%	29.1%	64.8%	35.2%
Wood or faux wood horizontal blinds	84.2%	15.8%	66.9%	33.1%
Cellular shades	30.7%	69.3%	21.0%	79.0%
Pleated shades	54.1%	45.9%	31.0%	69.0%
Roller shades	68.4%	31.6%	57.3%	42.7%
Soft sheer blinds	69.7%	30.3%	61.1%	38.9%
Roman Shades	47.6%	52.4%	41.2%	58.8%

Source: WCMA member responses to February 2022 questionnaire on CPSC’s NPR

This data demonstrates an important continuation of the shift to more cordless and motorized products and, correspondingly that there has been a decrease in the share of custom product that is corded between 2018 and 2021, across all categories of product. WCMA members indicate that this observed trend will continue. These trends should have been considered in CPSC’s analysis.

In the past, WCMA has submitted data from a comprehensive, confidential U.S. retail window covering market study conducted in 2016 that showed the breakdown of unit sales of window covering products by category. Based on the custom product market shares from that study and the 53.2 percent share of the custom product market that is corded in 2021 (based on WCMA member shipments in 2021), RIAS calculated the following revised estimates of corded custom window coverings in use.

<sup>98</sup> RIAS Inc. “Assessment of CPSC’s Risk and Preliminary Regulatory Analysis,” p. 16 Table 1.

Figure 8: Estimated Custom Product in Use, by Product Category<sup>99</sup>

	CPSC estimates of custom product in use	CPSC estimates of corded custom product in use (based on 65% assumption)	Revised estimates of custom product in use based on corrected market shares	Revised estimates of corded custom product in use (based on 53.2% share in 2021)
Horizontal Blinds, All Types	110.7	72	58.9	31.4
Shades, All Types	212.6	138.2	113.2	60.2
Vertical Blinds	9.8	6.4	5.2	2.8
Curtains & Drapes	178.6	116.1	178.6	95.0
Total	511.7	332.6	272.4	189.4

Source: RIAS Inc calculations

RIAS concludes that CPSC’s estimate of the number of corded custom window coverings in use by category suffers from the following shortcomings:

- The estimates are not based on direct measures, but rather on numerous data sources and studies from different years, each with underlying assumptions that, taken together, could have major influence on the end results. This is a critical weakness in the analysis because the number of corded custom window coverings in use is a fundamental piece used in CPSC’s estimates of annual injury costs.
- The CPSC’s estimates of the number of custom window coverings in use cannot be reproduced from the data presented in the notice in support of the Proposed Standard, the Staff Briefing Package, nor any of the other studies that have been available as part of the public record, so RIAS cannot reproduce CPSC’s estimates with the data provided. However, using data from sound alternative sources, RIAS’ estimates of number of custom window coverings in use differs substantially from CPSC estimates.
- CPSC has not presented any historical trends or future projections of the number of custom window coverings in use in either the notice in Support of the Proposed Standard or the Staff Briefing Package, despite availability of information derived in the D+R (2021) study. CPSC has not shown how these critical estimates in their analysis are expected change over time in the absence of any intervention by way of a mandatory standard for corded custom window coverings.

## 2. CPSC Significantly Understates the Costs of the Proposed Standard

CPSC concludes that the aggregate costs to society to implement the Proposed Standard would range from \$156.5 million to \$309 million.<sup>100</sup> RIAS concludes that this is an incomplete and inaccurate assessment of the costs, based on out of date and irrelevant estimates, a failure

<sup>99</sup> RIAS Inc. “Assessment of CPSC’s Risk and Preliminary Regulatory Analysis,” p. 17 Table 2.

<sup>100</sup> 87 Fed. Reg. 1,044.



to consider costs outside of the per-product (component) manufacturing costs, and unsupported assumptions. The result is that the CPSC Preliminary Regulatory Analysis grossly understates the costs that would be incurred by the Proposed Standard.

CPSC's cost-benefit analysis uses estimated per-product increases in component manufacturing cost across product type as the primary measure of the cost associated with adopting a mandatory standard. This presents only a partial picture of the costs for the window covering industry to implement the Proposed Standard and ignores the significant costs that would be imposed at every level within the supply chain:

*Manufacturing* – In addition to increased cost of component parts, cordless window coverings require up to 50 percent more assembly labor per blind or shade. This will require plant reconfiguration and additional square footage to support the same production volume. This will require capital approvals and lengthy plant construction activities.

*Supply Chain* – Increases in cordless operating system components will require additional tooling and/or sources of supply across a significant number of components and sub-systems.

*Marketing* – Sample books need to be updated to reflect the new product offerings. This complex development/supply chain exercise requires an 18 to 24-month development cycle. Website information and materials must also be updated after the new product offerings have been finalized.

*Retailer Systems* – Retailer ordering system integrations are completed at the conclusion of new product development and the timing will vary by retailer, but generally take a few months.

CPSC's evaluation also improperly assumes costs are limited to the transition of available cordless technologies, and even these are based on a two-year effective date, not the 180 days in the Proposed Standard. However, cordless technologies do not yet exist to cover the wide array of custom product offerings. This is reluctantly admitted by CPSC in its analysis: "the [Proposed Standard] could potentially result in the elimination of some sizes, and/or types of window coverings from the market."<sup>101</sup>

The industry will need to develop new technologies to meet consumer demand. Developing operating system solutions to cover gaps created within product offerings will be required, and such new product developments can take up to 48 months to implement on average. Once a new design successfully passes engineering trials, it requires an additional five to six months of on-site production qualification trials. Therefore, if the Proposed Standard goes into effect 180 days after it is approved, there would be a time where cordless products would not be available to consumers because the industry won't have adequate time to develop these new technologies (if they can be developed at all)—a cost that is not considered by the Proposed Standard.

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<sup>101</sup> Staff Briefing Package, p. 187.

The time and resources required to develop new products is compounded for the custom product market, which is made up of over 20 totally different product categories that will require multiple and unique engineering solutions to achieve possible compliance.<sup>102</sup> Manufacturers with multiple products lines affected will need to stagger and prioritize product development using existing resources (which will delay the availability of product), or expand their product development staff and resources (which will impose greater costs).

The use of manufacturing cost also ignores the impact of an increase in product prices on demand, with the higher prices encouraging consumers to postpone replacement of current products. The resulting reduction in sales would slow down the replacement of older corded window coverings, causing them to remain in use for a longer period of time, thereby reducing the estimated benefits of a mandatory standard for several years after adoption.

In February 2022, RIAS solicited input from WCMA members on the impact the Proposed Standard would have on product costs and expected change in sales. Figure 9 summarizes the cost implications of the proposed mandatory standard for custom window coverings, and the resulting impact on retail prices and total sales.

**Figure 9: Estimated Impact of the Proposed Rule on Costs, Price and Sales, by Product Type<sup>103</sup>**

	Average change in cost of parts	Average change in final product cost	Average change in final retail price	Expected change in total sales
Metal or vinyl horizontal blinds	60%	59%	38%	-70%
Vertical blinds	-16%	1%	1%	-2%
Wood/faux wood horizontal blinds	31%	32%	41%	-21%
Cellular shades	38%	40%	34%	-5%
Pleated shades	17%	17%	24%	18%
Roller shades	33%	27%	25%	-1%
Soft sheer blinds	18%	21%	18%	-17%
Roman Shades	24%	23%	15%	-3%

<sup>102</sup> The following is a non-exhaustive list of the various types of custom window coverings, each of which will require its own engineering solution to comply with the Proposed Standard: (1) horizontal blinds made of aluminum; (2) horizontal blinds made of wood; (3) horizontal blinds made of composite material; (4) horizontal blinds made of plastic; (5) vertical blinds; (6) cellular shades; (7) pleated shades; (8) roller shades; (9) woven wood shades; (10) banded shades; (11) vertical panels; (12) horizontal shadings; (13) vertical shadings; (14) multi-functional shadings; (15) cellular roller shades; (16) roman style roller shadings; (17) roman style tiered shadings; (18) insulating shadings (sonnette type); (19) balloon shades; (20) traditional roman shades; and (21) specialty shapes in multiple applications and product styles.

<sup>103</sup> RIAS Inc. "Assessment of CPSC's Risk and Preliminary Regulatory Analysis," p. 22. Table 4.

CPSC’s preliminary regulatory analysis fails to acknowledge, much less address, the complex and dynamic impact that the Proposed Standard would have on the window covering industry and relative market shares for products. For example, WCMA members estimate that for corded custom metal and vinyl blinds, the expected increase in parts and production cost and the resulting increase in price is expected to result in an overall 70 percent reduction of sales. For companies that sell corded custom vertical blinds, sales are expected to migrate to cordless, except where no cordless option is available (e.g., for product over 144” in width). For corded custom wood and faux wood blinds, companies estimate a 21 percent loss in sales, with customers migrating to cordless window coverings, but that due to price and the lack of a retractable cord option in the market, many customers will transition to shades. CPSC does not attempt to consider any of the likely resulting shifts among product types and categories, and instead offers a relatively simplistic and naïve view of the industry.

Overall, results from WCMA members indicate that more than 3.2 million units or 5.6 percent of custom product will be lost from the U.S. marketplace (this assumes zero lost sales in the custom curtains/draperies market).<sup>104</sup>

The preliminary regulatory analysis also does not acknowledge the extent to which initial and continuing costs would be incurred by wholesalers, retailers, and interior design centers to change their distribution, sales, marketing, and service operations to support drastically revised product lines. It is also possible that as consumers transition to more specialized technology, including motorized cordless, there could be higher service and repair costs to maintain the operability of cordless window coverings.

Finally, while the preliminary regulatory analysis focuses on residential use, commercial window coverings could be affected since CPSC considers many products used in commercial locations to be “consumer” products. The vast majority of commercial products are custom. If CPSC’s Proposed Standard were applied to commercial products CPSC’s estimate of the potential cost impacts of the Proposed Standard would grossly underestimate the true impact because CPSC’s cost impacts do not include commercial products.

The elimination of custom products with no viable replacements will have a severe financial impact on manufacturers and retailers including lost revenue and unused product. In addition, consumers will be deprived of the utility of these products—window coverings provide value to consumers in a number of ways, including privacy concerns, light control, temperature regulation, improved energy efficiency, and aesthetics. According to the U.S. Department of

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<sup>104</sup> These estimates were calculated by RIAS Inc. based on the expected change in sales in custom products by category provided to RIAS Inc by WCMA members in February 2022 as summarized in Figure 9, multiplied by the number of units sold by category from WCMA members, then scaled to the total custom units by category in 2021 from the D+R (2021) report.

Energy, “[a]bout 30% of a home's heating energy is lost through windows” as depicted in Figure 10.<sup>105</sup>

**Figure 10: Most household heat loss is through the windows and roof. Source, U.S. Department of Energy.**



In cooling seasons, about 76 percent of sunlight that falls on standard double-pane windows enters to become heat. Window coverings can help with this energy loss and lowering energy bills.<sup>106</sup> The energy savings potential from window coverings is significant.<sup>107</sup> Custom products in particular offer consumers unique solutions to address these needs that often are not available with stock products, needs like window coverings to prevent energy loss. Limitations associated with cordless products will have a direct impact on the availability of window coverings for large glass windows and windows out of reach from consumers—the same windows that have the highest energy losses. In addition, as discussed above certain “alternatives”—such as crank mechanisms and rigid cord shrouds—decrease the energy efficiencies of window covering products. CPSC staff’s erroneous assumption that cordless window coverings are available for all custom products results in their incomplete assessment of the true costs of the Proposed Standard.

Setting aside the incomplete costs, CPSC admits that there is tremendous uncertainty associated with the cost estimates it did produce.<sup>108</sup> CPSC’s estimates primarily were drawn from studies published in 2016 (which rely on data collected in 2015 and earlier). These studies do not reflect new technology developed in the interim; nor do they reflect the changes in the technology required by ANSI/WCMA-2018. Moreover, CPSC acknowledges that its cost estimates

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<sup>105</sup> The U.S. Department of Energy recognizes the importance of window coverings in saving energy. U.S. Department of Energy, Energy Efficient Window Coverings, available at <https://www.energy.gov/energysaver/energy-efficient-window-coverings>.

<sup>106</sup> The U.S. Department of Energy recognizes the importance of window coverings in saving energy. U.S. Department of Energy, Energy Efficient Window Coverings, available at <https://www.energy.gov/energysaver/energy-efficient-window-coverings>.

<sup>107</sup> See, U.S. Department of Energy, Energy Savings from Window Attachments, October 2013, Appendix C.

<sup>108</sup> 87 Fed. Reg. 1,044.

are probably “more applicable to stock products than to custom products.”<sup>109</sup> CPSC appears to dismiss this concern by pointing to price differences between available corded and cordless custom products. However, this comparison does not reflect the costs associated with developing cordless custom products that are not yet available. And as noted above, there is significant uncertainty associated with CPSC’s estimate of the cordless custom products in use, injecting further uncertainty into these estimates.<sup>110</sup>

### 3. CPSC Significantly Overstates the Benefits of the Proposed Standard

CPSC’s estimate of the benefits that could be expected from the Proposed Standard is predicated on a flawed estimate of fatal and nonfatal incidents that CPSC attributes to corded custom window coverings and fails to recognize the likely substantial future reduction in incidents that will occur absent finalizing the Proposed Standard. As a result, RIAS concludes that the benefits that CPSC attributes to the Proposed Standard are grossly overstated.

CPSC’s estimate of annual injury costs is predicated in part on its fatal incident estimate of nine (9) deaths per year based on NCHS data, which CPSC estimates to result in \$82.8 million annually. Based on the estimate of 185 nonfatal window covering injuries annually from CPSC’s Injury Cost Model (ICM), CPSC staff estimates that the societal costs of nonfatal window covering injuries are approximately \$9.3 million annually. Nowhere does the CPSC provide details on how the 185 nonfatal window covering injuries annually were estimated using the ICM, so it is impossible to reproduce CPSC’s numbers to verify if the calculations are reasonable – either as to their amount or with respect to the methodology applied by CPSC.

CPSC calculated a total annual benefit of approximately \$49.5 million. RIAS concludes that there are several reasons why this estimate substantially overstates the benefits that could be reasonably anticipated from a mandatory standard:

CPSC uses average annual numbers of fatal and non-fatal injury incidents calculated across the 2010 to 2020 period as the baseline for assessing the value of the Proposed Standard. As shown in RIAS’ assessment of CPSC’s incident data earlier in these comments,<sup>111</sup> the rates of fatality and injury incidents for custom window covering products have been declining over time, even when all incidents where the type of product is unknown are assumed to be custom products.

In addition to assuming that no reductions in the rates of fatalities and injuries have taken place over the past 13 years, CPSC’s injury cost estimates also assume that no further reductions

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<sup>109</sup> Staff Briefing Package, p. 182.

<sup>110</sup> CPSC’s estimate of corded custom window coverings in use “was based on estimates of the total number of window coverings and interviews with manufacturers and retailers in which some gave conflicting accounts. They were not based on exposure surveys and thus the actual number of corded custom products could be either higher or lower than the estimate used in the base analysis and we have no basis for stating if we think we have over or underestimated the number.” Staff Briefing Package, p. 183.

<sup>111</sup> A full accounting of the flaws associated with CPSC’s incident analysis are discussed in Section III.C.1.

would take place in the future in the absence of a mandatory standard. This assumption is completely erroneous. As RIAS has shown, the number of fatal and non-fatal incidents has continued to decrease over time as the ANSI/WCMA safety standard has been updated and as older products that did not comply with newer versions of the safety standard were replaced with compliant product. This downward trend in incidents will continue as newer stock and custom window coverings that are compliant with ANSI/WCMA-2018 displace older non-compliant product. Work on the next update to the ANSI/WCMA safety standard is underway, which when implemented, should result in a further reduction in incidents related to corded custom products.

CPSC assumes that all fatalities and injuries will be eliminated if a mandatory standard were adopted. However, this conclusion is illogical. The imposition of a mandatory standard will not remove legacy products from use. Furthermore, there is no compelling evidence presented by CPSC that the Proposed Standard is the only feasible option. And since the current data on incidents does not distinguish the age of window covering products, there is no reasonable way that CPSC can justify a mandatory standard as the sole means to improve safety. It also ignores the “natural evolution” of increased numbers of cordless and motorized products sold each year. This stems from industry innovation and is not solely tied to regulatory mandates.

Furthermore, the present value of injury costs is derived by the CPSC staff from a number of underlying estimates all of which have weaknesses. For example, CPSC’s annual injury cost per custom window covering in use is based on the estimated injury cost for each category of window covering, divided by the estimated number of corded window coverings in use for each category. Both the injury costs and the number of corded window coverings are decreasing over time – yet CPSC ignores these trends in the calculation of annual injury costs avoided if the Proposed Standard were to be implemented.<sup>112</sup>

As shown above, the number of corded custom products in use estimates cannot be independently verified based on the data presented in the notice of the Proposed Standard, the Staff Briefing Package, or any other studies that are part of the public record for the Proposed Standard. Further, future projections of the number of corded custom products in use in the absence of any intervention (*i.e.*, a mandatory standard) have not been incorporated in the analysis, so the estimates are likely overstated.

The annual injury cost per custom window covering in use is based on the estimated injury cost for each category of window covering divided by the estimated number of corded window coverings in use for each category. As discussed above, both the injury costs and the number of corded window coverings are decreasing over time—yet CPSC ignores these trends in the calculation of annual injury costs avoided if the mandatory rule were to be implemented.

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<sup>112</sup> RIAS Inc. “Assessment of CPSC’s Risk and Preliminary Regulatory Analysis,” p. 20.

4. The Justification for CPSC's Proposed Standard Limits Its Applicability to Residential Use

The entirety of CPSC's justification for the Proposed Standard is limited to the use of corded window coverings in residential applications: the incidents from CPSC's database are all in residential settings and CPSC's estimates of the total number of corded custom window coverings in use is derived from an estimate of U.S. residential housing units.<sup>113</sup> If finalized, any application of this standard outside the definition of consumer product and the justification provided would not be supported.

5. CPSC Has Not Provided the Public with Access to Information that it Relied on to Develop the Proposed Standard

As noted throughout these comments, CPSC has not been forthcoming with the data, assumptions, and analysis CPSC claims support its Proposed Standard. For example, WCMA still does not have access to much of the supporting data related to the incidents that CPSC identified. CPSC also has not provided access to a D+R Report from 2020, which appears to form the basis of many of CPSC's conclusions regarding the number of custom corded products in use.<sup>114</sup> Reports and data aside, CPSC has not released the bulk of the assumptions and analysis that form the basis of its estimates in the preliminary regulatory analysis, making assessment (or reproduction) of the analysis impossible.

Once the Proposed Standard was published, WCMA requested the underlying data and reports upon which CPSC staff relied for their briefing package. CPSC denied WCMA access to one report and two data sets on claims that the information was proprietary and/or privileged. CPSC did not inform WCMA that it would not provide access to this information for six weeks, until February 24, 2022.<sup>115</sup> WCMA eventually was able to access the two data sets by purchasing the data sets at a cost of \$1,195. WCMA obtained this data on March 16, 2022, one week before the comment period closed.

Without access to the underlying data, assumptions, and analysis, stakeholders like WCMA cannot provide meaningful comment and participation in the rulemaking process. The information withheld by CPSC relates to the composition of the industry and the breakdown of stock and custom products. This data is critical in that it underpins CPSC's assumptions regarding the number of custom products sold and in use and the potential benefits and costs of the Proposed Standard. Contrary to the Commission's assertion, CPSC has not provided WCMA with

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<sup>113</sup> See, e.g., 87 Fed. Reg. 1,019 (CPSC's description of the window coverings in use derives solely from U.S. residential housing units.).

<sup>114</sup> If in fact the reference to the 2020 D+R Report is a typo, RIAS has not been able to reproduce CPSC's estimates, suggesting that CPSC has failed to provide stakeholders with access to critical information supporting this rulemaking.

<sup>115</sup> A full summary of WCMA's efforts to obtain this information was provided to the Commission on February 28, 2022. Attachment 6.

access to the data that was needed to provide thorough comments on the Proposed Standard.<sup>116</sup> CPSC’s lack of transparency and failure to provide the underlying data in a timely manner is a violation of the Administrative Procedures Act.<sup>117</sup>

### **G. CPSC Has Failed to Make the Requisite Findings in Support of a Mandatory Standard**

CPSC’s authority to promulgate a mandatory safety standard is limited to situations where CPSC has first made appropriate findings in support of the standard and then determined that the standard is justified based on a balancing of costs and benefits.<sup>118</sup> These findings must be based on “substantial evidence.”<sup>119</sup> As detailed throughout these comments, CPSC’s justification and reasoning for the Proposed Standard is flawed at every step, from the estimated number of incidents, to the assumptions on corded custom window coverings in use, to the availability of technology to comply with the Proposed Standard. These flaws render the data and justifications underpinning CPSC’s findings and determinations meaningless.<sup>120</sup>

*Degree and Nature of the Risk* – CPSC’s finding is limited to identifying that operating cords on custom window coverings present a strangulation risk. But CPSC makes no attempt to discern the degree of this risk, which would need to consider the rate of incidents across time and the number of incidents as compared to the products in use, among other factors, as required by the statute.<sup>121</sup>

*Number of Consumer Products Subject to Proposed Rule* – CPSC estimates 512 million custom window coverings are in use. As noted above, based on RIAS’ expert analysis, WCMA believes CPSC’s methodology in producing this estimate is flawed. Instead, based on more recent WCMA member data, WCMA estimates there to be 272 million custom products in use. CPSC

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<sup>116</sup> See, Statement of Chair Alex Hoehn-Saric Regarding Votes to Deny Extensions of Two Public Comment Periods, March 1, 2022, <https://www.cpsc.gov/s3fs-public/Statement-of-Chair-Alex-Hoehn-Saric-Rulemaking-Extension-Statement.pdf?VersionId=B4LBcL5.YOtCTb1GbMLRwRkGKuderpDz>.

<sup>117</sup> *Chamber of Commerce of U.S. v. S.E.C.*, 443 F.3d 890, 899 (D.C. Cir. 2006) (Among the information that must be revealed for public evaluation are the “technical studies and data” upon which the agency relies.); *Conn. Light & Power Co.*, 673 F.2d at 530–31 (Enforcing the APA’s notice and comment requirements ensures that an agency does not “fail to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary” so that “a genuine interchange” occurs rather than “allow[ing] an agency to play hunt the peanut with technical information, hiding or disguising the information that it employs.”).

<sup>118</sup> 15 U.S.C. § 2058(f)(1), (3).

<sup>119</sup> 15 U.S.C. § 2060(c).

<sup>120</sup> The following is not meant to be an exhaustive list of flaws associated with each finding, but instead identifies the most egregious and fundamental errors.

<sup>121</sup> See 15 U.S.C. § 2058(e) (“A consumer product safety rule shall express in the rule itself the risk of injury which the standard is designed to eliminate or reduce.”); id. § 2058(f)(1); *Zen Magnets v. CPSC*, 841 F.3d 1141, 1147 (10th Cir. 2016) (“The regulation may issue if the severity of the injury that may result from the product, factored by the likelihood of the injury, offsets the harm the regulation imposes upon manufacturers and consumers.”) (emphasis added).



then applies the flawed premise that 65 percent of custom products are corded to conclude that 39 million corded custom products are sold each year. As CPSC itself acknowledges, it has no way of knowing the accuracy of the 65 percent value. CPSC also fails to explain its methodology for a calculation that uses estimates of product in use and to be sold.

*Public Need for Custom Window Coverings and the Effects of the Proposed Rule on Their Utility, Cost, and Availability* – CPSC’s description of the public need focuses on aesthetics and fails to capture public utility associated with privacy, temperature control, and energy efficiency. Moreover, although CPSC acknowledges there could be impacts to product availability and impacts to consumers with accessibility issues, it minimizes these impacts suggesting that consumers are likely willing to pay more and there could be alternative solutions available.

*Other Means to Achieve the Objective of the Proposed Rule, While Minimizing Adverse Effects on Competition and Manufacturing* – CPSC reviews the alternatives it considered but claims that the alternatives would not reduce the risk from injury. One alternative considered was a “later effective date,” to extend the effective date beyond two years. However, the Commission without any justification proposed a 180-day effective date, rendering this alternative meaningless. Furthermore, for the remainder of the alternatives, CPSC’s reasoning focuses solely on the product and whether the alternative would allow for corded products. CPSC made no attempt to assess the risk associated with these alternatives.

*Unreasonable Risk* – CPSC’s discussion of unreasonable risk is predicated on its flawed estimates of related incidents and potential benefits. Although CPSC acknowledges that this inquiry involves a balancing of the risk of the injury against the probable effect of the rule, CPSC’s analysis is conclusory at best. Without any support, CPSC concludes that “consumers already pay more for custom window coverings and are likely to pay more for safer products.” CPSC has not performed any willingness-to-pay studies associated with increased cost of corded custom window coverings. Moreover, CPSC’s balancing inquiry is mismatched when it compares “the possibility of increased costs for custom window coverings with the continuing deaths and injuries to young children.” There are understated costs associated with the Proposed Standard that include not just product manufacturing, development, and introduction and support costs, but lost utility for the public. On the other side, CPSC has not acknowledged the downward trend in incidents, the impact of the voluntary standard, and the true risk of these incidents associated with products compliant with the voluntary standard, making the claim that incidents will “continue” speculative.

*Public Interest* – CPSC’s statement of public interest makes no mention of the public utility that would be lost by the Proposed Standard, including the availability of custom product types, nor does it recognize that the incidents it relies on are on products that pre-date the most recent voluntary standard.

*Voluntary Standard* – As noted above, CPSC failed to make any meaningful attempt in assessing the effectiveness of ANSI/WCMA-2018 and instead relies on incident data that pre-dates the standard and the potential presence of cords to support its determination.

*Relationship of Benefits and Costs* – CPSC compares the aggregate benefits of the rule, \$49.5 million, to the lowest costs of the Proposed Standard, \$156.5 million. As CPSC notes, the lower cost estimates are more applicable for stock products. Instead, the upper bound estimate, which WCMA explains understates the costs, is \$309 million. CPSC’s discussion focuses on minimizing the likely impact of the rule and suggesting that consumers are willing to pay more. But importantly, CPSC provides absolutely no justification for why the benefits bear a reasonable relationship to the costs or any analysis to support its conclusion that consumers are willing to pay more.

*Least Burdensome Requirement that Would Adequately Reduce the Risk of Injury* – CPSC reviews the alternatives considered as justification for the Proposed Rule. As noted above, CPSC’s alternatives analysis failed to meaningfully assess the alternatives and their impact on safety.

#### **H. CPSC Failed to Consider the Impact of Proposed Testing, Certification, and Notice Requirements**

By finalizing a mandatory safety standard, custom window coverings would become subject to Section 14(a) of the CPSA certification requirements. The CPSC suggests that in some instances, custom window coverings could be considered “children’s products,” subject to the certification and testing specific to children’s products.<sup>122</sup> WCMA believes that most, if not all, custom window coverings are, and should be, considered non-children’s products. This is consistent with the CPSC’s definition of “furnishing and fixtures,” which excludes general home furnishings from the definition of “children’s products,” unless the product is explicitly for children:

General home furnishings and fixtures (including, but not limited to: . . . window curtains . . . ) that often are found in children's rooms or schools would not be considered children's products unless they are decorated or embellished with a childish theme and invite use by a child 12 years of age or younger, are sized for a child, or are marketed to appeal primarily to children.<sup>123</sup>

CPSC itself acknowledges that the percentage of custom window coverings considered “children’s products” is low.<sup>124</sup>

Nonetheless, CPSC has failed to adequately consider the costs of compliance with Section 14(a) certification requirements.<sup>125</sup> If the Commission issues a mandatory safety standard, manufacturers or importers of non-children’s custom window coverings must test products to

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<sup>122</sup> 87 Fed. Reg. 1,049.

<sup>123</sup> 16 C.F.R. § 1200.2(d)(1).

<sup>124</sup> 87 Fed. Reg. 1,049.

<sup>125</sup> In the final rule for clothing storage units, CPSC acknowledged and considered the impact of testing and certification requirements. 87 Fed. Reg. 6,246, 6,301-02 (Feb. 3, 2022).

the rule and issue a General Certificate of Conformity (GCC) demonstrating compliance.<sup>126</sup> Manufacturers of custom window coverings that are children's products must have products third party tested by a CPSC-accepted laboratory and issue a Children's Product Certificate (CPC) demonstrating compliance with the rule.<sup>127</sup> CPSC has failed to account for these costs in its assessments of the costs of the proposed standard.<sup>128</sup>

#### **IV. Conclusion**

WCMA appreciates the opportunity to comment on CPSC's Proposed Standard and to continue this important dialogue with CPSC. Should you have any questions on these comments or need for additional information, please contact Ralph Vasami, Executive Director of WCMA.

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<sup>126</sup> 15 U.S.C. § 2063(a)(1); see, generally, 16 C.F.R. Part 1110.

<sup>127</sup> 15 U.S.C. 2063(a)(2); see, generally, 16 C.F.R. Part 1110.

<sup>128</sup> In its assessment of the burden pursuant to the Paperwork Reduction Act, CPSC acknowledges minimal impact – 1 hour of recordkeeping and record maintenance – associated with compliance with the children's products certification and testing requirements. 87 Fed. Reg. 1,049. Not only does this estimate fail to acknowledge the burden for non-children's products, but CPSC's assertion that any amount of testing and certification could be accomplished with 1 hour of work is risible.