



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chairman Inez M. Tenenbaum
 Commissioner Nancy A. Nord
 Commissioner Robert S. Adler

ITEM:

Fiscal Year 2013 Operating Plan
(Briefing package dated December 5, 2012)

DECISION:

The Commission voted unanimously (3-0) to approve the Executive Director's recommendation with changes for the Fiscal Year 2010 Operating Plan. The agreed upon amendments are attached.

Commissioners Adler and Nord issued the attached statements regarding this matter.

For the Commission:

A handwritten signature in black ink that reads "Todd A. Stevenson".

Todd A. Stevenson
Secretary

* Ballot vote due January 18, 2013

Attachment: Adopted Amendments to the Fiscal Year 2013 Operating Plan
 Statement of Commissioner Adler
 Statement of Commissioner Nord

The Commission directs staff to incorporate where appropriate the below five paragraphs into the Fiscal year 2013 Operating Plan:

1. **“Determinations Regarding Heavy Metals:** Staff will draft a Request For Information (RFI) for publication in the Federal Register regarding whether there are materials that qualify for a determination, under the Commission’s existing determinations process, that do not, and will not, contain higher-than-allowed concentrations of any of the eight heavy elements specified in Section 4.3.5 of ASTM F963-11. (The elements are antimony, arsenic, barium, cadmium, chromium, lead, mercury, and selenium.) The burden for demonstrating whether any material qualifies for a determination shall be on the submitter of the information requested in the RFI.”
2. **“Determinations Regarding Phthalates:** Staff will draft a Request For Information (RFI) for publication in the Federal Register regarding whether there are materials that qualify for a determination, under the Commission’s existing determinations process, that do not, and will not, contain prohibited phthalates, and thus are not subject to third party testing. The burden for demonstrating whether any material qualifies for a determination shall be on the submitter of the information requested in the RFI.”
3. **“Determinations Regarding Adhesives in Manufactured Woods:** Staff will draft a Request for Information (RFI) for publication in the Federal Register regarding whether any adhesives used in manufactured woods can be determined not to contain lead in amounts above 100 ppm. The burden for demonstrating which, if any, adhesives should qualify for a determination shall be on the submitter of the information requested in the RFI.”
4. **“Determinations Regarding Synthetic Food Additives:** Staff will draft a Request For Information (RFI) for publication in the Federal Register regarding whether the process by which materials are determined not to contain lead in amounts above 100 ppm can be expanded to include synthetic food additives. The burden for demonstrating which, if any, synthetic food additives should qualify for a determination shall be on the submitter of the information requested in the RFI.”
5. **“For each RFI, the Commission intends to provide resources in the fiscal year 2014 operating plan to the extent the agency’s safety work permits to ensure staff reviews the responses and summarizes any recommended course of action on each item for the Commission. Each summary shall include the costs of any potential course of action, including any additional research that might be warranted. Staff shall seek Commission approval regarding any additional work that might be necessary and warranted.”**

To accommodate the scoped work on these four RFIs in fiscal year 2013, the Commission further directs staff to remove as necessary from the Fiscal Year 2013 Operating Plan references to proposed staff work related to 16 CFR part 1632 and 16 CFR part 1500.18(a)(5).

The Commission further directs staff to make the following changes:

On page 19 under “Emerging Hazards” after the sentence that ends with “or other sources.” Add: “For example, based on a data analysis completed in FY 2013, CPSC will support voluntary standards development activity associated with adult portable bed rails.”

On page 50, under “Special Projects” add “adult bed rails” in the final sentence as indicated here in bold: “at addressing emerging hazards, such as gel fuels, high-powered magnets, and **adult bed-rails.**”



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COMMISSIONER NANCY A. NORD

**Statement on the Commission's
adoption of a fiscal year 2013 operating plan**

January 24, 2013

The Consumer Product Safety Commission has now adopted an operating plan for the balance of fiscal year 2013. I joined my colleagues in voting to adopt the plan because I believe that Commissioners must find common ground to ensure that we define our priorities, we pursue our mission, and we clearly state how we are using precious public resources. Not only is it wise for the Commission to inform the public and Congress of our plans, it is our legal obligation to do so.

I voted for this operating plan, but my vote was not without reservation. While there is much to like, I am concerned about the actions we chose not to take. Although the operating plan lays out an important agenda for new and continuing regulatory activity, it does not carry out our obligation to assure that our rules are operating as they should. As a regulatory agency, that obligation is to pursue our consumer safety mission in a way that imposes the lightest burden possible on those we seek to regulate. Taking the long view, consumers do not benefit from—and consumer safety is not advanced by—regulatory actions that needlessly result in higher costs, less competition, and fewer choices. In this plan, we had the opportunity to fulfill our regulatory obligation by allocating resources for both broad rule review and targeted burden reduction. We missed that opportunity.

Consumers and products evolve, so our rules necessarily should evolve too. It is not far-fetched to suggest that some rules may no longer be current or relevant. Instead of acknowledging that need, we opted not to make any real effort to update, remove, or even identify rules that need to be either reconsidered or overhauled.

Similarly, we chose not to adequately address the unnecessary burden our recently promulgated and convoluted testing and certification rules impose. Last year, at the direction of Congress and with public input, we compiled a list of actions we could take to reduce the burden of our testing rules while maintaining compliance. Rather than acting on this list, we yet again ask for public input on a small portion of that list, making clear that we will not take any action this year to address the unnecessary costs we have imposed by the rules we have promulgated. In other words, the Commission decided the best approach to lightening the load we have placed on the American economy—and the weight we will pile on as our testing rule comes into full effect in

February 2013—is to ask people to repeat what they have already said, to tell us what the problems are even though they have already told us and we already know.

Misalignment of international test methods and variability in test results are two burdens that cry out for relief. Our staff told us that identifying test methods in international standards that are equivalent to those we require in our rules would substantially reduce the burden of testing. I hope we will find the money to pursue this opportunity when we do our mid-fiscal-year spending adjustment this spring. Second, I believe that the public's comments justify more agency attention to variability in the test results of CPSC-accredited third-party laboratories. I appreciate that my colleagues support my plan to host public meetings to develop information on lab variability, and I hope the next operating plan will demonstrate a commitment to act on that information.

To me, whether it is government or not, those who create a problem have an obligation to fix that problem. If a company threw a product into the marketplace and then walled itself off from any consideration of its flaws, we would rightly accuse that company of having insufficient regard for safety and hold it accountable for any harm that resulted. We owe it to the taxpayers to hold ourselves to no lower a standard.



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**Statement of Commissioner Robert Adler on the
CPSC Fiscal Year 2013 Operating Plan**

January 22, 2013

I was pleased to be part of our unanimous approval of the CPSC's Fiscal Year (FY) 2013 Operating Plan. In the current uncertain and austere budget environment, I think it does an outstanding job of balancing priorities, and achieving statutory mandates and agency goals. To me, it continues to place the Commission as one of the most forward looking health and safety agencies in the federal government. Our talented staff has found ways to fund projects ranging from increased import surveillance and domestic field operations to improving our laboratory capabilities. Moreover, we continue our work on a wide variety of rulemakings such as table saws and upholstered furniture while remaining committed to investigating ways to reduce manufacturers' testing burdens.

Vulnerable Consumers: Young and Old

In FY 2013, as always, our most vulnerable consumers remain a top priority. For example, we continue to work on durable infant products as mandated by the Danny Keysar Act and to look at other children's hazards such as drowning and furniture tip-overs that tragically claim too many young lives every year.

In addition, I am delighted that this year we will expand our focus on another vulnerable population: seniors. Despite making up only 13 percent of our current population, seniors are the victims of 60 percent of the 34,000 annual deaths associated with consumer products. I am particularly pleased to see our newly-approved project with the FDA and the voluntary standards community on portable adult bed-rails, which continue to be associated with more fatalities than infant bed rails – the subject of a recent CPSC safety standard. Moreover, I look forward to this year's review and report on deaths and injuries to seniors across all product

categories. I hope that this report will create a blueprint for reducing and preventing injuries to this rapidly growing demographic.

Resource Concerns

As with all budget documents, this operating plan is a product of compromise and is limited by the continued underfunding of our agency – not counting any cuts from the pending sequester under consideration by Congress. In 2008, with the passage of the Consumer Product Safety Improvement Act (CPSIA), Congress made clear that it recognized the CPSC needed increased authority and greater resources to address a landscape with more imports than ever and a need to look at chronic hazards in greater depth than the agency had traditionally done. While we have done our best to meet these challenges, our statutory appropriations have not kept pace. In CPSIA § 201(a)(1), Congress authorized \$131,783,000 for FY 2013 and \$136,409,000 for FY 2014. Our FY 2013 budget is based on a mark of approximately \$116,425,000, which is an increase from FY 2012, but is still significantly less than the funding originally envisioned by Congress when it reauthorized the agency in 2008.

CPSC Budget v. Other Independent Agencies

In this time of appropriate fiscal restraint, I understand that many independent agencies have cases to make regarding their funding being less than desired. But what cuts other agencies gouges an agency like CPSC. Think of a \$15 million cut in funding. In the case of large independent agencies like the Securities and Exchange Commission or the Nuclear Regulatory Commission, a \$15 million gap is less than .02 percent of their budget. For medium-sized independent agencies such as the Federal Trade Commission or the Federal Communications Commission, a \$15 million difference would mean less than 5 percent of their budget. But in the case of the tiny CPSC budget, \$15 million constitutes a 13 percent drop in funding. This kind of shortfall leads to our inability to fund meaningful safety projects and has the potential to dramatically slow our ability to protect the public from unreasonable risks of injury or death. I am hopeful that as members of Congress consider the FY 2013 and FY 2014 budgets, they keep in mind that a small net increase in CPSC's budget can make a large safety difference to consumers.

Unfunded Worthy Projects

As pleased as I am to see how far the staff at CPSC has stretched our scarce resources to work on critical projects, I would like to mention a few additional safety issues that have either been slowed or postponed because of our severe resource constraints. I hope to see the Commission devote more time and resources to the following projects in the future:

ATVs

In October 2012, the CPSC held our first ATV Safety Summit to address the serious safety concerns with these vehicles. I was fortunate to be able to attend almost all of the sessions over both days and have to say that I found the entire Summit to be educational – both technically and personally. To speak with the parents of the many children who have died on ATVs and to see them putting their hearts and souls into making ATVs safer proved sobering and inspirational to me.

I repeat my belief that ATVs are the single most dangerous discretionary-use product in CPSC's jurisdiction. Sadly, we see more than 700 deaths and over 100,000 serious injuries every year associated with ATVs. That's why I fully support any steps we can take to make this product less dangerous for riders – particularly children. In FY 2013, I look forward to reading the staff's review of the comments submitted in connection with the October Summit and their plan for moving forward. In FY 2014, I hope we can begin to address at the very least a few specific areas whether in connection with our mandatory rulemaking project as described in Public Law 112-28 (2012) or through the voluntary standards process:

1. *Barring passengers:* At least 20% of ATV deaths and injuries occur to passengers on ATVs. Too often these passengers are children – and most of the time these passengers are improperly riding on “single rider” vehicles. There has been some promising research regarding changing the length of seats, thereby making it less attractive for a passenger to sit behind the driver. One researcher has suggested that there is too much room in the front of the seat – room that almost invites placing a small child on an adult ATV. The length of seats should be examined closely by the industry and the CPSC.

If not modified seat length, surely there are other ways to discourage passengers on single rider vehicles. After all, the vehicles (as required by the voluntary standard) all bear warning labels not to carry passengers. I see no disagreement from manufacturers, safety experts, or responsible riding enthusiasts on this topic. Yet, all available evidence indicates that passengers continue to be enticed onto these vehicles. So, I ask, what more can be done? Should the warnings be bigger? Brighter? Rewritten and repositioned? Can the seats be made incapable of accommodating passengers? Could there be an alarm that sounds when extra passengers come aboard? Do certain uses of ATVs, say racing, require longer seats while others do not? In other words, there must be some action that can be taken to address a behavior that everyone agrees is too risky, and yet continues to result in hundreds of deaths and serious injuries year after year.

2. *Speed limiting devices:* Some ATVs are equipped with these devices – particularly the models for children and teenagers. Yet many consumer advocates have claimed the devices

are easily defeated and do not prevent these very heavy machines from going up to 50 or 60 mph. What can be done to make these devices more effective, less easy to defeat, and perhaps available for drivers and machines of all ages?

3. *Roll-over protection/Crashworthiness Performance Ratings*: While roll-over protection as an idea has been long discussed in the United States, our friends in Australia have begun to put into practice what on the surface seems to be a very logical safety concept. Simply put, if many ATV injuries result from the vehicle tipping over and crushing the rider underneath, one must ask – what if there were a bar of some kind preventing the vehicle from rolling over? I am not an engineer and I do not pretend that all simple sounding solutions are actually solutions in practice – but I am very eager to learn the results of using these types of safety devices “Down Under.”

Moreover, I understand that there is a separate effort in Australia to devise Crashworthiness Performance Ratings both for ATVs and for what we call “ROVs” (what they call “side-by-sides”). This ratings effort would publicly rate the crashworthiness of various ATVs and ROVs in comparison to one another. It is being funded by a state government and conducted by a large committee of academics, regulators, safety experts and industry. They plan on releasing these safety ratings in June 2013. Upon their release I hope we can explore whether such a system would be useful for U.S. consumers.

Cooktops and Electric Portable Heaters

The statistics change every year, but according to the National Fire Protection Association there were 1,389,500 fires reported in the United States during 2011, and these fires caused 3,005 civilian fire deaths, 17,500 civilian fire injuries, and \$11.7 billion in property damage.

Unfortunately there is no single project or series of projects that our agency can undertake to eliminate all of these injuries and deaths. Yet, there are several projects that if more funding were available for CPSC personnel or for outside contract testing, we would likely see fewer fires, and a reduced human and economic toll.

1. *Cook Tops (Electric and Gas)*: Cooking equipment accounts for the largest percentage of fires associated with products under the CPSC’s jurisdiction. Range and oven fires are linked to most of the deaths and injuries associated with cooking equipment. In FY 2012, we received a contractor’s report indicating that heating element control systems to detect and prevent food ignition in a pan on a cook top is something within reach. Other countries have already mandated this type of automated heating element control for gas cooktops to prevent food fires. Moreover, there are after-market products available for electric cooktop ranges. While our fire sciences personnel are working hard on this project, it is my

understanding more research dollars are needed to further validate the operation of the control systems developed and tested, as documented in the 2012 report. I hope we can find and devote the appropriate resources and attention in either FY 2013 or FY 2014 to continuing to develop effective solutions and work with the industry to have them implemented as quickly as possible.

2. *Portable Electric Heaters:* Every winter media reports and death certificates bring the news of another tragic fire associated with an electric space heater. These nearly ubiquitous products in our homes are also ripe for technological enhancement. This is why it is so important that we find the time and the resources to devote to two separate space heater related projects. The first is related to manually resetting temperature limiting controls – as opposed to the current automatically resetting controls which can lead to multiple overheating cycles. The technology for this type of a switch already exists and is being used in some products, but it is time to see it used universally. Secondly, and perhaps even more helpful in the long run, is the work we hope see take place on proximity sensors for space heaters. Many of the space heater fires occur from clothes or bedding, (or other materials) being placed too close to the heater and then igniting. It has been suggested that a proximity sensor in the space heater might be able to sense an item too close to the heater and shut itself off before a fire can begin. Time and resources from both CPSC and the space heater industry are likely to be needed to prove this concept – but the possibilities are exciting.

Generators and Furnaces

After prescription medicine overdoses, carbon monoxide (CO) is the leading cause of unintentional poisoning deaths in the United States — nearly 500 annually. While many of those deaths are related to auto emissions, nearly 200 per year are associated with both portable and stationary generators as well as home heating appliances – such as furnaces.

1. *Generators:* I strongly support our staff's initiative to research ways to address CO exposure deaths related to generators. We know of at least 17 such deaths in the weeks after "Super Storm" Sandy alone. Our recent research on reducing the amount of CO emitted by generators will hopefully spur our friends in the generator industry to join us in mitigating or eliminating these tragedies. In FY 2014, I hope we will be able to fund some continued research as well.
2. *Furnaces:* Every winter we read the reports of consumers who die in their homes due to CO leaks from their furnaces. Recent work by our staff has focused on durable CO sensors that can function effectively even inside furnaces and hopefully lead to technology that can be

made part of a standard that will stop these types of incidents before they become deadly. We have made this report public recently and I am looking forward to ways to address this silent killer in our homes through the use of new technology.