



## **U.S. CONSUMER PRODUCT SAFETY COMMISSION**

4330 EAST WEST HIGHWAY  
BETHESDA, MARYLAND 20814-4408

### **MINUTES OF COMMISSION MEETING DECISIONAL MATTER – CPSC FY 2020 PERFORMANC BUDGET REQUEST TO CONGRESS MARCH 13, 2019**

Decisional Matter: FY 2020 President’s Budget  
(Briefing package dated March 6, 2019 - OS No. 4855)

Acting Chairman Ann Marie Buerkle convened the March 13, 2019, 11:00 a.m., meeting of the U.S. Consumer Product Safety Commission in open session. Commissioners Robert S. Adler, Elliot F. Kaye, Dana Baiocco and Peter Feldman were in attendance. Acting Chairman Buerkle made welcoming remarks and summarized the agenda for the meeting. Before discussing the agenda topic for the meeting, Acting Chairman Buerkle called for any motions, to defer or delay the hearing, to a later hour on March 13, 2019 (same day) or postpone the meeting to March 14, 2019. Hearing none, the Chairman commenced with the meeting as planned.

After introducing the matter, Acting Chairman Buerkle expressed her concerns about the highly unusual aspect of having a public hearing for a budget that is classified as “FOR OFFICIAL USE ONLY (FOUO)”, until the President submits the budget to the Congress next week. Acting Chairman Buerkle stated that due to the unusual circumstances of the budget meeting, Acting General Counsel Melissa Hampshire, provided guidance for meeting and will closely monitor the meeting to ensure that the discussions remain on topic, limited to the Commissioners amendments to staff proposals and not the underlying proposals themselves. At this time, the Acting Chairman introduced staff members present and thanked them for preparing the Commissioners for the meeting. Present to respond to questions were Jay Hoffman, Director, Office of Financial Management and James Baker, Director and Budget Officer, Procurement and Budget Services. Acting Chairman Buerkle also acknowledged and thanked the Office of the Executive Director (OEX) and Office of the General Counsel (OGC) for all of their hard work in preparing each Commissioner for the meeting. The Chairman then called for consideration of 2020 Performance Budget Request to Congress and opened the meeting for questions from staff. The Chairman did not have any questions for staff. The Chairman then asked Commissioners for any questions for staff.

Commissioner Adler then offered a motion to lift the “FOR OFFICIAL USE ONLY (FOUO)” designation on the budget document and to discuss the document in the public session. Acting Chairman Buerkle asked for a second and Commissioner Kaye seconded the motion. The

Commission discussed the motion. Commissioner Adler expressed that the FOUO designation for the budget is not required and urged his colleagues to lift the FOUO designation on the document. Acting Chairman Buerkle asked Commissioner Adler if the FOUO designation for the agency budget has ever been lifted at the Commission to which Commissioner Adler responded, open deliberations was the practice when he worked at the Commission several years ago. Acting Chairman Buerkle cautioned against public discussions about the budget and said to do so would go against OMB guidance, which directed the agency to withhold the budget request from public release until submitted to Congress. Acting Chairman Buerkle asked Commissioner Adler to reconsider his motion to avoid jeopardizing the agency, the position of the agency, and the agency's relationship with OMB.

Commissioner Adler stated that unlike other agencies, CPSC has a provision, "27k" which grants the agency more independence for budget submissions requiring simultaneous submission to the Congress without seeking preapproval from any outside entity before submitting the budget. Commissioner Adler further stated that OMB would not be as concerned about this matter as suggested by Acting Chairman Buerkle because of the narrow focus of the Commission's discussion. Commissioner Adler cited prior history of open CPSC budget deliberations with similar guidance from OMB.

Acting Chairman Buerkle reiterated her concerns that the agency would be setting the wrong precedent by going against OMB guidance, which has never happened in her six years at the CPSC and that at least in recent history, there has been no precedent that the budget document would be open, that the designation would be waived on the FOUO designation and a public hearing of the document, whether the security was waived or not, has never happened. Commissioner Kaye asked Commissioner Adler to elaborate on the Commission's past practice with respect to open budget discussions by the Commission and sought specifics on the time period. Commissioner Adler explained that the Commission received similar guidance from OMB back in those days but in light of the Sunshine Act and in light of the Commission's independence and strong language contained in [CPSA] section 27k the Commission on an ongoing basis year after year held open deliberations, which at times included Commissioners discussing project trade-offs and staffing trade-offs while maintaining the spirit of OMB guidance. Commissioner Adler stated he was perfectly comfortable staying within the spirit of the OMB guidance and that this was a unique situation, prompted in part by Commissioner Adler's concern of the Chairman's remarks at ICPHSO about furniture tip over being construed as official Commission policy and therefore suggested an equally public discussion about whether that is the official policy of the Commission and that it was important to have that discussion on the Commission's budget.

Commissioner Kaye agreed with the Chairman's assessment that holding public discussions about the budget has not been the practice in the time Commissioner Kaye has been at the agency but clearly was in Commissioner Adler's memory. Commissioner Adler responded that he left the agency for 25 years and the practice ended during that time period. Commissioner Kaye acknowledged that waiving the FOUO designation was not an easy thing, but as a general matter he was compelled by the fact that President released his top line budget

numbers on Monday and even if CPSC's specific numbers were not released that the budget has been publicly disclosed and that bore on his decision to waive the FOUO designation for the Commission's budget.

Commissioner Baiocco described her support for Commissioner Adler's motion and stated that the subject budget request is nearly identical to the three previous budget requests submitted to Congress. Commissioner Baiocco stated that the OMB guidance being relied on by Acting Chairman Buerkle does not apply in this instance and that OMB actually recommends that certain agencies headed by a collegial body are required to hold public meetings unless the agency properly determines that the meeting should be held in a closed session which she did not believe to be the case and she rejected the notion that the meeting should be closed solely because it is the agency's practice. Commissioner Baiocco cited best practices and the changing world of consumer products as well as transparency as the basis for issues.

Commissioner Feldman recognized the unusual nature of the situation and stated that there is no treatment within the Commission's Decision Making Procedures and Commission directives to treat internal budget documents as privileged and that Commissioner Adler was within his rights under the Decision Making Procedures. Commissioner Feldman stated that the meeting should be open in light of the agency's commitment to transparency and to operate the agency in the open sunshine act, however he said discussions should not go beyond specifics previously negotiated with OMB over the pass back amount to the extent the amendments are being entertained do so with an agreed upon limit and consistent with the guidance set out in OMB Circular A-11.

Acting Chairman Buerkle reiterated her concerns and stated that to open the budget meeting to public deliberations is in defiance of OMB guidance. Acting Chairman Buerkle stated that there may be some confusion about the purpose of the budget (which finances the agency) versus the operating plan (which allocates the funds provided by the budget) and emphasized that meetings surrounding the operating plans have always been very public. Acting Chairman Buerkle emphasized that she had appealed the last two budgets and had obtained higher numbers as a result.

Commissioner Adler disagreed with the Chairman about defying OMB guidance and stated that the Commission was carrying out a strong Congressional mandate under section 27k and that OMB would find the public proceedings to be appropriate. Commissioner Adler further stated that the boundaries described by Commissioner Feldman would ensure that the meeting would not go beyond appropriate discussions should the FOUO designation be lifted and that OMB would not agree with the Chairman's defiance claim. Acting Chairman Buerkle reiterated her point about the apparent confusion between the budget and the operating plan, with the latter being the appropriate forum for discussing these matters.

Commissioner Adler challenged the premise about defying OMB, and stated that there are three opportunities to present proposals and those instances are the budget, operating plan or mid-year review and disagreed with Acting Chairman Buerkle that the appropriate time to make amendments to the budget would be during the operating plan only. Acting Chairman Buerkle

stated that the appropriate time to submit changes to the budget would have been in September when the budget was submitted to OMB and not during an impending vote.

Commissioner Adler stated that this is a unique situation, due in part to Acting Chairman Buerkle's speech at ICPHSO concerning a very thoughtful approach to furniture tip-over which was done in a public setting without advance notice of what would be discussed by the Chairman, hence a public discussion of furniture tip over is appropriate based on the Acting Chairman's remarks at ICPHSO.

Acting Chairman Buerkle stated that Commissioners Adler and Kaye, having both served as Chair for the Commission are aware of the speeches given at events such as ICPHSO and she did not outline Commission policy but rather her own views at ICPHSO.

Commissioner Kaye expressed his understanding of Acting Chairman Buerkle's frustration but reiterated his position regarding the uniqueness of this matter. Commissioner Kaye acknowledged that the agency's practice is not to discuss the budget in open session, however the release of the President's budget, acknowledging that the CPSC's number has not been released, changed the analysis for him because the budget itself was publicly disclosed, and wanting to respect certain relationships, and with the arrival of one or two new commissioners were valid reasons to openly discuss the budget.

After the discussion, Acting Chairman Buerkle called for a vote on the motion. The Commission voted (4-1) to lift the FOUO designation on the budget for public deliberations. Commissioner Adler, Commissioner Kaye, Commissioner Baiocco and Commissioner Feldman voted in favor of the motion to lift the FOUO designation on the budget for public deliberations. Acting Chairman Buerkle Chairman Buerkle voted against the motion.

Acting Chairman Buerkle called for any other amendments or motions. Commissioner Kaye introduced and described his amendment to adjust the topline number of the agency's budget request. The Chairman called for a second and Commissioner Adler seconded the motion. Acting Chairman Buerkle explained that each Commissioner would be recognized according to seniority and will have up to five minutes for questions and discussions. The Commissioners discussed their respective positions on the amendment.

Acting Chairman Buerkle stated that the purpose of the meeting is to discuss allocation of resources if we are funded at the level of the President's budget. The Appendix that highlights the unfunded priorities is clear and for what has already been requested from OMB and that the appendix highlights unfunded projects and signals that the agency can always use additional funds. The Acting Chairman noted past instances where she appealed successfully to OMB regarding the Commission's budget.

Commissioner Adler stated that he supports the notion contained in the amendment and the objective of the motion and commended the Chairman on her successful efforts to gain additional funding for CPSC; which other agencies had failed to accomplish. Commissioner Adler also stated that the amendment is an important gesture but is unlikely to result in a budget increase, therefore he would not support it for the same reasons echoed by Acting Chairman

Buerkle. Commissioner Baiocco stated that while additional funding would be ideal, she agreed with Commissioner Adler's sentiments in that the amendment would not be successful at this time. She stated that she would be open to supporting an amendment that would assist with the prioritization of certain unfunded projects. Commissioner Feldman stated that he would not support Commissioner Kaye's amendment out of respect for the agreed upon funding level with OMB but he agrees with and supports the underlying programs that the amendment seeks to fund. He stated that he would be supportive of the amendment if it identified budget neutral offsets from the existing top line allocation but because it does not he did not support it.

Commissioner Kaye asked his colleagues to monitor the status of the prioritized projects and if necessary to reconsider his amendment in the next budget cycle and asserting the Agency's independence more in the next cycle. After the discussion, Acting Chairman Buerkle called for a vote on the amendment. The Commission voted (3-1-1) not to adopt the amendment by Commissioner Kaye. Acting Chairman Buerkle, Commissioner Baiocco and Commissioner Feldman voted not to adopt the amendment Commissioner Kaye voted to adopt the amendment. Commissioner Adler abstained from the vote.

Acting Chairman Buerkle then called for any other motions or amendments. Commissioner Alder introduced a joint motion with Commissioner Kaye. The Chairman recognized Commissioner Adler and advised that he could take up to three minutes to describe the amendment. The Chairman asked for a second and Commissioner Kaye seconded (it was later determined that Commissioner Kaye could second the motion so the motion was seconded by Acting Chairman Buerkle). Commissioner Adler read the amendment which requested that staff be directed to draft a NPR for children's clothing storage units under Section 104 of the CPSA. The Commissioners discussed their respective positions on the proposed amendment. Commissioner Adler stated that the NPR is not intended to halt or slowdown the current activities related to furniture tip-overs under the broader rule of Section 7 and 9 CPSA. Commissioner Adler further stated that his proposal is for a subset of clothing storage units that presents hazards to children. Commissioner Adler noted the Sturdy Act. Commissioner Adler also stated that in the 10 years that section 104 has been in existence, the agency has drafted roughly 20 safety standards under 104 versus one safety standard under the provisions section 7 and 9 [of the CPSA] due to the cumbersome procedures required under section 7 and 9. Commissioner Adler also noted a rule under 104 applies the traditional 553 informal rulemaking provisions under the Administrative Procedure Act with one additional step, consulting with outside groups and one additional finding, that the standard be more stringent than the voluntary standard. Commissioner Adler noted that none of the 20 safety standards under section 104 have been challenged legally. Commissioner Adler noted that the voluntary standard process has been dragging. Commissioner Adler noted the parents he has met with made a most compelling argument for his amendment. Acting Chairman Buerkle did not intend to support the amendment, stating that Congress did not intend for this type of regulation when section 104 of the CPSIA was enacted. Acting Chairman Buerkle stated that a clothing storage unit, such as a dresser does not become a durable nursery product just because it is placed in a child's room. Acting Chairman Buerkle stated that the tip-over issue is a priority for her, citing the increased weight and decreased height limits in the standard and that work in this area is ongoing with the

voluntary standard to prevent dresser tip-over. Acting Chairman Buerkle stated that a standard of general applicability is the proper mechanism for a solution to address this hazard and not a standard geared towards a subset of products. Acting Chairman Buerkle agreed that there have been delays with the voluntary standard, however the proposed amendment will not enable faster movement, but rather create a distraction with current voluntary standard activities in this area. Chairman Buerkle could not agree with this approach.

Commissioner Adler disagreed and stated that Congress would approve of a standard development in this manner and that the proposed amendment is in line with the scope of the voluntary standard which is to reduce tip-over hazards associated with clothing storage units such as chest drawers or chest clothing units to cover children up to age 5.

Commissioner Kaye stated that Commissioner Adler covered all of the underlying reasons for their amendment. Commissioner Kaye stated that their amendment does not conflict with the work currently being done in this area but rather compliments ongoing activities.

Commissioner Baiocco agreed that the amendment presented by Commissioner Alder and Commissioner Kaye is important and that she too was disturbed by Acting Chairman Buerkle's speech at ICPHSO, in which she stated that it was a priority of hers but that the Acting Chair stated "she directed staff" and Commissioner Baiocco stated direction to staff to take action should include input from all of the Commissioners. Commissioner Baiocco agreed that the voluntary standard isn't working and that the amendment would not cause a distraction, however she could not support the amendment legally under section 104. Commissioner Baiocco stated that the recommendation in the amendment about a durable children's good is too subjective and creates labeling loopholes including changing 16 CFR 1130.2 for the registration of durable children's products. Commissioner Baiocco preferred to direct staff to develop a rule that can be mandated by the Commission to address this problem.

Commissioner Feldman agreed with Commissioner Adler and Commissioner Kaye's assessment of the problem in this area, and shared Commissioners Adler and Baiocco's concerns regarding Acting Chairman Buerkle's speech at ICPHSO and the industry's perception of the speech. He stated that it is not the agency's position to move from "50 to 60", nor is it something that was voted on by the Commission and is not Commission policy. Commissioner Feldman agreed that the development of a mandatory standard is the proper course of action because the voluntary standard isn't working. The test method of hanging a 60 lb. weight may not adequately address the underlying hazards in the IDIs and the data in the field and may be more complicated than the test method of a static hanging weight. Commissioner Feldman also questioned industry's substantial compliance with the existing voluntary standards. Commissioner Feldman stated that Section 7 would be the appropriate route to address the hazard. He does not believe that addressing the issue through section 104 would be the correct route. Commissioner Feldman questioned how we would go about making a determination of certain product falling within the definition of durable nursery product and this would not fully address the issue because it would touch a narrow subset of the broader product category. Commissioner Feldman stated that the amendment could create a perverse market incentive for manufacturers to market products as adult products which are intended for use by children.

Commissioner Feldman stated that a review of the IDIs and incident data that exists of the product seen in injuries and fatalities how product is within the definition of durable nursery product and questioned whether it is a solution in search of problem. Therefore, he could not support the amendment. Commissioner Feldman then stated that he and Commissioner Baiocco will introduce a similar amendment that would direct staff to move forward with a full NPR.

Commissioner Adler acknowledged the support from the dais to move forward with a mandatory standard which he believed would send a strong message to the voluntary standard developers. Commissioner Adler stated that Section 104 provides for the adoption of any voluntary consumer product safety standard for durable infant or toddlers products whether or not the standard also cover products that are not durable or infant products and requires intended only for durable infant products and there is no hint in the statute that it be only for such products. The fact that there are additional products that we cannot regulate should not be the basis for proceeding under section 104. Commissioner Feldman responded to the legality of moving forward on the designation of durable products under Section 104 rule, would leave to an Article III Judge and would open the agency up to legal challenges and delays in court and under section 104 would take away resources that could be used to pursue this matter under Section 7 or Section 9, both of which would provide broader application to the entire product line. Commissioner Adler responded that if legal challenges exist under section 104, then it is likely that the same would happen under Section 7 and 9 rules.

Commissioner Baiocco noted the fact that all of the Commissioners are in agreement on spending resources to pursue the tip-over hazard.

Acting Chairman Buerkle called for additional questions, hearing no further discussion, she called for a vote on the amendment. The Commission voted (3-2) not to adopt the amendment. Acting Chairman Buerkle, Commissioner Baiocco and Commissioner Feldman voted not to adopt the amendment. Commissioner Adler and Commissioner Kaye voted to adopt the amendment.

At this time, Commissioner Adler requested that the amendment that Commissioner Feldman mentioned as being similar to the joint amendment from Commissioners Adler and Kaye be introduced next as a logical sequence.

Acting Chairman Buerkle then called for any other amendments. Commissioner Feldman introduced a joint amendment with Commissioner Baiocco (Feldman and Baiocco 3) to address the risk of furniture tip over in the mandatory standards table. Acting Chairman Buerkle called for a second and Commissioner Adler seconded the motion. Commissioner Feldman introduced and described the amendment which suggested a change in the mandatory standard table on page 24 of the budget request by striking data analysis and inserting NPR.

Acting Chairman Buerkle thanked Commissioners Feldman and Baiocco for their amendment and described her support for the amendment. Acting Chairman Buerkle thanked Commissioners Feldman and Baiocco for offering the amendment and stated that furniture tip-over hazard is a priority for the agency and she is hopeful that the voluntary standard will bear fruit with weight and height specifics. Acting Chairman Buerkle further stated what she

discussed at ICPHSO are interim steps and that the agency is spending resources and will continue to spend resources in this area.

Commissioner Adler also thanked and commended Baiocco and Feldman for coming up with a “Plan B.” Commissioner Adler described his support for the amendment and stated that the amendment provides expedited approach to a solution, and will monitor progress gained from this amendment and make adjustments at mid-year if necessary.

Commissioner Kaye also thanked Commissioners Baiocco and Feldman and agreed that their amendment is an excellent “Plan B.” Commissioner Kaye described his support for the amendment and stated that it should be followed up at mid-year. Commissioner Baiocco thanked all of the Commissioners for their support. Acting Chairman Buerkle called for additional questions and hearing none, she called for a vote on the amendment. The Commission voted unanimously (5-0) to adopt the amendment.

Acting Chairman Buerkle asked for any other amendments or motions. Commissioner Feldman introduced a joint amendment with Commissioner Baiocco (Feldman-Baiocco 4), which is intended to address Child Nicotine Poisoning Prevention Act Enforcement in the budget request. Acting Chairman Buerkle called for a second. Commissioner Kaye seconded the motion. Acting Chairman Buerkle did not have any questions and stated her support for the amendment. Commissioner Adler also stated that he did not have any questions and supported the amendment. Commissioner Adler stated that though a joint amendment with Commissioner Baiocco, Commissioner Feldman deserved special recognition for being persistent in this area and that this advancement would not be possible had Commissioner Feldman not joined CPSC. Commissioner Kaye also thanked Commissioners Feldman and Baiocco and described his support for the amendment and stated that Commissioners Feldman and Baiocco have made a difference that will lead to safer outcomes. Commissioner Baiocco also thanked her colleagues and stated that the agency got off to a slow start in this area but is hopeful that the agency is moving in the right direction. At this time the Chairman offered a technical change for the consistency of language; drop “liquid” from “Child Liquid Nicotine Poisoning Prevention Act Enforcement.” The Chairman asked for any objections to the change and hearing none and there being no further comments on the amendment, the chairman called for a vote. The Commission voted unanimously (5-0) to adopt the amendment as modified.

At this time the Commission took a five-minute recess because Commissioner Kaye stepped away from the dais for a few minutes.

The Chairman reconvened the meeting and asked for any amendments. Commissioner Feldman introduced a joint amendment with Commissioner Baiocco (Feldman-Baiocco 2). Commissioner Feldman described the amendment as funding for agency data and information technology priorities in the underlying budget request by directing staff to identify offsets from the existing budget that would enable the allocation of funds to unfunded projects, specifically data analysis and IT systems in Appendix A of the budget. Commissioner Feldman described similarities between their amendment and that of Commissioner Kaye’s first amendment which was not adopted. The Chairman called for a second. Commissioner Kaye seconded the



amendment. The Commissioners discussed the amendment. Acting Chairman Buerkle said she could not support the amendment because the offsets are not identified and Appendix A of the budget already sets forth unfunded prioritized projects. Acting Chairman Buerkle stated though she cannot support the amendment at this time, she is open to future consideration of the subject matter of technology and data. Commissioner Adler shared Acting Chairman Buerkle's sentiments. Commissioner Adler stated that the amendment does not account for pay inflation and non-pay inflation. Commissioner Feldman stated that categories in the IT domain that are listed in Appendix A deserve special attention due to their importance in meeting the agency's mandate. Commissioner Baiocco stated that the agency's IT needs is of high importance and should be earmarked in the budget now, not later in mid-year. Commissioner Baiocco expressed that without a better data analysis system, and without a better IT structure, the agency would continue to be stagnant in this area. Commissioner Adler again reiterated that that he cannot make the amendment a high priority without accounting for pay inflation and non-pay inflation.

Commissioner Baiocco stated that data analysis is the foundation of the agency therefore it is highly important to focus resources in this area. Commissioner Feldman argued that he and Commissioner Baiocco are not making a prioritization judgement and emphasized the agency's reliance on data and IT failure could have catastrophic consequences. Commissioner Feldman described a recent incident at the agency regarding internet connectivity issues with zero access to internet for a significant amount of time. Commissioner Feldman further stated that the agency cannot fully perform without adequate IT support. Commissioner Kaye stated that he agreed with the substance of the amendment however, the agency does not have the staffing needs to offset funding, and that is why his amendment requested additional funding which would not impact other staff work. Commissioner Adler stated that he could not agree to take money away from allocated projects.

Acting Chairman Buerkle called for additional questions and hearing no further discussions, called for a vote. The Commission voted (3-2) to not adopt the amendment. Acting Chairman Buerkle, Commissioner Adler and Commissioner Kaye voted not to adopt the amendment. Commissioner Baiocco and Commissioner Feldman voted to adopt the amendment.

Acting Chairman Buerkle called for any other amendments or motions. Commissioner Feldman introduced a joint amendment with Commissioner Baiocco (Feldman-Baiocco 1), which called addressing workforce challenges and skills gaps for the creation of 2 FTEs, a Chief Technologist and Chief Data Officer as improvements to the agency's IT functions within the existing budget caps. Acting Chairman Buerkle asked for a second and Commissioner Kaye seconded the motion. The Commission had a vigorous discussion about how this measure would be accomplished. Commissioner Feldman considered withdrawing this amendment so the Commission took a brief recess to allow time for Commissioner Feldman to consider his options. Commissioner Feldman deferred to Commissioner Baiocco about how she would like to proceed. Commissioner Baiocco advocated going forward with the amendment. The Chairman recessed the meeting for ten minutes and then reconvened the meeting. Commissioner Feldman opted to have the amendment considered for a vote.

Commissioner Kaye seconded the motion. Commissioners Feldman and Commissioner Baiocco strongly urged the necessity for the positions outlined in their amendment. Acting Chairman Buerkle expressed that this is not the time to create new FTEs and the matter is not ripe. Commissioner Baiocco stated that staff informed her that job descriptions were not necessary at this time and that the Agency is way down in FTEs. The Executive Director advised the Commission that midyear funds do not fund FTEs. The Chairman stated conceptually the idea was excellent but that it was not ripe. Commissioner Kaye stated that if additional funding was available, then he would consider the amendment. Commissioner Feldman stated his understanding was that the Chair would pursue funding for FTEs at mid-year in consideration of withdrawing the amendment. The Chair advocated an organized approach for pursuing this issue. Commissioner Feldman stated that the Commission was non-compliant to a requirement for agencies to have the positions described in their amendment. Commissioner Adler stated that additional information, such as job descriptions and placement of personnel is required to fully consider this amendment and urged withdrawal of the amendment now. Commissioner Kaye stated that if additional funding was available above the base number, then he would consider the amendment, otherwise he could not support the amendment. Commissioner Baiocco stated that under strategic goal number one and the workforce should include the two types of people that the Agency does not have and that are being advocated for. Commissioner Feldman asked questions about the Foundations for Evidence Based Policymaking and interpretations to the Acting General Counsel Melissa Hampshire, about the agency's compliance to said requirement. Acting General Counsel Hampshire stated that while she was not aware of the statute off the top of her head she respectfully could not advise the Commission in a public meeting about legal interpretations of specific statutes but she is available to address any questions from Commissioner Feldman, but not in the public meeting. Commissioner Adler again thought consideration of the matter was premature and urged withdrawal. After additional intense and vigorous discussions, Acting Chairman Buerkle asked for additional questions and hearing none, Acting Chairman Buerkle called for a vote on the amendment. The Commission voted (3-2) not to adopt the amendment. Acting Chairman Buerkle, Commissioner Adler and Commissioner Kaye voted not to adopt the amendment. Commissioner Feldman and Commissioner Baiocco voted to adopt the amendment.

Acting Chairman Buerkle called for additional amendments and hearing none, she called for consideration of the Fiscal Year 2020 budget request as amended by the Commission in the March 13, 2019 Meeting. The Commission voted (3-2) not to adopt the budget as amended in the March 13, 2019 Meeting. Commissioner Kaye, Commissioner Baiocco and Commissioner Feldman voted not to approve the budget as amended. Acting Chairman Buerkle and Commissioner Adler voted to approve the budget as amended. The Chairman stated that Commissioners would each have 10 minutes for closing remarks. The Chairman reserved her remarks for last. Commissioner Adler made a brief statement. Commissioner Kaye stated that he will submit a written a statement at a later time. Commissioner Baiocco did not waive her right to submit a written statement at a later time and made brief remarks. Commissioner Feldman made closing remarks and stated that he believed that staff would be able to meet the deadline of March 18, 2019 to submit the budget to Congress.

The Chairman then made closing remarks and thanked staff for all of their great work. There being no other business, Acting Chairman Buerkle then concluded and adjourned the meeting at **1:10 p.m.**

**Attachments: Commission Adopted Amendment (Proposed by Commissioners Feldman and Baiocco (#2)**  
**Commission Adopted Amendment (Proposed by Commissioners Feldman and Baiocco (#3)**  
**Proposed Amendment by Commissioners Adler and Kaye (not adopted)**  
**Proposed Amendment by Commissioner Kaye (not adopted)**  
**Proposed Amendment by Commissioners Feldman and Baiocco (#4 not adopted)**  
**Proposed Amendment by Commissioners Feldman and Baiocco (#1 not adopted)**  
**Joint Statement of Commissioners Feldman and Baiocco**

For the Commission:

Secretary

## **Proposed Commissioner Kaye Amendments to the FY 2020 Performance Budget to Congress**

1. Staff is directed to strike \$127,000,000 and change it to \$135,000,000 in the Proposed Appropriations Language on page 1 and make all corresponding changes as described below throughout the rest of the FY 2020 Performance Budget Request.
2. Staff is directed to include in the FY 2020 Performance Budget Request all the initiatives listed in "Appendix A: Unfunded Priorities previously submitted by the Commission" on pages 38-40, which shall increase the total request in the FY 2020 Performance Budget by \$8 million.

**Adler/Kaye Joint Motion to Amend CPSC FY 2020 Performance Budget Request to Congress**

Commissioners Adler and Kaye propose the following amendment to the FY 2020 Performance Budget Request to Congress –

On page 24 of the draft FY 2020 Performance Budget Request, add in the **Mandatory Standards Table** the following language –

<b>CPSIA, as amended by Pub. L. No. 112-28, and including Section 104 of the CPSIA</b>		
	<b>FY 2019 Op Plan</b>	<b>FY 2020 Request</b>
Children’s Clothing Storage Unit Tip-Overs (section 104)	DA/TR	NPR

## **COPF and CODB 1**

Purpose: To address workforce challenges and agency skill gaps with respect to emerging technologies and IT mission-support functions in budget request, and for other purposes.

### **Amendment to the FY 2020 Performance Budget Request to Congress**

Staff is directed to include in its Fiscal Year 2020 Performance Budget Request two full time equivalents (FTEs) to allow the agency to hire a Chief Technologist and a Chief Data Officer in order to address the workforce challenges identified in Strategic Goal 1. Staff is further directed to offset these FTEs from within the existing 539 FTE limit and taking into account existing vacancies.

## **COPF and CODB 2**

Purpose: To include funding for agency data and IT priorities in budget request, and for other purposes.

### **Amendment to the FY 2020 Performance Budget Request to Congress**

Contingent upon the identification of an offset that does not negatively impact staffing or programmatic spending that is critical to the agency's mission to protect the public from unreasonable risks of injury associated with consumer products, staff is directed to include \$2 million to Expand Data Analysis and \$2 million for IT Systems and Security in its Fiscal Year 2020 Performance Budget Request and to make conforming amendments striking those items from Appendix A.

### **COPF and CODB 3**

Purpose: To recognize expedited Commission promulgation of a mandatory standard to address the risk of injury and death associated with furniture tip overs in budget request.

#### **Amendment to the FY 2020 Performance Budget Request to Congress**

The Mandatory Standards Table of the FY 2020 Performance Budget Request to Congress is amended –

- (1) On page 24, by striking “DA/TR” in the FY 2020 Request column entry for Furniture Tip-Over and inserting “NPR.”



## **COPF and CODB 4**

Purpose: To address Child Nicotine Poisoning Prevention Act enforcement in budget request.

### **Amendment to the FY 2020 Performance Budget Request to Congress**

The FY 2020 Budget Initiatives and Activities entry of the FY 2020 Performance Budget Request to Congress is amended –

(1) On page 13, by inserting at the appropriate place:

“Child Liquid Nicotine Poisoning Prevention Act Enforcement

“Under the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA), Pub. L. No. 114-116, the Commission is charged to enforce regulations requiring that nicotine provided in a liquid nicotine container sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States to be in “special packaging.” The Commission contemplates using a portion of the FY 2020 request allocation for response to support identification and removal of hazardous product that does not comply with the special packaging requirements of 16 C.F.R. 1700.15.”

**March 13, 2019**

**JOINT STATEMENT OF COMMISSIONERS FELDMAN AND BAIOTTO ON THE CPSC'S FISCAL YEAR  
2020 PERFORMANCE BUDGET REQUEST**

BETHESDA, MD. Commissioners Peter A. Feldman and Dana Baiocco of the United States Consumer Product Safety Commission today issued the following statement:

While we are disappointed that today the Commission was unable to come to an agreement on its Fiscal Year 2020 Performance Budget Request to Congress, we remain optimistic that we can reach a deal on final passage before the Monday deadline. It is our hope that negotiations will continue, including through the weekend if necessary, to pass this budget request. However, despite the well-known agency mantra that the CPSC is a "data-driven agency," significant shortfalls in our data and information technology systems must be addressed. The Commission adopted a number of amendments to improve this budget proposal. Nevertheless, the proposed budget leaves in place a significant gap with respect to agency expertise on new and emerging technologies and data science. To address these challenges, we jointly introduced a budget-neutral amendment to include two full time equivalents in the form of a Chief Technologist and a Chief Data Officer. This proposal is not an unfamiliar one to CPSC, and was the subject of considerable agency scrutiny, including a 2015 hearing. This measure has historically received bipartisan support and has been implemented with great success across the federal government. As proposed, the budget falls short on efficiently and effectively moving this agency forward to complete its mission on behalf of American consumers. CPSC must continue to be a forward looking agency, and we are hopeful that through continued negotiation we can arrive at a consensus solution to fill this critical need.