



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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Statement of Acting Chairman Robert S. Adler on CPSC's Fiscal Year 2021 Operating Plan

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Commissioner Feldman has just issued a statement on the recent vote by the Commission on its FY 2021 Operating Plan criticizing my commitment to supporting CPSC's mission to protect the public from unreasonably dangerous products. In advancing this claim, he references unnamed "close observers of the Commission" who have questioned the agency's willingness to take strong enforcement measures. His specific gripe: I did not support his amendment to add roughly \$36,000 to the agency's compliance division. I write to clear up his unfair criticism that distorts the facts and my position.

First, my opposition to Commissioner Feldman's amendment had nothing to do with supporting the agency's compliance efforts. I opposed it because it was premised on vague savings from other activities (e.g., supposed savings associated with COVID-19 activities that he does not identify) that might never be realized, leaving his amendment in limbo. Moreover, even at an agency as small as CPSC, providing an additional \$36,000 without identifying what unmet needs remain unaddressed and with no guidance as to how this money should be spent would do little to enhance our compliance activities.¹ To say the least, my colleague's amendment simply constitutes what has come to be known as "virtue signaling," by which one offers a symbolic proposal to inform the world that he or she stands above the rest of us in supporting a lofty principle.²

Second, failing to support the agency's commitment to vigorous enforcement of its laws surely must sit at the absolute bottom of any fair critique of my record. Anyone who has followed my

¹ Commissioner Feldman states that his amendment would have increased funding for the agency's headquarters compliance team by 10 percent. Not by a long shot. The funding for our compliance team is substantially greater than the amount he cites – in fact, it is in the millions. The number he references is for ordinary administrative matters, such as training and travel. Having carefully checked, I believe that the amount in the Op Plan is more than sufficient to meet these needs.

² What's sad is that to make his point my colleague has voted against an Operating Plan of \$135 million that proposes strong regulatory action on products such as ATVs that present stability issues, infant sleep products (including crib bumpers) that can suffocate children, magnet sets that can tear children's digestive systems, portable gas generators that present CO poisoning hazards, and many other dangerous products. All of this over a \$36,000 number that is not needed and would add no measurable safety.

career and positions over the years knows that I have always strongly supported the agency's compliance and enforcement efforts. In fact, prior to my assuming the role of Acting Chairman, I took strong issue with Commissioner Feldman's support of a weak and inadequate recall of a children's stroller, and I strongly supported the imposition of the highest civil penalty ever imposed by CPSC.

Third, among the first steps I took upon becoming Acting Chairman was to insist that staff begin to issue strong warnings about dangerous products more aggressively notwithstanding the strictures of section 6(b) of the Consumer Product Safety Act. As I have said numerous times, this section, which applies uniquely to CPSC among all health and safety agencies, acts as a major impediment to the disclosure of critical safety warnings to the public. I still await Commissioner Feldman's joining me in opposing this unwarranted restriction on safety. I can think of no greater measure that my colleague, if he truly supported our compliance efforts and valued consumer safety, could take than to show his strong support for abolishing 6(b).

Moreover, I strongly supported the reorganization of our compliance division into one cohesive unit, which has resulted in a more streamlined and efficient group. And, as I am certain Commissioner Feldman knows, I have enthusiastically supported hiring more compliance personnel, resulting in the addition of a significant number of new attorneys and staff over the past few months. These are not the actions of one who is unwilling to take strong enforcement steps.

Fourth, although Commissioner Feldman complains that the agency has undertaken fewer recalls recently, I note that CPSC is hardly alone in seeing a drop in these enforcement actions as the coronavirus pandemic has spread. To single out CPSC as unique among agencies in seeing fewer recalls unfairly ignores the devastating impact of the pandemic on the government and society at large.³ It also casts unfair aspersions on CPSC's dedicated and talented compliance staff.

All of this said, I welcome my colleague's newly found commitment to strong agency enforcement of its law. Accordingly, I look forward to his support for meaningful civil penalties for firms that knowingly violate our laws and regulations, his support for strong unilateral

³ For example, there were 79 FDA food recalls from April 2020 to June 2020, down 44% from 141 recalls from January 2020 to March 2020. See, Jay Sjerven, *Food Recalls Decline Even As Pandemic Rages*, Food Bus. News (Sept. 9, 2020), <https://www.foodbusinessnews.net/articles/16800-food-recalls-decline-even-as-pandemic-rages>; Dan Flynn, *Food Recalls During the COVID Quarter Came with 'Glaring Food Safety Headlines*, Food Safety News (Sept. 3, 2020), <https://www.foodsafetynews.com/2020/09/food-recalls-during-the-covid-quarter-came-with-glaring-food-safety-headlines/>. From January 2020 to March 2020, USDA recalls dropped 78.6% from the previous year. Linda Larsen, *First Quarter Recalls Plummet, But Experts Expect Rebound*, Food Poisoning Bulletin (June 12, 2020), <https://foodpoisoningbulletin.com/2020/first-quarter-recalls-plummet-but-experts-expect-rebound/>.

warnings about dangerous products distributed by firms, and his support for vigorous actions against products that present substantial product hazards.

Finally, should my colleague truly wish to contribute, I welcome his support for the many safety initiatives that the agency is currently working on to protect consumers. While I encourage open feedback and constructive criticism, as a Commissioner, I believe that our commitment to safety goes beyond obsessive oversight of one another, and calls instead for us to work together to accomplish our important mission.