



# UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION

## MINUTES OF COMMISSION MEETING

### **Decisional Matter: Supplemental NPR: Safety Standard for Portable Generators** **(Briefing package dated March 8, 2023)**

April 5, 2023

Chair Alexander Hoehn-Saric convened the April 5, 2023, meeting of the U.S. Consumer Product Safety Commission in open session at 10:00 a.m. The meeting was held remotely and in person at CPSC Headquarters in Bethesda, MD. Commissioners Peter A. Feldman, Richard Trumka Jr., and Mary T. Boyle were in attendance. The Chair made welcoming remarks, and summarized the agenda item for the meeting.

Chair Hoehn-Saric introduced the decisional matter pending before the Commission and introduced staff that was present to address questions from the Commission: Janet Buyer, Project Manager, Office of Hazard Identification and Reduction; Jason Levine, Executive Director; Austin Schlick, General Counsel; and DeWane Ray, Deputy Executive Director.

Chair Hoehn-Saric advised that each Commissioner would have five minutes to ask questions of staff, followed by consideration of amendments. Before the questioning session, the Chair stated that it was not appropriate to discuss legal advice given to the Commission by the Office of the General Counsel outside of Executive Session.

Chair Hoehn-Saric called for questions for staff. The Commissioners did not have questions for staff. The Chair excused staff and commenced consideration of the Supplemental Notice of Proposed Rulemaking (SNPR) for a safety standard for portable generators, as proposed by staff, as well as any amendments to the SNPR.

Chair Hoehn-Saric introduced a Manager's Amendment that included separate amendments proposed by Commissioners Trumka and Boyle. The Chair recognized those Commissioners by order of seniority to explain their respective portions of the Manager's Amendment. Commissioner Trumka described his two amendments. He explained that the first would seek public comment on 1) whether manufacturers of portable generators vary production seasonally, and 2) the need for additional visual representation in conjunction with the automatic shutoff warning to convey the danger of carbon monoxide (CO) poisoning to consumers. Commissioner Trumka's second amendment would revise the draft's proposed stockpiling provision to prohibit excessive stockpiling by manufacturers.

Commissioner Boyle described her amendment to seek public comment on the need for notification requirements for visually impaired consumers who may not perceive warning lights or visual prompts in connection with CO levels on portable generators.

Chair Hoehn-Saric called for a second on the Manager's Amendment and Commissioner Feldman seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and the Commissioners stated their support for the amendment. Hearing no further discussion or questions, the Chair called for a vote on the Manager's Amendment. The Commission voted unanimously (4-0) to adopt the Manager's Amendment; the adopted amendment is attached.

Chair Hoehn-Saric then called for additional amendments and recognized Commissioner Feldman for an amendment. The Chair advised that Commissioner Feldman could have three minutes to describe his amendment. Commissioner Feldman explained that his amendment would seek public comment on 1) the existence of any intellectual property rights that could impede the implementation of the proposed rule, and 2) the licensing structure associated with such intellectual property rights if they exist.

Chair Hoehn-Saric called for a second, and Commissioner Boyle seconded the motion. The Chair recognized each Commissioner in order of seniority for questions and the Commissioners discussed their respective positions on the amendment. Hearing no further discussion or questions, the Chair called for a vote on Commissioner Feldman's amendment. The Commission voted 2-2, a majority was not reached, and the amendment was not adopted. Chair Hoehn-Saric and Commissioner Feldman voted to approve the amendment. Commissioners Trumka and Boyle voted to not approve the amendment; the proposed amendment is attached.

The Chair called for any other amendments and hearing none, moved for approval of staff's draft SNPR for a safety standard for portable generators, as amended, and publication of the same in the *Federal Register*. The Chair called for a second and Commissioner Feldman seconded the motion. The Commission voted unanimously (4-0) to approve the draft SNPR, as amended and to publish the same in the *Federal Register*.

Chair Hoehn-Saric stated that each Commissioner would have up to 10 minutes for closing remarks. The Chair provided his closing remarks and then recognized each Commissioner for closing remarks. In their closing remarks, the Commissioners recognized and thanked staff for their diligent work in this area.

There being no other business, Chair Hoehn-Saric adjourned the meeting at 10:22 a.m.

For the Commission:

Alberta E. Mills

Attachments: Commission Adopted Manager's Amendment  
Amendment Proposed by Commissioner Feldman (not adopted by the Commission)  
Statement by Commissioner Feldman  
Statement by Commissioner Boyle

**Manager's Amendment Portable Generator SNPR**

**Trumka Amendment 1: Seek comment on manufacturing trends and seek comment on automatic shutoff warning efficacy**

OS 81:

After the first bullet, insert a bullet that reads: “The appropriateness of both the base period and the production limits included in the stockpiling provision. This would include evidence of variation in monthly portable generator manufacturing volumes, including whether any portable generator manufacturers vary their production seasonally, information regarding the growth rate and variability of production and sales, and any other useful information;”

OS 81:

At the end of the bulleted list, insert a bullet that reads: “Information demonstrating whether it would be useful to add to the automatic shutoff warning either a visual representation of the risk presented, such as a skull and crossbones symbol, and/or the word “DANGER,” “DANGEROUS,” or “POISONOUS” before “CARBON MONOXIDE.”

**Trumka Amendment 2: Reinstate Commission-adopted stockpiling provision**

OS 42:

In line 2, delete “120 percent” and replace with “105 percent”

Delete the sentence beginning “The base period is” and replace it with “The base period is the calendar month with the median manufacturing or import volume within the last 13 months immediately preceding the month of promulgation of the final rule.”

Delete the paragraph beginning “We propose the atypical figure of” and replace it with “The Commission seeks comment on these proposals.”

OS 89:

Delete “120 percent” and replace with “105 percent”

OS 90:

Delete the sentence beginning “The base period for portable generators is” and replace it with “The base period for portable generators is the calendar month with the median manufacturing or import volume within the last 13 months immediately preceding the month of promulgation of the final rule”

**Boyle Amendment:**

Insert additional request for public comment at the end of the section, Notification Indicator Requirements (p. OS 33), as follows:

*Shutoff Notification for visually impaired consumers.* The Commission seeks public comment on the need for shutoff notification requirements that are accessible to consumers other than “a user with normal vision,” such as an audible warning to alert visually impaired consumers when a portable generator shuts off and a means to communicate actions to take in response to the shutoff to reduce the risk of CO poisoning.

**COPF Amendment 1 to Supplemental Notice of Proposed Rulemaking (SNPR): Safety  
Standard for Portable Generators**

Purpose: To include additional questions for commentors regarding intellectual property.

On page OS-82, after “were not considered in this analysis:”, insert:

- “Are there any designs, processes, or other means or methods essential to comply with the performance standard described in this SNPR that are subject to current or anticipated patents, trademarks, or other intellectual property rights in the United States or elsewhere?
- If such intellectual property rights exist are the rights available for license? If such rights exist, is there a history of licensing such intellectual property on fair, reasonable, and non-discriminatory terms? Would any such license materially increase the cost of meeting the performance standard should the Commission adopt the standard described in this SNPR?”



UNITED STATES  
**CONSUMER PRODUCT SAFETY COMMISSION**  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814  
**COMMISSIONER PETER A. FELDMAN**

**STATEMENT OF COMMISSIONER PETER A. FELDMAN  
REQUESTING COMMENT ON PORTABLE GENERATOR INTELLECTUAL  
PROPERTY AND LICENSING CONCERNS**

**APRIL 5, 2023**

*The often-complex negotiations for intellectual property licenses could delay the availability of compliant products on store shelves.*

The U.S. Consumer Product Safety Commission today voted to issue a supplemental notice of proposed rulemaking (SNPR) on standards for portable generators. I voted in favor of issuing the notice because public input is a crucial part of our decision-making process, and I believe we need more information on the potential effects of this proposed rule.

I am disappointed that a majority of my colleagues did not support my bipartisan amendment, which sought public comment on whether there might be intellectual property (IP) issues that affect this rule's implementation. If someone who holds IP rights, for example patents or copyrights, refuses to license them, it might affect the timing, cost, or ability of producers to comply with our rule. We should know that before we finalize this rule, not after.

I am concerned that a standard that relies on essential patents could increase litigation risk unnecessarily, particularly if those patents are not made available on reasonable terms. Moreover, the often-complex negotiations for IP licenses could delay the availability of compliant products on store shelves.

If the Commission is going to make the most informed decision possible, we should not simply refuse to ask for the facts. While my amendment was not adopted, I nevertheless urge the public to comment on the following two issues to provide a complete record to inform our next steps:

1. Are there any designs, processes, or other means or methods essential to comply with the performance standard described in this SNPR that are subject to current or anticipated patents, trademarks, or other intellectual property rights in the United States or elsewhere?
2. If such intellectual property rights exist, are the rights available for license? If such rights exist, is there a history of licensing such intellectual property on fair, reasonable, and non-discriminatory terms? Would any such license materially increase the cost of meeting the performance standard should the Commission adopt the standard described in this SNPR?



UNITED STATES  
**CONSUMER PRODUCT SAFETY COMMISSION**  
4330 EAST WEST HIGHWAY BETHESDA, MD 20814  
**COMMISSIONER MARY T. BOYLE**

**Commissioner Mary T. Boyle Statement on Approval of the Portable  
Generator SNPR**

**April 5, 2023**

With today's unanimous vote, the Commission steps up to the plate on a long overdue measure to protect unsuspecting consumers from carbon monoxide poisoning associated with portable generators. This is a well-documented hazard, responsible for more than 1,300 deaths and 17,000 injuries over the past 18 years. These numbers are not abstractions but represent real people -- who turned to generators for help when they were in crisis. And the latest information we have suggests that this disheartening pattern of death and injury continues unabated. We owe it to the public to seize this opportunity to reverse this trend.

The good news is that we can make a difference. By advancing this rulemaking process, we are taking action aimed squarely at preventing harm and saving lives. The proposed rule before us sets clear, science-based expectations for manufacturers. It requires them to build safer generators with lower emissions and automatic shut-off mechanisms. The specifics in the rule match up with standards developed by industry-led organizations.

The importance of safety for portable generators will only grow as demand for them grows in the face of extreme weather events -- like those we have seen even just over the past week. Bringing this to life, the briefing package offers a compelling example from the aftermath of one such natural disaster. (Staff Briefing Package Tab D.) After Hurricane Ida caused widespread power outages in Louisiana in 2021, staff conducted an investigation in collaboration with the State Fire Marshall and local fire departments. Among the findings: at least 66 homes had documented incidents of CO exposure associated with portable generators; tellingly, in at least three homes, the fire department reported that CO exposure was linked to a neighbor's generator; and tragically, a family of three died of CO poisoning linked to a newly purchased portable generator located outside their house.

Today's Commission action has put us on a trajectory toward the goal of eliminating this hazard. We can do this. Not only can we do this, but we must do this -- to save lives. I welcome comments on the proposed rule that aim to further this goal, and I expect the industry to embrace this chance to partner with us in protecting consumers.

We would not be here without CPSC's dedicated staff, especially Janet Buyer, Barbara Little, and the many others who have done the rigorous technical analysis, carefully reviewed the data, and navigated the ins and outs of the rulemaking process, not to mention those who worked on research, reports and education campaigns to raise public awareness of life-threatening hazards related to portable generators and CO poisoning. This work makes a difference. I am more optimistic than ever about the prospects for progress, and I look forward to a swift advancement to the final rule stage.