



# UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION

## MINUTES OF COMMISSION MEETING

### Decisional Matter: Fiscal Year 2023 Operating Plan

(Briefing package dated September 28, 2022)

October 26, 2022

Chair Alex Hoehn-Saric convened the October 26, 2022, meeting of the U.S. Consumer Product Safety Commission in open session at 10:02 a.m. The meeting was held remotely. Commissioners Peter A. Feldman, Richard L. 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: Jason Levine, Executive Director; James Baker, Chief Financial Officer; Austin Schlick, General Counsel; and Pamela Springs, Director, Office of Communications.

Chair Hoehn-Saric advised that each Commissioner would have five minutes to ask questions of staff, followed by consideration of amendments.

The Chair then called for questions for staff. The Commissioners did not have any questions for staff. Commissioner Trumka thanked staff for addressing all his questions prior to the meeting. Chair Hoehn-Saric excused staff and commenced consideration of the FY 2023 Operating Plan proposed by staff, as well as any amendments to the plan. The Chair advised that each Commissioner would be recognized by order of seniority and would have three minutes to explain any proposed amendments.

Chair Hoehn-Saric introduced a Manager's Amendment that included 19 separate amendments originally proposed by Commissioners Feldman, Trumka and Boyle. The Chair commended the collaborative efforts by the Commissioners in developing the Manager's Amendment. The Chair called for a second and Commissioners Feldman and Trumka both seconded the motion. The Chair recognized Commissioners by order of seniority to explain their respective portions of the Manager's Amendment. Commissioner Feldman described his three amendments. The first would require staff to implement recommendations from the Government Accountability Office (GAO) and to provide status reports to the Commission for open GAO recommendations. The second would direct staff to use the various media channels available to the agency to publicize the Commission's import and enforcement activities for public awareness. The third called for additional staffing for the Office of Compliance and Enforcement and the Office of the General Counsel.

Commissioner Trumka highlighted his amendments: rulemaking to address fire hazards associated with Off-Highway Vehicles (OHVs), the finalization of a rule to address carbon monoxide (CO) hazards associated with portable generators, improvements regarding recall effectiveness rates and voluntary standards, and the assessment of every civil penalty case for potential referral to DOJ.

Commissioner Boyle described her amendments related to NEISS modernization, chronic hazards associated with gas stoves, commitment to equity with respect to consumer safety hazards associated with age and gender, battery ingestion safety, civil penalty assessments as an agency priority, outreach to underserved communities, and recall effectiveness. Hearing no further discussion, the Chair called for a vote on the amendment. The Commission voted unanimously (4-0) to adopt the Manager's Amendment; the Commission adopted amendment is attached.

Chair Hoehn-Saric then recognized each Commissioner by order of seniority for additional amendments. Commissioner Feldman introduced an amendment (Feldman 2) regarding enforcement of the Child Nicotine Poison Prevention Act (CNPPA) as an agency priority to protect children from hazards associated with liquid nicotine. The Chair called for a second and Commissioners Trumka and Boyle seconded the motion. The Commissioners discussed their respective positions and support for the amendment. Hearing no further questions, the Chair called for a vote on the amendment. The Commission voted unanimously (4-0) to adopt amendment Feldman 2; the Commission adopted amendment is attached.

Chair Hoehn-Saric recognized Commissioner Feldman for another amendment (Feldman 5). Commissioner Feldman introduced and explained the rationale for his amendment, which would require staff to consult with federal agencies expert in antitrust issues in connection with safety standards development to avoid monopolistic effects on consumers. The Chair called for a second and Commissioner Boyle seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and the Commissioners discussed their respective positions on the amendment. After the discussion and hearing no further questions, the Chair called for a vote on the 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 adopt the amendment. Commissioners Trumka and Boyle voted to not adopt the amendment; the proposed amendment is attached

The Chair recognized Commissioner Feldman for a third amendment (Feldman 6). Commissioner Feldman read and explained his amendment, which is intended to protect the agency's data and information technology (IT) systems by prohibiting the use of TikTok on any Commission issued device. The Chair called for a second and Commissioner Boyle seconded the motion. Chair Hoehn-Saric and Commissioner Boyle expressed support for the amendment with the caveat that the Commission reconsider the prohibition upon the conclusion of other agencies' ongoing investigations concerning TikTok. Commissioner Trumka stated that unless the usage of TikTok is prohibited by an Executive Order, the agency should not restrict its usage because of its reach to young people. Hearing no further discussion or questions, Chair Hoehn-Saric called for a vote on the amendment. The Commission voted (3-1) to adopt amendment Feldman 6. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to adopt the amendment. Commissioner Trumka voted to not adopt the amendment; the Commission adopted amendment is attached.

Chair Hoehn-Saric recognized Commissioner Feldman for his last amendment (Feldman 7). Commissioner Feldman read and explained his amendment as preserving the Commission's resources for mission-critical matters and projects. Commissioner Feldman stated that the CPSC directive that provides guidance to staff in this area is outdated and lacks sufficient oversight. However, Commissioner Feldman withdrew this amendment based on assurance by the Chair that the subject directive is currently under review and will likely contain revisions that address his concerns; the withdrawn amendment is attached.

Chair Hoehn-Saric asked Commissioner Feldman if he had additional amendments, to which Commissioner Feldman responded that he did not have additional amendments.

Chair Hoehn-Saric asked Commissioner Trumka if he had any amendments, and recognized Commissioner Trumka for his amendments. Commissioner Trumka discussed two related amendments; Trumka 3 and Trumka 3A. Commissioner Trumka explained that Trumka 3 would direct staff to initiate rulemaking pertaining to gas stoves. However, Commissioner Trumka acknowledged the lack of support for Trumka 3 and withdrew this amendment. Commissioner Trumka then offered a substitute amendment, Trumka 3A, which would direct staff to issue a Request for Information (RFI) to obtain public input on hazards associated with gas stoves. The Chair called for a second and Commissioner Boyle seconded the motion. The Commissioners discussed their respective positions and support for Trumka 3A. Hearing no further questions or discussion, Chair Hoehn-Saric called for a vote on Trumka 3A. The Commission voted unanimously (4-0) to adopt the amendment; the Commission adopted amendment is attached (the withdrawn amendment, Trumka 3, is also attached).

The Chair called for other amendments and recognized Commissioner Trumka for an amendment. Commissioner Trumka read his amendment (Trumka 5) for the record and explained that this amendment would direct staff to monitor relevant international rulemakings regarding consumer product safety and hazardous substances, and to share such information with the Commission. The Chair called for a second and Commissioner Boyle seconded the motion. The Commissioners discussed their respective positions on the amendment. Hearing no further discussion or questions, the Chair called for a vote on the amendment. The Commission voted (3-1) to adopt amendment Trumka 5. Chair Hoehn-Saric, Commissioners Boyle and Trumka voted to adopt the amendment. Commissioner Feldman voted to not adopt the amendment; the Commission adopted amendment is attached.

Chair Hoehn-Saric called for other amendments and recognized Commissioner Boyle for an amendment (Boyle 2). Commissioner Boyle read and described her amendment directing staff to conduct safety, research and rulemaking activities regarding infant pillows and nursing pillows. The Chair called for a second and Commissioner Trumka seconded the motion. The Commissioners discussed the amendment. After the discussion, Chair Hoehn-Saric called for a vote on the amendment. The Commission voted 2-2, and the amendment was not adopted. Chair Hoehn-Saric and Commissioner Feldman voted to not adopt the amendment. Commissioners Trumka and Boyle voted to adopt the amendment; the proposed amendment is attached.

Chair Hoehn-Saric called for any other amendments and, hearing none, moved for approval of the FY 2023 Operating Plan as amended. The Chair called for a second and Commissioner Feldman seconded the motion. The Commission voted (3-1) to approve the FY 2023 Operating Plan as amended. Chair Hoehn-Saric, Commissioners Trumka and Boyle voted to approve the FY 2023 Operating Plan as amended. Commissioner Feldman voted to not approve the FY 2023 Operating Plan as amended.

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. Commissioners Feldman, Trumka and Boyle each gave closing remarks.

There being no other business, Chair Hoehn-Saric adjourned the meeting at 11:09 a.m.

For the Commission:

Alberta E, Mills

Attachments: Manager's Amendment (adopted by the Commission)

Amendments proposed by Commissioner Feldman

(Feldman Amendment 2 – adopted by the Commission)

(Feldman Amendment 5 – not adopted by the Commission)

(Feldman Amendment 6 – adopted by the Commission)

(Feldman Amendment 7 – withdrawn by Commissioner Feldman)

Amendments proposed by Commissioner Trumka

(Trumka Amendment 3 – withdrawn by Commissioner Trumka)

(Trumka Amendment 3A – adopted by the Commission)

(Trumka Amendment 5 – adopted by the Commission)

Amendment proposed by Commissioner Boyle

(Boyle Amendment 2 – not adopted by the Commission)

Statement by Statement by Chair Hoehn-Saric

Statement by Commissioner Feldman

Statement by Commissioner Trumka

Statement by Commissioner Boyle

**Manager's Amendment**

**Feldman 1 -- U.S. Government Accountability Office Recommendations**

Purpose: To implement recommendation made by the U.S. Government Accountability Office (GAO).

Staff shall, for Government Accountability Office (GAO) recommendations –

1. For any GAO recommendation that remains unimplemented within 180 days of the approval of this Operating Plan, provide to the Commission a written explanation for why the open GAO recommendation(s) remains unimplemented, and report on the status of such unimplemented recommendations every 180 days thereafter;

2. on page OS-22, add “and GAO” after each place “OIG” appears.

3. on page OS-37, add “and GAO” after each place “OIG” appears.

4. on page OS-42, add “and GAO” after each place “OIG” appears.

5. on page OS-45, add “and GAO” after each place “OIG” appears.

6. on page OS-48, add “and GAO” after each place “OIG” appears.

7. on page OS-51, add “and GAO” after each place “OIG” appears; and

8. on page OS-55, add “and GAO” after each place “OIG” appears.

**Feldman 3 -- Seizures and Enforcement Activities**

Purpose: To emphasize and highlight CPSC enforcement activities.

On page OS-47 in the section titled “FY 2023 Priority Activities,” add at the appropriate place:

Publicize import and enforcement activities, including through the increased use of social media, press releases, and other CPSC media channels.

**Feldman 4 -- Augmenting the Compliance Team**

Purpose: To provide additional staff and hiring flexibilities to the Office of Compliance and Field Operations and the Office of General Counsel.

Upon receipt of FY2023 appropriated funds –

For any fiscal year (FY) 2023 annual appropriation dollars above \$143.45 million, EXC is authorized to hire up to five new full-time-equivalent (FTE) staff to support increased

investigation and litigation activity. The Office of General Counsel (OGC) is authorized to hire one FTE to support EXC's additional investigation and litigation work.

Staff shall support the use of all available hiring authorities, including the use of nonsupervisory GS-15 positions.

### **Trumka Amendment 1: Clarifying Edits**

#### **On page OS-11, in footnote 7:**

Delete "the risks associated with these shipments are largely unknown" and replace with "we are working to build visibility into the risk associated with these shipments."

#### **On page OS-12, in section iii:**

Add "existing and" before "emerging hazards patterns and trends."

#### **On page OS-21:**

In the fourth bullet under "FY 2023 Priority Activities:"

Insert "and implement SAS-VIYA migration to detect patterns in large data sets" after "approach to advance analytics" and before "(Milestone EXHR-M05)"

In the table below "Annual Milestones," in Milestone EXHR-M05:

Insert "and implemented SAS-VIYA migration to detect patterns in large data sets" after "for artificial intelligence/machine learning for CPSC analytics"

#### **On page OS-24, in project 21726, first bullet:**

Strike "and further review of potential exemption considerations for specific fabric types such as certain fabrics containing certain types of fibers (e.g.) Spandex."

### **Trumka Amendment 2: Supporting Robust Mandatory Standards Work**

#### **On page OS-30, in the Mandatory Standards Table:**

- For the entry titled "Off-Highway Vehicle (OHV) Fire Hazards," in the far-right column, strike "DA/TR" and replace with "DA/TR / NPR."
- For the entry titled "Portable Generators," in the far-right column, strike "SNPR" and replace with "SNPR/FR."

#### **On page OS-25**

- Insert a new sentence at the end of "22667 – Mechanical Hazards: Rulemaking Activities (General Use Products)" as follows: "In FY 2023, CPSC will submit a Notice of Proposed Rule Briefing Package for Off-Highway Vehicle Fire Hazards unless within 120 days after the FY23 Operating Plan is approved a voluntary safety standard adequately addressing the relevant fire hazards is published."

### **Trumka Amendment 4: Acknowledge Success in Voluntary Standards**

#### **On page OS-27:**

In the Key Performance Measure table, strike the third row of the table (2023KM1.2.1) and replace it with the following row:

<b>2023KM1.2.1</b>	Number of voluntary standards activities in which CPSC staff participated that result in a revised standard that reduces the risk of injury associated with products covered by the standard	20
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**On page OS-28:**

In the Operating Performance Measures table, strike the twelfth row of the table (2023OP15) and replace it with the following row:

<b>2023OP15</b>	Number of voluntary standards activities in which CPSC actively participates	87
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**On page OS-33:**

In the Voluntary Standards Summary Table, strike row 41 renumber the remaining rows accordingly.

Insert footnote to the voluntary standards table stating: “Staff may participate in a newly created voluntary standard, and shall notify the Commission when doing so.”

**Trumka Amendment 6: Celebrate Success in Recall Effectiveness**

**On page OS-40:**

In the row beginning “**2023KM2.3.1**” in the far-right column, replace “25%” with “33%”

**Trumka Amendment 7: Strengthen Deterrence of Criminal Conduct**

**On page OS-37:**

Insert new Milestone EXC-M11:

“All civil penalty cases were reviewed for potential criminal referral to the Department of Justice.”

**Boyle Amendment 1: To emphasize the importance of robust data collection, the need for progress on NEISS modernization, and the Commission’s commitment to equity, the FY 23 Operating Plan shall be amended as follows:**

OS21: Revise bullet 5 to read, “Continue implementation of FY 2021 hospital sample modernization plan for the National Electronic Injury Surveillance System (NEISS) sample, including a focus on recruiting hospitals in underserved communities (Milestones EXHR-M02, EXHR-M03) [ARPA]; Update EXHR-M02 and EXHR-M03 accordingly; and revise Project 11179 (OS22) by adding a final sentence that reads, “Recruitment should include a focus on hospitals in underserved communities.”

**Boyle Amendment 3: To ensure that Commission work fully integrates data and analysis of product risks with disparate impacts tied to age and gender, the FY 23 Operating Plan shall be amended as follows:**

OS21: Insert new bullet, “Conduct Research on Older Consumer Safety Hazards, including efforts to better address the senior population risks associated with the use of consumer products and an evaluation of whether these risks carry a disparate impact with respect to gender.” And on OS 24, Revise 22640 to read: “Older Consumer Safety Hazards: This project provides resources for staff to develop and submit an Adult Portable Bed Rails Final Rule Briefing Package and for activities related to senior safety, including efforts to better address the senior population risks associated with the use of consumer products and an evaluation of whether these risks carry a disparate impact with respect to gender. In FY 2023, staff will continue work on voluntary standards changes for Adult Portable Bed Rails, Flooring, and Bathtubs.”

**Boyle Amendment 4: To mark and define the importance of chronic hazards for consumers linked with PFAs and gas stoves, the FY 23 Operating Plan shall be amended as follows:**

OS21: Insert a bullet: "Focus on chronic hazards, including hazards associated with PFAs and gas stoves." And on OS25, Revise bullet one under 23258 to read: “Work on voluntary standards associated with indoor air quality issues and per- and polyfluoroalkyl substances (PFAs), including completing a contracted literature review funded in FY 2022. A request for information (RFI) will be drafted and submitted to the Commission to seek public input on hazards associated with PFAs used in textiles, apparel, and children’s products.

**Boyle Amendment 5: To further the Commission’s commitment to battery safety and direct attention to innovative solutions, the FY 23 Operating Plan shall be amended as follows:**

OS-23/24: Revise 21518, Batteries, to add a paragraph to read, “As part of staff’s engagement with voluntary standards bodies, staff also will engage stakeholders on solutions to address corrosion associated with battery ingestion. This work will build on the FY2023 NPR and Final Rule package on battery ingestion related to warning labels and packaging of button cell and coin cell batteries to establish possible mechanisms to target the prevalence of these batteries and mitigate the negative health implications.”

**Boyle Amendment 6: To reflect that civil penalty work is an agency priority, the FY 23 Operating Plan shall be amended as follows:**

OS36: Insert additional Bullet under FY23 Priority Activities: “Conduct timely initial assessments to determine whether to open a civil penalty investigation following a recall announcement.”

**Boyle Amendment 7: To promote safety equity through dialogues with underserved communities, the FY 23 Operating Plan shall be amended as follows:**



OS37: Revise EXC-MO3 to read: “Conducted outreach initiatives targeting underserved consumers in at least 10 states to promote safety equity, aligning messaging with local needs as well as responding to emerging safety issues.” And on OS39, revise 34301, second sentence: “This project provides resources for activities conducted with state and local governments under contract, which include recall effectiveness checks and inspections. Education and outreach activities shall align with local needs as well as respond to emerging safety issues.

**Boyle Amendment 8: To promote safety equity through dialogues with underserved communities, the FY 23 Operating Plan shall be amended as follows:**

OS48: Revise OCM-MO4: “Conducted at least two out-of-home advertisings, such as billboards, bus shelters, or public transportation ads, focusing on historically excluded communities and aligning messaging with local needs as well as responding to emerging safety issues.”

**Boyle Amendment 9: To promote safety equity, by amplifying consumer education on multiple topics responsive to community needs, and by conducting campaigns and other outreach on products reflecting dialogues and engagement with underserved communities, the FY 23 Operating Plan shall be amended as follows:**

OS47: Revise Bullet 2 under FY23 Priority Activities: “Conduct outreach campaigns in four categories to prevent injuries and deaths from consumer products: pool safety; furniture tip-over prevention; baby safety; carbon monoxide. Outreach shall respond to needs and interests identified through work with community organizations representing diverse populations. As funds are available, staff also shall conduct outreach campaigns on battery ingestion and micromobility. In the absence of dedicated funds for additional campaigns, staff shall incorporate safety messaging on button battery ingestion and micromobility safety issues in seasonal earned media outreach, organic social media, and event-driven news associated with these safety issues to drive interest.”

**Boyle Amendment 10: To promote safety equity through dialogues with underserved communities, the FY 23 Operating Plan shall be amended as follows:**

Revise bullet 4 on OS47: “Conduct community outreach events/activities (including virtual or digital events as necessary as well as outdoor advertising campaigns), especially to underserved communities, aimed at raising awareness of and preventing injuries and deaths associated with consumer products, aligning messaging with local needs as well as responding to emerging safety issues. (Milestone OCM-M02)

**Boyle Amendment 11: To allocate limited resources to reflect the evolution of the product safety landscape and evaluate the efficacy of campaigns that are repeated annually, the FY 23 Operating Plan shall be amended as follows:**

OS-47: Add an additional bullet point under FY2023 Priority Activities that reads, “Assess the impact of current media campaigns, such as “AnchorIt!” and baby safety, in light of changing

regulatory conditions, including the finalization of the Safe Sleep for Babies Act and Infant Sleep Rule, and the CSU final rule. Review how these programs should be updated or transitioned.”

**Boyle Amendment 12: To enable Commission review of research on consumer behavior related to recalls, the FY 23 Operating Plan shall be amended as follows:**

Revise OCM-MO5: “Conducted a study of consumer behavior regarding recalls and factors relating to consumer willingness to report consumer product injuries and submitted report and recommendations based on the study to the Commission.”

**Feldman 2 -- CNPPA Enforcement**

Purpose: To maintain enforcement activity of the Child Nicotine Poisoning Prevention Act.

On page OS-37, under the heading entitled “FY2023 Priority Activities,” at the appropriate place, insert the following and make any necessary conforming changes:

“Enforce the Child Nicotine Poisoning Prevention Act, including removal of noncompliant liquid nicotine containers from commerce.”

## **Feldman 5 -- Competition Coordination**

Purpose: To ensure that consumer product safety standards are not used to create anticompetitive effects or promote restraints on trade.

At the appropriate place, insert:

Required consultation –

To assist in applying the requirements of 16 C.F.R. §1031.5(c) for voluntary standards and inform development of mandatory standards, Commission staff shall consult with the U.S. Department of Justice--Antitrust Division and the Federal Trade Commission regarding principles for avoiding anticompetitive effects or restraints of trade in standards development. Staff, including but not limited to the Office of the General Counsel and the Directorate of Economic Analysis, shall identify those principles and provide them to the Commission.

## **Feldman 6 -- TikTok Prohibition**

Purpose: To prohibit CPSC employees and contractors from downloading or using TikTok on any device issued by the Commission.

Data Protection Requirements –

On pages OS-51-52 at the end of Project #54575 – IT Security, add the following:

“No employee or contractor of the Consumer Product Safety Commission may download or use TikTok or any successor application developed by ByteDance or any entity owned or controlled by ByteDance on any device issued by the Commission unless the use of the application is for compliance, enforcement, or product safety research related purposes and is consistent with appropriate IT security practices and applicable guidance from the appropriate U.S. Government national security agencies.”

On page OS- 47 at the end of “Overview and Priorities Activities, add the following:

“OCM is expressly prohibited from expanding its digital advertising to or maintaining a presence on TikTok.”

**Feldman 7 -- Limitations on Non-Mission Critical Expenses**

Purpose: To preserve CPSC resources for mission-critical matters and projects.

Staff shall, at the appropriate place, insert the following:

Limitation –

Any conference or other external program expenditures of \$5000 or more for any single conference or other external activity for CPSC staff attendance or participation shall be reviewed by and receive the written approval of the CPSC Executive Director. Such written approval shall include specific explanation and details regarding the need for and benefit of the conference to the Commission.

Any conference or other external program expenditure greater than \$25, not otherwise approved, shall require the written approval of an employee's supervisor.

Trumka Amendment 3: Address Hazards Associated with Gas Stoves

On page OS-26:

- Insert a new project description under “23336 – Combustion (Carbon Monoxide) Hazards: Rulemaking Activities” as follows:  
“XXXXX – Chronic Hazards: Rulemaking Activities: This project will address the health risks posed by gas stove emissions. In FY23, staff will prepare and submit to the Commission a Notice of Proposed Rulemaking for gas stoves.”

**On page OS-30, in the Mandatory Standards Table:**

- Insert a new row in the mandatory standards table under “Furnaces (CO Hazards)” and above “Imitation Firearms” as follows:

Gas Stoves (Indoor Air Quality)		NPR
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Trumka Amendment 3A: Address Hazards Associated with Gas Stoves

**On page OS-26:**

- Insert a new project description under “23336 – Combustion (Carbon Monoxide) Hazards: Rulemaking Activities” as follows:

“XXXXX – Chronic Hazards: Rulemaking Activities: By March 1, 2023, staff will prepare and submit to the Commission a Request for Information (RFI) to seek public input on hazards associated with gas stoves and proposed solutions to those hazards.”



Trumka Amendment 5: Continue to Be the Global Leader on Stringent Consumer Product Safety Rulemaking

**On page OS- 44:**

Below “FY 2023 Priority Activities:” insert a new bullet at the end of the list following “(2023OP119)” as follows:

“Coordinate with other federal agencies and international partners to monitor relevant international rulemakings regarding consumer product safety and hazardous substances. In a timely fashion provide information to the Commission regarding such rulemaking proceedings.”

Commissioner Boyle Operating Plan FY23 Amendment

**Boyle Amendment 2: To further infant safety as a top priority for the Commission and provide vital information to families, caregivers, and the public, the FY 23 Operating Plan shall be amended as follows:**

1. OS21: Revise bullet 6 to read, “Focus on hazards to children by conducting baby safety research and completing an NPR and FR on infant pillows and an NPR on nursing pillows.; Insert additional bullet: “Complete NPR/FR on battery ingestion.”
2. On OS25, revise Last sentence in Project 22727 to read, “This project includes submission to the Commission rulemaking initiatives, including but not limited to an NPR for nursing pillows and an NPR/FR for an infant pillow ban.” And on OS30: Under Rule Review, for Infant Pillow Ban replace NPR with NPR/FR.



UNITED STATES  
**CONSUMER PRODUCT SAFETY COMMISSION**  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

**Statement of Chair Alexander Hoehn-Saric on Passage of Operating Plan for Fiscal Year  
2023**

**October 26, 2022**

Today, on the eve of our agency's 50<sup>th</sup> anniversary, the Consumer Product Safety Commission approved our Operating Plan for Fiscal Year 2023. With this plan, we are charting ourselves an ambitious path to keep consumers safe in our second half century.

The CPSC is a small but mighty agency. We have a limited budget, with a vast jurisdiction over consumer products that can change rapidly and expand as new consumer products are introduced onto the market each year.

The work that was approved today is based on an assumption that the agency will operate through FY23 at the level of our Continuing Resolution of \$139.05 million. This is a number that forced us to make hard choices. I hope that we are simply being pessimistic, and that Congress will provide us with increased funds as the year continues. To that end, we have included in the plan a discussion of how we could spend additional funding up to the level of the President's Budget Request were it made available to us.

In the meantime, we are working with the funds that we have. With those funds, we plan to:

- **Strengthen safety standards for babies.** We will begin the rulemaking process to develop strong safety standards for nursing support pillows, bassinets, and infant rockers, propose changes to the infant pillow ban, and finalize a rule establishing safety standards for button cell batteries;
- **Address carbon monoxide poisoning.** We will issue final rules establishing safety standards for portable generators and for CO sensors on furnaces and boilers;
- **Conduct vigorous research.** The research agenda for FY23 includes examinations of hazards ranging from infant sleep products to organohalogen flame retardants to gas stoves and will continue to examine disparate safety impacts on vulnerable communities and other demographics including gender.
- **Improve public information sharing.** We will finalize a rule aimed at improving the agency's ability to share product hazard information with the public.
- **Strengthen import monitoring.** With a beta pilot and a notice of proposed rulemaking, we will move forward with our eFiling system, which will give the Commission greater

visibility over imports and improve our targeting to better stop hazardous products before they reach consumers' homes and store shelves.

While that work is going on, we will continue to prioritize enforcement of our laws. We will work with firms to conduct recalls, but where companies are unwilling to protect their own consumers, we will use all available authority to protect the public. We will continue our public communications efforts, working to further expand our reach so that all Americans – especially those in underserved communities – can be informed about recalls and other essential safety information. We will continue to improve the way recalls are conducted to make it easier for consumers to act and monitor e-commerce platforms to make sure recalled products are not being sold. And we will enforce our mandatory standards to ensure compliance both in stores and online.

The goals set forth in the operating plan are aggressive and the timetables are tight, but I believe that they are obtainable. They are not simply aspirational but provide a roadmap for the Commission, and if we fall short, it will not be for a lack of trying by staff, my fellow Commissioners, or myself. CPSC staff are the backbone of this agency. I am truly grateful for the work they do and am honored to be in the trenches with them fighting to make products safer for all Americans from infants to seniors.

Finally, I am pleased that this plan reflects my priorities as well as the priorities of my fellow Commissioners, each of whom had several of their amendments adopted into the plan. I look forward to working with them to put it into action.



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COMMISSIONER PETER A. FELDMAN

**STATEMENT OF COMMISSIONER PETER A. FELDMAN  
ON THE FISCAL YEAR 2023 OPERATING PLAN**

**OCTOBER 26, 2022**

Today, the Commission voted to approve its Operating Plan for Fiscal Year 2023 (FY23). While I am encouraged that this plan includes a number of my priorities, I voted not to approve the final plan, for several reasons, including the following. As I have [stated previously](#), the basis for our planning documents should provide a realistic blueprint for the future. Our Operating Plan should be tethered to the current fiscal reality and appropriations environment. This plan is not.

Last year, Congress considered and rejected the Commission's \$170 million proposal, and instead funded the Commission at \$139.05 million, nearly 20 percent below CPSC's request. For FY23, Congressional appropriators have already rejected the Commission's \$195.5 million request. Nevertheless, this plan is keyed to the \$195.5 million figure, which we will not receive. The plan's second funding scenario, flat funding pursuant to a continuing resolution, is also unlikely. Based on my experience, I anticipate funding somewhere between the House and Senate appropriations levels (\$166.3 million and \$153 million, respectively). Rather than approve a plan that fluctuates wildly between two unlikely funding scenarios, our operating plan should better reflect what we are likely to receive.

Further, safety standards should not create anti-consumer monopolies. Among other concerns with this plan, my amendment to collaborate with our federal antitrust authorities was not adopted. This would have used few resources and ensured that our standards work does not unintentionally raise prices and limit innovation.

Nevertheless, I am pleased that several of my amendments to protect consumers and strengthen the agency were adopted. These include:

- Building our compliance team, including new hiring authorities to increase our capacity;
- Highlighting the important work at our ports, including product seizures;
- Maintaining CPSC's enforcement focus against illegal liquid nicotine sales;
- Ensuring work to implement open GAO recommendations; and
- Protecting agency data and network assets from hostile foreign actors.

I appreciate the effort the Chairman, my fellow Commissioners, and agency staff have put into the FY23 Operating Plan. I look forward to working with my colleagues in the coming fiscal year to fulfill our mission as we implement this plan.



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## **COMMISSION COMMITS TO ACCELERATING SAFETY RULEMAKINGS AND ENFORCEMENT IN THE 2023 OPERATING PLAN**

**OCTOBER 26, 2022**

With the inclusion of the Commission's amendments, the 2023 Operating Plan moves CPSC further and faster than ever in its mission to protect people from dangerous products.

Being forced to choose among so many priority projects brought into focus just how much critical work this agency does. We reached consensus on pressing consumer safety issues, and it's a testament to the creative vision flowing from this Commission.

Priority activities now in the Operating Plan reflect my primary goals as Commissioner:

- Eliminating deaths associated with infant products;
- Transforming our work on chronic hazards and toxic chemicals;
- Expanding the reach of our communications, so we can get dangerous products out of homes as quickly as possible;
- Recalibrating our engagement with voluntary standards to make the most productive use of our agency's most valuable resource: our staff's time;
- Focusing on equity in product safety;
- Swiftly and meaningfully penalizing bad actors to deter future misconduct; and
- Speeding up rulemakings on high injury products.

My driving purpose as a consumer advocate is to get hidden hazards out of American homes. It is imperative that we devote as much time, energy, and resources as possible to regulating chronic hazards and toxic chemicals. The Commission adopted my amendment to move forward with public input on the hazard posed by gas stoves. And we adopted Commissioner Boyle's amendment to address PFAS in things like textiles, apparel, and children's products. We continue to be the global leader in consumer safety, but we have a lot of catching up to do on chemical regulation, so we amended our plan to track international standards so that we can build on them. CPSC will be at the forefront of addressing what I believe are the most dangerous hidden hazards of our time.

We commit to advancing equity in product safety. We are going to collect more injury data from traditionally underserved communities. And as we research racial and gender gaps in product safety, that information will guide our policy priorities.

One of my priorities for CPSC is to swiftly and effectively deter bad actors from selling consumer products that they know are dangerous. We have already increased our use of strong civil penalties. Today and with the adoption of my amendment, the Commission committed to streamlining its process of referring cases to the Department of Justice for criminal prosecution where appropriate. My amendment is a warning to the worst corporate offenders. We will not tolerate recklessness when it comes to safety, and we will punish those who would put profit over peoples' lives.

My amendments also speed rulemaking in several high priority areas. For example, we reached agreement to finalize regulation of the carbon monoxide poisoning risk posed by portable generators. And we are moving faster to address the fire risks of off-highway vehicles like side-by-sides and ATVs.

I would like to thank our hardworking staff for maximizing every dollar and hour to take care of American consumers. I am grateful for the collaboration of my fellow Commissioners. 2023 will be a very good year for safety.



UNITED STATES  
**CONSUMER PRODUCT SAFETY COMMISSION**  
4330 EAST WEST  
HIGHWAY BETHESDA, MD  
20814

**COMMISSIONER MARY T. BOYLE**

## **Commissioner Mary T. Boyle Statement on the Passage of the Fiscal 2023 Operating Plan**

**October 26, 2022**

Today, the Commission approved the Fiscal Year 2023 Agency Operating Plan, taking decisive action to expand the possibilities for safety work in the coming year. With a 3-1 vote, a clear majority supported the plan, which was enhanced by crucial amendments I offered to emphasize safety priorities that belong at the top of the agency's list: baby safety, senior safety, battery ingestion, and chronic hazards impacting children and families – both PFAS and gas stoves. My amendments called attention to underserved communities across the spectrum of our work, from data collection to communications, and urged increased attention to gender and age disparities. They also set an expectation that battery safety work should include a focus on other safety solutions, beyond packaging and warning labels, and directed staff to focus on civil penalties for those who jeopardize the safety of American consumers.

Finally, I was also pleased to support Commissioner Trumka's amendments pressing CPSC to move forward expeditiously with rulemaking on portable generators and off-highway vehicle (OHV) fire hazards, as well as the marker he set down, through development of a Request for Information, for CPSC to engage in a serious way in the coming year with the dangers of gas stove emissions. This is important work, and I appreciate his eloquent advocacy for consumers and his commitment to addressing the hidden hazards in our homes.

I was, however, disappointed that my amendment on baby safety was not adopted as part of the final Operating Plan. As I have done throughout my career at CPSC, today I advocated for infant safety as a top priority for the Commission. Through my amendment, I intended to emphasize the need for continued baby safety research should the agency receive additional funds, and to clarify the difference between nursing pillows and infant pillows—a point of confusion that was evident during our briefing on the Operating Plan.

Within this amendment, I asked my fellow Commissioners to support the goal of expediting our infant pillow rulemaking to a final rule that will update and clarify the scope of the existing ban. This proposal builds on staff work authorized in last year's Operating Plan. The market has changed over the last two decades, and this action is overdue. I included language



intended to remove artificial deadlines associated with rulemaking, endorsing the goal of a notice of proposed rulemaking (NPR) this year while signaling the need to continue working towards the earliest possible date for a final rule (FR) upon completion of the NPR. This is a paradigm shift from past years and was adopted elsewhere in the FY23 Plan.

Through my years at the agency, I know that what may seem impossible today may be possible tomorrow. It is for that reason I believe that operating plans should be living documents, in which we strive to make the impossible possible year after year—and an issue in which babies' lives are at stake should be at the top of our priority list.

Although I am disappointed, my message is clear. We need continued baby safety research. We need to live up to our commitment to protect infants, families, and caregivers, with up-to-date rules and reliable guidance on products on the market today. Baby safety is not just a women's issue, but in our society, women are by and large tasked with childcare and with choosing safe products to use. I am proud of CPSC's contributions, and I plan to continue to use my voice as a commissioner to press for progress and to set high expectations for protecting the vulnerable among us.

I want to thank staff for their conscientious efforts in putting together this document, and for the expertise they consistently bring to the work of implementing agency priorities. Finally, I also want to thank the Chair and my fellow Commissioners for their partnership.