



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
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**STATEMENT OF COMMISSIONER ELLIOT F. KAYE
ON THE APPROVAL OF THE FISCAL YEAR 2018 OPERATING PLAN**

December 14, 2017

I am pleased that the Commission recently voted 4–0 to approve the Operating Plan for Fiscal Year 2018, as amended. Every year the CPSC’s Operating Plan is completed because of all the hard work put in by our CPSC staff. The process starts months and months earlier at all the different division levels in gathering critical data. While all that hard work is not obvious to the public, it is certainly something that is appreciated and valued very much. The American public is the true beneficiary of all that great staff work. Thank you.

Also, I want to thank Acting Chair Ann Marie Buerkle for her leadership in coordinating and offering a manager’s package of amendments. The manager’s amendment, as well as my other amendments, are attached. It was truly the Commission at its best – working in a bipartisan way to address each Commissioner’s concerns. Specifically, I appreciate my colleagues’ support for all of the amendments that I offered, but in particular my amendments that created deliverables this Fiscal Year for our battery and Internet of Things work; that required CPSC staff to verify and validate work being done in the voluntary standards process on portable generators; that regularized and strengthened our transparency with respect to firms’ Monthly Compliance reports for Corrective Actions; and, once again, that clarified that the Commission will not support efforts to address fire safety in voluntary standards at the expense of increased exposure to toxic chemicals in furniture.

We have a clear responsibility to the American public to prioritize their products’ safety, first and foremost. This is an enormous responsibility borne by approximately 545 individuals at the agency. From cribs to playgrounds, furniture to batteries,

portable generators to window coverings – overall, the work outlined in our Fiscal Year 2018 Operating Plan pulls us closer toward the goal of fewer deaths and fewer injuries associated with consumer products.

However, I would like to note that I do see an ever-so-slight shift in our priorities in this year's Operating Plan. Less mandatory rulemaking and research on chronic hazards, and more resources for voluntary standards efforts and to train the regulated community. This drift away from safety is a disconcerting development.

The idea of economic development is a critical mission. It is just not the CPSC's mission. To paraphrase what former CPSC Commissioner Thomas Moore famously said a number of years ago, "We're not the Business Protection Bureau." I wholeheartedly agree with him. We're not an economic development council. That is a very valid, legitimate and important function for the United States government to pursue. However, those activities are just not what this Commission is supposed to be doing.

Let me be clear, I am not opposed to robust voluntary standards that set high safety standards or with providing the regulated community with necessary safety information and training. In fact, we need to leverage our limited resources and work with all our stakeholders to keep consumers safe. I support a world where consumer product safety problems are completely solved and solutions are implemented quickly without promulgating new safety regulations or commencing enforcement actions. But Congress in its wisdom gave us tools to address consumer product safety hazards because they believed a voluntary, self-regulatory system does not always provide adequate protections to the consuming public, and has often failed to do so. Congress's concerns remain valid today.

Every administration is entitled to pursue its own priorities, but our independent agency must still stay within the boundaries of the critical safety work that Congress charged us with doing. So I think it is worth those in Congress who pay attention to consumer safety issues and the media and the consumer groups and other stakeholders to keep us accountable. Help ensure that we stay true to the core safety mission that this agency was created to do.

Manager's Amendments to Staff Draft FY 2018 Operating Plan

1. Proposed Amendments to the Voluntary Standards Table:

- p. 6, in the Voluntary Standards Table, in #33 Crib Mattresses (include Supplemental Mattresses), add the words “and Aftermarket” after the word “Supplemental”.
- pp. 6-7, in the Voluntary Standards Summary Table, move #56 Furnaces (CO sensors) after #39 in the section in entitled, “Voluntary Standards Activities Related to Ongoing or Potential Rulemaking Activities.”

2. Proposed Amendments to the Mandatory Standards Table:

- p. 9, in the Mandatory Standards Table, add the phrase “/Crib Mattresses (include Supplemental and Aftermarket)” after the words “Consumer Registration Requirement for Crib Bumpers.”
- P. 9, in the Mandatory Standards Table, in the “Other Ongoing or Potential Rulemaking-Related Activities” section, add Organohalogen Flame Retardants and designate DA/TR in the FY 2018 column.

3. p. 10 – 19, Proposed Amendments to EXHR:

- p. 12, under “11179- National Electronic Injury Surveillance System (NEISS),” add the following language at the end of the section: “In FY 2018, CPSC plans to explore the collection of incident data to include the treatment of product-related injuries that are treated at urgent care centers. This project will provide the necessary foundation to further pursue this work in FY 2019.”
- p. 11, under “FY 2018 Priorities Activities,” add a new bullet point with the following language: “In FY 2018, CPSC staff will develop a plan to increase collaboration and coordination with all interested stakeholders, including domestic and foreign government partners, to address potential safety issues with IoT related products before they enter the marketplace.”
- p. 11, under “In FY 2018 Priority Activities,” add a new bullet point with the following language: “Explore and evaluate opportunities to cooperate with academic institutions researching global health incident data and healthcare spending, to enhance CPSC’s data collection and analysis and its evaluation of injury costs.”
- p. 14, under “21518 - Electrical Hazards: Voluntary Standards and Codes,” add the following at the end of the section, “In FY 2018, CPSC staff will submit to the Commission a report summarizing their work to-date, including any findings, as well as any recommendations for future work with respect to their efforts to address hazards associated with high-energy density batteries.”
- p. 14 -15, under “22637 – All Terrain Vehicles (ATV) Rulemaking Activities,” strike bullet point #2 and replace with the following bullet point, “continued technical work on passengers, stability and access by children in furtherance of mandatory rulemaking as required by the CPSIA.”
- p.15, under the project code 23259 – Chemical Hazards, Rulemaking Activities, add the following language in a separate paragraph beginning after the current final sentence: “This project also provides resources for the commencement of rulemaking activities relating to organohalogen flame retardant chemicals, including but not limited to, the development of a Chronic Hazard Advisory Panel (CHAP) as directed by the Commission at the September 20, 2017 meeting on Organohalogen Flame Retardants.

Staff will, in cooperation with the National Academies of Science (NAS), complete a scoping and feasibility study by March 1, 2018 of the direction given by the Commission at the September 20, 2017 meeting on Organohalogen Flame Retardants (“the Commission Direction on OFRs”) to convene a Chronic Hazard Advisory Panel (CHAP). Pursuant to the Commission’s preliminary assessment that OFRs as a class of chemicals may constitute a “hazardous substance” under the Federal Hazardous Substances Act (FHSA), the CHAP will identify and apply generally accepted scientific methodologies for assessing the toxicity of and exposure to OFRs as a class, consistent with the definitions set forth in the FHSA and the Commission Direction on OFRs, (including consideration that consumers are exposed not just to a single additive, but rather to mixtures of chemicals). Staff will focus its inquiries with NAS on two key points: 1) an assessment of the cost, timeframes, and approach of NAS assistance in the convening and administering of a CHAP as described above; and 2) any alternative approach, including associated costs and timeframes, to achieving such goals that NAS may offer.”

- p.15, under the project code 23259 – Chemical Hazards, Rulemaking Activities add the following language: “The project also includes staff engagement with stakeholders to understand current use of organohalogen flame retardants (“OFRs”) and alternatives to OFRs in electronics casings, including how the use or non-use of OFRs impacts fire safety.”
- p. 16, under “23335 – Combustion (Carbon Monoxide) Hazards: Voluntary Standards Activities,” add the following at the end of the section, “Specifically, in FY 2018, CPSC staff will evaluate the effectiveness of prototype portable generator CO detection and shut-down systems, including the effectiveness and reliability of these systems along with industry proposed shut-down thresholds, based on the hazard patterns from the death and injury incident data associated with these products.”
- p.16, add the following sentence under project code 23336 after the words “as appropriate”: “This project also provides resources for addressing potential rulemaking activities regarding the hazards of CO poisoning associated with furnaces.”

4. p. 20, Proposed Amendments to EXC:

- p. 20, under “FY 2018 Priority Activities,” at the end of bullet point #7 add the following language: “, including steps recalling firms can and should take.”

5. p. 31, Proposed Amendments to OCM:

- p. 31, under “FY 2018 Priority Activities,” move bullet #11 regarding micro targeting strategies up in the list making it bullet #4.
- p. 31, under “FY 2018 Priority Activities,” add a new bullet point with the following language: “Evaluate the effectiveness of one of the following CPSC campaigns: *Pool Safety*, *Anchor It*, or *Safe to Sleep*, including consumer recognition of the campaign, comprehension of the hazards and remedies, and behavior change as a result of the campaign using a nationally representative sample of at least 600 or more consumers from a stratified cross-section of regions.”

6. p. 35, Proposed Amendments to EXIT:

- p. 35, under "FY 2018 Priority Activities," move bullet #4 regarding cybersecurity to the top of the list making it bullet #1.
- p. 35, under "FY 2018 Priority Activities," add the following bullet point with the following language: "The Data Management Working Group will explore systems to aggregate and analyze external structured and unstructured data to enhance CPSC's ability to detect emerging hazards and the sale of noncompliant goods and recalled products and make recommendations as appropriate."

Commissioner Kaye Amendments to Staff Draft FY 2018 Operating Plan

1. p. 14, Proposed Amendment to EXHR:

- p. 14, under “21498 - Upholstered Furniture Flammability Rulemaking,” add the following at the end of the section, “While pursuing fire safety through voluntary standards efforts, staff shall support development of a voluntary standard that can be achieved without exposure to toxic chemicals either from the furniture itself or through combustion of the furniture.”

2. p. 20, Proposed Amendment to EXC:

- p. 20, under “FY 2018 Priority Activities,” add a new bullet point with the following language: “Publish Monthly Corrective Action Plan progress reports from recalling firms on a monthly basis to better inform consumers and other stakeholders about recall effectiveness.”

Commissioner Adler Motion Relating to FY 2018 Operating Plan

Direct staff to place activities related to the regulation of OFRs as identified in project code 23259, including but not limited to a CHAP as described in the Commission Direction on OFRs, as one of the top three priority issues for consideration to receive unexecuted funds at the 2018 Mid-Year decisional.