



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

MINUTES OF COMMISSION MEETING

May 22, 2019

Acting Chairman Ann Marie Buerkle convened the May 22, 2019, 10:00 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.

Decisional Matter: FY 2019 Mid-Year Review (Briefing package dated May 8, 2019)

After introducing the matter on the agenda, Acting Chairman Buerkle called for any questions for staff. Acting Chairman Buerkle advised that each Commissioner would have five minutes to ask questions of staff. Present to respond to questions were DeWane Ray, Deputy Executive Director for Safety Operations and Jay Hoffman, Director, Office of Financial Management. Additional staff were also available in the audience to answer questions should their expertise be needed. Acting Chairman Buerkle had no questions for staff and asked each Commissioner if they had any questions for staff. The Commissioners did not have any questions for staff.

Acting Chairman Buerkle then excused the staff and called for consideration of the Fiscal Year 2019 Mid-Year Review as proposed by staff as well as any amendments to the proposal.

At this time, Acting Chairman Buerkle introduced her amendment (Buerkle #1), which called for the removal of NCARES from the budget and for staff to reorder the remaining projects as categorized in the proposed amendment.

Acting Chairman stated that all of the Commissioners agreed to omit one project, NCARES, from the budget. The Chairman stated that with the removal of NCARES, it is highly likely that most of the projects identified in her amendment will be funded. Acting Chairman Buerkle stated that her amendment reflects a consensus among Commissioners with respect to the order of the projects listed in the table. Acting Chairman Buerkle then made a motion on her amendment and Commissioner Kaye seconded the motion.

The Commissioners moved to consideration of Acting Chairman Buerkle's amendment. Each Commissioner was recognized in order of seniority for questions. The Commissioners discussed the amendment.

Commissioner Baiocco proposed an amendment to Acting Chairman Buerkle's standing amendment. Commissioner Baiocco proposed that the "SafeProducts.gov Modernization" project be elevated from its current position of No. 9 in the table to No. 4. Acting Chairman Buerkle called for a second on Commissioner Baiocco's amendment. Commissioner Kaye seconded the motion. Commissioner Baiocco discussed the rationale for her amendment.

The Commissioners discussed Commissioner Baiocco's amendment. After multiple rounds of queries, Acting Chairman Buerkle called for additional questions regarding Commissioner Baiocco's amendment and hearing none, Acting Chairman Buerkle called for a vote on the amendment. The Commission voted (3-2) not to adopt Commissioner Baiocco's amendment. Acting Chairman Buerkle, Commissioners Adler and Kaye voted to not adopt the amendment. Commissioners Feldman and Baiocco voted to adopt the amendment.

Acting Chairman Buerkle then called for any additional questions regarding her amendment and hearing none, she called for a vote on the amendment. The Commission voted unanimously (5-0) to adopt Acting Chairman Buerkle's amendment.

Acting Chairman Buerkle called for any other amendments. Commissioner Adler introduced a joint amendment with Commissioner Kaye, (Adler/Kaye #1). Commissioner Adler described and read the amendment into the record. The amendment called for listing Children's Clothing Storage Unit Tip-Overs DA/TR (Data Analysis / Technical Review) for consideration under Section 104. Acting Chairman Buerkle seconded the motion.

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

Acting Chairman called for any other amendments. Commissioner Kaye introduced a joint amendment with Commissioner Adler (Kaye/Adler #2). Commissioner Kaye described and read the amendment into the record. The amendment directs staff to include the following footnote to any voluntary standard participation or rulemaking goals that are currently delayed: *"As of May 2019, the Commission does not believe its goal will be met by the end of the fiscal year."* Commissioner Kaye advised that the purpose of this amendment is to provide further transparency to the public by denoting those goals in the FY 2019 Operating Plan that staff is currently able to identify as work that will not be completed at the fiscal. The Acting Chairman seconded the motion.

The Commission discussed the amendment and Commissioner Adler discussed his rationale for the joint amendment. Acting Chairman Buerkle called for additional questions and hearing no further discussions, called for a vote on the amendment. The Commission voted (4-1)

to adopt the amendment. Commissioners Adler, Kaye, Baiocco and Feldman voted to adopt the amendment. Acting Chairman Buerkle voted to not adopt the amendment.

Acting Chairman Buerkle called for any other amendments. Commissioner Kaye offered a joint amendment with Commissioner Adler (Kaye/Adler #3). Commissioner Kaye described and read the amendment into the record. Commissioner Kaye advised that this amendment directs staff to implement a three-prong approach to protect consumers from hazards associated with infant inclined sleep products. It would require staff to: 1) develop voluntary standards for infant inclined sleep products; 2) survey the market place for infant inclined sleepers; and 3) identify infant inclined sleep products at import to determine and take appropriate action if these products pose a hazard. Acting Chairman Buerkle seconded the motion.

The Commission discussed the amendment. After considerable discussions, Acting Chairman Buerkle called for additional questions regarding the amendment and hearing none, called for a vote on the amendment. The Commission voted (2-0-2) not to adopt the amendment. Acting Chairman Buerkle and Commissioner Feldman voted not to adopt the amendment. Commissioners Adler and Kaye voted to adopt the amendment. Commissioner Baiocco abstained from voting.

Acting Chairman Buerkle called for any other amendments. Commissioner Kaye introduced a joint amendment with Commissioner Adler (Kaye/Adler #4). Commissioner Kaye read the amendment into the record and described the amendment which directs staff to include ROV injury and deaths data in the annual ATV report. Acting Chairman Buerkle seconded the motion.

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

Acting Chairman Buerkle called for any other amendments. Commissioner Kaye introduced a joint amendment with Commissioner Adler (Kaye/Adler #5). This amendment directs staff to work with ASTM voluntary standards committees with the goal of developing robust test methods that would anticipate worst-case scenarios with respect to furniture tip-over. Commissioner Feldman seconded the motion.

The Commission discussed the amendment. After discussions, Acting Chairman Buerkle called for any additional questions and hearing none, called for a vote on the amendment. The Commission voted (4-1) to adopt the amendment. Commissioners Adler, Kaye, Baiocco and Feldman voted to adopt the amendment. Acting Chairman Buerkle voted not to adopt the amendment.

Acting Chairman Buerkle called for any other amendments. At this time, Commissioner Adler briefly discussed an amendment that he considered proposing at this meeting but decided to withdraw the amendment.

Acting Chairman Buerkle called for any other amendments or motions. Commissioner Baiocco offered a motion for “the Commission to approve the agency to work with a detailee from the DOJ, FBI or other governmental agency with appropriate expertise and knowledge to assist, inform and advise the Commission on matters pertaining to the Clearinghouse Breach...” in accordance with the specifics outlined in the amendment. The motion was seconded by Commissioner Kaye.

Commissioner Adler requested an adjournment of the meeting for one hour in order to allow sufficient time for him to evaluate Commissioner Baiocco’s amendment. Acting Chairman Buerkle asked for any objections to taking a break for one hour to assess the motion from Commissioner Baiocco. Commissioner Baiocco objected to the adjournment.

Acting Chairman Buerkle recommended that the meeting continue and if after further discussions, Commissioner Adler still needed additional time to consider Commissioner Baiocco’s amendment, then she will adjourn the meeting for an hour. Commissioner Feldman seconded the motion to continue with the meeting.

The Commission proceeded to discuss Commissioner Baiocco’s amendment. After extensive discussions about the amendment, Acting Chairman Buerkle suggested that Commissioner Baiocco’s motion be tabled to allow additional review and evaluation by the Commissioners. Commissioner Adler seconded Acting Chairman Buerkle’s motion to table the motion. The Commissioners voted unanimously (5-0) to adjourn the meeting. Acting Chairman Buerkle adjourned the meeting at 11:30 a.m. and stated that the meeting will resume at 1:00 p.m. for additional discussion.

Acting Chairman Buerkle reconvened the public meeting of the CPSC Mid-Year Review Plan and resumed the issue on the table.

Commissioner Baiocco introduced a revised version of her original motion. Acting Chairman Buerkle informed Commissioner Baiocco that her original motion is still on the table. Commissioner Baiocco then withdrew her original motion and read her revised motion into the record. Commissioner Feldman seconded the motion. The Commission continued their discussion of Commissioner Baiocco’s motion.

Commissioner Adler offered four amendments to Commissioner Baiocco’s motion. In the interest of time, Commissioner Adler requested that his amendments be considered simultaneously. Acting Chairman Buerkle seconded the four amendments.

The Commission discussed Commissioner Adler’s amendments. Acting Chairman Buerkle called for additional questions regarding Commissioner Adler’s amendments and hearing none, called for a vote on the amendments. The Commission voted (3-2) not to adopt Commissioner Adler’s amendments. Commissioners Kaye, Feldman and Baiocco voted not to adopt the amendments. Acting Chairman Buerkle and Commissioner Adler voted to adopt the amendments.

Acting Chairman Buerkle then called for any questions on Commissioner Baiocco's motion. Hearing none, Acting Chairman Buerkle called for a vote on the amendment. The Commission voted (3-2) to not adopt the motion. Acting Chairman Buerkle, Commissioners Adler and Kaye voted not to adopt the motion. Commissioners Feldman and Baiocco voted to adopt the motion.

Acting Chairman Buerkle called for any other motions or amendments and hearing none, called for a vote on the Mid-Year Review Plan as amended. The Commission voted unanimously (5-0) to adopt the Mid-Year Plan as amended.

The Chairman called for any closing remarks from the Commissioners. The Commissioners did not make any closing remarks. There being no other business, Acting Chairman Buerkle then concluded and adjourned the meeting at **1:40 p.m.**

**Attachments: Commission Adopted Amendment (Proposed by Acting Chairman Buerkle)
Commission Adopted Amendments (Proposed by Commissioners Kaye and Adler #2, #5)
Proposed Amendments by Commissioners Kaye and Adler (#1, #3, and #4 not adopted)
Proposed Amendment by Commissioner Baiocco (not adopted)
Proposed Amendments by Commissioner Adler (#1, #2, #3, and #4 not adopted)**

For the Commission:

Abioye E. Mosheim,
Assistant General Counsel o/b/o
Alberta Mills, Secretary

Buerkle amendment No 1:

In Table 1 on page 1, strike MidYear item No. 3 (NCARES), and reorder the remaining rows as follows:

MY#	PROJECT TITLE	AMOUNT
1	Enterprise Data Analytic Strategy- IT Assessment	\$750
2	Enterprise Data Analytic Implementation –Pilot Study to Use Machine Learning/AI	\$700
3	eCommerce Concept of Operations (CONOPS)	\$225
4	IoT Lab at NPTEC	\$75
5	Business Process review for IT Modernization of Integrated Field System	\$ 350
6	ATV Stability and Rollover - Occupant Protection Device (OPD) Design Concepts	\$695
7	Gas Appliances CO Sensors – Effectiveness of Shut-off Devices	\$150
8	Lithium Ion Batteries	\$170
9	SaferProducts.gov Modernization	\$590
10	Child Strength Measurement – Quantitative Analysis of Postural Data	\$100
11	Smoke and CO Sensor Alarm Local Codes – Cities in the Alarm Operability Survey	\$150
12	Safe Sleep Initiative	\$100
	Total	\$4,055

Commissioners Kaye and Adler Amendment to the FY 19 Midyear Review

2. In furtherance of safety and providing additional transparency and data to the public, the FY 2019 Operating Plan shall be amended as follows:
 - p. 5 -9, under the Voluntary Standards Summary Table and the Mandatory Standards Table, staff is directed to include the following footnote for any voluntary standard participation or rulemaking goals that are currently delayed:

“As of May 2019, the Commission does not believe its goal will be met by the end of the fiscal year.”

Commissioners Kaye and Adler Amendment to the FY 19 Midyear Review

5. In furtherance of addressing the hazards associated with furniture tip-overs, the FY 2019 Operating Plan shall be amended as follows:

- p. 16, under project “#22667 – Mechanical Hazards: Rulemaking Activities (General Use Products),” add the following at the end of the project description:
“Staff shall work with ASTM voluntary standards committees on the applicable furniture tip-over related standards to develop a better performance requirement that prevents furniture tip-over in worst-case scenarios. This work shall include updating the test weight and working to develop better, more dynamic test methods that mimic real-life scenarios including replicating the forces seen as a child climbs on a drawer. Staff shall work to develop test methods that account for the weight of 95th-percentile children of the oldest reported child victim age, always using the most current weight data; the full extension of multiple drawers that are realistically weighted with reasonably foreseeable loads; reasonably foreseeable dynamic impulses observed in stepping onto an elevated surface, such as those recorded in previous CPSC studies of oven stability; and the effects of carpeted surfaces with carpet tack strips under the back legs of a dresser. Surrogate methods could be used to address these parameters. A dynamic approach could be used as the basis for a static test.”

Commissioners Kaye and Adler Amendment to the FY 19 Midyear Review

1. On p. 9, in the Mandatory Standards Summary Table, under the category entitled "CPSIA, as amended by Pub. L. No. 112-28, and including Section 104 of the CPSIA," add the following:

	FY 2019 Op Plan
Children's Clothing Storage Unit Tip-Overs (section 104)	DA/TR

Commissioners Kaye and Adler Amendment to the FY 19 Midyear Review

3. In furtherance of the safety of infant inclined sleep products, the FY 2019 Operating Plan shall be amended as follows:
- p. 15, under project “#22560 – Children’s /Nursery Product Hazards: Voluntary Standards,” add the following at the end of the project description:
“In FY 2019, staff is directed to work with the ASTM Infant Inclined Sleep Products subcommittee to develop performance requirements consistent with peer-reviewed, evidence-based infant safe sleep practices to eliminate the hazard patterns associated with inclined sleepers, such as roll-over suffocation.”
 - p. 21, in Compliance Operating Plan Details, under “FY 2019 Priority Activities,” add the following bullet point:
“Survey the marketplace for infant inclined sleep products and, as appropriate, seek corrective action with respect to those products that pose a safety hazard to infants.”
 - p. 26, in Import Surveillance Operating Plan Details, under “FY 2019 Priority Activities,” add the following bullet:
“Work with compliance staff to identify infant inclined sleep products at import and, as appropriate, seek corrective action with respect to those that pose a safety hazard to infants.”

Commissioners Kaye and Adler Amendment to the FY 19 Midyear Review

4. In furtherance of safety and providing additional transparency and data to the public, the FY 2019 Operating Plan shall be amended as follows:
 - p. 15, under project “#22637 – All-Terrain Vehicles (ATVs): Rulemaking activities,” strike the first bullet under “FY 2019 activities under this project include:” and replace with the following bullet:

“Annual ATV death and injury data update report, with data on ATV deaths, by state; relative risk of death, by year; injuries distributed, by year; and age grouping. In addition, the annual ATV report shall include Recreational Off-highway Vehicle (ROV) injuries and deaths.”

COMMISSIONER BAIOTTO'S MOTION REGARDING A DETAILEE

I MOVE THE COMMISSION TO APPROVE THE AGENCY TO WORK WITH A DETAILEE FROM THE DOJ, FBI, OR OTHER GOVERNMENTAL AGENCY WITH APPROPRIATE EXPERTISE AND KNOWLEDGE TO ASSIST, INFORM AND ADVISE THE COMMISSION ON MATTERS PERTAINING TO THE CLEARINGHOUSE BREACH AS DESCRIBED BELOW

1. The Detailee shall be approved by the full Commission and shall start immediately.
2. The Detailee shall review and investigate the circumstances that gave rise to the breach and evaluate the steps taken to date by the Agency and will take in the future to address the situation.
3. The Detailee shall brief the Commission on a regular basis as requested by the Commission. Any briefing, or portion thereof, shall be public if deemed necessary by the Commission and consistent with all applicable law.
4. The Detailee shall notify the Commission of any legal interpretations by the Office of the General Counsel that the Detailee deems relevant to his/her responsibilities, functions or recommendations. Consistent with its authority, the Commission shall have final say on any legal determinations or interpretations associated with this matter.
5. The Detailee shall report his/her initial findings to the Commission and advise the Commission on any and all recommendations on how to proceed.
6. The Detailee shall also advise the Commission on how best to address and fully inform those impacted, directly or indirectly, by the breach.
7. The Detailee shall have the full cooperation of the Agency staff, the members of the Breach Response Team and any and all Agency employees who are working on the matter.

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ADLER AMENDMENT TO BAIOTTO PROPOSAL

At the end of paragraph 1, insert the following language –

No Detailee shall be appointed until the CPSC Inspector General has completed and submitted his report pertaining to the Clearinghouse Data Breach.

ADLER AMENDMENT TO BAIocco PROPOSAL

At the end of paragraph 1, add the following sentence –

Prior to undertaking any review by the Detailee, he or she, after consultation with the Commission, shall submit a detailed work plan for the investigation, which shall be approved by the full Commission, and which shall include –

- a). a detailed list of agency resources that the Detailee plans to use in the investigation,
- b) the approximate number of CPSC staff that the Detailee plans to interview,
- c) the time line that the Detailee believes it will take for the investigation,
- d) the nature of any final report that the Detailee plans to submit to the Commission

ADLER AMENDMENT TO BAIOTTO PROPOSAL

At the end of paragraph 3, add the following sentence –

Prior to any report by the detailee in a public forum, the detailee shall certify in writing that the materials he or she will be discussing will not violate any provision of the law, including section 6(b) of the Consumer Product Safety Act.

ADLER AMENDMENT TO BAIOTTO PROPOSAL

At the end of paragraph 7, add the following sentence –

The Detailee shall not have the authority to direct any CPSC staff member to undertake any assignment that will require more than two hours of the staff member's time without the approval of the full Commission.