



**THIS MATTER IS NOT SCHEDULED FOR A BALLOT VOTE
A DECISIONAL MEETING FOR THIS MATTER IS SCHEDULED ON:
May 22, 2024**

TO: The Commission
Alberta E. Mills, Secretary **DATE:** May 1, 2024

THROUGH: Jessica Rich, General Counsel

FROM: Austin C. Schlick, Executive Director

SUBJECT: Fiscal Year 2024 Proposed Operating Plan
Alignment and Midyear Review

The attached memorandum summarizes staff's recommendations for the Fiscal Year 2024 Proposed Operating Plan Alignment and Midyear Review. A briefing on this matter is scheduled for May 8, 2024, with a decisional meeting scheduled for May 22, 2024.

Please indicate your vote on the following options:

- I. Approve FY 2024 Midyear Review, as drafted.

(Signature)

(Date)

- II. Approve FY 2024 Midyear Review, with the following specified changes.

(Signature)

(Date)



III. Do not approve FY 2024 Midyear Review.

(Signature)

(Date)

IV. Take other action specified below.

(Signature)

(Date)

Attachment: Executive Director’s Memorandum: Fiscal Year 2024 Proposed Operating Plan Alignment and Midyear Review



United States
Consumer Product Safety Commission

May 1, 2024

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Jessica Rich, General Counsel

FROM: Austin C. Schlick, Executive Director

SUBJECT: Fiscal Year 2024 Proposed Operating Plan Alignment and Midyear Review

At the start of fiscal year (FY) 2024, the President's Budget, which requested \$212.6 million and 687 full-time equivalents (FTEs) for CPSC, was pending before Congress. Due to uncertainty surrounding annual appropriations, the Commission approved the FY 2024 Operating Plan on November 8, 2023, with two funding scenarios: a Debt Ceiling Level and a Current Services Level.

- For the baseline Debt Ceiling Level, the Operating Plan reduced agency-wide spending to reflect a lower appropriation of \$151.0 million in FY 2024, as well as to fund the expected 5.2% pay raise in 2024 and other higher expenses.
- For the alternative Current Services Level with a \$162.2 million appropriation, the Operating Plan authorized staffing at 585 FTEs and directed staff to restore identified reductions that were taken to achieve the Debt Ceiling Level of spending.

On March 23, 2024, the President signed into law H.R. 2882, the Further Consolidated Appropriations Act, 2024, which funds CPSC at \$150.975 million. This is down from \$152.5 million in FY 2023 and virtually identical to the Debt Ceiling Level in the Operating Plan. As foreseen in the Operating Plan, the combination of a lower Congressional appropriation, government-wide pay-raise, and increased costs for purchasing and contracts, does not allow continuation of all CPSC's programs at the FY 2023 level.

Furthermore, the Commission has been able to productively use most of the funds provided in the American Rescue Plan Act of 2021 (ARPA). Under the FY 2024 Operating Plan, up to \$11.1 million of ARPA funding is expected to be used this year, leaving less than \$1 million remaining at the start of FY 2025.

Staff recommends using this midyear review to ensure CPSC lives within its reduced FY 2024 appropriation, to position the agency for the upcoming exhaustion of ARPA funds, and to prepare the agency for the possibility of constrained annual appropriations in future years. Specifically, staff makes four recommendations:

1. Align the funding and staffing levels in the FY 2024 Operating Plan with CPSC's recently enacted annual appropriation;

2. Use the small amount of anticipated available funds achieved through projected operational savings during the fiscal year—expected to total approximately \$2.9 million—to support the highest-priority projects that were to be funded in the Current Service Level scenario (subject to actual availability of funds);
3. Conform the Mandatory Standards Summary Table in the FY 2024 Operating Plan to intervening developments since the plan was adopted; and
4. Address a deficiency in the current performance measure for recall effectiveness (KM2.3.1).

These recommendations are explained below.

RECOMMENDATION #1: Align the Operating Plan with CPSC’s Enacted Appropriation

As noted, Congress enacted a \$150,975,000 annual appropriation for CPSC in FY 2024, which is \$1.525 million below the FY 2023 appropriation. The enacted appropriation designates \$2 million of no-year funds for both the Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act and the Virginia Graeme Baker Pool and Spa Safety Act grant programs and associated administrative costs, leaving \$146.975 million for other operations.

To align the FY 2024 Operating Plan with the enacted appropriation and the draw-down of CPSC’s ARPA funding, and given the possibility of continued constrained appropriations in future years, staff requests Commission authorization for the Executive Director to implement voluntary personnel measures to maintain staffing levels within the limits of available funding without applying the 585-FTE level in Budget Tables 1 and 2 of the Operating Plan, which is based on the Current Services Level funding scenario.

RECOMMENDATION #2: Restore Projects Using Realigned Funds as Available

Attachment A to this memorandum is staff’s restoration list of highest-priority projects that were to be funded in the FY 2024 Operating Plan’s Current Services Level, and were not able to be funded in the Debt Ceiling Level scenario. The list also includes two newly identified, high-priority equipment requirements at the Laboratory, should adequate funding become available. Funds for the restorations of funding will be obtained primarily from anticipated lower staff levels. Further funding could become available from un-executable contracts, or expenditures for specific projects that are less than the budgeted amount. The actual amount of available funds at year end is likely to be in the \$2.9 million range. This is significantly less than the \$4.4 million total cost of the potential projects listed in Attachment A and is adequate to fund only Projects 1-10.

RECOMMENDATION #3: Update Mandatory Standards Summary Table

Staff has evaluated progress in implementing the FY 2024 Operating Plan and identified recommended changes to the Commission-approved Mandatory Standards Summary Table (pages 15-16). First, staff recommends changing the action for *104-Rule Updates for Firmness (Infant Carriers)* from “NPR” to “DA/TR”. The majority of infant carrier products are combination car seat/carriers for which the National Highway Traffic Safety Administration recently adopted new performance requirements that have not yet been implemented. 88 Fed. Reg. 84,514 (Dec.

5, 2023). Most of the other infant carriers covered by this table item are combination stroller/carrier products that are expected to be addressed with the stroller standard (DA/TR in FY 2024). Accordingly, staff believes it would be premature to propose rule revisions for infant carriers this fiscal year.

Staff also recommends the following conforming changes to the Mandatory Standards Summary Table:

- *Infant Support Cushions*: To reflect action already taken by the Commission in FY 2024, change “FR” to “NOA, FR”;
- *Nursing Pillows*: To reflect action already taken by the Commission in FY 2024, change “FR” to “NOA, FR”;
- *PPPA Exemption Petition*: To reflect action already taken by the Commission in FY 2024, change “DA/TR” to “FR”;
- To reflect action already taken by the Commission in FY 2024, add: *104-Standards Revision (Swings)*—DFR; and
- To reflect action already taken by the Commission in FY 2024, add: *Portable Fuel Containers Safety Act (Standards Revision)*—DFR.

Attachment B shows these proposed changes.

RECOMMENDATION #4: Adjust Performance Measure KM2.3.1

Staff proposes a change to FY 2024 performance measure KM2.3.1 assessing recall effectiveness. Current KM2.3.1 reports the aggregated recall effectiveness rate for all consumer recalls, with a target of 33 percent. Results are calculated by dividing the total number of corrections for all recall cases closed in a fiscal year (after the monitoring period ends), by the total number of recalled products for all the closed cases. Under the current calculation, one or two recalls with large numbers of affected products can dominate calculation of the metric for the entire year, while recalls with small numbers of affected products are nearly immaterial to the measured performance. This creates significant performance fluctuations year-to-year and arguably does not fairly present the effectiveness of staff’s work overall. For example, the [2017 recall of 37.8 million Kidde fire extinguishers](#) closed in fiscal year 2022, when it represented nearly two-thirds of all recalled units and largely determined the final correction rate.

The proposed revised metric is average correction rate for all consumer product recalls, with a target of 43 percent. The proposed revised metric, determined by calculating the average correction rate for all recalls closed in the fiscal year, would be a less variable and more representative measure, as shown below:

Year	Correction Rate (Current Calculation)	Average Correction Rate	Total Number of Products Recalled
FY23	24%	45%	14,536,091
FY22	16%	41%	58,604,008
FY21	33%	49%	6,361,170
FY20	33%	47%	16,265,365
FY19	19%	44%	39,127,404

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Staff appreciates the Commission's consideration of these recommendations to help CPSC advance its consumer product safety mission as much as possible within severely constrained funding. Tables describing staff's recommended restorations and mandatory standard project changes are attached.

Attachment A: Recommended Restorations

Staff proposes to restore funding to the recommended projects in the following order, subject to available unexecuted balances and acquisition feasibility. Currently staff anticipates funding availability of approximately \$2.9 million, equivalent to Projects 1-10.

Rank	Org	Project Title	Funding (in \$000's)	Description
1	EXHR	Lab Exhaust	\$375	Replace deteriorated Large Fire Lab (123A) exhaust system used for testing including mattress compliance. [Need identified since FY 2024 Operating Plan.]
2	EXIT	Help Desk (July 1, 2024-June 30, 2025)	\$431	Continue current level of Help Desk support, including onsite staff and support software. Failure to restore would reduce Help Desk capabilities by 50% (e.g., 6 contract staff reduced to 3). Lesser restorations would allow commensurate service levels; restoring \$145K would fund Help Desk functions at 2/3 of current level (e.g., 6 contract staff reduced to 4).
3	EXHR	Lab Equipment, Maintenance, and Supplies	\$193	Replace specialized equipment (e.g., microwave digester used for identifying lead and other metals in plastics and glass, which is no longer supported by its manufacturer); make backlogged building and equipment repairs; purchase lab supplies and consumables.
4	EXIT	Cyber Security (July 1, 2024-June 30, 2025)	\$303	Maintain cyber incident response and investigation capabilities at current staffing level (1 of 2 authorized positions). Failure to fund this position creates vulnerability to cyberthreats.
5	EXIT	Web NEISS O&M (current contract expires Sept 2024)	\$326	Maintain response/resolution capabilities for NEISS application issues and restore capability to develop new a Web NEISS application. Failure to restore would reduce contract staff from 2 to 1. Restoring \$164K would allow 1.5 contract staff.
6	EXHR	Project Support (FY 2024)	\$434	NEISS investigations for bikes and scooters (\$100K); market research for eBike mechanical hazards rulemaking (\$100K); DC load equipment for lithium ion battery testing (\$14K); misc. fire, electrical, mechanical, and combustion projects.
7	EXIT	Website O&M (current contract expires Aug 2024)	\$303	Continues current level of contract staff for cpsc.gov web postings, content remediation (reviewing PDFs, webpages, and other digital assets to apply tags and metadata to make the content more searchable and to return more relevant results), user support, system updates, and security patches. Failure to restore would reduce contract staff from 3.5 to 2.5 and could lessen website functionality. Restoring \$150K would allow 3 contract staff.

8	EXHR	DART-MS	\$250	Lifecycle replacement of 2012 Direct Analysis in Real Time Mass Spectrometry unit that is no longer supported by manufacturer. Replacement will have improved resolution/sensitivity for compliance, rulemaking, and standards activities, enhanced features, and a new vacuum system for easier maintenance. [Need identified since FY 2024 Operating Plan.]
9	EXHR	Chemical Hazards Rulemaking Support (FY 2024)	\$225	Document a process for scoping boundaries of class-based assessments for PFAS and emerging chemicals of concern, to determine if known chemical-product hazard patterns could extend to other similar chemicals or consumer products.
10	EXRM	Agency-Wide Training (FY 2024)	\$31	Enable project management and contracting officer representative training (\$13K), Small Agency Council management training (\$10K), Managing People training (\$5K), and Decision Making training (\$3.8K).
11	EXIT	Data Lake (Sept 30, 2024-Sept 29, 2025)	\$200	Restore contract staffing to 3 (from 2) to avoid delaying work including report and data migration. Restoring \$100K would allow 2.5 contract staff.
12	EXHR	EXHR Staff and Standards Support (FY 2024)	\$391	Restore 38% reduction in technical and project management training, journal subscriptions, professional development, and standards development support.
13	EXHR	Data Collection and Studies (FY 2024)	\$227	Develop and update product population and life expectancy information for Commission rulemakings.
14	OCM	Campaigns (Sept 1, 2024-Aug 29, 2025)	\$810	Restore 57% reduction to vendor contract for social media, video media tours, video of fireworks, and Pool Safety web support.

Attachment B: Changes to Mandatory Standards Summary Table

Items by Major Categories		FY 2024 Op Plan	FY 2024 Op Plan Revised
CPSIA, as amended by Pub. L. No. 112-28, and including Section 104 of the CPSIA			
104-Rule Updates for Firmness (Infant Carriers)		NPR	DA/TR
Infant Support Cushions (<i>Previously "Infant Pillow Ban"</i>)		FR	NOA, FR
Nursing Pillows		FR	NOA, FR
104-Standards Revision (Swings)			DFR
Petitions			
PPPA Exemption Petition		DA/TR	FR
Other Ongoing or Potential Rulemaking-Related Activities			
Portable Fuel Containers Safety Act (Standards Revision)			DFR