



## U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY  
BETHESDA, MARYLAND 20814-4408

### MINUTES OF COMMISSION MEETING

August 31, 2016

Chairman Elliot F. Kaye convened the August 31, 2016, 10:00 a.m., meeting of the U.S. Consumer Product Safety Commission in open session. Commissioners Robert S. Adler, Marietta S. Robinson, Ann Marie Buerkle and Joe P. Mohorovic were in attendance.

Decisional Matter: Regulatory Agenda and Plan for Fall 2016  
(Briefing package dated August 24, 2016, OS No. 3719)

After introducing the matter and making an opening statement, Chairman Kaye asked questions of the staff. Patricia Adkins, Executive Director, DeWane Ray, Deputy Executive Director for Safety Operations, George Borlase, Assistant Executive Director for Hazard Identification and Reduction, and Patricia Pollitzer, Assistant General Counsel for Regulatory Affairs, responded to the questions. Chairman Kaye called for any opening statements or questions. The Commissioners made opening statements and asked questions of the staff.

Chairman Kaye called for motions for amendments. Commissioner Buerkle moved that the Regulatory Agenda and Plan for Fall 2016 be amended to change the Agenda Review Report entry for Voluntary Recalls Notices to provide a date of September 30, 2017 for the final rule briefing package. Commissioner Mohorovic seconded the motion. Commissioner Buerkle explained the purpose of the amendment and the Commission discussed the amendment. After the discussion, Chairman Kaye called for a vote on the matter. The Commission voted (4-1) to not adopt Commissioner Buerkle's motion and amendment. Chairman Kaye, Commissioner Adler, Commissioner Robinson and Commissioner Mohorovic voted to not adopt Commissioner Buerkle's amendment. Commissioner Buerkle voted to adopt Commissioner Buerkle's amendment.

Chairman Kaye called for any other motions for amendments. Commissioner Buerkle moved that the Regulatory Agenda and Plan for Fall 2016 be amended to change the Agenda Review Report entry for Regulation on Information Disclosure Under Section 6(b) to provide a date of September 30, 2017 for the final rule briefing package. Commissioner Robinson seconded the motion. Commissioner Buerkle explained the purpose of the amendment and the Commission discussed the amendment. After the discussion, Chairman Kaye called for a vote on the matter. The Commission voted (4-1) to not adopt Commissioner Buerkle's motion and amendment. Chairman Kaye, Commissioner Adler, Commissioner Robinson and Commissioner Mohorovic voted to not adopt Commissioner Buerkle's amendment. Commissioner Buerkle voted to adopt Commissioner Buerkle's amendment.

Chairman Kaye called for any other motions for amendments. Commissioner Mohorovic moved that the Regulatory Agenda and Plan for Fall 2016 be amended to add to the Regulatory Plan certain projects, specifically, Window Coverings, Phthalates, Table Saws, Portable Generators and Rule Review of Flammability (Open Flame) of Mattress Sets. Commissioner Buerkle seconded the motion. Commissioner Mohorovic explained the purpose of the amendment and the Commission discussed the amendment. After the discussion, Chairman Kaye called for a vote on the matter. The Commission voted (3-2) to not adopt Commissioner Mohorovic's motion and amendment. Chairman Kaye, Commissioner Adler and Commissioner Robinson voted to not adopt Commissioner Mohorovic's amendment. Commissioner Buerkle and Commissioner Mohorovic voted to adopt Commissioner Mohorovic's amendment. (The proposed amendment not adopted is attached.)

Chairman Kaye called for any other motions for amendments. Commissioner Mohorovic moved that action on the Regulatory Agenda and Plan for Fall 2016 be deferred, that the Executive Director with other offices be directed to evaluate the items in the Regulatory Agenda Fall 2016 to identify an items that the Executive Director does not believe the agency can reasonably anticipate achieving the stated action within the next 12 calendar months. The motion further called for the evaluation to be completed by September 1, 2016 and to reschedule the Regulatory Agenda Fall 2016 for a vote by ballot on September 2, 2016. Commissioner Buerkle seconded the motion. Commissioner Mohorovic explained the purpose of the amendment and the Commission discussed the amendment. After the discussion, Chairman Kaye called for a vote on the matter. The Commission voted (3-2) to not adopt Commissioner Mohorovic's motion and amendment. Chairman Kaye, Commissioner Adler and Commissioner Robinson voted to not adopt Commissioner Mohorovic's amendment. Commissioner Buerkle and Commissioner Mohorovic voted to adopt Commissioner Mohorovic's amendment. (The proposed amendment not adopted is attached.)

Chairman Kaye called for other amendments or discussion. Hearing none, Chairman Kaye moved for final passage of the staff drafted Regulatory Agenda and Plan for Fall 2016, as drafted. Commissioner Adler seconded the motion. The Commission voted (3-2) to approve the draft Regulatory Agenda and Plan for Fall 2016, as drafted. Chairman Kaye, Commissioner Adler and Commissioner Robinson voted to approve the Regulatory Agenda and Plan for Fall 2015, as drafted. Commissioner Mohorovic and Commissioner Buerkle voted to not approve the Regulatory Agenda and Plan for Fall 2016.

Chairman Kaye called for any closing statements. The Commissioners each made closing statements. There being no other business, Chairman Kaye adjourned the meeting at 12:40 a.m.

For the Commission:



Todd A. Stevenson  
Secretary

Attachments: Changes Proposed by Commissioner Mohorovic (Not Approved)

Motion #2 by Commissioner Mohorovic  
Regulatory Agenda Fall 2016

Regulatory Plan: Window Coverings, Phthalates, Table Saws, Portable Generators, & Mattress Flammability (Open Flame) Rule Review

**Motion – CLEARED FOR PUBLIC RELEASE**

Commissioner Mohorovic moves that the Commission direct staff, prior to submission of the Regulatory Agenda Fall 2016 to the Office of Information and Regulatory Affairs (OIRA), to amend said Regulatory Agenda as necessary to add the following items to the Commission's Regulatory Plan:

- 1. Window Coverings: A coalition of organizations petitioned the Commission to request that the Commission promulgate a mandatory standard that: (a) prohibits any window covering cords, if a feasible cordless alternative exists, and (b) for those instances where a feasible cordless alternative does not exist, requires that all cords be made inaccessible through the use of passive guarding devices. The Commission published in the Federal Register an Advance Notice of Proposed Rulemaking on January 16, 2015. The Commission's regulatory proceeding could result in several actions, including a mandatory standard requiring that window coverings meet mandatory requirements specified in the standard.*
- 2. Phthalates: Under Section 108 of the Consumer Product Safety Improvement Act, the Commission must promulgate a rule based upon the report of a Chronic Hazard Advisory Panel (CHAP) on phthalates in children's toys and child care articles. The CHAP's report included a novel approach for cumulative risk evaluation. The Commission published in the Federal Register a Notice of Proposed Rulemaking on December 30, 2014. The Commission published in the Federal Register a Notice of Availability of updated exposure estimates on June 23, 2015. The Commission's regulatory proceeding could result in the banning as a hazardous product of any children's toy or child care article containing one or more accessible phthalates.*
- 3. Table Saws: Under Section 9 of the Consumer Product Safety Act, the Commission may set mandatory product safety standards for any product within its jurisdiction as necessary to address an unreasonable risk of injury or death that is not adequately addressed by a substantially adopted voluntary safety standard. The Commission is considering regulating table saws under this provision to address the risk of lacerations, amputations, and other serious injuries from blade contact. The Commission's regulatory proceeding could result in a mandatory standard requiring that table saws meet mandatory requirements specified in the standard, such as inclusion of technology designed to sense and prevent blade contact.*

Motion #2 by Commissioner Mohorovic  
Regulatory Agenda Fall 2016

Regulatory Plan: Window Coverings, Phthalates, Table Saws, Portable  
Generators, & Mattress Flammability (Open Flame) Rule Review

4. *Portable Generators: Under Section 9 of the Consumer Product Safety Act, the Commission may set mandatory product safety standards for any product within its jurisdiction as necessary to address an unreasonable risk of injury or death that is not adequately addressed by a substantially adopted voluntary safety standard. The Commission is considering regulating portable generators under this provision to address the risk of toxic carbon monoxide inhalation. The Commission's regulatory proceeding could result in a mandatory standard requiring that portable generators meet mandatory requirements specified in the standard, such as inclusion of technology designed to limit the amount of carbon monoxide produced by portable generators.*
  
5. *Rule Review of Flammability (Open Flame) of Mattress Sets: Under the Regulatory Flexibility Act, the Commission is presently conducting a ten-year review of its rule governing the Flammability (Open Flame) of Mattress Sets under the Flammable Fabrics Act (FFA). The Commission's regulatory proceeding could result in changes to that rule or other rules on related subjects, such as a strengthening of performance requirements or the elimination of duplicative regulations.*

Motion #3 by Commissioner Mohorovic  
Regulatory Agenda Fall 2016

Unified Agenda: Staff Review

**Motion – CLEARED FOR PUBLIC RELEASE**

Commissioner Mohorovic moves that the Commission:

1. Defer action on the Regulatory Agenda Fall 2016;
2. Direct the Executive Director, in consultation with the Associate Executive Director for Hazard Identification and Reduction and the Office of General Counsel, and such other staff offices as the Executive Director sees fit, to
  - a. evaluate the items presently indicated by the Regulatory Agenda Fall 2016 to be published in the forthcoming Unified Agenda prepared by the Office of Information and Regulatory Affairs;
  - b. identify any items among the group specified in paragraph 2(a) for which, after such consultation, the Executive Director does not believe the agency can reasonably anticipate achieving the stated action within the next 12 calendar months; and
  - c. present to the Commission, not later than 5:00 p.m. on Thursday, September 1, 2016, a revised Regulatory Agenda Fall 2016 reflecting that all agenda items identified in paragraph 2(b) have been marked as Long-Term Actions; and
3. Reschedule the Regulatory Agenda Fall 2016 for a vote by ballot to be due by 10:00am on Friday, September 2, 2016.