



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

MINUTES OF COMMISSION MEETING

October 10, 2018

Acting Chairman Ann Marie Buerkle convened the October 10, 2018, 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: Fiscal Year ("FY") 2019 Operating Plan (Briefing package dated September 19, 2018)

After introducing the matter, Acting Chairman Buerkle introduced staff members present and called for any questions from staff. Present to respond to questions were DeWane Ray, Deputy Executive Director for Safety Operations, Dr. George Borlase, Assistant Executive Director, Hazard Identification and Reduction, Jay Hoffman, Director, Office of Financial Management and James Baker, Director and Budget Officer, Procurement and Budget Services. The Acting Chairman 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 Operating Plan as proposed by staff as well as any amendments to the Operating Plan as it was proposed. Acting Chairman Buerkle offered a Manager's Amendment that, for the sake of convenience and in the spirit compromise, contained five amendments combined into a Manager's Amendment from the Commissioners. The Chairman then recognized Commissioner Adler and Commissioner Kaye as generating the ideas in the amendments and recognized all five offices in working together in developing language that all the Commission could support. Acting Chairman Buerkle then advised Commissioners Adler and Kaye that they could take up to three minutes to explain their portion of the Manager's Amendment.

Commissioner Adler introduced his amendment (number five) and, after welcoming the new Commissioner Feldman, explained his amendment. Commissioner Adler read his amendment into the record. Commissioner Adler discussed the rationale for his amendment related to voluntary standards activity and the addition of a full-time employee to support voluntary standards coordination.

The Chairman then recognized Commissioner Kaye, who welcomed Commissioner Feldman, and then described and explained his respective portions of the Manager's Amendment. Chairman Kaye described and explained the proposed change in the Manager's

Minutes of CPSC Decisional Meeting October 10, 2018; Fiscal Year ("FY") 2019 Operating Plan

Amendment to the Operating Plan relating to window coverings, a status report on the Internet of Things, and a proposal that Compliance staff provide a summary to the Commission of its evaluation of the Fast Track Program and its plan to evaluate Recall Effectiveness.

Acting Chairman Buerkle asked for a second to the Manager's Amendment and Commissioner Baiocco seconded the motion. The Acting Chairman described her support for Commissioner Adler's amendment. Acting Chairman Buerkle recognized Commissioner Adler who then described his support and recognized the Acting Chair and Commissioner Kaye. Acting Chairman Buerkle then recognized Commissioner Kaye who had no further comment. Acting Chairman Buerkle then recognized Commissioner Baiocco who described her support for the Manager's Amendment on all five points and described her concern on Commissioner Adler's amendment. Acting Chairman Buerkle then recognized Commissioner Feldman who described his support for the Manager's Amendment and Commissioner Adler's language in the amendment but also raised his concerns.

After the discussion, and before calling for a vote, Acting Chairman Buerkle offered a technical change to Item No. 5 of the Manager's Amendment, to change this portion to read in part "The Executive Director **should allocate...**" in lieu of "The Executive Director **shall reallocate...**" Acting Chairman Buerkle asked for any objections to this change and hearing none and no further comments on the Manager's Amendment called for the vote. The Commission voted unanimously (5-0) to adopt the Manager's Amendment. The adopted amendment is attached.

Acting Chairman Buerkle called for any additional amendments to the FY 2019 Operating Plan. Commissioner Kaye was recognized and he introduced and described his amendment to have staff expand on the agency's current annual All-Terrain Vehicle (ATV) report to include statistics on death and injuries for Off-Highway Vehicles (ROVs). Acting Chairman Buerkle asked for a second on Commissioner's Kaye's amendment. Commissioner Adler seconded the motion. The Commission then considered Commissioner Kaye's amendment. Each Commissioner was recognized and discussed their position on the proposed amendment. After the discussion, Acting Chairman Buerkle called for a vote on the amendment. The Commission voted (3-2) to not adopt Commissioner Kaye's amendment. Acting Chairman Buerkle, Commissioner Baiocco and Commissioner Feldman voted not to adopt Commissioner Kaye's amendment. Commissioner Adler and Commissioner Kaye voted to adopt Commissioner Kaye's amendment.

Acting Chairman Buerkle then called for any other motions or amendments. Commissioner Kaye was recognized and described his motion to set a firm deadline on an NPR on Gates in the Operating Plan. Commissioner Kaye explained the purpose of his motion. Commissioner Kaye moved to direct staff to submit to the Commission "a Notice of Proposed Rulemaking proposing a mandatory consumer product safety standard for Gates and Other Enclosures under and consistent with section 104 of the Consumer Product Safety Improvement Act of 2008" within 180 days of the Commission approval of the Fiscal Year 2019 Operating Plan. The Chairman sought a second of Commissioner Kaye's motion. Commissioner Adler seconded the motion. Acting Chairman Buerkle then recognized each Commissioner who discussed their respective position on the motion. Acting Chairman Buerkle, sought and having

Minutes of CPSC Decisional Meeting October 10, 2018; Fiscal Year ("FY") 2019 Operating Plan

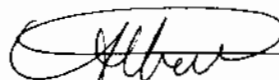
heard no further questions, called for a vote on the motion. The Commission voted (4-1) to not adopt the motion. Acting Chairman Buerkle, Commissioner Adler, Commissioner Baiocco and Commissioner Feldman voted not to adopt Commissioner Kaye's motion. Commissioner Kaye voted to adopt the motion.

Acting Chairman Buerkle then called for any other amendments or motions on the Fiscal Year 2019 Operating Plan. Having heard no further amendments or motions, the Acting Chairman then turned to consideration of the Fiscal Year 2019 Operating Plan as amended. Acting Chairman Buerkle first called for any other comments by fellow Commissioners on the Fiscal Year 2019 Operating Plan and hearing none called the vote on the Fiscal Year 2019 Operating Plan as amended. The Commission voted (4-1) to adopt the Fiscal Year 2019 Operating Plan as amended. Acting Chairman Buerkle, Commissioner Adler, Commissioner Baiocco and Commissioner Feldman voted to approve the Fiscal Year 2019 Operating Plan as amended. Commissioner Kaye voted not to approve the Fiscal Year 2019 Operating Plan as amended.

Acting Chairman Buerkle then proceeded to closing remarks. She informed Commissioners they would have up to 10 minutes per Commissioner for closing remarks. Acting Chairman Buerkle provided her closing remarks and then recognized each Commissioner. Commissioner Adler, Commissioner Kaye, Commissioner Baiocco and Commissioner Feldman each gave brief closing remarks.

There being no other business, Acting Chairman Buerkle then concluded and adjourned the meeting at 10:55 a.m.

For the Commission:



Alberta E. Mills
Secretary

Attachments: **Adopted Manager's Amendment**
Amendment Proposed by Commissioner Kaye (Not Adopted)
Statement of Acting Chairman Buerkle
Statement of Commissioner Kaye
Statement of Commissioner Feldman

10/10/2018

Manager's Amendment to the FY 2019 Operating Plan (to be offered by Acting Chairman Buerkle)

1. On p. 9, in the Mandatory Standards Summary Table under Other Ongoing or Potential Rulemaking-Related Activities, add "DA/TR" for Window Coverings in the FY 2019 Op Plan column.
2. On p. 13, under project "#13327 – Emerging Hazards," after the words "as well as related wearable products, and 3-D printing." add the following: "In FY 2019, staff will provide the Commission with a status update on its current progress on IoT-related work."
3. On p. 24, under project "#34382 – Fast Track Program," after the words "In FY 2019, staff will evaluate the program" add the following: "and provide a summary of its evaluation to the Commission."
4. On p. 24, under project "#34789 – Recall Effectiveness," add the following at the end of the section: "Staff will provide a summary of its plan to the Commission."
5. The Executive Director shall allocate one *additional* full-time employee to support the Voluntary Standards activity and coordination work in EXHR. In addition to providing support for ongoing voluntary standards activities, this FTE shall assist the Voluntary Standards Coordinator in an ongoing assessment of the Commission's voluntary standards activities and future needs of the voluntary standards program. The additional FTE will be funded by reducing the funding in project 23704 Nanotechnology to account for the additional FTE. Budget Table 2 shall be updated to reflect the offset in Nanotechnology and EXHR's FTE of 160 and the total FTE to 539.

Commissioner Kaye Motion to the Draft FY 19 Operating Plan

Motion – Gates

No later than 180 days after the Commission approves the Fiscal Year 2019 Operating Plan, staff shall provide to the Commission for its consideration a Notice of Proposed Rulemaking proposing a mandatory consumer product safety standard for Gates and Other Enclosures under and consistent with section 104 of the Consumer Product Safety Improvement Act of 2008.

Commissioner Kaye Amendment to the Draft FY 19 Operating Plan

In furtherance of providing additional transparency and data to the public, the FY 2019 draft Operating Plan shall be amended as follows:

Amendment to the Hazard Identification Operating Plan Details: pgs. 11-20

- 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 Off-Highway Vehicle (ATV and ROV) death and injury data update report, with data on ATV and ROV deaths, by state; relative risk of death, by year; injuries distributed, by year; and age grouping; and”



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

ACTING CHAIRMAN ANN MARIE BUERKLE

Please let me begin by expressing my gratitude to the staff for all of their efforts in putting together the FY 2019 Operating Plan. In particular, I want to thank Mary Boyle, DeWane Ray, Monica Summit, George Borlase, Jay Hoffman, James Baker, and the Office of Financial Management. Distilling everything this agency does into a single document is not an easy task, and I truly appreciate all of the time, attention, and work across directorates that went into developing this year's operating plan. I am proud of the job that was done by staff and even more proud of the course we have laid out for CPSC this fiscal year.

As I mentioned at the beginning of this hearing, we have just welcomed our fifth Commissioner. A new group of Commissioners, but one with the same mission of keeping consumers safe from unreasonable risks of injury or death. I reject any hint or suggestion that safety is in jeopardy because there is a new majority. We are still the Consumer Product Safety Commission. We still have the same responsibilities to carry out, the same laws and regulations to enforce. As with any change in any administration, it is reasonable to expect that there will be different ideas, approaches, and policies. How we accomplish things may change, but the goal of safety remains the same.

While we Commissioners may not always agree on policy or the approach to take, I believe we all share the same purpose – to keep consumers safe. We will have policy disagreements, but I hope that we will find ways to agree – and when we cannot, that in the words of my friend Commissioner Adler, “we can find ways to disagree without being disagreeable.” Safety is not and must not be a political issue.

I think this Operating Plan is a case in point. We did not agree on everything, but we found areas to compromise on, adding some fine points to staff's already solid proposal. This ops plan is a robust and accurate portrayal of the work staff will conduct this fiscal year--work that truly enhances consumer safety.

This FY 2019 Operating plan reflects my priorities--the same priorities I've highlighted since I arrived at the Commission in July 2013.

I believe we are most effective in carrying out our safety mission when we focus on:

1. identifying highest priority risks and emerging hazards;
2. improving import surveillance;
3. enhancing the Agency's data capabilities;
4. strengthening collaboration, education, and outreach.

Risk

I believe we carry out our mission effectively by ensuring that our resources are dedicated to the highest priority risks and that we focus on emerging technologies and how the application of such technologies could promote or harm safety.

With the advancement of new technologies and innovations, the consumer product landscape is changing. What types of products consumers want, how those products are powered, and where those products are purchased is evolving rapidly. It is therefore critical that CPSC remains highly engaged on issues related to the Internet of Things and connected products, lithium-ion batteries, and e-Commerce.

However, dedicating valuable resources with risk in mind does not mean just focusing on new products. It means working to solve longstanding issues as well. I am eager to see the fruits of staff's labor on the issues of furniture tipovers and portable generators. These are highly complex, at times controversial issues that we will continue to vigorously address. Staff is doing significant work in both of these areas. I am hopeful their efforts will result in safer standards, whether they be voluntary or mandatory. It is important to note that their work is necessary to inform either option.

An important determinant of risk is exposure, and I believe we need to do a better job of accounting for exposure as we evaluate risks and establish priorities. Last year, our professional staff proposed an initiative, known as "NCARES," to capture exposure information for a range of consumer products. I supported the staff's initiative in the 2018 Mid-Year request, but it did not win support from the then-existing majority. Admittedly, the price tag was somewhat steep. I do not see how we can make intelligent, informed decisions without factoring exposure into our calculus. I hope the new Commission will give this renewed consideration in due time. This is a key reason I voted against Commissioner Kaye's amendment. As I said earlier, in principle, I support expanding the ATV annual report to include Recreational Off-Highway Vehicles (ROVs). I would like to hear from staff regarding whether it should be a joint

or separate report. However, unless we are prepared to undertake the expense of an exposure study, I do not believe we can make a useful determination of the relative risk for these different vehicle classes.

Import Surveillance

One of the best ways to keep unsafe products out of consumers' hands is to keep them from entering the U.S. marketplace altogether. It is important for CPSC to remain vigilant in monitoring the safety of imported products by nurturing our excellent working relationship with Customs and Border Patrol as well as making incremental improvements to our Import Surveillance program when.

Data

CPSC is a data-driven agency and it is important that we continue to enhance our own data and technology to keep up with the changing times. In particular I am pleased to see us taking a critical look at saferproducts.gov to see what improvements may be necessary to make it more prominent, functional, and user-friendly.

In addition to assessing current systems like saferproducts.gov, we must continue working to expand the sources from which we receive data as well as the types of data we receive. It is also important to focus on improving our capabilities to analyze the data we receive so that it can be used to identify and assess emerging hazards, inform compliance decisions and voluntary standard work, and be utilized for rulemaking when appropriate. Scientific integrity, reliable data, and a sound process are paramount in all that we do to fulfill our mission of safety. I am pleased to see these areas highlighted in the operating plan and consider them essential in accomplishing our mission.

Collaboration, Education, & Outreach

CPSC has jurisdiction of more than 15,000 types of consumer products. We are a small agency with a very big mission. It is unrealistic to think we can execute our mission effectively without collaborating with all stakeholders. Engagement with manufacturers, retailers, consumer advocates, other government agencies, academia, and other stakeholders helps enhance consumer safety.

Education and outreach should be an important focal point of the agency. Increasing consumer awareness of potential hazards as well as publicizing safety solutions

through information and education campaigns, such as our Pool Safely, Anchor It!, and Safe Sleep campaigns, will have a positive impact.

As we speak, Hurricane Michael is soon to make land fall. Across this agency and all across the nation CPSC staff is working aggressively with others to raise awareness about the dangers.

Education is not exclusive to consumers though. Part of our mission of safety should be better education of the regulated community on how to best comply with our rules and regulations. If we can inform industry as to our interpretations of safety requirements, best practices, the importance of managing supply chains, and being engaged with CPSC, we can help design safety into products.

One key area that we continue to collaborate with stakeholders on is recall effectiveness, which is another long-standing, challenging issue. Our staff will continue to dedicate time and resources to find a more effective and efficient recall process that informs consumers of unsafe products. There is, unfortunately, no quick fix to remedying this problem. It will take time, but this is a priority issue for me and the CPSC staff.

The future of CPSC is bright. Our mission remains clear, and this Operating Plan reflects that. The 2019 Operating Plan prioritizes the key areas of risk, emerging hazards, data, import surveillance, and standards development. It strives for regulatory excellence, strengthens our agency, and enhances consumer safety.

Thank you again to the staff for all of your work and to my fellow Commissioners for their support.



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814**

**STATEMENT OF COMMISSIONER ELLIOT F. KAYE
ON THE PASSAGE OF THE FISCAL YEAR 2019 OPERATING PLAN**

October 16, 2018

On October 10, 2018, in a vote of 4 to 1, the Commission approved an Operating Plan for Fiscal Year 2019. Although the Operating Plan contained many important safety initiatives that I agree the CPSC should undertake this fiscal year, I was unable to support it in its final form because it fell short in a few key areas.

As I considered the draft Operating Plan, I tried to work within the framework as presented to the Commission and offered amendments with the following goals in mind:

- **First, increasing *transparency and accountability*** of the CPSC to the American public, given our vital mission to keep people safe;
- **Second, measuring the agency's progress with *explicit deliverables and milestones*** and clear communication of our plans, our strategies, and our goals as we pursue this important mission; and
- **Third, enhancing our risk assessments and policy decisions with *better data and information*.**

I am pleased that some of the amendments that I offered to provide increased transparency, clearer deliverables, and enhanced data were incorporated to some extent into a Manager's Amendment offered by Acting Chairman Buerkle and supported by all of my colleagues, including these changes:

- **Window Coverings:** The mandatory standards chart in the Operating Plan was revised to more accurately reflect that there is ongoing data analysis and technical review work being done at the staff level on the window coverings standards. Every month, approximately one child dies and another suffers near strangulation after becoming entangled in a window covering cord. Cordless options are currently available and can be functional, attractive and affordable. Although some retailers are committed to selling only cordless options, certain types of window coverings with hazardous cords are still available for purchase. This change reflects the fact that staff will continue its work in FY 2019 to ensure that window covering standards address the strangulation hazards associated with *all* window coverings.
- **Internet of Things:** The Operating Plan was revised to reflect that staff will provide the Commission with a status report on staff's work on the Internet of Things (IoT) in FY 2019. With the rapidly increasing popularity and complexity of Internet-connected devices, the CPSC must have a clear plan with timelines and deliverables to get ahead of any emerging hazards within our jurisdiction. Product designers need to be aware of the capabilities of every component of their final product and predict unintentional uses and intentional misuses that could lead to foreseeable hazardous conditions. We need to continue collaborating and working with stakeholders and other agencies on these issues. However, that alone is not a path forward, nor does it provide much transparency for the public into what our agency is doing to address this issue. This change to the Operating Plan will require staff to provide the Commission with a clear deliverable outlining their current progress on IoT-related work. Although it was not specified in the Manager's Amendment, I am hopeful that staff will provide as a part of their status report any associated timelines for future work, including if possible a list of strategies for preventing potential safety issues.
- **Fast Track and Recall Effectiveness Programs:** The Operating Plan was revised to reflect that staff will provide the Commission with summaries of their evaluation of the fast track program and their plan to improve recall effectiveness. I believe this will provide additional transparency and accountability as staff evaluates and works on improving these programs.

I am grateful to my colleagues for supporting my amendments in the Manager's package. In particular, I would like to express my appreciation to Acting Chairman Buerkle for her leadership in putting together the Manager's Amendment and her

continued commitment to finding compromise among the Commissioners. However, I was disappointed that we could not reach agreement on all of the changes that I proposed, including the following changes that were not adopted:

- **Publishing ROV Death and Injury Data:** I proposed that death and injury data for recreational off-road vehicles, commonly known as ROVs or side-by-sides, be added to the Commission's existing annual death and injury data report for all-terrain vehicles, or ATVs. Off-highway vehicles, including ROVs and ATVs, are among the most dangerous consumer products within the CPSC's jurisdiction. At least one study has suggested that ROV sales have quadrupled from 2000 to 2015 and that fatal crashes have increased drastically.¹ Providing the public with the death and injury data on ROVs that we currently collect is an important first step in better understanding the hazards and evaluating trends associated with off-highway vehicles.
- **Deadline for Gates and Other Enclosures NPR:** I offered a motion to set a firm deadline for moving ahead with a Notice of Proposed Rulemaking (NPR) on Gates and Other Enclosures. Simply put, I proposed a clear "pencils down" deadline. This project was already listed as an NPR in the Operating Plan, so the motion would have simply provided a firm deadline for completion of staff's work (no later than six months from passage of the Operating Plan).

There is no safety justification to wait any longer than six months to send the NPR to the Commission for its consideration. Staff has raised the issue of push-out forces in the ASTM meetings at various meetings during the last *three years*. Meanwhile, in 2016, there were an estimated 2,900 emergency department-treated injuries associated with baby gates involving children younger than 5 years old. This is an increase from the previous year. Five deaths occurred between 2011 and 2014.²

To be clear, this is not a rulemaking that requires universal agreement on a voluntary standard. Under Section 104 of the Consumer Product Safety Improvement Act, Congress only required the Commission to "consult" with various stakeholders and "examine and assess the effectiveness of" any relevant

¹ Richardson, RE, McMurtry, TL, Gepner, B, Kerrigan, JR (2018). Field data analysis of recreational off-highway vehicle crashes. Traffic Injury Prevention. Sep 27:1-6. doi: 10.1080/15389588.2018.1470326.

² Chowdhury, RT (2017). Injuries and deaths associated with nursery products among children younger than age five. U.S. Consumer Product Safety Commission. https://www.cpsc.gov/s3fs-public/Nursery-Products-Annual-Report-2017_0.pdf?iVo_dIqsrTuWAep2RzahKbFcsiCfXZhK

voluntary standard, and promulgate a rule that is substantially the same as that voluntary standard or more stringent than the voluntary standard if the Commission determines that more stringent standards would further reduce the risk of injury. Through its work in the voluntary standards setting for the past three years, staff has done just that and has a recommended approach that would further reduce the risk of injury beyond the existing voluntary standard. Therefore, we should move forward as soon as possible and publish an NPR for public comment. An NPR does not bind the Commission. If the voluntary standard changes in the next year, then those changes can be addressed through the rulemaking process. Although my motion failed, my hope is that the staff will nevertheless send up an NPR within the next six months.

My vote against the Operating Plan for FY 2019 should not be viewed as a vote against staff's work or the work of the agency. In fact, I think we are not giving staff and our agency enough credit. I believe that there is more that we can be doing to advance our safety mission even with the extremely limited resources that we have.

The CPSC's annual Operating Plan is a vehicle for progress in advancing our mission of safety, saving lives and preventing injuries - a mission that makes working here so meaningful.

We can and should sharpen our hazard identification datasets to enhance the speed with which we find potential problems in the marketplace. But we also need to strike a careful balance between rigorous data collection and delay and over-analysis. I could not support delaying rules or protracted technical reviews when the hazard mitigation strategies are already well-known, they are available and there are no legal impediments to moving forward.

My hope is that we will continue to aim to be transparent and accountable to the public regarding our efforts to advance safety. And most importantly, I hope that we can reach a little bit more for safety and dream a little bit bigger for a safer world. We are capable of that and the public is counting on us to do it.

Statement on the Fiscal Year 2019 Operating Plan
Commissioner Peter A. Feldman
October 10, 2018

I would like to take a moment to express my gratitude to Chairman Buerkle and to my fellow commissioners for the warm welcome I have received at the Consumer Product Safety Commission (CPSC).

Today is my third day on the job, and we have wasted no time getting down to business. I am pleased to be voting today on an Operating Plan that sets out clear priorities for the agency, among other things, to focus resources on the highest-priority consumer product safety risks, and to emphasize collaboration, education, and outreach by engaging all stakeholders.

I am impressed with the work staff has done in putting together this document, and also with how my colleagues have worked together to reach bipartisan consensus reflecting the priorities of all five Commissioners.

I look forward to working with everyone to find common ground to address these important safety issues.

The final product is forward looking in many respects.

Before joining CPSC, I stated my belief that the agency must do more to address the role of online platforms and to improve the quality of the data on which it most frequently relies.

With respect to online platforms, I am pleased that among the Fiscal Year 2019 priority activities included in this plan is an evaluation of e-commerce platforms to analyze potential options to monitor the marketplace effectively for emerging hazards.

With respect to data quality, I am pleased that this plan seeks to improve the Office of Hazard Identification and Reduction's data analytics capabilities by expanding the use of advanced analysis software tools and seeking additional data sources that can signal emerging hazards, including evaluating whether CPSC should expand its data collection to include urgent care centers.

Thank you to our dedicated staff in preparing this document and I look forward to working with all of you.