



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action Commissioners Voting by Ballot*

Commissioners Voting: Acting Chairman Robert S. Adler
 Commissioner Elliot F. Kaye
 Commissioner Dana Baiocco
 Commissioner Peter A. Feldman

ITEM:

CPSC Fiscal Year 2022 Performance Budget Request to Congress
(Briefing package dated May 12, 2021, OS No. 0060)

DECISION:

Acting Chairman Adler and Commissioner Baiocco voted to approve the FY 2022 performance budget request to Congress, as drafted.

Commissioner Kaye voted to take other action as follows: "Approve the FY 2022 performance budget request to Congress, with changes specified in Attachment A if supported by a majority. If a majority does not approve the FY 2022 performance budget request to Congress, with changes specified in Attachment A; then approve the FY 2022 performance budget request to Congress, as drafted. A majority vote was not reached for Attachment A.

Commissioner Feldman voted to not approve the FY 2022 performance budget request to Congress. Commissioner Feldman filed a statement with his vote.

As a result of Commissioner Kaye's contingent vote, the Commission voted (3-1) to approve the FY 2022 performance budget request to Congress as drafted.

For the Commission:

Alberta E. Mills
Secretary

*Time critical ballot vote due May 18, 2021

Attachments:

Amendments from Commissioner Kaye (Attachment A – FY 2022 Performance Budget Request) – **Not adopted**
Statement from Commissioner Feldman

Attachment A

Commissioner Kaye Amendments to the FY 2022 Performance Budget Request

Staff is directed to make following changes to the “Summary of Changes.”

1. On page 4, under “Changes to Program,” strike initiative entitled, “Enhance Communications (+\$1.6 million),” and replace with the following:
 - **Enhance Communications (+\$0.6 million):** The agency requests an additional \$0.6 million to enhance communications efforts alerting consumers, especially those who are disadvantaged and underserved, to the dangers of portable fuel containers, carbon monoxide (CO) poisoning, portable generators, and other high-risk consumer products. Two FTEs were funded with ARPA funds in FY 2021, and we seek to include funding for those 2 FTEs in this budget request.
2. On page 4, under “Changes to Program,” add the following initiative:
 - **Vigorous Compliance (+\$1.0 million):** The agency requests an additional \$1.0 million for increased defect investigation capabilities and civil penalty enforcement. There is a significant need to increase the agency’s investigative capacity through the addition of a cadre of trained investigators. An expanded investigative staff would enable product investigations to occur more expeditiously. With regard to penalty enforcement, CPSC Compliance attorneys perform both compliance enforcement work and civil penalty work related to violative or defective products in the marketplace. Civil penalty work is time consuming and the agency lacks sufficient resources to pursue the full volume of potential penalty cases. Additional civil penalty staff would allow the agency to work on a faster timeframe. The agency’s ability to move more quickly on both these fronts is vital to removing defective products from the marketplace and deterring bad actors.

On page 41, under “Appendix A: Unfunded Priorities,” staff is directed to reduce the total amount for the initiative entitled, “Vigorous Compliance,” by \$1.0 million for a total of \$4.8 million instead of \$5.8 million.

On page 27, staff shall amend the Mandatory Standards Table of the proposed Fiscal Year 2022 Performance Budget Request as follows:

1. Under the category entitled, “Other Ongoing or Potential Rulemaking-Related Activities,” strike “DA/TR” for “Off-Highway Vehicle (OHV) Fire and Debris

Attachment A

Commissioner Kaye Amendments to the FY 2022 Performance Budget Request

Penetration Hazards” and replace with “NPR” in the “FY 2022 Request” column.

2. Under the category entitled, “Other Ongoing or Potential Rulemaking-Related Activities,” add a new line entitled “Batteries, Ingestion (Button/Coin Cell),” with “NPR” in the “FY 2022 Request” column.
3. Under the category entitled, “Other Ongoing or Potential Rulemaking-Related Activities,” add a new line entitled “Liquid Laundry Packets,” with “NPR” in the “FY 2022 Request” column.
4. Under the category entitled, “Other Ongoing or Potential Rulemaking-Related Activities,” add a new line entitled “Adult Portable Bed Rails,” with “NPR” in the “FY 2022 Request” column.

Staff is also directed to make any additional conforming changes throughout the FY 2022 Performance Budget Request as needed to comply with these amendments, including but not limited to any conforming changes to the proposed appropriations language, executive summary, budget discussion and tables.



UNITED STATES
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COMMISSIONER PETER A. FELDMAN

**STATEMENT OF COMMISSIONER PETER A. FELDMAN ON THE
FISCAL YEAR 2022 PERFORMANCE BUDGET REQUEST TO CONGRESS**

May 18, 2021

Today, the Commission is considering the Fiscal Year 2022 Performance Budget Request to Congress. I vote not to approve. Undoubtedly, staff worked hard on this Budget, and I thank them for their work. Unfortunately, the Acting Chairman, rather than collaborating with his colleagues, is presenting us with a take-it-or-leave-it offer. On top of that, the Acting Chairman is using our expedited approval process, limiting debate and frustrating the ability of Commissioners to offer and consider individual amendments. This is not how a collegial, well-functioning body should operate. Given our after-the-fact input on this year's mid-years one and two, and now this, sadly we have arrived at a place that is both exhausting and unfortunate.

There are things I have supported and continue to support in this Budget.¹ I also recognize that any budget is a compromise. Nevertheless, I have many concerns. Most notably, I am disappointed to see that the Budget does not call for increased port inspectors beyond the six included in Mid-Year II. Congress intended that the Commission hire an additional sixteen port inspectors at key ports. In the past, we have all supported increasing such personnel. This Budget fails to make progress towards that goal.

The Acting Chairman's plans regarding port security are confusing and seemingly contradictory. In Midyear II, the Acting Chairman opposed my amendment to add up to ten inspectors at key high-volume ports on grounds that such an approach "goes well beyond the mandate contained in the COVID legislation."² I also offered a similar amendment to Midyear I, which did not pass. In this Budget, the Acting Chairman decries that "additional resources are necessary to implement the significant mandate from Congress, [and] expand port staff at traditional ports," among other things.³

¹ There are also a number of amendments offered by Commissioner Kaye that I would have supported. Unfortunately, the time critical balloting process is not conducive to supporting individual amendments without also supporting the underlying budget request.

² U.S. Consumer Prod. Safety Comm'n, Meeting on Proposed FY 2021 Spending Plan of the American Rescue Plan Act, YOUTUBE at 00:38:00 (Apr. 19, 2021), <https://www.youtube.com/watch?v=o2GusXfLnNw> (statement of Robert Adler, Acting Chairman, U.S. Consumer Prod. Safety Comm'n) (and stating further "I don't necessarily want to see staff locked/stationed at the ports").

³ U.S. Consumer Prod. Safety Comm'n, Fiscal Year 2022 Performance Budget Request to Congress at 42 (May 24, 2021).

I have been a vocal proponent of additional resources for CPSC's Office of Compliance and Field Operations. While I am pleased this Budget includes additional funding for lab and compliance testing, it underfunds CPSC enforcement efforts by \$5.8 million. We continue to fall short of the additional investments needed to ensure robust enforcement where it is warranted.

Thus, due to the lack of collaboration and the reasons listed above, I cannot support the Fiscal Year 2022 Performance Budget Request to Congress.