



United States  
**Consumer Product Safety Commission**

Record of Commission Action  
Commissioners Voting by Ballot\*

Commissioners Voting:      Chair Alexander D. Hoehn-Saric  
   Commissioner Peter A. Feldman  
   Commissioner Richard Trumka Jr.  
   Commissioner Mary T. Boyle

ITEM:

Directives for Commission Action  
(Briefing package dated December 7, 2022, OS No. 0180)

DECISION:

For Item 1, the Commission voted (3-1) to delegate authority to Executive Director and General Counsel to evaluate any changes made to the Common Rule adopted by the Department of Health and Human Services and, if appropriate, adopt and publish such changes in CPSC's regulations regarding the Common Rule, by approving as drafted Directive 0310.17, *Delegation of Authority to the Executive Director and the General Counsel to Update the Federal Policy for the Protection of Human Subjects (Common Rule)*, to supersede and cancel D202.9 (dated Sept. 19, 2019).

Commissioner Feldman voted to reject draft Directive 0310.17, *Delegation of Authority to the Executive Director and the General Counsel to Update the Federal Policy for the Protection of Human Subjects (Common Rule)*, cancel D202.9 (dated Sept. 19, 2019), and terminate the authority granted to Executive Director and General Counsel in RCA dated March 9, 2018.

For Item 2, the Commission voted unanimously (4-0) to approve cancellation of Directive D202.8, *Delegation of Authority to the Deputy Director, Safety Operations, to Adopt or Reject ICCVAM Test Methods and Approaches* (dated Sept. 19, 2019).

Commissioner Feldman issued a statement with his vote.



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For the Commission:

Alberta E. Mills  
Secretary

\*Ballot vote due December 13, 2022.

Attachment: Statement by Commissioner Feldman

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*This memorandum was prepared by the CPSC staff. It has not been reviewed or approved by, and may not necessarily reflect the views of, the Commission.*



UNITED STATES  
**CONSUMER PRODUCT SAFETY COMMISSION**  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814  
**COMMISSIONER PETER A. FELDMAN**

**STATEMENT OF COMMISSIONER PETER A. FELDMAN  
ON REVIEW OF CPSC DIRECTIVES  
DECEMBER 13, 2022**

I am pleased that the Commission is undertaking a systematic review of its agency directives. The delegations in the Commission's directives allow career staff to act in the place of either the full Commission or the Chairman. While such delegations help streamline work and create efficiencies, they also detach the Commissioners from oversight of daily operations that affect our mission. There are even instances, as is the case here, where powers that previously rested with the full Commission were delegated without the consent of, or notice to, the then-sitting Commissioners.

For too long, and in too many instances, important policy decisions have been delegated away from presidentially nominated, Senate confirmed, and politically accountable Commissioners. To provide efficiencies, delegations to staff may be appropriate in certain instances, especially where the delegated authorities involve routine and ministerial matters. On the other hand, Commissioners must weigh in, and have the final say on functions involving substantive policy or extraordinary matters. In all instances, delegations should never be secret. As the agency continues this review, I will evaluate the existing delegations on a case-by-case basis according to these principles.

With today's vote, the Commission is revisiting its delegation to agency staff regarding the Commission's adoption of the Department of Health & Human Services' (HHS) Common Rule and any subsequent revisions. The functions at issue with this Directive are neither routine nor ministerial. The Common Rule addresses safeguards for human testing and was first adopted in 1991. Since that time, HHS has revised this rule only once. Given the infrequent nature of Common Rule revisions and the inherent sensitivity of the policies underlying human testing, CPSC policies regarding the Common Rule should be reserved to the Commission.

The Commission should review its directives system on a periodic basis to ensure oversight and proper function. I am hopeful that this review will lead to a more accountable and efficient agency, and most importantly, provide better protections for American consumers.