



U.S. CONSUMER PRODUCT SAFETY COMMISSION

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B E T H E S D A , M A R Y L A N D 2 0 8 1 4 - 4 4 0 8

Record of Commission Action Commissioners Voting by Ballot*

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

ITEM:

Fiscal Year 2022 Operating Plan
(Briefing Package dated September 15, 2021)

DECISION:

On September 26, 2021, upon request for review by the Acting Chairman, the Acting General Counsel determined that the vote on the **Fiscal Year 2022 Operating Plan** (Briefing Package dated September 15, 2021) is null and void because the Decision Making Procedures were not followed.

Acting Chairman Adler had voted to approve the FY 2022 Operating Plan as recommended by the Executive Director.

Commissioners Feldman and Baiocco had voted to take other action as described in the attached documents (see attachments).

Ballot vote due September 24, 2021.


Commissioner Baiocco extended the vote due date from September 21, 2021.

Attachments: Take Other Action/Amendments from Commissioners Feldman and Baiocco

For the Commission:

Alberta Mills

Alberta E. Mills
Secretary

 Digitally signed by Alberta Mills
Date: 2021.09.29 09:55:35 -04'00'

TAKE OTHER ACTION

Approve the *Fiscal Year 2022 Operating Plan*, with the following amendments:

1. Line Item Changes

Staff shall –

- I. On page 7, under FY 2022 Priority Activities, insert the following where appropriate and make conforming changes to the Annual Milestones table on pages 7-8:

“Continue to improve EXHR’s data analytic capabilities by identifying and executing use cases for applying machine learning techniques to unstructured data (automated data classification and anomaly detection).”
- II. On page 7, under FY 2022 Priority Activities, insert the following where appropriate and make conforming changes to the Annual Milestones table on pages 7-8:

“Continue to implement improved internal controls and related procedures based on the results of FY 2020 analyses.”
- III. On page 7, under FY 2022 Priority Activities, insert the following where appropriate and make conforming changes to the Annual Milestones table on pages 7-8:

“Conduct review of SaferProducts.gov incident reporting and posting trends and submit report to Commission.”
- IV. On page 7, “FY22 Priority Activities,” strike the fourth bullet and insert:

“Focus on hazards to children by working with voluntary standards organizations to develop a voluntary standard for infant support pillows and nursing support products, complete NPR addressing battery ingestion, and Final Rules on clothing storage units, window coverings, and hazardous magnet sets (Mandatory Standards Table pages 20-21)”
- V. On page 11, under Project Description “21726 – Fire Hazards: Rulemaking Activities,” in the last sentence of the first bullet, strike the entire sentence beginning with “Depending” and ending with “consideration.”
- VI. On page 11, under the Project Description “22560 – Children’s/Nursery Product Hazards: Voluntary Standards,” insert an additional bullet point where appropriate with the following language:

“Report to the Commission the results of the magnet strength measurement research and magnet testing methodologies and corresponding assessment of the need to update the current test method.”

- VII. On page 11, under the Project Description “22560 – Children’s/Nursery Product Hazards: Voluntary Standards,” in the eighth bullet, strike “environments in which infants sleep” and insert “infant sleep products.”
- VIII. On page 11, under the Project Description “22640 – Older Consumer Safety Hazards,” in the last sentence, insert “senior clothing fires and senior” between “senior” and “trips.”
- IX. On page 12, under the Project Description “22666 – Mechanical Hazards: Voluntary Codes and Standards,” in the last sentence, strike “report” and insert “report, with data on OHV deaths, by state; relative risk of death, by year; injuries distributed, by year; and age grouping and additional information on other OHV incidents” before the period.
- X. On page 12, under project number “22727 – Children’s/Nursery Product Hazards: Rulemaking Activities,” add a period (.) after “magnet sets” and strike the remaining lines in that paragraph.
- XI. On pages 12 to 13, under the Project Description “23259 – Chemical Hazards: Rulemaking Activities,” in the paragraphs pertaining to “OFRs,” replace the words “classes” with the words “subclasses” throughout the entire Project Description.
- XII. On page 13, under the Project Description “23336 – Combustion (Carbon Monoxide) Hazards: Rulemaking Activities,” in the first sentence, strike “portable generators and gas appliances (CO sensors)” and insert “portable generators.”
- XIII. On page 13, under the Project Description “23336 – Combustion (Carbon Monoxide) Hazards: Rulemaking Activities,” in the last sentence, strike “For” and all that follows before the period and insert “For gas appliances (CO sensors), CPSC staff will conduct data analysis and technical review,” and insert “Gas Appliances (CO Sensors)” as a DA/TR entry on the “Mandatory Standards Summary Table” on page 21.
- XIV. On page 19, under the “Other Planned Voluntary Standards Activities” table (#70), change “Nursing Pillows” to “Infant Support Pillows and Nursing Support Products.”
- XV. On pages 8 to 14, under the “Project Descriptions,” at the appropriate place insert:
“25727 – Burden Reduction.

This project provides funding for ongoing efforts toward potentially meaningful reduction of third party testing costs of children’s products, among other things, consistent with ensuring statutory compliance.

In FY 2022, CPSC staff will continue to explore recommendations for potential determinations on testing exemptions for spandex fibers for Commission consideration.”

- XVI. On page 21, under the “Mandatory Standards Table” subheading “Rule Review”/ “Expand Scope of Infant Pillow Ban” strike “Expand Scope of Infant Pillow Ban,” insert “Evaluate Scope of Infant Pillow Ban,” and make conforming changes by deleting “NPR” and inserting “DA/TR.”
- XVII. On page 23, under “Overview and Priority Activities,” in the third sentence of the first paragraph, insert “protect consumers and” between “to” and “remove.”
- XVIII. On page 23, under “Overview and Priority Activities,” in the first paragraph, insert “EXC plays a role in educating companies to help inform stakeholders of product safety requirements.” before the last sentence in that paragraph.
- XIX. On page 23, under “Overview and Priority Activities,” in the first bullet of the second paragraph, insert “cooperatively” between “works” and “with.”
- XX. On page 23, under “Overview and Priority Activities,” in the third bullet of the second paragraph, insert “conduct public pool inspections,” between “recall performance” and “distribute.”
- XXI. On pages 23 to 24, under “FY 2022 Priority Activities,” strike the sixth bullet and make conforming changes to the Annual Milestone (EXC-M05) on page 24.
- XXII. On pages 23 to 24, under “FY 2022 Priority Activities,” strike the seventh bullet, and insert “Working with EXIS and EXHR, identify high-risk FY 2022 holiday seasonal products and their manufacturers, importers, and retail or online sellers, and make conforming changes to the Annual Milestone (Milestone EXC-M06) on page 24, by inserting a period (.) after “sellers” and striking the remainder of the sentence.
- XXIII. On pages 23 to 24, under “FY 2022 Priority Activities,” in the tenth bullet, strike “including products” and all that follows before the parentheses, and make conforming changes to the Annual Milestone (EXC-M10) on page 24, by adding a period (.) after “violative products” and striking the remainder of the sentence.
- XXIV. On page 28, in the “Summary of Operating Performance Measures” table, under the entry for “2022OP107,” strike “or Y classification.”
- XXV. On page 28, in the “Summary of Operating Performance Measures” table, under the entry for “2022OP107,” strike “retailers, if applicable” and insert “retailers.”

XXVI. On page 29 to 30, under “FY 2022 Priority Activities,” insert the following where appropriate and insert a corresponding Control ID entry to the “Annual Milestones” table on page 30:

“Continue to expedite enforcement actions on certain noncompliant imported products at ports of entry.”

XXVII. On page 35, under “FY 2022 Priority Activities,” in the second bullet, strike “in six categories to prevent injuries and deaths with consumer products,” and insert “in the following areas to prevent injuries and deaths with consumer products: emerging/unexpected hazards, CPSC branding, senior safety.”

XXVIII. On page 35, under “FY 2022 Priority Activities,” in the fourth bullet, insert “to reach at-risk consumers,” before “especially.”

XXIX. On page 36, under “42549 –Information and Education (I&E) Outreach Campaigns,” insert “emerging/unexpected hazards, CPSC branding, senior safety,” before “Pool Safely.”

XXX. On page 37, in the Summary of Operating Performance Measures” table, for entry “2022OP53” strike “80%” and insert “95%.”

XXXI. On page 55, under EXHR’s FY22 Priority Activities, Strategic Objective 2.2, strike “by completing NPRs on infant pillows” and insert:

“by working with voluntary standards organizations to gather data and develop a voluntary standard for infant support pillows and nursing support products”

2. Children’s Products Defect Team Reinstatement

Purpose: to reestablish a children’s product defect team.

On page 23-4 under the heading entitled “FY2022 Priority Activities,” at the appropriate place, insert:

“Draft and transmit to the Commission for consideration and approval a plan to reconstitute a children’s product defect team within the Office of Compliance.”

3. Strengthening the Office of Compliance and Field Operations

Purpose: to provide additional resources to the Office of Compliance and Field Operations for additional training in investigatory best practices and development of statically reliable data to support compliance analysis.

On page 4, in the table titled “Budget Table 2” under “Compliance - Field Operations”

and “FY 2022 Budget” strike “\$1,437,” insert “\$1,843.25,” offset this operating budget increase from within the FY 2022 operating budget for the Office of Communications, and make all conforming changes.

4. Improving the Office of Compliance and Field Operation Performance Measures

Purpose: To improve the Office of Compliance’s performance target on preliminary determinations.

On page 27, in the table entitled “Key Performance Measures,” under the FY 2022 Target for 2022KM3.1.01, strike “65%” and insert “70%.”

5. Additional Port Inspectors at High-volume Ports

Purpose: To increase CPSC port presence consistent with the Congressional mandates included in P.L. 116-260 and P.L. 117-2.

Staff shall --

- I. Hire, train, and assign ten additional full-time equivalent personnel to be stationed at the highest volume ports of entry;
- II. Offset the cost of these additional FTEs from the funds provided to the Commission in P.L. 117-2 for these purposes; and
- III. Make all appropriate conforming changes to the Operating Plan reflecting these additional FTEs.

6. Office of Communications

On page 35, the heading entitled “FY2022 Priority Activities,” at the appropriate place, insert the following:

“Upon request by any Commissioner, provide timely updates to the Commission including information to support any safety claim made in OCM press releases, social media posts, safety campaigns, and other external communications.”

7. Use of Influencers in CPSC Public Relations Campaigns

Purpose: to improve the transparency and accountability of CPSC’s use of paid media influencers.

At the appropriate place, insert:

“The Commission is prohibited from using compensated outside influencers and spokespeople in agency campaigns, except where—

- (1) OCM has circulated a memo outlining reasons, objectives, benefits, costs, and performance metrics and targets associated the use of a proposed influencer or spokesperson in a particular campaign;

- (2) staff has exhausted all non-compensated options;
- (3) such use is supported by a majority of the Commission; and
- (4) such influencer or spokesperson has been vetted pursuant to industry standards to avoid embarrassment or reputational harm to the agency.”

8. TikTok Prohibition

Purpose: to prohibit CPSC employees and contractors from downloading or using TikTok on any device issued by the Commission.

- I. No employee or contractor of the Consumer Product Safety Commission may download or use TikTok or any successor application developed by ByteDance or any entity owned by ByteDance on any device issued by Commission.
- II. OCM is expressly prohibited from expanding its digital advertising to TikTok and from maintaining a presence on this, or any successor platform, whatsoever.
- III. On page 36, in the FY 2022 Milestone Statement Table, in the entry for OCM-M03, staff shall strike “TikTok and” to conform with this prohibition.

9. Inspector General Recommendations

Purpose: To implement audit recommendation made by the CPSC Office of Inspector General (OIG).

- I. Staff shall –
 - (a) Implement any open OIG recommendations within 180 days; and
 - (b) For any OIG recommendations that remain unimplemented within 180 days of the approval of this Operating Plan, provide to the Commission and OIG a written explanation for why any of the OIG recommendation(s) remains unimplemented, and report on the status of such unimplemented recommendations every 90 days thereafter.
- II. Compliance with paragraphs I(a) and I(b) shall be a performance metric for Senior Executive Service employees, and other senior management officials, including but not limited to the Executive Director, agency Deputy Executive Directors, the Director of the Office of Communication, the General Counsel, and other additional agency personnel as determined by the Executive Director; and
- III. Staff shall make all appropriate conforming changes to the Fiscal Year 2022 Operating Plan reflecting these performance metrics;

10. CNPPA Enforcement

Purpose: to increase enforcement activity of the Child Nicotine Poisoning Prevention Act.

On page 23-4, under the heading entitled “FY2022 Priority Activities,” at the appropriate place, insert the following:

“Enforce the Child Nicotine Poisoning Prevention Act, including removal of noncompliant liquid nicotine containers from commerce.”

11. Reports to Commission

Purpose: to ensure CPSC Commissioners are provided timely information.

Any report that is required under this Operating Plan and designated for submission to the Executive Director shall also be submitted to every CPSC Commissioner at the same time.

12. Additional Performance Metrics

Purpose: to include OGC and OLA within the milestones and measures set forth in the FY 2022 Operating Plan.

Within 180 days, staff shall submit for Commission approval key performance measure proposals for the Office of General Counsel (OGC) and Office of Legislative Affairs (OLA), including the FOIA Office.

13. Conforming Changes to Appendices

Staff is directed to make all conforming changes to appendices to reflect these amendments.

TAKE OTHER ACTION

Approve the *Fiscal Year 2022 Operating Plan*, with the following amendments:

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Purpose: to prohibit CPSC employees and contractors from downloading or using TikTok on any device issued by the Commission.

- I. No employee or contractor of the Consumer Product Safety Commission may download or use TikTok or any successor application developed by ByteDance or any entity owned by ByteDance on any device issued by Commission.
- II. OCM is expressly prohibited from expanding its digital advertising to TikTok and from maintaining a presence on this, or any successor platform, whatsoever.
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