



**U.S. CONSUMER PRODUCT SAFETY COMMISSION**  
4330 EAST WEST HIGHWAY  
BETHESDA, MARYLAND 20814-4408

**MINUTES OF COMMISSION MEETING**  
March 28, 2012

Chairman Inez M. Tenenbaum convened the March 28, 2012, 10:00 a.m., meeting of the U. S. Consumer Product Safety Commission in open session. Commissioners Nancy A. Nord, Anne M. Northup and Robert S. Adler were in attendance. Chairman Tenenbaum made welcoming remarks and summarized the agenda for the meeting.

Decisional Matter: Fiscal Year ("FY") 2012 Operating Plan  
(Briefing packages dated February 8 and 24, 2012)

Chairman Tenenbaum introduced the decisional matter and thanked the staff for their hard work. Chairman Tenenbaum asked the Commission whether there was any discussion on the FY 2012 Operating Plan. Hearing none, Chairman Tenenbaum called for any motions. Commissioner Adler moved that the Commission incorporate the amendments listed in the "Consensus Amendments to the FY 2012 Operating Plan," document into the draft FY 2012 Operating Plan distributed on February 24, 2012. (The Consensus Amendments are attached.) Commissioner Adler briefly summarized some of the amendments. Commissioner Nord seconded the motion. Chairman Tenenbaum called for any discussion. Hearing none, Chairman Tenenbaum called for the vote. The Commission voted unanimously (4-0) to adopt the amendments to the FY 2012 Operating Plan.

Chairman Tenenbaum called for any other motions. Commissioner Adler moved that the Commission approve the FY 2012 Operating Plan as amended. Chairman Tenenbaum seconded the motion and called for any discussion. There being no discussion, Chairman Tenenbaum called for the vote. The Commission voted unanimously (4-0) to approve the FY 2012 Operating Plan as amended.

Briefing Matter: Draft Final Rule Titled, "Audit Requirements for Third Party Assessment Bodies;" and Proposed Rule: Requirements Pertaining to Third Party Conformity Assessment Bodies  
(Briefing packages dated March 14, 2012)

Dave DiMatteo, General Attorney, Office of General Counsel, and Randy Butturini, Electrical Engineer, Office of Hazard Identification and Reduction (EXHR"), briefed the Commission on a final rule establishing requirements for the periodic audit of third party conformity assessment bodies as a condition of their continuing accreditation implementing section 14(i)(1) of the Consumer Product Safety Act ("CPSA"), as amended by section 102(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA")(16 C.F.R. Part 1112). They

further briefed the Commission on the proposed rule that would establish the requirements pertaining to the third party conformity assessment bodies of laboratories that are authorized to test children's products in support of the certification required by section 14(a)(2) of the CPSA, as amended by section 102(a) of the CPSIA (16 C.F.R. Parts 1112 and 1118). Richard O'Brien, Program Manager, Office of Education, Global Outreach and SBO, Scott Heh, Special Assistant, EXHR, and Joel Recht, Director, Division of Chemistry, Directorate of Laboratory Sciences, also participated in the briefing and responded to questions from the Commission. No decisions were made during this part of the meeting.

There being no further business on the agenda, Chairman Tenenbaum adjourned the meeting at 12:40 p.m.

For the Commission:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", written in a cursive style.

Todd A. Stevenson  
Secretary to the Commission

Attachment: Consensus Amendments to the FY2012 Operating Plan

## **Consensus Amendments to the FY2012 Operating Plan**

### **Highlights of the Operating Plan (p. i) (CONN)**

- At the end of first paragraph, delete the second to last sentence beginning with “The Commission’s workload”
  - Insert “The Commission is reprioritizing planned work to support the timely completion of new requirements brought about by the passage of H.R. 2715 (now PL 112-28), which provides the CPSC with greater discretion in enforcing consumer product safety laws, but also sets new mandates and requirements for the Commission to fulfill.”

### **Highlights of the Operating Plan (p. ii) (CONN)**

- Change second to last sentence in the first paragraph (beginning with “Public Law 112-28 also requires...”) to say:
  - “Public Law 112-28 also requires the CPSC to seek public comments on opportunities to reduce the costs of third party testing requirements consistent with assuring compliance with any applicable consumer product safety regulations and to review those comments. CPSC may prescribe new or revised third party testing regulations if it determines such regulations would reduce third party testing costs consistent with assuring compliance with the applicable safety regulations. If the Commission determines that it lacks the authority to implement an opportunity for reducing such costs consistent with assuring compliance, P.L. 112-28 requires the Commission to send a report to Congress reviewing those opportunities along with recommendations for any legislation to permit such implementation.”

### **Approaches to Product Safety (p. 2) (CONN)**

- Insert “some of the” before “mandates” in the last sentence of the 4th paragraph.

### **Highlights of the Operating Plan & Objective 1.2 - Plans for International Engagement (pp. ii, 9, & 13) (CONN)**

- On each of these three pages, make appropriate edits to reflect the fact that CPSC will conduct two extended training exchanges with foreign regulatory partners during FY2012.

### **Approaches to Product Safety - Civil Penalties (p. 6) (CORA)**

- Add language proposed by staff on page 14 of the Q&A’s document.

**Objective 1.1 – Determine Critical Consumer Product Hazards (p. 8) (CORA & CONN)**

- At the end of the first sentence of the descriptive text, add “in accordance with 16 CFR 1009.8.”

**Objective 2.1 – Voluntary Standards Activities, Goal 1. Cooktops (p. 19) (CORA)**

- Reinsert “Cooktops” and the first two descriptive paragraphs concerning cooktops from page 26 of the FY2012 Performance Budget Request.
- Add the following goal: “In 2012, CPSC staff will review the contractor’s technical report, and as warranted, use the findings to support future proposals to the voluntary standards.”

**Objective 2.1 – Voluntary Standards Activities, Goal 2. CO Alarms. & Enhanced Smoke Alarm Projects (p. 19) (CORA)**

- Reinsert “CO Alarm Project” and the first two descriptive paragraphs concerning the CO alarm project from page 27 of the FY2012 Performance Budget Request.
- Reinsert “Enhanced Smoke Alarms Project” and the first two descriptive paragraphs concerning the enhanced smoke alarms project from page 28 of the FY2012 Performance Budget Request.

**Objective 2.1 – Voluntary Standards Activities (p. 19) (CONN)**

- Insert “Fireworks” as a voluntary standard activity CPSC is supporting.

**Objective 2.2 – Firepots and Fuel Gels (p. 25) (CONN)**

- Change “Fuel Gels” to “Gel Fuels” in title text
- Change “this product” at the end of the last sentence in the description paragraph to “firepots and gel fuels”

**Objective 2.2 – Fireworks Amendments (p. 25) (CONN)**

- Add the following new section before “HR 2715” on p. 25:

Fireworks

On June 26, 2006 the Commission voted to issue an advanced notice of proposed rulemaking (ANPR) to amend fireworks safety standards as written in 16 CFR Parts 1500 and 1507. The ANPR was published in the Federal Register on July 12, 2006. In June 2011 the Commission directed staff to review

progress made since the issuance of the FY06 ANPR regarding consumer fireworks regulations. In FY 2011, CPSC staff drafted a status report analyzing the ANPR comments, injury reports, and applicable standards. In FY 2012, staff will concentrate efforts on developing a more efficient and quantitative test method to evaluate aerial firework break charge energy release as opposed to the current approach of limiting 130 mg of pyrotechnic composition for fireworks intended to produce audible effects. In addition staff will assess potential hazards to consumers associated with new “adult snapper” fireworks and propose appropriate solution.

Goal : In 2012 CPSC staff will prepare an internal status report on the development of an alternate test method to measure the energy release of aerial firework break charges and after assessing consumer hazards associated with adult snapper fireworks, propose an appropriate solution.

**Objective 2.2 – H.R. 2715 (p. 25-26)**

- First Goal on p. 26 – Strike “, as directed by the Commission,” and insert “for Commission consideration” after “prepare” in line 4 of the goal. (COIT)
- Second Goal on p. 26 – Substitute the following language in place of the original goal text: “Goal: In 2012, CPSC staff will prepare for Commission consideration a Federal Register Notice seeking public comment on opportunities to reduce third party testing costs consistent with assuring compliance with any applicable consumer product safety rules, bans, standards, or regulations as required by CPSA § 14(d)(3)(A). Staff will review the public comments submitted in response to the Federal Register Notice and will independently review 16 CFR parts 1107 and 1109. Based on the public comments, the review of 16 CFR parts 1107 and 1109, and the knowledge and experience of CPSC staff, staff will consider potential opportunities to reduce third party testing costs that are consistent with assuring compliance with any applicable consumer product safety rules, bans, standards, and regulations. Consistent with the relevant provisions of CPSA § 14(d)(3), staff will prepare a briefing package for Commission consideration summarizing and responding to the public comments, and identifying opportunities for reducing the costs of third-party testing consistent with assuring compliance with any applicable consumer product safety rules, bans, standards, or regulations and indicating whether the Commission lacks authority to implement any such opportunities. The briefing package will include recommendations for any legislation to permit such implementation.”
- As appropriate, convert “HR2715” references to “PL 112-28” throughout the operating plan. (COIT)

**Objective 2.2 – Rule Review (p. 27) (COAN)**

- Substitute the following language in place of the original goal text: “In 2012, CPSC staff will be seeking public comments and information to help develop a plan for review of existing rules that will be appropriate to the agency and fulfill the spirit of E.O. 13579. Based on the comments received, CPSC staff will submit a draft plan for Commission consideration on revising CPSC’s voluntary review process for existing rules.”
- Add a new second goal and insert the following language for the goal text: “Staff will initiate and complete reviews of 16 CFR 1500.18(a)(5), 1500.40, 1500.41, 1500.42, 1500.47, and 1500.86(a)(6).”

**Objective 2.2 – Table Saws (p. 28) (CORA)**

- Add language proposed by staff on page 15 of staff Q&A’s document.

**Objective 2.2 – Upholstered Furniture (p. 28) (CONN)**

- Delete “possible” from text of the goal.

**Objective 2.2 – VGB Act (p. 28) (COAN w/ CORA edit)**

- Add the following new section before “7” on p. 28:

VGB Act      In October 2011, the Commission voted to revoke its interpretation of the term “unblockable drain” as used in the Virginia Graeme Baker Pool and Spa Safety Act and to seek public comment on the ability of those who have installed VGBA compliant unblockable drain covers as described at 16 CFR 1450.2(b) to come into compliance by May 28, 2012.

Goal: Prior to April 13, 2012, staff will prepare a briefing package for Commission consideration responding to the comments received and recommending whether the Commission should change the effective date for those who installed VGBA compliant unblockable drain covers, on or before October 11, 2011, as described at 16 CFR 1450.2(b) 2011.

**Objective 2.2 – Bicycles (p.28) (CONN)**

- Add the following title: “Bicycles”
- Add the following descriptive text: “CPSC bicycle standards have not been substantially updated in many years. Many new bicycle designs were not anticipated in the original regulations. In order to plan for any potential solutions

staff needs to conduct research to understand the state of the product and current standards.”

- Add the following goal text: “In 2012, staff will seek information regarding modernizing the bicycle standard to address new and emerging bicycle design and will develop an internal memo outlining the findings.”

**Objective 2.3 – Annual Goals Summary (p. 31) (CONN) (p. 11 of staff q&a doc)**

- Increase annual goal #11 from 6 to 11.
- Increase annual goal #12 from 6 to 9.
- Increase annual goal #13 from 6 to 11.

**Objective 3.1 – Quality of Product Hazard Data (pp. 35-36) (COAN)**

- Make consistent with the following:

Objective 3.1: Improve the quality and comprehensiveness of crucial product hazard data.

Annual Goals Summary		2007	2008	2009	2010	2011	2012
<b><i>Information Technology Infrastructure Update and Renewal</i></b>							
1. Information Technology Infrastructure Update and Renewal	Goal	**	**	3	6	4	5
	Actual			3	6	4	

**1. Information Technology Infrastructure Update and Renewal**

The CPSIA directs the Commission to expedite efforts to upgrade and improve information technology systems. To address these mandates, CPSC staff created a new system to consolidate the CPSC’s siloed systems into a single, integrated, Web-based environment to enhance the efficiency and effectiveness of CPSC staff’s consumer product safety work; and to foster a more rapid dissemination of information.

In 2011, CPSC staff reengineered the business processes and supporting systems related to the intake and triage of reported incidents, such as injury reports, death reports, and other incident reports. The new system will provide incident information to the public in a data feed format that software programs developed by the public can use. (CPSC staff expects that by providing a public data feed, third party software developers will respond by developing customized mobile, Web, and retailer applications for use by a broad range of the public to access information from [www.SaferProducts.gov](http://www.SaferProducts.gov).) Finally, the new system will ultimately provide triage teams with priority incidents highlighted to better identify incidents that need Commission action.

Case management techniques will be used to improve the grouping of incident reports, investigations, product safety assessments, and other Commission-generated documents. CPSC staff will develop business processes and systems to move action

requests on prioritized incidents previously handled by a mix of legacy systems, e-mail, and phone calls to automated workflows within the new system. The processes will improve the ability of staff to route requests for action to other staff within the new system. This will improve the coordination between staff that prioritizes incidents, integrated product teams that determine what actions should be taken, and staff that completes those actions.

In 2012, CPSC staff will accomplish the following goals related to the new system.

Goal: In 2012, staff will extend the new system to integrated product teams so they can assign and track actions.

Goal: In 2012, staff will complete the business requirements analysis required to start development to migrate unregulated product compliance operations (the Section 15 legacy system) to the new system.

Goal: In 2012, staff will implement a data feed to SaferProducts.gov that provides a summary of publicly available incident reports in a Comma Separated Value format to enable published incident report data to be downloaded.

Goal: In 2012, staff will implement a data feed to SaferProducts.gov that gives the public the ability to read publicly available incident reports to enable software developers more sophisticated access to the data, and will work with software developers seeking to create applications that enhance the public's access to the data on [SaferProducts.gov](http://SaferProducts.gov).

Staff believes that a targeting system is required to optimally prioritize incidents for the triage team. The first step toward this is providing a data feed. The second step, to be implemented in the future, will involve targeting the incidents using predefined rules.

Goal: In 2012, staff will provide an internal data feed that a future targeting application can use.

### **Objective 3.1 - Annual Goals Summary (p. 36) (CONN) (p. 12 of staff q&a doc)**

- Increase annual goal #12 from 80% to 95%.

### **Objective 3.1 - IT Infrastructure Update & Renewal (p. 37) (COAN)**

- Add before "Data Analysis of Product Hazards" on page 37 (and renumber subsequent subsections accordingly):

## Information Technology Security

### 2. Address Security Issues

On November 15, 2011, the Commission received an annual Federal Information Security Management Act Report ("FISMA Report") from the Office of Inspector General. The 2011 FISMA Report incorporated past FISMA Report findings, prior CFO Act Audits, a 2001 Grant Thornton independent audit, and a current review of the CPSC's IT infrastructure for fiscal year 2011 to evaluate information security control procedures and practices utilized by the Commission. The FISMA report noted 65 findings, 15 of which were classified as high risk issues that need to be rectified by CPSC staff. Among those issues identified was the maintenance of a full Authorization to Operate (ATO) security accreditation for the GSS LAN.

Goal: In 2012, CPSC staff will take action to address the security concerns raised by the CPSC's Office of the Inspector General's Federal Information Management Act Report of 2011. In doing so, staff will achieve and maintain a full Authorization to Operate (ATO) accreditation of the GSS LAN by the end of the fiscal year.

#### **Objective 3.1 – Data Analysis of Product Hazards (p. 37) (CONN)**

- Insert staff's recommended language from page 12 of the Q&A's document in response to question #61 as the first title, descriptive paragraph, and goal listed under "Data Analysis of Product Hazards."

#### **Objective 3.2 – Technology for Measuring Lead (pp. 40-41) (CONN)**

- Insert "different types of" before "XRF" in goal text.

#### **Objective 3.2 – Efficiency of Responding to Incident Reports (p. 42) (CORA)**

- Delete the last sentence of the descriptive text as suggested by staff on page 15 of the Q&A's document.

#### **Objective 3.3 – Risk Based Methodology (p. 43) (CORA & CONN)**

- Add the following title: "Risk-Based Methodology"
- Add the following descriptive text: "CPSC staff has been working to develop a risk-based methodology for identifying and prioritizing hazards in order to guide the

Commission's work in addressing consumer product hazards. A pilot methodology has been developed and is being vetted among CPSC experts.

- Add the following goal text: "In 2012, staff will further refine and test the risk-based methodology to identify and prioritize rulemaking and other hazards activities not prescribed by statute, to be addressed in accordance with 16 CFR 1009.8."

**Objective 3.5 – Non-Children’s Bed Rails (pp. 45-47) (CORA) (p. 8 of staff q&a doc)**

- Add the following wherever most appropriate under objective 3.5:

**Non-Children’s Bed Rails** During the course of CPSC’s promulgation of a portable bed rail safety standard as directed by section 104(b) of the CPSIA, the Commission received public comments regarding possible injuries and deaths associated with non-children’s bedrails. While the final rule for portable bed rails exclusively addressed portable rails used on the side of an adult bed to keep children, typically age 2 to 5 years old, from falling out of the bed, a non-children’s bedrail is generally designed for use by adults, particularly older adults. Some manufacturers of non-children’s bedrails make medical claims regarding their product and therefore those bedrails would likely fall under the jurisdiction of the Food and Drug Administration. In December 2010, CPSC staff undertook a preliminary analysis of existing data on this topic in response to a question from a member of the public.

Goal: In 2012, staff will conduct an abbreviated review of existing CPSC epidemiological data of deaths and injuries associated with bedrails for consumers 13 years of age and older since 2003. This review is not intended to address jurisdictional questions."

**Objective 4.1 (p. 51) – Improve the Targeting Effectiveness Rate (COAN)**

- Substitute the following language in place of the original parenthetical at the end of the first paragraph on p. 51: "(the number of samples that violate a mandatory safety standard found per examination)."

**Objective 4.3 – Annual Goals Summary (p. 51) (CONN)**

- In objective text, delete "effectiveness" and replace with "efficiency"

### **Objective 5.1 – Social Media Platforms (p. 57-58) (CONN)**

- In the descriptive text, delete "The CPSC will continue to work to establish our presence on Facebook, if possible" and add the following to the end of the second sentence "and will expand our social media presence to the extent permitted by the acts we administer."
- Change the goal text to the following: "In 2012, the CPSC will establish a presence on at least one new additional social media platform to raise awareness of CPSC's safety information, recalls, and programs."

### **Objective 5.2 (pp. 65-66) – Safety Publication Update (COAN)**

- Last full descriptive paragraph on p. 65 – Substitute the following language in place of the original description text: "Currently, there are an estimated 3 million youth tackle football players in the United States between the ages of 6-14. In 2009, there were an estimated 21,878 football related emergency room treated head injuries to children in this age group. While head impacts in football rarely result in fatalities, many players suffer other forms of mild traumatic brain injuries, such as concussions, which can go unrecognized by the player, and/or be either undiagnosed or not considered serious. During all football related activity, every player is required to wear a protective helmet, which in general is required to meet the National Operating Committee on Standards for Athletic Equipment (NOCSAE) standards. These standards include impact requirements, and NOCSAE recommends that football helmets be reconditioned periodically. Improper fit, usage and maintenance/care of a helmet are additional risk factors for football players. As traumatic brain injuries become understood better, and more information becomes available for the protection of youth football players, this information needs to be made available to those involved in this activity."
- Goal on p. 66 – Substitute the following language in place of the original goal text: "In 2012, CPSC staff will develop for Commission consideration a publication addressing the fit, usage and maintenance/care of helmets, including the limitations of helmets to protect against mild traumatic brain injuries, to help educate consumers involved with youth football and to augment player safety efforts."

### **Objective 5.3 – Neighborhood Safety Network (p. 68) (p. 13 of staff q&a doc)**

- Delete "Membership" from title
- Add the following text to the end of the descriptive text: "With thousands of new members joining the network this year, staff also will assess which issues that CPSC has approved safety messages are of the highest interest to the constituents that these organizations and agencies serve."

- Add a second goal with the following text: "In 2012 CPSC staff will develop 15 new posters or messages for the NSN membership, related to approved safety campaigns, recalls, or urgent safety risks."