



**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 MIDYEAR REVIEW AND PROPOSED
OPERATING PLAN ADJUSTMENTS**

June 20, 2019

On May 21, 2019, the Commission voted (5 to 0) to approve its Fiscal Year 2019 Midyear Review and Proposed Operating Plan Adjustments (“FY19 Midyear Plan”). The FY19 Midyear Plan contained staff’s recommendations to allocate future unexecuted salary and expense balances to support project work during this fiscal year by modifying the Fiscal Year 2019 CPSC Operating Plan (“FY19 Operating Plan”).

I want to thank CPSC staff for their tireless efforts to meet the goals as set forth in the FY19 Operating Plan, which is particularly commendable in light of the fact that they had to make up over a month’s worth of work due to the government shut down.

The following is a summary of the proposed changes that Commissioner Adler and I offered¹ that were adopted:

- **Furniture Tip-over Testing Work:** Although we have spent many years evaluating the physics of furniture instability, some dressers that meet the current stability requirements of the applicable voluntary standard still can be easily tipped over with the slightest dynamic loading, added weight, various drawer configurations, or multiple children climbing on them. This change provided direction to CPSC staff to create performance requirements based on the worst-case scenario and move forward with recommendations to eliminate the hazard associated with furniture tip-overs.
- **Funding for CO Sensor Study for Gas Appliances:** This change elevated the priority of funding important research into the durability of carbon monoxide sensor technology for gas appliances. CO sensors in gas appliances have the

¹ The full text of the amendments we offered is attached.

potential to save lives and prevent tragedies here in the U.S. as they are already doing in Japan and Europe. U.S. consumers deserve the same level of assurance that their home heating appliances are up to 21st century standards. This project will enable staff to demonstrate that readily-available sensors could help prevent dozens of tragedies every year from carbon monoxide poisoning.

- **Direction to Staff to Denote Any FY19 Operating Plan Goals that Will Not Be Met:** This change directed staff to denote in the FY19 Operating Plan any goals in the Voluntary Standards Summary Table and the Mandatory Standards Table (pages 5-9 in the FY19 Operating Plan) that the Commission does not believe, at this time, will be met this fiscal year. The purpose of this change was to provide timely transparency and notify the public of this information.

Unfortunately, the following amendments were not adopted:

- **Work to Address Hazards Associated with Infant Inclined Sleepers:** This change would have directed staff to work with the appropriate voluntary standard bodies to develop evidence-based performance requirements to eliminate the hazard patterns associated with infant inclined sleepers. In addition, we proposed direction to staff to survey the marketplace, including imports, for infant inclined sleepers and, if appropriate, pursue corrective actions with respect to those products that pose a safety hazard to infants. Unfortunately, these changes were not supported by our colleagues despite the fact we were told by CPSC staff that this work is underway.
- **Inclusion of ROV Incident and Death Data in the Annual ATV Report:** This change was offered to reflect staff's plan to include some death and injury data in the upcoming FY 2019 annual ATV death and injury report. As the Commission has seen ROV usage increase, it is important to provide the public with any death and injury data associated with ROVs that the CPSC has in its files.

Although he decided not to offer an amendment at the decisional meeting, I supported Commissioner Adler's proposal to create a Consumer Ombudsman position to serve as a conduit between consumer stakeholders and the agency. This would provide us with a resource for best practices on reaching consumers with information, education and safety messaging and strengthen our outreach to victims and victim's families. This position would bring the CPSC into alignment with the many other federal agencies that dedicate resources to interact with important constituencies other than the agency's regulated community. I hope the Commission will consider creating this position during the formulation of the agency's next Operating Plan.

Although I was disappointed that some of the changes Commissioner Adler and I proposed were **not** adopted, ultimately, I supported the FY19 Midyear Plan as amended because I believe the final amended package provided much needed support and Commission direction for some of the Commission's most urgent safety projects.

Commissioners Kaye and Adler Amendment to the FY 19 Midyear Review

2. In furtherance of safety and providing additional transparency and data to the public, the FY 2019 Operating Plan shall be amended as follows:
 - p. 5 -9, under the Voluntary Standards Summary Table and the Mandatory Standards Table, staff is directed to include the following footnote for any voluntary standard participation or rulemaking goals that are currently delayed:

“As of May 2019, the Commission does not believe its goal will be met by the end of the fiscal year.”

Commissioners Kaye and Adler Amendment to the FY 19 Midyear Review

3. In furtherance of the safety of infant inclined sleep products, the FY 2019 Operating Plan shall be amended as follows:
 - p. 15, under project “#22560 – Children’s /Nursery Product Hazards: Voluntary Standards,” add the following at the end of the project description:

“In FY 2019, staff is directed to work with the ASTM Infant Inclined Sleep Products subcommittee to develop performance requirements consistent with peer-reviewed, evidence-based infant safe sleep practices to eliminate the hazard patterns associated with inclined sleepers, such as roll-over suffocation.”
 - p. 21, in Compliance Operating Plan Details, under “FY 2019 Priority Activities,” add the following bullet point:

“Survey the marketplace for infant inclined sleep products and, as appropriate, seek corrective action with respect to those products that pose a safety hazard to infants.”
 - p. 26, in Import Surveillance Operating Plan Details, under “FY 2019 Priority Activities,” add the following bullet:

“Work with compliance staff to identify infant inclined sleep products at import and, as appropriate, seek corrective action with respect to those that pose a safety hazard to infants.”

Commissioners Kaye and Adler Amendment to the FY 19 Midyear Review

4. In furtherance of safety and providing additional transparency and data to the public, the FY 2019 Operating Plan shall be amended as follows:
 - 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 ATV death and injury data update report, with data on ATV deaths, by state; relative risk of death, by year; injuries distributed, by year; and age grouping. In addition, the annual ATV report shall include Recreational Off-highway Vehicle (ROV) injuries and deaths.”

Commissioners Kaye and Adler Amendment to the FY 19 Midyear Review

5. In furtherance of addressing the hazards associated with furniture tip-overs, the FY 2019 Operating Plan shall be amended as follows:
 - p. 16, under project “#22667 – Mechanical Hazards: Rulemaking Activities (General Use Products),” add the following at the end of the project description:

“Staff shall work with ASTM voluntary standards committees on the applicable furniture tip-over related standards to develop a better performance requirement that prevents furniture tip-over in worst-case scenarios. This work shall include updating the test weight and working to develop better, more dynamic test methods that mimic real-life scenarios including replicating the forces seen as a child climbs on a drawer. Staff shall work to develop test methods that account for the weight of 95th-percentile children of the oldest reported child victim age, always using the most current weight data; the full extension of multiple drawers that are realistically weighted with reasonably foreseeable loads; reasonably foreseeable dynamic impulses observed in stepping onto an elevated surface, such as those recorded in previous CPSC studies of oven stability; and the effects of carpeted surfaces with carpet tack strips under the back legs of a dresser. Surrogate methods could be used to address these parameters. A dynamic approach could be used as the basis for a static test.”