U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

MINUTES OF COMMISSION MEETING

June 2, 2021

Acting Chairman Robert S. Adler convened the June 2, 2021, 9:00 a.m., meeting of the U.S. Consumer Product Safety Commission in open session. The meeting was held remotely due to the COVID-19 pandemic. Commissioners Elliot F. Kaye, Commissioner Dana Baiocco and Commissioner Peter A. Feldman were in attendance.

Decisional Matter: Accreditation of the Laboratory of Guangsheng M&P Manufacturing Co. Ltd. Conformity Assessment Body as a "Firewalled" Third Party Laboratory and Related Delegation of Authority
(Briefing package dated April 21, 2021[1])

Acting Chairman Adler made welcoming remarks and summarized the two agenda items for the meeting: 1) Decisional Matter to accredit the laboratory of Guangsheng M&P Manufacturing Co. Ltd as a firewalled third party laboratory, and, if approved, decide whether to authorize the Deputy Executive Director for Safety Operations to grant or deny subsequent applications; and 2) Decisional Matter on whether to approve staff's recommendation to finalize a rule establishing a safety standard for infant sleep products under Section 104 of the Consumer Product Safety Improvement Act (CPSIA) of 2008; scheduled for 10 a.m.

Acting Chairman Adler gave a brief background about firewalled labs. He stated that provisions under Section 14 of the Consumer Product Safety Improvement Act (CPSIA) require third party testing and certification for products subject to the Commission's children products safety rules, and authorize the Commission to accredit conformity assessment bodies, also known as labs. The labs must be a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement ("ILAC-MAR"), and all applicants must demonstrate established procedures to ensure that the test results are protected from undue influence by the manufacturer, private labeler or other interested parties. Furthermore, any attempt by the aforementioned entities to exert undue influence over test results must

[1] Commissioner Feldman extended the vote due date on April 26, 2021 and transferred the ballot vote to a decisional meeting on April 27, 2021.

immediately be reported to the Commission and such reports may be made confidentially if preferred.

Acting Chairman Adler then introduced some of the staff who were present for the meeting: Mary Boyle, Executive Director, DeWane Ray, Deputy Executive Director, Duane Boniface, Assistant Executive Director for Hazard Identification and Reduction, Jennifer Sultan, Acting General Counsel, David DiMatteo, Attorney, Office of the General Counsel, and Scott Heh, Program Manager, Laboratory Sciences.

Acting Chairman Adler advised that Commissioners would have five minutes for questions. After questions, he would offer motions for two votes; 1) to approve the accreditation of the subject lab, and, if approved, 2) to delegate authority to the Deputy Executive Director for Safety Operations to grant or deny future applications from the lab.

Before the question session, acting Chairman Adler stated that while it is perfectly appropriate for Commissioners to express personal opinions on legal issues, any legal advice given to the Commission by the Office of the General Counsel must remain confidential.

Acting Chairman Adler did not have questions for staff and asked the Commissioners if they had questions for staff. Commissioners Kaye and Baiocco did not have any questions for staff.

Commissioner Feldman asked staff questions about the review process for the application from the accrediting body, specifically whether the examination process for the lab included onsite visits by staff or the accreditation body, or is based solely on document review. Commissioner Feldman also asked staff about the determination methods to assure that the lab would protect the test results from undue influence, while ensuring that the lab staff can report allegations, confidentially when necessary, to the Commission. He also inquired about labs that were involved in whistleblower complaints and staff's resolution of such cases.

Staff responded to Commissioner Feldman's questions and advised that while the process does not include onsite visits, staff undertakes a detailed review of laboratories' policies and training records, to include controlled operational procedures and guidance to staff, and that any attempt of undue influence regarding tests results must be reported to the Commission. Staff further advised that all accredited labs have to renew their accreditation at least every two or three years, pursuant to provisions under the ILAC process and ISO standards, and that the process could involve onsite visits by the accreditation bodies to ensure that all requirements in ISO 17025 are fully satisfied. The Commission also requires firewalled labs to submit an audit application every two years for staff's review. Lastly, staff informed the Commissioner that there are procedures in place for staff to follow up and investigate whistleblower complaints if and when they occur.

Commissioner Feldman then stated that he would vote to deny staff's request to delegate authority to the Deputy Executive Director for Safety Operations to grant or deny subsequent applications by this lab because each request should be reviewed with a "fresh eye" to avoid binding future Commissions with a decision made at this meeting.

Acting Chairman Adler thanked staff for answering questions and moved to approve staff's recommendation to accredit the laboratory of Guangsheng M&P Manufacturing Co. Ltd as a firewalled third party laboratory in accordance with the order attached to the staff's briefing package of April 21, 2021. Acting Chairman Adler called for a second, and Commissioner Kaye seconded the motion. The Acting Chair then asked for any amendments to the motion. The Commissioners did not have any amendments to the motion. Acting Chairman Adler then moved to consideration of the recommendation from staff to accredit the company as a firewalled lab. The Commission voted unanimously (4-0) to approve the first motion, which was the recommendation from staff to accredit the company as a firewalled lab.

Acting Chairman Adler then moved on the second motion, to approve the delegation of authority to the Deputy Executive Director for Safety Operations to grant or deny future applications by this lab for additional requirements or test methods. Acting Chairman Adler called for a second, and Commissioner Kaye seconded the motion. Acting Chairman Adler called for any amendments to the motion. The Commissioners did not have any amendments to the motion. The Acting Chair then moved for a vote on the second motion. The Commission voted 2-2, so the motion was not adopted. Acting Chairman Adler and Commissioner Kaye voted to delegate authority to the Deputy Executive Director of Safety Operations to grant subsequent requests for this lab. Commissioners Baiocco and Feldman voted to not delegate authority to the Deputy Executive Director of Safety Operations to grant subsequent requests for this lab.

Acting Chairman Adler called for closing remarks. The Commissioners thanked staff for their hard work. The Acting Chair concluded this meeting at 9:21 a.m. and advised that the second agenda item would be discussed at 10 a.m., as announced in the public meeting notice.

Decisional Matter: Final Rule: Safety Standard for Infant Sleep Products
(Briefing package dated May 12, 2021, OS No. 0061)

Acting Chairman Adler reconvened the meeting at 10:00 a.m. and again summarized the agenda item for the meeting, which was consideration of the final draft rule to establish a consumer product safety standard for infant sleep products under Section 104 of the Consumer Product Safety Act. The Commission was briefed on this matter by staff at the Commission meeting of May 19, 2021.

Acting Chairman Adler stated that if approved, the infant sleep products draft final rule would incorporate by reference the voluntary standard ASTM F3118-17A as a mandatory standard with modifications that would further reduce the risk of injury associated with infant sleep products. He explained that the draft standard addresses infant sleep products that are intended to provide sleeping accommodations for infants five months old or younger, but are not currently covered by any of the five existing CPSC sleep standards. He also advised that all of the late comments submitted for this rule will be added to the official docket.

Acting Chairman Adler advised that each Commissioner would have five minutes for questions and introduced staff who were present to address questions from the Commission: Duane Boniface, Assistant Executive Director for Hazard Identification and Reduction, Celestine Kish, Program Manager, Division of Human Factors – Directorate for Engineering Sciences, and Mary House, Attorney, Office of the General Counsel.

Before the questions, acting Chairman Adler reiterated that any legal advice given to the Commission by the Office of the General Counsel must remain confidential. Acting General Counsel Jen Sultan also reminded the Commissioners to refrain from discussing legal advice provided by her office.

Acting Chairman Adler then turned to questions for staff and asked staff to address the comment that approval of this rule would remove in-bed sleepers from the market and adversely affect disadvantaged consumers. Staff responded that the rule is intended to make sleeping environments safe for infants, so those interested in bedsharing could use bed side sleepers, which would allow children to sleep in their own space, but next to a parent.

Commissioner Kaye asked staff if ASTM could still proceed with standard development for any of the products that fall within the scope of this rule and staff responded that the Section 104 rules allow ASTM to present new and updated standards for Commission consideration.

Commissioner Baiocco asked staff whether the draft standard would apply to sleep products designed or intended to be bassinets. Staff responded that if the product is intended for sleep by an infant up to five months old, then it must comply with the bassinet standard and this standard would apply to any sleep product that does not comply with any of the Commission's five sleep regulations. In response to questions from Commissioner Baiocco, staff advised that some sleep products may have to be redesigned to meet the standard and that most of the in-bed sleepers on the market would require redesign in order to meet the bassinet standard. Commissioner Baiocco asked staff about the volume of products that would fall into this category and staff responded that there are dozens of products in both the in-bed sleeper and bassinet categories. Commissioner Baiocco asked staff whether these products could have their own standard, to which staff responded that ASTM is currently working to develop a voluntary standard for in-bed sleepers. Lastly, Commissioner Baiocco asked whether staff consulted any sleep or well-being specialist with a background in occupational therapy or expertise with in-bed sleepers for the development of the rule. Staff mentioned comments received from consumers, however, their respective backgrounds were not known to staff.

Commissioner Feldman did not have any questions for staff and offered to yield his time to Commissioner Baiocco. Commissioner Baiocco responded that she did not have more questions.

The Acting Chairman called for and hearing no further questions, moved on the adoption of the staff's draft final rule on infant sleep products. He called for a second and Commissioner Kaye seconded the motion. At this time, Commissioner Feldman stated he would like to make a motion, if in order. Acting Chairman Adler recognized Commissioner Feldman for his motion.

Commissioner Feldman moved to "direct staff to resubmit the 'Final Rule: Safety Standard for Infant Sleep Products' package, as a second supplemental notice of proposed rulemaking, and then submit a revised final rule to the Commission for its consideration."

Acting Chairman Adler called for a second and Commissioner Kaye seconded the motion. Commissioner Feldman explained the rationale for his motion and welcomed questions from the Commissioners.

Acting Chairman Adler advised that the Commissioners would have five minutes for questions on Commissioner Feldman's motion. The Commissioners discussed their respective positions on the motion. Acting Chairman Adler called for additional questions and hearing none, called for a vote on the motion. The Commission voted 2-2, so the motion was not adopted. Acting Chairman Adler and Commissioner Kaye voted to not adopt the motion. Commissioners Baiocco and Feldman voted to adopt the motion.

(1) Accreditation of the Laboratory of Guangsheng M&P Manufacturing Co. Ltd. Conformity Assessment Body as a "Firewalled" Third Party Laboratory and Related Delegation of Authority;
(2) Final Rule: Safety Standard for Infant Sleep Products –

At this time, Acting Chairman Adler moved to approve staff's recommendation to publish the final rule on infant products, and called for any amendments to his motion. The Commissioners did not have any amendments to his motion. Having deliberated on the motion, Acting Chairman Adler then moved the question, "shall the Commission approve the staff's recommendation that the Commission publish the final rule on infant products." The Commission voted (3-1) to publish the final rule on infant products. Acting Chairman Adler, Commissioners Kaye and Feldman voted to publish the final rule.

Commissioner Baiocco voted to take other action: "to advance the rule as it was intended to apply to inclined sleep products but to carve out and have a hearing and do a deeper dive into the products that I've been told by pretty much everybody I've asked, can have a standard in and of itself, that's my vote."

Acting Chairman Adler advised that each Commissioner would have 10 minutes for closing remarks. The Commissioners each made closing remarks.

There being no other business, Acting Chairman Adler adjourned the meeting at 10:47 a.m.

For the Commission:

Alberta Mills

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Date: 2021.06.14 16:05:52 -04'00'

Alberta Mills
Secretary

Attachment: Commissioner Feldman's Motion to the Final Rule for A Safety Standard for Infant Sleep Products - Not Adopted

COPF MOTION TO THE
FINAL RULE FOR A SAFETY STANDARD FOR INFANT SLEEP PRODUCTS

1. Motion to direct staff to resubmit the "Final Rule: Safety Standard for Infant Sleep Products" package, as a second supplemental notice of proposed rulemaking, and then submit a revised final rule to the Commission for its consideration.

Purpose: To collect comments on the underlying justification for including flat infant sleep products in the rulemaking.

> The Commission directs the staff to resubmit the "Final Rule: Safety Standard for Infant Sleep Products" as a second supplemental notice of proposed rulemaking, to collect comments on the underlying justification for including flat infant sleep products in the rulemaking, and to then submit a revised final rule.