



## **U.S. CONSUMER PRODUCT SAFETY COMMISSION**

4330 EAST WEST HIGHWAY  
BETHESDA, MARYLAND 20814-4408

### **MINUTES OF COMMISSION MEETING**

March 25, 2021

Acting Chairman Robert S. Adler convened the March 25, 2021, 10:00 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. Acting Chairman Adler made welcoming remarks and summarized the agenda for the meeting.

#### Decisional Matter: FY 2021 Midyear Review (Briefing package dated March 10, 2021<sup>1</sup>)

Acting Chairman Adler introduced the decisional matter pending before the Commission and recognized staff for their diversity efforts and thanked Commissioner Kaye for his valuable contributions to the agency's commitment to serve minorities and underserved groups.

Acting Chairman Adler then introduced some of the staff that was 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, James Baker, Chief Financial Officer, and Alberta Mills, Office of the Secretary. Additional staff were also available to answer questions should their expertise be needed.

Acting Chairman Adler advised that each Commissioner would have five minutes to ask questions of staff. Acting Chairman Adler did not have questions for staff and asked each Commissioner if they had any questions for staff. Commissioners Kaye and Baiocco did not have any questions for staff. Commissioner Feldman began to make statements/comments regarding the package and was reminded by the Acting Chairman that he could ask questions of staff, and that his statements would be welcomed at the appropriate time. Commissioner Feldman advised that he did not have any questions for staff.

There being no other questions, Acting Chairman Adler excused and thanked staff for their work on the FY 2021 Midyear Review plan. Acting Chairman then moved to adopt the FY 2021 Midyear Review plan as proposed by staff. Commissioner Baiocco seconded the motion.

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<sup>1</sup> Acting Chairman Adler transferred the ballot vote to a decisional meeting on March 15, 2021.

Minutes of CPSC Decisional Meeting on March 25, 2021: (1) Fiscal Year 2021 Midyear Review; and (2) Notice of Availability - Proposed Guidance for Industry and Test Method Developers: CPSC Staff Evaluation of Alternative Test Methods and Integrated Testing Approaches and Data Generated from Such Methods to Support FHSA Labeling Requirements

Before calling for a vote on the plan, Acting Chairman Adler called for any amendments to the plan. Acting Chairman Adler, Commissioners Kaye and Baiocco did not have any amendments. Acting Chairman Adler then informed Commissioner Feldman that he could resume making his statements, and would be recognized for any amendments he wanted to present.

Commissioner Feldman described his amendments which he stated would require the Commission to plan before it acts and also demonstrate to Congress that the Commission takes its instructions seriously. Acting Chairman Adler stated that Commissioner Feldman had eight amendments, and that he could take up to three minutes to describe each amendment, followed by questions or comments from Commissioners, and then Commissioner Feldman could respond to said questions or comments.

Commissioner Feldman introduced his first amendment (Feldman #1). Commissioner Feldman described and read the amendment into the record and proceeded to explain the rationale for his amendment. The amendment would direct staff to “develop a plan to meet Congressional mandates.” The plan would include options for Commission consideration. Commissioner Kaye seconded the motion.

At this time, the Commission discussed a point of order raised by Commissioner Baiocco regarding Commissioner Feldman’s amendments. Commissioner Baiocco commented that while she found the substance of the amendments to be valid, the Midyear review meeting may not be the appropriate time to present them. Acting Chairman Adler advised Commissioner Baiocco that she could vote in favor or against the amendment, once proposed. Commissioner Feldman then stated that during the 2019 Midyear review meeting, Acting Chairman Adler said it was agency practice and precedent that a Commissioner can offer any amendment during Midyear. Acting Chairman Adler responded that Commissioner Feldman was within his right to offer his amendments. At the conclusion of the discussions on the point order, the Commission turned to consideration of Commissioner Feldman’s first amendment (Feldman #1). Acting Chairman Adler recognized each Commissioner in order of seniority and the Commissioners discussed their respective position on the proposed amendment. Commissioner Feldman responded to questions from the Commissioners. After the discussion, Acting Chairman Adler called for a vote on the amendment.

The Commission voted (3-1) to not adopt the amendment. Acting Chairman Adler, Commissioners Kaye and Baiocco voted to not adopt the amendment. Commissioner Feldman voted to adopt the amendment.

Acting Chairman Adler called for any other amendments. Commissioner Feldman introduced his second amendment (Feldman #2), and read the amendment into the record. Commissioner Feldman then explained that the amendment would direct staff to “hire, train, and assign four additional full-time equivalent personnel to serve as port inspectors in the CPSC Office of Import Surveillance (EXIS).” Commissioner Kaye seconded the motion.

Minutes of CPSC Decisional Meeting on March 25, 2021: (1) Fiscal Year 2021 Midyear Review; and (2) Notice of Availability - Proposed Guidance for Industry and Test Method Developers: CPSC Staff Evaluation of Alternative Test Methods and Integrated Testing Approaches and Data Generated from Such Methods to Support FHSA Labeling Requirements

The Commissioners discussed the proposed amendment. After considerable discussions, Acting Chairman Adler called for additional questions and hearing none, called for a vote on the amendment. The Commission voted (2-2), and the amendment is not adopted. Acting Chairman Adler and Commissioners Kaye voted to not adopt the amendment. Commissioners Baiocco and Feldman voted to adopt the amendment.

Acting Chairman Adler called for any other amendments. Commissioner Feldman introduced his third amendment (Feldman #3), and read the amendment into the record. Commissioner Feldman described the amendment which would direct staff to “develop a plan to conduct remedial screenings of product inventories that entered the United States during the COVID-19 pandemic.” Commissioner Kaye seconded the motion.

The Commission discussed the amendment. After discussions, Acting Chairman Adler called for additional questions and hearing no further discussions, called for a vote on the amendment. The Commission voted (3-1) to not adopt the amendment. Acting Chairman Adler, Commissioners Kaye and Baiocco voted to not adopt the amendment. Commissioner Feldman voted to adopt the amendment.

Acting Chairman Adler called for any other amendments. Commissioner Feldman introduced his fourth amendment (Feldman #4), and read the amendment into the record. Commissioner Feldman explained that this amendment, titled “E-Commerce Surveillance,” would direct staff to develop a “plan to enhance monitoring of internet websites for the sale of new and used violative consumer products, including COVID-19 products, for Commission consideration, and to coordinate with retail and resale websites to improve identification and elimination of listings of such products.” Commissioner Kaye seconded the motion.

The Commission discussed the amendment. After discussions, Acting Chairman Adler called for additional questions and hearing no further discussions, called for a vote on the amendment. The Commission voted (3-1) to not adopt the amendment. Acting Chairman Adler, Commissioners Kaye and Baiocco voted to not adopt the amendment. Commissioner Feldman voted to adopt the amendment.

Acting Chairman Adler called for any other amendments. Commissioner Feldman introduced his fifth amendment (Feldman #5), and read the amendment into the record. This amendment would prohibit compensation for non-government spokespeople including “actors, social media influencers, media personalities, or any other non-government spokespeople” unless such action is approved by a majority Commission vote, or performed transpire on a pro bono basis. Commissioners Kaye and Baiocco simultaneously seconded the motion.

The Commission discussed the amendment. After discussions, Acting Chairman Alder called for additional questions and hearing no further discussions, called for a vote on the amendment. The Commission voted (3-1) to adopt the amendment. Commissioners Kaye, Baiocco and Feldman voted to adopt the amendment. Acting Chairman Adler voted to not adopt the amendment.

Minutes of CPSC Decisional Meeting on March 25, 2021: (1) Fiscal Year 2021 Midyear Review; and (2) Notice of Availability - Proposed Guidance for Industry and Test Method Developers: CPSC Staff Evaluation of Alternative Test Methods and Integrated Testing Approaches and Data Generated from Such Methods to Support FHSA Labeling Requirements

Acting Chairman Adler called for any other amendments. At this time Commissioner Feldman withdrew his sixth amendment (Feldman #6) because staff addressed the concerns described in the amendment prior to this meeting date.

Acting Chairman Adler called for any other amendments. Commissioner Feldman introduced his seventh amendment (Feldman #7), and read the amendment into the record. Commissioner Feldman explained that the amendment would direct staff to develop a “safety campaign for portable fuel container safety.” Commissioner Kaye seconded the motion.

The Commission discussed the amendment. After discussions, Acting Chairman Adler called for additional questions and hearing no further discussions, called for a vote on the amendment. The Commission voted (3-1) to not adopt the amendment. Acting Chairman Adler, Commissioners Kaye and Baiocco voted to not adopt the amendment. Commissioner Feldman voted to adopt the amendment.

Acting Chairman Adler called for any other amendments. Commissioner Feldman introduced his eighth and final amendment (Feldman #8), and read the amendment into the record. Commissioner Feldman explained the amendment would require staff to develop an agency “post pandemic plan” that would “provide the Commission with options related to staffing at agency facilities, accounting for various possible staffing arrangements.” Commissioner Kaye seconded the motion.

The Commission discussed the amendment. After discussions, Acting Chairman Adler called for additional questions and, hearing no further discussions, called for a vote on the amendment. The Commission voted (3- 1) to not adopt the amendment. Acting Chairman Adler, Commissioners Kaye and Baiocco voted to adopt the amendment. Commissioner Feldman voted to adopt the amendment.

Acting Chairman Adler asked the Commissioners for any additional questions and hearing none, called for a vote on the FY 2021 Midyear Review plan as amended. The Commissioners voted (3-1) to adopt the FY 2021 Midyear Review plan as amended. Acting Chairman Adler, Commissioners Kaye and Baiocco voted to adopt the FY 2021 Midyear Review plan as amended. Commissioner Feldman voted to not adopt the plan.

Acting Chairman Adler stated that the Commissioners would each have 10 minutes for closing remarks. The Commissioners each made brief closing statements. Commissioner Feldman stated that he may submit a written a statement at a later time.

The Chairman adjourned the meeting for the FY 2021 Midyear review at 11:20 a.m.

At this time the Commission took a five-minute recess before the second agenda item.

Minutes of CPSC Decisional Meeting on March 25, 2021: (1) Fiscal Year 2021 Midyear Review; and (2) Notice of Availability - Proposed Guidance for Industry and Test Method Developers: CPSC Staff Evaluation of Alternative Test Methods and Integrated Testing Approaches and Data Generated from Such Methods to Support FHSA Labeling Requirements

Decisional Matter: Notice of Availability – Proposed Guidance for Industry and Test Method Developers: CPSC Staff Evaluation of Alternative Test Methods and Integrated Testing Approaches and Data Generated from Such Methods to Support FHSA Labeling Requirements (Briefing package dated January 27, 2021<sup>2</sup>)

Acting Chairman Adler reconvened the meeting at 11:25 a.m. After introducing the matter and making an opening statement, the acting Chair announced staff present to respond to questions. Present to respond to questions were Hyun Kim, Attorney, Office of the General Counsel, John Gordon, Ph.D., Division of Toxicology and Risk Assessment, Duane Boniface, Assistant Executive Director for Hazard Identification and Reduction.

Acting Chairman Adler advised that the Commissioners would have five minutes for questions to staff, with multiple rounds as necessary. The Acting Chairman, Commissioners Kaye and Baiocco did not have questions for staff. Commissioner Feldman asked staff whether the agency's new Chief Data Analytics Officer, Dr. Anthony Kassekert, was consulted on the development of the Notice of Availability. Mr. Boniface responded to Commissioner Feldman's question and advised that although Dr. Kassekert was not consulted in the development of the subject package, his expertise is being fully utilized by staff.

Acting Chairman Adler sought and hearing no further questions, moved that the Commission adopt the *Notice of Availability – Proposed Guidance for Industry and Test Method Developers: CPSC Staff Evaluation of Alternative Test Methods and Integrated Testing Approaches and Data Generated from Such Methods to Support FHSA Labeling Requirements, (Federal Register Notice)* as proposed by staff. Commissioner Feldman seconded the motion.

Acting Chairman Adler then called for any amendments and recognized Commissioner Kaye for his amendment and stated that Commissioner Kaye could take up to three minutes to introduce his amendment. Commissioner Kaye read his amendment into the record. The amendment called for the addition of the following statement in the *Federal Register* notice: "The Commission reaffirms its policy to find alternatives to traditional animal testing that replace animals, reduce the number of animals tested, and decrease the pain and suffering in animals associated with testing household products. As such, the Commission strongly encourages all agency stakeholders to submit for evaluation by CPSC staff any scientifically validated alternative test methods that do not require animal testing for determining compliance with the labeling requirements under the FHSA." The amendment reinforces to stakeholders, the Commission's support of the move away from animal testing where applicable. Commissioner Feldman seconded the motion.

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<sup>2</sup> Commissioner Feldman transferred the ballot vote to a decisional meeting on February 1, 2021.

Minutes of CPSC Decisional Meeting on March 25, 2021: (1) Fiscal Year 2021 Midyear Review; and (2) Notice of Availability - Proposed Guidance for Industry and Test Method Developers: CPSC Staff Evaluation of Alternative Test Methods and Integrated Testing Approaches and Data Generated from Such Methods to Support FHSA Labeling Requirements

The Commission discussed the amendment. The Commissioners strongly supported the amendment. Commissioner Baiocco expressed her support for the amendment and commented that she voted on the matter previously by ballot. Commissioner Baiocco was advised that her vote at the decisional meeting superseded her prior vote by ballot. Acting Chairman Adler then called for additional questions and hearing no further discussions, called for a vote on the amendment. The Commission voted unanimously (4-0) to adopt the amendment. Acting Chairman Adler called for any other motions or questions and hearing none, called for a vote on the *Federal Register* notice as amended. The Commission voted unanimously (4-0) to adopt the *Federal Register* notice as amended.

Acting Chairman Adler then called for any questions and hearing none, called for closing statements. The Commissioners each made brief closing statements.

There being no other business, Acting Chairman Adler adjourned the meeting at 11:40 a.m.

For the Commission:

Alberta Mills  
Secretary

Attachments: Commission Adopted Amendment for the FY 2021 Midyear Review Plan (Feldman #5 - Proposed by Commissioner Feldman).

Other Amendments by Commissioner Feldman – Not adopted (Feldman #1, #2, #3, #4, \*#6, #7, #8).

Commission Adopted Amendment for the Notice of Availability: Proposed Guidance for Industry Test Methods (Proposed by Commissioner Kaye).

\*Commissioner Feldman withdrew Feldman #6.

## **5. Prohibition on compensation for non-government spokespeople**

Purpose: To eliminate the use of taxpayer dollars to compensate actors, social media influencers, media personalities, or any other non-government spokespeople as a part of CPSC's Office of Communication's public service announcements.

In "Attachment 2" "Table 2" insert the following language in MY#s 2,3, and 5, at the end of the description, respectively:

"With the exception of approved contractors, non-government spokespeople shall not be compensated, directly or indirectly, as part of any project, unless a majority of the Commission approves or the engagement is on a pro bono basis. Any directives governing the use of influencers, supported by a majority of Commissioners, shall supersede this requirement."

Update "Attachment 2" "Table 3" accordingly.

COPF MID-YEAR AMENDMENTS

## **Commissioner Feldman’s Draft Amendments to the Fiscal Year 2021 Proposed Operating Plan Alignment and Mid-Year Review**

### **1. Develop a plan to meet Congressional mandates**

Purpose: To instruct staff to develop a plan to meet Congressional mandates included in P.L. 116-260 and P.L. 117-2.

Insert in “Attachment 2” “Table 2” the following project title, amount, and description, and renumber projects as appropriate. Update “Attachment 2” “Table 3” accordingly.

Insert MY #1:

Project Title: “Congressional Mandate Implementation Plan”

Amount (in \$000): \$0

Description: “Staff shall allocate the requisite hours to develop and submit to the Commission for approval a plan to meet requirements of Pub. Law 116-260, Title XX and Pub. Law 117-2, Section 7401. The plan shall include options and any recommendations regarding a budget, additional staffing, and specific timeline to meet the requirements –

- (1) to ensure, to the maximum extent feasible, that investigators are stationed at ports of entry;
- (2) to meet the goal of covering not fewer than 90 percent of all consumer products entering the United States;
- (3) to consult with U.S. Customs and Border Protection, and other relevant agencies, including health and safety agencies, on methods to safely staff ports during the pandemic;
- (4) to hire, train and assign not fewer than 16 additional full-time equivalent personnel to be stationed at or supporting efforts at ports of entry;
- (5) to make additional port personnel hires pursuant to the requirements Section 2001(b) of Title XX of Division FF of the Consolidated Appropriations Act, 2021, Pub. Law 116-260; and
- (6) to transmit to Congress and make publicly available a study and report assessing the risk to consumers associated with the reduction in Commission port inspection activity during the COVID-19 pandemic and the targeting and screening of de minimis shipments.”



COPF MID-YEAR AMENDMENTS

**2. Staff shall promptly hire, train, and assign four full-time equivalents in partial satisfaction of the requirements of P.L. 116-260 and P.L. 117-2.**

Purpose: To carry out Congressional mandates included in P.L. 116-260 and P.L. 117-2.

Insert in “Attachment 2” “Table 2” the following project title, amount, and description, and renumber projects as appropriate. Update “Attachment 2” “Table 3” accordingly.

Insert MY #2:

Project Title: “Additional Port Inspectors”

Amount (in \$000): “\$375”

Description: “The Executive Director shall promptly hire, train, and assign four additional full-time equivalent personnel to serve as port inspectors in the CPSC Office of Import Surveillance (EXIS).”

COPF MID-YEAR AMENDMENTS

**3. Develop a plan to conduct remedial screenings of product inventories that entered the United States during the COVID-19 pandemic**

Purpose: To instruct staff to develop a plan to meet Congressional mandates included in P.L. 116-260 and P.L. 117-2.

Insert in “Attachment 2” “Table 2” the following project title, amount, and description, and renumber projects as appropriate. Update “Attachment 2” “Table 3” accordingly.

Insert MY #3:

Project Title: “Remedial Screenings”

Amount (in \$000): “\$0”

Description: “Staff shall develop and transmit to the Commission for approval a plan to conduct remedial, on-the-shelves and in-distribution-centers, inspections with the goal of detecting non-compliant and violative products that entered the United States during the COVID-19 pandemic. This plan shall include any recommendations regarding additional staff necessary to conduct such inspections. Products that pose threats to vulnerable populations, especially children and seniors, shall be prioritized. Special attention shall be paid to the top five non-paperwork violations for FY 2019, as reported by the Office of Import Surveillance.”

**4. E-Commerce Surveillance**

Purpose: To instruct staff to develop a plan to meet Congressional mandates included in P.L. 116-260 and P.L. 117-2.

Insert in “Attachment 2” “Table 2” the following project title, amount, and description, and renumber projects as appropriate. Update “Attachment 2” “Table 3” accordingly.

Insert MY #4:

Project Title: “E-Commerce Surveillance”

Amount (in \$000): “\$0”

Description: Staff shall develop and transmit to the Commission for approval a plan to enhance monitoring of internet websites for the sale of new and used violative consumer products, including COVID-19 products, and to coordinate with retail and resale websites to improve identification and elimination of listings of such products. This plan shall include any recommendations regarding additional staff necessary to conduct such inspections.

**6. SOFFA Act Guidance**

Purpose: To provide guidance to stakeholders on the requirements of P.L. 116-260 § 2101, the Regulatory Relief and Work from Home Safety Act.

Include, within the funded items, the following language:

“CPSC staff shall promptly issue guidance to regulated entities regarding how to comply with the requirements of P.L. 116-260 § 2101. This guidance should include a start date for enforcement, and an overview of how existing inventory will be treated.”

Update “Attachment 2” “Table 3” accordingly.

COPF MID-YEAR AMENDMENTS

**7. Information and Education Campaign: Portable Fuel Container Safety**

Purpose: To carry out Congressional mandates included in P.L. 116-260.

Insert in “Attachment 2” “Table 2” the following project title, amount, and description, renumber projects as appropriate. Update “Attachment 2” “Table 3” accordingly.

Insert MY #6:

Project Title: “Portable Fuel Container Safety Education Campaign”

Amount (in \$000): “\$375”

Description: “This project will use funds to develop a safety campaign for portable fuel container safety. This campaign will ‘educate consumers on the dangers associated with using and storing portable fuel containers’ in satisfaction of requirements of P.L. 116-260 901§7(a). With the exception of approved contractors, non-government spokespeople shall not be compensated, directly or indirectly, as part of any project, unless a majority of the Commission approves or the engagement is on a pro bono basis. Any directives governing the use of influencers, supported by a majority of Commissioners, shall supersede this requirement.”

**8. Post-Pandemic Plan**

Purpose: To create a post-pandemic plan for the Consumer Product Safety Commission.

Insert in “Attachment 2” “Table 2” the following project title, amount, and description, renumber projects as appropriate. Update “Attachment 2” “Table 3” accordingly.

Insert MY #5:

Project Title: “Post-Pandemic Plan”

Amount (in \$000): “\$0”

Description: “Staff shall draft and submit to the Commission a post-pandemic plan. Among other things, the plan will provide the Commission with options related to staffing at agency facilities, accounting for various possible staffing arrangements (e.g., full-onsite staffing, partial work-from-home, etc.) and related expenses.”

**Commissioner Kaye Amendment to Notice of Availability – “Proposed Guidance for Industry and Test Method Developers: CPSC Staff Evaluation of Alternative Test Methods and Integrated Testing Approaches and Data Generated from Such Methods to Support FHSA Labeling Requirements”**

**March 25, 2021**

On page 4 of the draft *Federal Register* notice, add the following paragraph before the first full paragraph:

“The Commission reaffirms its policy to find alternatives to traditional animal testing that replace animals, reduce the number of animals tested, and decrease the pain and suffering in animals associated with testing household products. As such, the Commission strongly encourages all agency stakeholders to submit for evaluation by CPSC staff any scientifically validated alternative test methods that do not require animal testing for determining compliance with the labeling requirements under the FHSA.”