



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814**

**STATEMENT OF CHAIRMAN INEZ M. TENENBAUM ON THE CPSC FISCAL YEAR 2014 BUDGET
REQUEST**

April 18, 2013

On April 10, 2013, the U.S. Consumer Product Safety Commission (CPSC) submitted its Fiscal Year (FY) 2014 Performance Budget Request to Congress. The Commission's FY 2014 Budget Request represents the best of CPSC. It demonstrates the agency's commitment to complete implementation of the Consumer Product Safety Improvement Act of 2008 (CPSIA), proactively address emerging hazards, and improve the safety of products with identified hazards. The Budget also includes funding for CPSC's import surveillance program, nanotechnology research, outreach and education for small businesses, operating an integrated information technology system, and enhancing the technology capabilities of our testing and evaluation center to benefit the health and safety of the consumers whom we faithfully serve. The Commission's FY 2014 Budget Request also reflects the current austerity that the federal government is facing and seeks to achieve meaningful results in a time of decreasing resources.

My colleague, Commissioner Nancy Nord, chose to vote against the CPSC's budget request. She did so because Commissioner Adler and I declined to include language she demanded mandating a premature diversion of scarce Commission resources from safety operations to independent testing burden reduction activities related to the third party testing of children's products (burden reduction). Rather than simply noting her objection and voting in favor of the Commission's overall budget, Commissioner Nord chose to once again ignore the core mission of this agency—product safety—and instead continue her mission of opposing meaningful reform and implementation of the CPSIA at every turn. The safety of consumers and the livelihoods of CPSC employees are directly tied to the funding level of our perpetually underfunded agency. Fully understanding this, Commissioner Nord chose to advance a personal political agenda over the interests of consumers and CPSC staff.

The Commission's Continued Pursuit of Opportunities to Reduce Third Party Testing Costs

The Commission's record on burden reduction demonstrates a thoughtful and consistent approach to voluntarily acting on certain items recommended by CPSC staff and unanimously agreed upon by the Commission. Despite Commissioner Nord's assertion that the "only action the Commission has taken in the past two years is to ask the public to comment on issues already commented upon,"¹ the history of agency action outlined below reflects the Commission's continued efforts to achieve meaningful results in this area.

¹ <http://www.cpsc.gov/Global/About-CPSC/Commissioners/Nord/NordFY14BudgetStatement.pdf> at 2.

Public Law 112-28 (P.L. 112-28), enacted in August 2011, left the core safety components of CPSIA firmly in place while also directing the Commission to solicit and review comments from the public on ways the agency could reduce third party testing costs while assuring compliance with any applicable consumer product safety rules, bans, standards, or regulations. P.L. 112-28 also stated that the Commission *may* prescribe new or revised third party testing regulations if it determines that such regulations will reduce third party testing costs consistent with assuring compliance.

On October 19, 2011, the Commission voted to solicit public comments on reducing third party testing costs while assuring compliance as required by P.L. 112-28. Our staff received these comments, discharged the agency's statutory duty by reviewing them, and submitted a briefing package to the Commission on August 29, 2012, that identified a set of specific areas for further exploration that could potentially yield third party testing relief. It is important to note that, based on a review of the comments submitted to the agency, CPSC staff believed each of the areas identified as potential opportunities to reduce third party testing costs would require additional—and, in some instances, very significant—exploration and devotion of Commission resources before more specific recommendations could be made. On October 10, 2012, going beyond the statutory requirements of P.L. 112-28 and subject to subsequent resource allocation decisions in the FY 2013 Operating Plan, the Commission unanimously voted to approve further exploration of eight areas where staff believed potential opportunities to reduce third party testing costs while assuring compliance may exist.²

The Commission began considering resource allocation decisions for these activities in December when the CPSC's FY 2013 Operating Plan was submitted for Commission consideration. On January 18, 2013, the Commission voted unanimously to approve the FY 2013 Operating Plan and direct staff to draft a Request for Information (RFI) for publication in the *Federal Register* regarding potential third party testing exemptions for adhesives in manufactured woods, synthetic food additives, and materials that can be determined not to include heavy metals or phthalates.³ The Commission also agreed to make decisions regarding the allocation of resources for additional burden reduction activities as a part of CPSC's FY 2014 Operating Plan.⁴

On April 9, 2013, the Commission voted unanimously to publish the RFI.⁵ The comment period for the RFI will close this summer and the Commission, informed by the comments, will subsequently make resource allocation decisions regarding further actions in this area.

Disregarding the Commission's Prior Agreement

This thoughtful approach, which is the proper planning process for balancing burden reduction work with the Commission's core mission of safety, was not enough for Commissioner Nord and she voted against the entire budget. Subsequently, she attempted to stoke the fears of CPSC's regulated

² <http://www.cpsc.gov/PageFiles/130209/3rdparty.pdf>

³ <http://www.cpsc.gov/Global/Newsroom/FOIA/Records-of-Commission-Action-and-Meeting-Minutes/rca%20fy%2013%20op.pdf>

⁴ *Id.*

⁵ <http://www.cpsc.gov/en/Regulations-Laws--Standards/Federal-Register-Notices/2013/Request-for-Information-Regarding-Third-Party-Testing-for-Lead-Content-Phthalate-Content-and-the-Solubility-of-the-Eight-Elements-Listed-in-ASTM-F96311/>

community by issuing a statement minimizing the agency's past burden reduction actions and making the claim that Commissioner Adler and I "do not plan to use any resources to reduce testing burdens" in FY 2014.⁶ This claim is patently false. Commissioner Adler and I simply chose not to make a decision regarding the commitment of resources to this activity prior to receiving public comments that will help inform the Commission on what additional actions may be warranted.

In fact, Commissioner Nord's proposed amendment explicitly sought to undermine a prior agreement reached by the Commission. The agreement, unanimously reached by the Commission in January as a part of the FY 2013 Operating Plan negotiations, states:

In FY 2013, staff will draft four requests for information (RFIs) for publication in the Federal Register for determinations regarding heavy metals, phthalates, adhesives in manufactured woods, and synthetic food additives. . . . For each RFI, the Commission intends to provide resources in the *fiscal year 2014 operating plan* to the extent the agency's safety work permits to ensure staff reviews the responses and summarizes any recommended course of action on each item for the Commission.⁷

The Commission chose to use the 2014 "operating plan" as the vehicle for future resource decisions and did not insert "budget request" into this amendment because it was well understood that it would be premature to commit resources to any further activity until the agency had received public comments from the RFI. Although Commissioner Nord states that her proposed amendment to the 2014 budget request "reflected the decision the Commission made in the January operating plan,"⁸ the plain words of the operating plan agreement itself do not support this reconstruction of the Commission's intention.

Ignoring a Compromise

Despite the fact we would be extending the terms of the Commission's original agreement in January, we attempted to work with and reach a compromise with Commissioner Nord by offering an amendment (attached) committing the agency to undertaking further data analysis and technical review related to burden reduction in FY 2014. Despite Commissioner Adler's and my offer to commit these agency resources in an area where no resources had already been committed, Commissioner Nord rejected the offer and voted against the entire FY 2014 Budget.

Correcting the Record

In her statement, Commissioner Nord makes the claim that the Commission can no longer blame any failure to act on burden reduction activities on insufficient funding because we have requested additional money that can and should be spent on burden reduction. Again, this is simply untrue. As noted by Commissioner Nord, we have requested \$2.2 million in funding over the FY 2013 budget. However, this amount reflects increases requested to fund required maintenance and operations for

⁶ <http://www.cpsc.gov//Global/About-CPSC/Commissioners/Nord/NordFY14BudgetStatement.pdf> at 2.

⁷ <http://www.cpsc.gov//Global/Budget/2013OperatingPlan.pdf> at 24 (emphasis added).

⁸ <http://www.cpsc.gov//Global/About-CPSC/Commissioners/Nord/NordFY14BudgetStatement.pdf> at 2.

import surveillance, purchase needed laboratory equipment, improve the agency's international operations, maintain salary and expense levels for CPSC staff, sustain our current financial accounting operation services, and enhance methods to meet the agency's information technology records management requirements.⁹ Each of these items added together constitute the full \$2.2 million in extra funding the agency requested for FY 2014.

To suggest any future claim of insufficient funding is nothing more than a "ruse to cover an utter lack of interest in performing [burden reduction]"¹⁰ is to completely ignore the fact that burden reduction activities accounted for zero dollars of the additional funding requested for FY 2014. If Commissioner Nord had proposed an amendment increasing the amount of funding for the agency to ensure certain burden reduction activities are achieved and Commission Adler and I had rejected it, then she could credibly make this argument. As it stands, however, Commissioner Nord proposed no such increase in agency appropriations to fund additional burden reduction activities.

Conclusion

I am committed to a reasonable burden reduction review process, and I look forward to working on that issue in the FY 2014 Operating Plan. In the end, however, it is critical to remember that product safety is the core mission of this agency. Voting against an *entire agency budget*, as Commissioner Nord did, because a majority will not accept a three-sentence amendment on premature activity is simply an irresponsible act driven by a personal political agenda with absolute disregard for the well being of this agency, its staff, and the hundreds of millions of consumers we are obligated to protect.

⁹ <http://www.cpsc.gov/Global/About-CPSC/Budget-and-Performance/2014BudgettoCongress.pdf> at 21, 22.

¹⁰ <http://www.cpsc.gov/Global/About-CPSC/Commissioners/Nord/NordFY14BudgetStatement.pdf> at 3.

Chairman Tenenbaum/Commissioner Adler Proposed Compromise Amendment

On Page 12, replace “There is also a requirement to review third party testing burdens.” with the following language:

In FY 2013, subsequent to fulfilling Public Law 112-28’s requirement that the Commission solicit and review comments regarding potential opportunities to reduce the cost of third party testing requirements consistent with assuring compliance, the Commission chose to direct staff to develop a Request for Information (RFI) on four such potential opportunities. In FY 2014, the comments received in response to the RFI will be reviewed and analyzed and, as warranted, the Commission may undertake additional activities to reduce any burdens identified consistent assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation. [See also the mandatory standards table on pages 28–29.]

In the mandatory standards summary on Page 29, under the heading “Implementation of Public Law 112-28,” change the table to reflect the following:

| Implementation of Public Law 112-28 | | | |
|--|-------------|-----------------|--------------|
| | 2012 Actual | 2013 Op Plan | 2014 Request |
| Burden Reduction/ <i>Assuring Compliance</i> | BP | DA/TR | <i>DA/TR</i> |