



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
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COMMISSIONER NANCY A. NORD

**Statement on the Commission's
Fiscal Year 2014 Budget Request**

April 10, 2013

The Commission recently submitted its Fiscal Year 2014 Budget Request to Congress. I declined to sign onto the budget request. It asks for \$117 million, an increase of \$2.2 million over the FY13 budget and \$8.4 million over the FY13 sequestration amount. Preparing and proposing a budget is one of the most important tasks of an agency's leadership, so my decision was not a light one. The budget adopted contains an obvious and critical omission: it fails to meaningfully address the burdens our testing regulations have imposed. As discussed below, that omission represents a failure to perform basic regulatory tasks competently and to follow through on congressional direction.

Budgets: accountability & competency

Preparing a budget—detailing where and when an agency plans to spend public resources—is key to a democratically accountable administrative state. Thus, though I have not agreed with every line of every budget, since becoming a commissioner I have signed on to every previous budget of the Commission, believing that it was important to signify my agreement with the central mission of the agency and to convey that message to our congressional overseers and the American people. So it was not a light matter for me not to sign this budget request.

My vote was prompted by my belief that regulating in the least burdensome way is central to our agency's—any agency's—mission. Unfortunately, pursuit of that is absent in this budget request. At a time when we are asking for an increased budget (as other agencies face cuts) it is unconscionable to submit a budget that does not address one of the most urgent responsibilities before us: reducing the unwarranted burdens of the testing rules we have imposed, burdens which are well-known to the agency. The responsibility to regulate in the least burdensome way is inherent upon us as competent regulators, and it was even more forcefully pressed upon us by Congress when it passed Public Law 112-28 in 2011.

The CPSC's special obligation to cut costs

That law, among other things, directed the Commission to seek public input into ways to reduce testing burdens. The law allowed for new regulatory action by the Commission if warranted to reduce costs while maintaining compliance and report to Congress if we lacked the appropriate authority to implement opportunities to reduce

costs. After seeking and analyzing public comments in response to this directive, the Commission's staff proposed 16 different methods of reducing the burden of third-party testing. The staff made clear that these 16 suggestions were not all-inclusive.

The Commission, after much debate, decided to move forward on nine of those areas. (I joined my colleagues in supporting that move, although, as I stated at the time, I would have preferred much broader moves, and moving forward more quickly.) It was a start. However, in our Fiscal Year 2013 operating plan (adopted in January 2013), we narrowed that list from nine areas to four, stating that the only action we planned to take in FY13 was to ask for additional public comment. In other words, the only action the Commission has taken in the past two years is to ask the public to comment on issues already commented upon—a stunning example of “kicking the can down the road” which hardly comports with the spirit (if not the letter) of the law.

Our failure to act

Thus, in this budget, I proposed an amendment calling for concrete action on each of the four areas that we agreed to examine further in the operating plan. Though I would have preferred much stronger language and more resources being dedicated to burden reduction, the language I proposed (attached) reflected the decision that the Commission made in the January operating plan. Unfortunately, my colleagues demurred, instead adopting language that was equivocal about when, if ever, we would move ahead on this task. Indicating that we had plans to take action to reduce the wasteful burdens we imposed was too much of a commitment.

The language that the Commission did adopt sends precisely the wrong message. My colleagues' decision to decline to even conditionally plan to move forward on burden reduction is insufficiently responsive to Congress's action and to the need for proper balance in our testing regulations. I find this position incomprehensible. Failing to act on and meaningfully fulfill the direction of Congress violates both our duty to execute the law and basic notions of administrative competence. To adopt the language that the Commission adopted, and reject the language I proposed, suggests that my colleagues do not plan to use any resources to reduce the testing burdens documented by our staff. To reject such plans—while asking for more money as the rest of the government generally expects budget cuts—is shocking to me.

As officeholders, we serve the public. We do not serve just one constituency or ideal. We are not merely advocates for safety—we have the responsibility to regulate with balance. Even in the absence of congressional intervention in the form of Public Law 112-28, it was clear that the burden imposed by our testing rule was high—unnecessarily so. That conclusion is inescapable after public pressure produced Public Law 112-28. Our obligation as regulators was to make some sincere effort to reduce that burden.

Any suggestion that our earlier failure to act was the product of insufficient funding loses credibility in the budget process, where we can request—and have requested—additional resources. If we left burden reduction incomplete because we had too little money, then, when we asked for more in this budget, we would spend the new money on the task left unfinished. That we express no such intent suggests the cries of insufficient funding were a ruse to cover an utter lack of interest in performing the task before us. Because the budget that my colleagues adopted fails to follow through on our commitment, I could not in good conscience support it.

Insert the following language on page 12 as indicated in italics.

There is also a *statutory* requirement to review third party testing burdens. *Depending on the outcome of reviews performed under that requirement, the Commission may undertake activity to reduce the burdens identified.* [See also the mandatory standards table on pages 28–29.]

In the mandatory standards summary, 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	BP	DA/TR	BP or NPR