



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

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September 8, 2011

The Honorable Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
1650 Pennsylvania Avenue, NW
Washington, DC 20503

Dear Mr. Sunstein:

On August 29, 2011, CPSC Chairman Tenenbaum wrote to you summarizing this agency's efforts to implement the President's July 11, 2011 Executive Order – Regulation and Independent Regulatory Agencies. Chairman Tenenbaum's letter is limited to efforts to implement Section 2 of the executive order, dealing with retrospective analyses of existing rules. Section 1 of the order, dealing with cost-benefit analysis, was not discussed because a majority of the Commissioners at this agency have proactively decided to ignore the President's direction.

There is a long history at this agency of regulating only after consideration of the costs and benefits of regulations. Unfortunately, that practice has fallen by the wayside over the past two years. In our efforts to implement the Consumer Product Safety Improvement Act, we have abandoned the use of cost-benefit analysis as a tool to protect public health while "promoting economic growth, innovation, competitiveness and job creation." While that law does not mandate the use of cost-benefit analysis, it does not prohibit it either. However, the position of a majority of the Commissioners at this agency is that since we do not have to do it, we will not.

In its 40 year history, this agency has issued only two major rules (having an impact on the economy of over \$100 million). The first, dealing with mattress flammability, was issued in 2005 and was well informed by a cost-benefit analysis. The second major rule, setting new standards for cribs, was issued in 2010 but did not include this analysis and consequently created needless havoc in the marketplace, in spite of the worthy goal of crib safety. We are now poised to issue our third major rule, dealing with ongoing product testing, again without the benefit of an economic analysis. With respect to this testing rule, Congress has expressly stated its concern (H.R. 2715) over testing costs and has asked us to seek

public comment on this issue. The majority plans to issue a final rule in October before seeking this public input.

While the Chairman's letter would have you believe that we are enthusiastically implementing the President's executive order, such is not the case. With the proper analysis, this agency can construct rules that advance safety without undue economic impacts and without delay. That result requires efforts on our part but unfortunately, the majority here has shown no interest in making those efforts.

Sincerely,

A handwritten signature in black ink that reads "Nancy Nord". The signature is written in a cursive, flowing style.

Nancy A. Nord
Commissioner