



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action Commissioners Voting by Ballot*

Commissioners Voting: Chairman Inez M. Tenenbaum
 Commissioner Thomas H. Moore
 Commissioner Nancy A. Nord
 Commissioner Anne M. Northup
 Commissioner Robert S. Adler

ITEM:

FY 2010 Spring Regulatory Agenda
(Briefing package dated February 22, 2010, OS No. 3040)

DECISION:

The Commission voted unanimously (5-0) to approve the draft of the Commission's regulatory agenda with changes to be published in a *Federal Register* notice. The notice lists those rules which are expected to be proposed or issued during the next twelve months and which may have a significant economic impact on a substantial number of small entities, including small businesses. The format is specified by the Office of Management and Budget and the General Services Administration for inclusion in the Unified Agenda of Federal Regulatory and Deregulatory Actions, to be published in Spring 2010. The publishing of the regulatory agenda is required by Section 602 of the Regulatory Flexibility Act, 5 U.S.C. § 602, and Executive Order 12866.

Commissioner Northup issued the attached statement with her vote.

For the Commission:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson".

Todd A. Stevenson
Secretary

* Ballot vote due February 24, 2010

Attachment



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

COMMISSIONER ANNE M. NORTHUP

STATEMENT OF COMMISSIONER ANNE M. NORTHUP
ON THE FISCAL YEAR 2010 SPRING REGULATORY AGENDA

February 24, 2010

Today's vote on the FY 2010 Spring Regulatory Agenda would have provided an excellent opportunity for the five Commissioners to discuss and debate the agenda for the year and how best we can meet the goal of the Regulatory Flexibility Act ("RFA") 5 U.S.C. 601 et seq., to protect small businesses from excessive regulatory costs. I voted for this agenda because I agree with its contents, including the list of rulemakings the Commission will need to address. However, having not had a public hearing or a briefing for the five Commissioners on the agenda, I am submitting this statement to convey my concerns with how we should prioritize these many rulemakings, and how we are meeting the RFA requirements.

By submitting this agenda to the Office of Management and Budget, we imply that we are doing what is required of us under the RFA. As required, we invite comments from the small business community on the agenda through June 1, 2010. While we may be meeting the minimal legal requirements of the law, I believe it is important that we also use all of the authority given us to conduct regulatory or economic analyses. Using our full authority would ensure that the public and the business community learn the true impact that the regulations of the Consumer Product Safety Improvement Act of 2008 are having on thousands of small businesses. I would have liked to discuss with our staff prior to today's vote the Commission's expertise and resources available for these types of analyses since the new law greatly expands the regulatory burden on small businesses compared to previous statutes. Our agency needs to ensure we have the manpower to analyze fully all of these regulations.

The Commission has received a considerable amount of anecdotal evidence from the business community on the negative impact of the CPSIA on employment, consumer choice, and other economic aspects. In March 2009, the Commission staff estimated that the economic costs associated with the law would be "in the billions of dollars range."¹ To accompany the Commission's Report to Congress with recommendations to amend the CPSIA, I submitted 90 pages of letters I received from small businesses and trade associations on the impacts of the law. I know of companies that have closed their doors, small businesses that have left the children's market and others who have been forced to cut employees due to the immense regulatory burden of this law. Recently, my staff heard from various toy makers at the Toy Fair in New York

¹ Letter from Acting CPSC Chairman Nancy Nord to Representative John Dingell, March 20, 2009.

regarding the high costs of compliance with the CPSIA. Thus, instead of doing the minimum that is required of us under the RFA for various rulemakings, going forward I believe we should be doing everything we can to define and aggregate the economic impact of the law.

Knowing the challenges small businesses face with this new law and that Congress is considering amendments to help avoid certain unintended consequences, the Commission could prioritize **both** a regulatory flexibility analysis (per the RFA) and a full cost-benefit analysis, as necessary, for each CPSIA rule. This undertaking would impact the Commission's regulatory agenda and would require shuffling some priorities, but it would provide a maximum amount of transparency in these rulemakings for small businesses and provide Congress with important information it seeks as it considers amending the law. As President Clinton stated in Executive Order 12866:

“The American people deserve ... a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. ... [I]n choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits ... unless a statute **requires** another regulatory approach.” (emphasis added)

In fulfilling our responsibilities to “select those [regulatory] approaches that maximize net benefits” the Commission ought to do more than just the required regulatory flexibility (RFA) analysis and instead provide a thorough cost-benefit analysis for certain regulations to present a more accurate view of the associated costs. We can do this because the CPSIA does not require us **not** to perform such analyses. However, we have chosen in most cases not to go above what is required.²

I should note that the CPSIA does not direct the Commission to promulgate rules in a way that would require the agency to conduct more complete cost-benefit analyses.³ This omission may have been intentional on the part of Congress in order to avoid the Commission's unveiling and advertising these facts. More likely, Congress did not want such analyses to slow down implementation of the law. However, even if there was an intention to cover up the impact on small business in 2008, Congress is completely open to, if not begging for, these facts today. Congressional support certainly has changed for the CPSIA, given that today there is a bi-partisan effort to amend the law:

² Approximately five CPSIA rulemakings (proposed and/or finalized) since 2008 have included a small business regulatory flexibility analysis, as required by the RFA. Only two of these five rules also provide cost-benefit analyses that go beyond the required RFA analysis. These two rulemakings that received a more complete analysis were rules designed to provide *exemptions* for businesses from some of the law's requirements and thus received analyses that did not indicate added costs to businesses.

³ None of the rules are directed to be promulgated under Section 9 of the CPSA, which requires a cost-benefit analysis and which also *precludes* the Commission from promulgating any rules whose benefits are not expected to bear a reasonable relationship to their costs.

- Democrats and Republicans in Congress asked the Commission in December to report back to them with recommendations on ways to amend the law to make it more workable and to avoid its many unintended consequences. This report was submitted to Congress on January 15, 2010.
- At least 11 bills have been introduced by both Republicans and Democrats since the CPSIA's passage to amend the law to avert its unintended consequences.
- Members of Congress on both sides of the aisle have written more than a dozen letters to the Commission to request leniency in the law's requirements for small businesses, exemptions for specific products they feel should not have been impacted by the law, and other changes.

As a Commissioner, I will continue to take every opportunity possible to ensure safety, which is the mission of this agency, while balancing the regulatory burdens that come with any new laws. Unfortunately, as our Report to Congress in January indicates and as many businesses across America already know, a majority of the requirements of the CPSIA have little to do with safety or risk. This week's vote on the Spring Regulatory Agenda was a missed opportunity to discuss and unravel some of the ways that the Commission can prioritize its time and resources this year to ensure we are doing our best to help small businesses negatively impacted by the CPSIA.