



## 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:

Spring 2011 Regulatory Agenda  
(Briefing package dated February 11, 2010, OS No. 4228)

### DECISION:

The Commission voted (5-0) to approve the draft Regulatory Agenda with changes to be published in a *Federal Register* notice. Chairman Tenenbaum and Commissioners Moore, Northup and Adler voted to approve with the same amendments. Commissioner Nord voted to approve with different amendments with one amendment adopted. 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 for inclusion in the Unified Agenda of Federal Regulatory and Deregulatory Actions, to be published in Spring 2011. 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.

Commissioners Nord and Northup issued the attached statements with their votes.

For the Commission:

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

Todd A. Stevenson  
Secretary

\* Ballot vote due February 24, 2011  
Attachments



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STATEMENT OF COMMISSIONER NANCY NORD  
ON THE VOTE TO APPROVE, WITH CHANGES, THE SPRING 2011  
REGULATORY AGENDA  
February 24, 2011

My vote supporting the Regulatory Agenda is conditioned on the following changes being made.

- 1.) **Testing and Certification Rule:** Although the agency has decided not to undertake the necessary analysis to determine how this rule will impact the economy, we know that the impact will be considerable. We also concede that we do not know the magnitude of the risk we will be addressing with this rule. Given this, my hope is that we proceed with regulatory caution. Therefore I was surprised to see the statement in the agenda, under “Statement of Need” that the Commission has elected to define a “reasonable testing program” which would regulate the manufacturing processes of all products (not just children’s products) subject to a CPSC standard. This statement is incorrect and should be deleted since, as yet, the Commission has made no such election. For that reason I suggested and the other Commissioners agreed to delete that statement.
- 2.) **Certifications of Compliance:** We are considering a proposed amendment to our existing rule (16 CFR part 1110) to clarify which parties must issue a certificate. This issue should be considered in conjunction with the Testing and Certification Rule since it goes both to who has to do a certificate and to what needs to be in it. The date for consideration should be changed to conform with that rule.
- 3.) **Third Party Accreditation for Toys and Phthalates:** The Regulatory Agenda proposes that third party lab accreditation rules for toys subject to ASTM 963 and products containing phthalates be published in July, 2011, with required testing to commence 90 days later. The timing of these rules puts extensive and complex new testing requirements on small manufacturers at their busiest time. Since the underlying requirements are in place, the lab accreditation requirements should be delayed so that they do not go into effect until the end of the calendar year. Such a change would track a similar decision that we made with respect to lead testing.



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STATEMENT OF COMMISSIONER ANNE M. NORTHUP ON  
THE SPRING 2011 REGULATORY AGENDA

February 24, 2011

I support today's vote on the Spring 2011 Regulatory Agenda with the understanding that the dates attached to each proposed rulemaking are not set in stone.

In particular, I support Commissioner Nancy Nord's view that the Third Party Accreditation for both the Toy and Phthalates Standards should be pushed back well beyond the proposed date of July 2011. Right now, this agenda estimates that the Commission's testing rules (the "15 month rule" and Component Parts rule) will be completed this August—a month *after* the proposed date for lifting the stay on testing for phthalates and ASTM F-963. For the same reason that prematurely lifting the stay on testing for lead would have been disastrous for many small manufacturers, I believe it would be irresponsible to lift the stay on testing to these other major rules until this Commission has finalized its testing rules *and* given manufacturers sufficient time following the rules' finalization to understand them and come into compliance.

Moreover, this agenda does not even contemplate a date for the finalization of the Definition of Toy and Child Care Article—another key component for manufacturers to know exactly what products will have to be tested.