



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:

Fiscal Year 2012 Performance Budget Request
(Briefing package dated January 21, 2011, OS No. 5751)

DECISION:

The Commission voted 4-1 to submit the Fiscal Year 2012 Performance Budget Request as recommended by the Executive Director with changes. Chairman Tenenbaum and Commissioners Moore, Nord and Adler voted to approve the Fiscal Year 2012 Performance Budget Request. An amendment offered by Commissioner Nord was not approved. Commissioner Northup voted to not approve the Fiscal Year 2012 Performance Budget Request.

Chairman Tenenbaum and Commissioners Adler and Moore submitted a joint statement regarding the matter. Commissioner Nord submitted a statement regarding the matter. Copies of the statements are attached.

For the Commission:

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

Todd A. Stevenson
Secretary

* Ballot vote due February 2, 2011

Attachments: Joint Statement of Chairman Tenenbaum, Commissioner Adler and
Commissioner Moore
Statement of Commissioner Nord



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**STATEMENT OF
CHAIRMAN INEZ M. TENENBAUM AND
COMMISSIONERS ROBERT S. ADLER AND THOMAS H. MOORE
REGARDING THE FISCAL YEAR 2012 PERFORMANCE BUDGET REQUEST**

February 14, 2011

Today the President released his proposed Budget of the United States Government, Fiscal Year (FY) 2012. Contained within this budget is the Consumer Product Safety Commission's Fiscal Year 2012 Performance Budget Request, (available at: <http://www.cpsc.gov/cpsc/pub/pubs/reports/2012plan.pdf>). This Budget Request has the bipartisan support of the Commission and reflects a measured, reasonable approach to resources necessary for CPSC to carry out its statutory duty to protect the public against unreasonable risks of injury or death while recognizing the need for government agencies to remain focused on operating as economically and efficiently as possible.

Historically, CPSC has had to survive with significantly fewer resources than its sister health and safety agencies. FY2012 continues this trend. While agencies such as FDA and USDA routinely receive budget outlays in the billions of dollars, as recently as FY2007 the CPSC had a budget of less \$63 million and fewer than 390 employees to regulate more than 15,000 types of consumer products, many of which are manufactured overseas. While we learned to do more with less over the years, this funding disparity was not without cost to the American consumer. During those lean times CPSC discovered, and Congress recently recognized, that the continued lack of sufficient funding and staff was beginning to make it nearly impossible for the agency to accomplish even the minimum that is required of a health and safety agency.

It is our belief that the FY2012 Performance Budget Request of \$122 million is essential to do our job on behalf of the American consumer. The FY2012 Budget will allow the agency to perform mission critical tasks, including:

- *Enforcement:*
 - CPSC's Import Surveillance Division, since its creation in 2008, has given CPSC its first significant and dedicated presence at U.S. ports. CPSC is colocated with U.S. Customs and Border Protection offices at 15 locations, enabling us to screen consumer products before they enter the U.S. In FY2010, CPSC found violative products in more than 50 percent of the 1700-plus samples that were collected. With approximately 85 percent of U.S. product recalls involving imported products, CPSC's presence at the ports is one of the American consumer's best, and most economical, lines of protection against these violative products reaching their homes.
 - The Virginia Graeme Baker Pool and Spa Safety Act (VGB Act) requires all public pools to comply with new safety standards that will prevent child drownings and entrapments. On average, approximately 400 children drown every year in pools in the United States. CPSC is charged with enforcing the Act and does so through both inspections and cooperative

relationships with state enforcement bodies. Further, CPSC's "PoolSafely" campaign aims to educate all pool users, public or private, of the need to act responsibly and proactively when it comes to all aspects of pool safety.

- *Education:*

- CPSC's newly created Office of Education, Global Outreach, and Small Business Ombudsman is charged with the significant task of creating an institutionalized, coordinated approach to industry education and outreach activities to both domestic and international stakeholders, including manufacturers, retailers, resellers, small businesses, and foreign governments. In particular, this Office is now offering and will continue to offer assistance to small businesses that fall under the agency's jurisdiction.
- The Safe Sleep Campaign, which emphasizes the need for a safe sleep environment for all of the nation's babies has been a key priority for CPSC and will continue to be in FY2012. This campaign focuses on educating new parents and child care providers about the dangers of placing babies to sleep in recalled, defective, or outdated cribs, and keeping soft bedding out of cribs, bassinets, and play yards.
- In the Internet age the most frequent method of interacting with consumers and businesses is in cyberspace. Accordingly, in FY2012 the CPSC Website will undergo a long overdue overhaul to make it friendlier and more useful to businesses and consumers alike.
- In FY2012, funds will be used to support the new Publicly Available Consumer Database, which is part of the Commission's overall IT modernization effort. This relatively new way for the public to interact with the Commission will allow for critical safety information to be disseminated faster to all concerned—but will require increased funds to modify our processes and organization to support the intake, processing, and review of incoming reports of harm and manufacturer comments.

- *Commitment to Prevention*

- CPSC is not only responsible for enforcing existing laws and regulations but also for proactively working to prevent the next hazard from arising. In the last few years the agency has not only continued to work with standards setting organizations, but we have also begun a long term effort of promoting the production of safe products at the design stage. Our effort to encourage more focus on safety earlier in the global supply chain will assist with CPSC's task of preventing hazards from entering consumer markets.
 - More specifically, CPSC is working to improve the effectiveness of carbon monoxide (CO) alarms as well as urging all Americans to install them in their homes to protect themselves from the nearly 200 deaths annually associated this silent killer. CPSC will also be working in 2012 with the United States Fire Administration on third generation prototype smoke alarms, as well as continued efforts to reduce carbon monoxide deaths resulting from improper use of portable generators through consumer education campaigns and rulemaking activities.
 - CPSC is also keeping a close eye on nanotechnology and studying whether the potential release of nanoparticles from consumer products create health effects. The explosive growth in the use of nanoparticles in consumer products merits closer scrutiny.

- *Emerging Hazards*
 - One of CPSC's greatest challenges during the last few years has been its leadership of the Interagency Drywall Task Force to investigate possible health and safety risks from problem drywall. This has been a challenge not only because it has been the single most expensive and largest compliance investigation in CPSC history, but also because it was not an area of concern prior to the first complaints arising about the product. In other words, when the next unexpected hazard emerges that CPSC must address, the agency's ability to respond will be dependent upon having received the appropriate level of resources.

- *Regulation*
 - The Consumer Product Safety Improvement Act (CPSIA) not only assisted in revitalizing the agency with an influx of resources and directives but also required CPSC to enter into rulemaking at a rate of more than three times its normal output on an annual basis. While many of these rules have now been successfully completed, FY2012 will see more rulemakings required to be either completed or initiated. For example, in FY2012 the CPSC expects to work on four final rules relating to durable nursery products and four more proposed rules on durable nursery products. The agency will also be considering important draft rules on portable generators, upholstered furniture and recreational off-road vehicles. Additionally, the agency will be undertaking a required review of the mandatory toy standard (ASTM F963) and continued activities associated with harmonizing these requirements with international toy standards.

- *Information Technology Modernization*
 - In addition to the CPSIA's mandate to create a publicly available database, the Act also required a modernization of CPSC's antiquated IT systems. Over the course of the agency's nearly forty years, too many overlapping and siloed technology systems were created. The long overdue and required IT overhaul will allow the data CPSC collects, no matter the source, to be used more effectively and more quickly by the agency because it will eliminate much of the stove-piped inefficiencies and redundancy that a lack of appropriate funding has allowed to develop over the years.



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STATEMENT OF COMMISSIONER NANCY NORD
ON THE VOTE TO APPROVE THE FISCAL YEAR 2012 CPSC BUDGET REQUEST
February 14, 2011

I support the agency's Fiscal Year 2012 Budget Request for \$122 million because we need these resources to do the job Congress gave us. I do not agree, however, with how this budget proposes to spend some of these funds. Two areas of major concern are the Public Database and overall implementation of the Consumer Product Safety Improvement Act (CPSIA).

Public Database

We propose to add an additional 24 staff next fiscal year just for data intake review alone. It is very important to note that the intake review is not an investigation of a possible hazard. Even with this significant FTE increase, at best, the staff will only be able to investigate approximately 10% of the reports to determine if the product is hazardous.

We have structured the database to take complaints from anyone who can meet very minimal requirements, expanding the definition of "consumer" well beyond what I understand to be Congressional intent and, as a consequence, assuring that the number of complaints is large but the reliability of complaints is questionable. Even with the large influx of funds to do data intake, we have not allocated funds to investigate claims of material inaccuracy of complaints. In other words, we are proposing to fund a database that will have unsubstantiated, uninvestigated and possibly inaccurate information posted on it. We have not allocated funds to assure that the information is vetted so that it could be a useful tool for consumers. I am concerned that consumers will be ill-served by incomplete, inaccurate or misleading complaints. It is inevitable that these complaints will drive agency priorities, pressuring the agency to use our limited resources to react to incidents that may generate extensive media coverage, but do not necessarily pose a serious safety risk. Instead safety priorities should be set, as they have been in the past, by relying on actual data correlating product safety risks and exposure.

CPSIA Implementation

The agency's requested funding increase is being driven by the many new requirements imposed on the agency by the CPSIA that are highly resource intensive and account for a considerable portion of the agency budget. The agency has undertaken an average of 26 substantive rulemaking activities in 2009, in 2010 and proposed in 2011, the cumulative effect of which has significantly increased the agency's enforcement workload. More rules are planned for completion in FY2012. This request explains our need for more investigators and compliance officers along with technical, laboratory and legal staff to support their efforts. The steady growth of required regulations necessitates sufficient funding to carry out our mandates.

I think we can make our ongoing regulatory actions better. We need to use our limited resources to address real safety and health issues by focusing regulatory efforts on products that present serious hazards. Too often we are issuing rules that are not worth the cost, do not enhance safety and have absurd results. For example, aspects of the rule defining children's products which impose expensive and burdensome third-party testing on

products that were not traditionally thought of as children's products – such as carpets and rugs, general apparel textiles and vinyl plastic film – do not, prima facie, justify the cost and result in little or no gain in terms of safety. These general applicability rules were not implemented to address identified risks specific to a child. We have stretched the law and are pulling in products that obscure our priorities. I question our focus and use of public funds to mandate unnecessary third-party testing.

I am also disappointed that my colleagues would not approve my request to include resources for a cost-benefit analysis for our rules under CPSIA. Soon we will consider a testing and certification rule that is only the third major rule ever proposed by the Commission. Because cost-benefit analysis of rules under CPSIA is not required, the majority of my colleagues who turned down a similar request last year, again chose not to expend resources for this critical analysis. Nevertheless we know this rule will have a huge impact on global manufacturing yet we are not developing the data we need as regulators to assure the most cost-beneficial regulatory approach. The magnitude of the crib rule, the agency's second major rule issued late last year, did not become evident to us until we were finalizing it and we had to address the cost issue as best we could and without benefit of appropriate data. A cost-benefit analysis would have identified the significant cost drivers, as well as the benefits, and perhaps we would have developed more cost effective options to implement our important safety goal of a safe sleep environment for infants. We do not know the full impact of our regulations because we have not done sufficient spadework – we need to regulate from an informed point of view.

Summary

I believe that, at times, we are regulating for the sake of regulating rather than targeting our work to projects that provide a real payback of safety to consumers. At times, there is a disconnect between our regulations and actual risk. I want to raise these issues with Congress in the hope that the agency will be granted more flexibility to better protect the public while minimizing the significant regulatory burdens that have resulted from the law.