



UNITED STATES  
**CONSUMER PRODUCT SAFETY COMMISSION**  
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**COMMISSIONER RICH TRUMKA JR.**

## **CPSC MUST FIX GAG RULE REGULATIONS SO CONSUMERS CAN PROTECT THEIR FAMILIES**

**FEBRUARY 8, 2023**

Every American deserves the opportunity to protect themselves and to keep their families safe. As a CPSC Commissioner, I should be able to warn you when I know about a dangerous product so you can use that information to protect your family.

The Gag Rule<sup>1</sup> is, undoubtedly, an anti-consumer hurdle to transparency. It makes it hard, and sometimes impossible, for me to share critical safety information with you. But this agency also willingly raised the hurdle even higher for itself, starting in 1983, when it passed a regulation tacking on additional burdens that prevented us from informing consumers without extensive and time-consuming negotiations with regulated companies. As a result, historically, this agency has rarely communicated about product safety without corporate consent.

Against that history, our duty to the public is clear: we must strip away all burdens to information-sharing that are not required by law. That is what I expected an SNPR concerning the Gag Rule to do. The SNPR that came to the Commission for today's vote does not meet this test.

I voted "no" because I do not support the direction this proposal takes. It fails to improve our ability to communicate important safety information to the public as rapidly and completely as the statute allows. It does not embrace the pro-consumer and pro-transparency approach that Americans have every right to expect.

Almost a decade ago, in 2014, this agency published an NPR that, while very modest, had one clear benefit for transparency: it allowed the Commission to comment on information that was already public. But the SNPR walks backwards from that position. Though the SNPR acknowledges that the Gag Rule only applies to disclosures, and that sharing information that is already public cannot possibly be a "disclosure," it still adds unnecessary burdens to our ability to share information. It adds ambiguous language that could impose new constraints on our ability to "characterize" accurate, and already-public information. The proposal would open new

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<sup>1</sup> 15 U.S.C. § 2055.

doors for outside interests to censor our speech and hide safety information from consumers. The SNPR unjustifiably abandons the modest improvements CPSC proposed in 2014.

This SNPR is also a missed opportunity to bring sunlight to product safety under two important exclusions to the Gag Rule:

First, our statute anticipates that we will warn the public immediately when risks are serious and imminent, connecting public health and safety to the concept of practicability. 15 U.S.C. § 2055(b)(1). This proposal fails to provide meaningful examples of how we could use our full authority to quickly warn the public of danger when notifying a manufacturer and waiting for a response is not practicable.

Second, our statute provides that information is subject to corporate preclearance only if that information was obtained under CPSC's unique information-gathering powers, granted by the specified Act,<sup>2</sup> or is disclosed to the public in connection with information specifically obtained that way. A unanimous Supreme Court has clarified that the purpose of corporate preclearance under the Gag Rule is to protect manufacturers' reputations from our disclosure of sensitive, private information that we gather under our vast statutory information-gathering powers. *CPSC v. GTE Sylvania, Inc.*, 447 U.S. 102, 111-12 (1980) (Rehnquist, J.). Information that we come across in different ways—for example, information that we generate through our own research on products or information that we gather using public sources—was never intended to go through the Gag Rule's elaborate corporate censorship process. This proposal gives no content to that statutory exclusion.

Rather than open critical safety information to the sunlight, this SNPR would draw a new maze through the darkness. I cannot think of any practical examples where this proposal would allow us to share new, important information with the public, or increase the speed at which we share it. This maze of new procedures gets us nowhere.

Now that the SNPR will be published, the role of consumer commenters is very important. I expect you to urge us to correct the shortfalls of this SNPR. I expect you to tell us how we can best get you as much information at the law allows. When you do that, I am confident that our final rule briefing package will take a significantly different approach. At the final rule stage, we need to think about how we can get the most information to consumers as quickly as possible. Where the Gag Rule stops us . . . so be it. But there is no room for us to *stop ourselves* from doing the right thing. We owe consumers more than that.

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<sup>2</sup> 15 U.S.C. § 2055(b)(1), (d)(1).