CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Statement of Regulatory Priorities

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of death and injury associated with consumer products. To achieve this goal, the Commission:

- Develops mandatory product safety standards or banning rules when other, less restrictive, efforts are inadequate to address a safety hazard, or where required by statute;
- Obtains repair, replacement, or refund of the purchase price for defective products that present a substantial product hazard;
- Develops information and education campaigns about the safety of consumer products;
- Participates in the development or revision of voluntary product safety standards; and
- Follows congressional mandates to enact specific regulations.

When deciding which of these approaches to take in any specific case, the Commission gathers and analyzes the best available data about the nature and extent of the risk presented by the product. The Commission's rules require the Commission to consider, among other factors, the following criteria when deciding the level of priority for any particular project:

- Frequency and severity of injury;
- Causality of injury;
- Chronic illness and future injuries;
- Costs and benefits of Commission action;
- Unforeseen nature of the risk;
- Vulnerability of the population at risk; and
- Probability of exposure to the hazard.

If the Commission proposes a mandatory safety standard for a particular product, the Commission is generally required to make statutory cost/benefit findings and adopt the least burdensome requirements that adequately protect the public.

Additionally, the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314 (Aug. 14, 2008), requires numerous rules and notices to be completed on a specific schedule. One such regulatory action pertains to the testing, certification, and labeling of certain consumer products. Section 102(d)(2) of the CPSIA requires the Commission to initiate by regulation: (1) A program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of section 102(a) of the CPSIA; (2) protocols and standards (i) for ensuring that a children's product tested for compliance with an applicable children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts; (ii) for the testing of random samples to ensure continued compliance; (iii) for verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and (iv) for safeguarding against the exercise of undue influence on a third-party conformity assessment body by a manufacturer or private labeler. This regulatory action will constitute a ''significant regulatory action'' under the definition in Executive Order 12866 ''Regulatory Planning and Review'' (Oct. 4, 1993).

CPSC

FINAL RULE STAGE

171. TESTING, CERTIFICATION, AND LABELING OF CERTAIN CONSUMER PRODUCTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 110–314, sec 102

CFR Citation:

Not Yet Determined

Legal Deadline:

NPRM, Statutory, November 14, 2009.

Abstract:

Section 102(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314 (Aug. 14, 2008), requires the Commission to initiate by regulation, no later than 15 months after the date of enactment: (1) A program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of section 102(a) of the CPSIA; (2) protocols and standards (i) for ensuring that a children's product tested for compliance with an applicable children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts; (ii) for the testing of random samples to ensure continued compliance; (iii) for verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and (iv) for safeguarding against the exercise of undue influence on a third-party conformity assessment body by a manufacturer or private labeler. In May 2010, the Commission published a Notice of Proposed Rulemaking (NPRM) in the Federal Register. The proposed rule defined a reasonable testing program for non-children's products subject to a rule, ban, standard, or regulation enforced by the Commission and additional third-party testing requirement for children's products.

Statement of Need:

Section 102(d) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Consumer Product Safety Commission (CPSC) to engage in rulemaking to establish requirements pertaining to the testing, certification, and labeling of certain consumer products. CPSC also has elected to issue regulations regarding a ''reasonable testing program'' under section 102(a) of the CPSIA to establish the elements of such a program.

Summary of Legal Basis:

Section 102(b) of the CPSIA requires the Commission to initiate by regulation: (1) A program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of section 102(a) of the CPSIA; (2) protocols and standards (i) for ensuring that a children's product tested for compliance with an applicable children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts; (ii) for the testing of random samples to ensure continued compliance; (iii) for verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and (iv) for safeguarding against the exercise of undue influence on a third-party conformity assessment body by a manufacturer or private labeler.

Section 102(a) of the CPSIA requires manufacturers of certain products to certify, based on a test of each product or upon a reasonable testing program, that such product comports with all rules, bans, standards, or regulations applicable to the product under laws enforced by CPSC. Section 3 of the CPSIA authorizes the Commission to issue regulations, as necessary, to implement the CPSIA and the amendments made by the CPSIA.

Alternatives:

The preamble to the proposed rule invited comment on alternatives such as: (1) Establishing different compliance or reporting requirements that take into account the resources available to small businesses; (2) clarifying, consolidating, or simplifying compliance and reporting requirements for small entities; (3) using performance rather than design standards; and (4) exempting small entities to the extent statutorily permissible under section 14 of the CPSA. However, the proposal would give firms considerable discretion to determine the precise nature of their testing programs (including the number of samples to be tested and testing frequency). As for exemptions, the statute does not appear to give the Commission the authority to exempt firms from the testing or certification requirements, so it may not be possible to exempt firms within section 14 of the CPSA.

Anticipated Cost and Benefits:

The congressional mandate to issue this regulation does not require the Consumer Product Safety Commission to do a cost/benefit analysis for this regulation. Therefore, a cost/benefit analysis is not available for this regulatory action.

Risks:

Congress determined a need for testing, and in the case of children's products, third-party testing to ensure compliance with the Agency's standards. The Agency's standards address unreasonable risks of injury associated with consumer products; testing and certification to these standards provide an extra assurance that the consumer products are free from those unreasonable risks of injury; and through such testing programs, encourage manufacturers to address possible risks in the early stages of product manufacture. Given the breadth of the risks of injury the Agency's standards address and the number of products that are subject to testing or third-party testing, it is not possible to provide an analysis of the magnitude of the risk this regulatory action addresses.

Timetable:

Action	Date	FR Cite
Staff Sends Briefing Package to the Commission	04/01/10	
Commission Decision	05/05/10	
NPRM	05/20/10	75 FR 28336
NPRM Comment Period End	08/03/10	
Staff Sends Briefing Package to Commission	01/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory Priorities

I.Regulatory Priorities

Background

The Federal Trade Commission (''FTC'' or ''Commission'') is an independent agency charged by its enabling statute, the Federal Trade Commission Act, with protecting American consumers from ''unfair methods of competition'' and ''unfair or deceptive acts or practices'' in the marketplace. The Commission strives to ensure that consumers benefit from a vigorously competitive marketplace. The Commission's work is rooted in a belief that competition, based on truthful and non-misleading information about products and services, brings the best choice of products and services at the lowest prices for consumers.

The Commission pursues its goal of promoting competition in the marketplace through two different, but complementary, approaches. Unfair or deceptive acts or practices injure both consumers and honest competitors alike and undermine competitive markets. Through its consumer protection activities, the Commission seeks to ensure that consumers receive accurate, truthful, and non-misleading information in the marketplace. At the same time, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from anticompetitive business practices. Thus, the second part of the Commission's basic mission—antitrust enforcement—is to prohibit anticompetitive mergers or other anticompetitive business practices without unduly interfering with the legitimate activities of businesses. These two complementary missions make the Commission unique insofar as it is the Nation's only Federal agency to be given this combination of statutory authority to protect consumers.

The Commission is, first and foremost, a law enforcement agency. It pursues its mandate primarily through case-by-case enforcement of the Federal Trade Commission Act and other statutes. In addition, the Commission is also charged with the responsibility of issuing and enforcing regulations under a number of statutes. Most notably, pursuant to the FTC Act, the Commission currently has in place 16 trade regulation rules. Other examples include the regulations enforced pursuant to credit and financial statutes[1] and to energy laws.[2] The Commission also has adopted a number of voluntary industry guides. Most of the regulations and guides pertain to consumer protection matters and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions.

Commission Initiatives

The Commission vigorously protects consumers through a variety of tools including both regulatory and non-regulatory approaches. To that end, it has encouraged industry self-regulation, developed a corporate leniency policy for certain rule violations, and established compliance partnerships where appropriate.

As detailed below, information privacy and security, the evolving nature of technology, health care, consumer credit and finance issues, and marketing to children continue to be at the forefront of the Commission's consumer protection and competition programs. By subject area, we discuss the major workshops, reports,[3] and initiatives the FTC has pursued since the 2009 Regulatory Plan was published.

(a)Medical and Health Care. On January 13, 2010, FTC staff released a report entitled ''Pay-for-Delay: How Drug Company Pay-Offs Cost Consumers Billions.''[4] The study found that settlement deals featuring payments by branded drug firms to a generic competitor kept generics off the market for an average of 17 months longer than agreements that do not include a payment and cost consumers an estimated $3.5 billion per year—or $35 billion over 10 years.

In a speech to the American Medical Association in June 2010, Chairman Jon Leibowitz noted that the new health care reform law establishes programs for Medicare called ''accountable care organizations,'' or ACOs, as possible devices to improve quality and lower the cost of health care. On October 5, 2010, the Commission held a public workshop on health care competition policy, payment reform, and the new models for delivering health care that seek to incentivize high-quality, cost-effective care. The FTC workshop focused on how ACOs could affect competition in commercial health care markets.

(b) Assistance to Consumers in Financial Distress. Historic levels of consumer debt, increased unemployment, and an unprecedented downturn in the housing and mortgage markets have contributed to high rates of consumer bankruptcies and mortgage loan delinquency and foreclosure. Debt relief services have proliferated in recent years as the economy has declined and greater numbers of consumers hold debts they cannot pay. During the summer of 2010, the Commission issued a final rule amending the Telemarketing Sales Rule to address the telemarketing of debt relief services offered to consumers.[5] The amendments are necessary to protect consumers from deceptive or abusive practices in the telemarketing of debt relief services.

The recent national mortgage crisis has launched an industry of companies purporting, for a fee, to obtain mortgage loan modifications or other relief for consumers facing foreclosure. The Commission and other law enforcement have also taken action against mortgage companies that harm consumers through their advertising and servicing practices. The Commission initiated active rulemakings to protect distressed homeowners, one relating to Mortgage Assistance Relief Services (''MARS'') and another relating to Mortgage Acts and Practices (''MAP'') through the life cycle of the mortgage loan.[6] The MAP proceeding has since been split into rulemakings on MAP-Advertising and MAP-Servicing.

In February 2009, the FTC issued ''Collecting Consumer Debts: The Challenges of Change.''[7] The report noted that the FTC lacked sufficient information on debt collection proceedings. In the summer and fall of 2009, the Commission convened three public roundtables at which it examined consumer protection issues involving

[1]For example, the Fair Credit Reporting Act (15 U.S.C. sections 1681 to 1681(u), as amended) and the Gramm-Leach-Bliley Act (Pub. L.106-102, 113 Stat.1338, codified in relevant part at 15 U.S.C. sections 6801 to 6809 and sections 6821 to 6827, as amended).

[2]For example, the Energy Policy Act of 1992 (106 Stat. 2776, codified in scattered sections of the U.S. Code, particularly 42 U.S.C. section 6201 et seq. and the Energy Independence and Security Act of 2007 (EISA).

[3]The FTC also prepares a number of annual and periodic reports on the statutes it administers. These are not discussed in this plan.

[4]This report can be found at http://www.ftc.gov/os/2010/01/100112payfordelayrpt.pdf.

[5]Go to Final Actions and see *Debt Relief Services TSR Rule.*

[6]Go to Rulemakings and Studies Required by Statute and see *Mortgage Loans Rule.*

[7]This can be found at http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf.