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 Midyear Review
(Briefing package dated May 24, 2010, OS No. 3718)

DECISION:

The Commission voted (3-2) to approve the Fiscal Year 2010 midyear review recommendations as drafted by the Executive Director. Chairman Tenenbaum and Commissioners Moore and Adler voted to approve the recommendations as drafted. Commissioner Nord voted to approve the recommendations with certain changes. Commissioner Northup voted to not approve the review recommendations. Commissioners Nord and Northup issued the attached statements with their votes.

For the Commission:

Todd A. Stevenson
Secretary

* Ballot vote due June 4, 2010

Attachment: Statement of Commissioner Nord
Statement of Commissioner Northup

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STATEMENT OF COMMISSIONER NANCY NORD ON THE CPSC MID-YEAR FY2010 BUDGET REVIEW

June 7, 2010

The CPSC's mid-year budget review shows that we have more than $7 million in unallocated funds. To spend this money, it is proposed, among other things, to accelerate spending on certain activities and equipment planned and budgeted for next fiscal year. I offered an amendment to use a modest amount to do a cost-benefit analysis of the rule on Testing and Labeling Pertaining to Product Certification proposed by the Commission. I am both disappointed and puzzled that my colleagues are willing to use these unallocated funds to buy, for example, new computers but will not fund the computation needed to support a major regulatory undertaking.

This testing rule, required by the CPSIA, is one of the most significant rules ever promulgated by this agency. This has been universally acknowledged by staff and commissioners. It is also potentially one of the most costly in terms of its impact on the economy. Certainly, it meets the definition of a "major rule," defined as having an impact on the economy of over $100 million.

Under the terms of a long-standing executive order which has been followed by successive administrations, when a safety agency that is part of the President's cabinet – such as NHTSA or FDA – issues a major rule, that agency is required to do a rigorous cost-benefit analysis to assure that the benefits to society outweigh the costs to society imposed by the regulation. Because the CPSC is an independent regulatory agency, the executive order does not explicitly apply to us, but the importance of the principle does. In the past, when the CPSC issued a major rule, it followed the lead of other agencies and went through this discipline. The decision making process was better informed because of the rigorous analysis that was done.

With respect to this testing rule, such an analysis has not been done in spite of its significance. The regulatory impact of this rule has been hinted at because we did do an initial regulatory flexibility analysis focusing on the proposed rule's potential impact on small business. The information in that analysis is extremely troubling. It shows that the economic impact from the costs of testing on small business will be quite significant. For example, according to our analysis:

- "The draft proposed rule could have a significant adverse impact on a substantial number of small businesses. The provisions of the draft rule that are expected to have the most significant impact are provisions related to requirements for the third party testing of children's products with and without a reasonable testing program. The impact of these provisions would be expected to be disproportionate on small and low-volume manufacturers."
- "The provisions that would require manufacturers and importers of non children's products to establish and maintain reasonable testing programs could also have an adverse impact on some manufacturers and importers."
- In hypothetical examples intended to illustrate some potential cost implications, the cost to do the required testing of bikes could range from $7,350 to $18,600, and the test cost for toys could range from $4,848 to $18,560.

- "Some manufacturers might attempt to redesign their products to reduce the number of tests required... Manufacturers and importers could also be expected to reduce the number of children's products that they offer or, in some cases, exit the market for children's products entirely. Some may go out of business altogether."
- "The requirement for third party certification testing could be a barrier for new firms to enter the children's product market..."

With this as a warning, it is imperative that the agency understand better the full regulatory impact – both costs and benefits – of this rule before we finalize it. Without this information, how can we best decide what to do with this rule?

A regulatory flexibility analysis looks only at the impact on small business; a full cost-benefit analysis would look at the entire picture, not just part of the equation. There is no good reason why we are not doing such an analysis in this important case, especially since the necessary funds are available.

During the agency's appropriation hearing where we discussed the use of agency funds, Chairman Tenenbaum and I were asked about the utility of looking at the costs of the CPSIA. Both of us agreed that such an analysis would be helpful. Here was an opportunity to do that analysis and my colleagues voted to take a pass. This is not responsible regulating.

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STATEMENT OF COMMISSIONER ANNE M. NORTHUP ON THE FISCAL YEAR 2010 MID-YEAR REVIEW RECOMMENDATIONS

June 4, 2010

Today I voted to send $7.1 million in extra agency funds available for internal reallocation back to the U.S. Treasury in order to help reduce the federal budget deficit. At a time when the federal debt is over $13 trillion (every household owes over $500,000 due to unfunded federal commitments),[1] I cannot support the Commission's plan to reallocate this extra money that we do not need to spend.

The Commission's budget has grown at a remarkable pace since 2008, mostly due to the passage of the Consumer Product Safety Improvement Act of 2008 (CPSIA). This law passed in response to a flood of toys recalled with lead paint. As Congress has become aware of the law's overreach, however, Members of both parties have introduced bills to amend the law significantly.

As a result of two consecutive years of large budget increases and the naturally gradual but steady pace taken to fill dozens of new CPSIA-related positions agency-wide, the Commission has ended up with approximately $7.1 million in extra funds this year (including about $5.7 million unspent for salaries). I do not fault the Commission for failing to make all of its new hires immediately upon receiving budgetary approval for them; indeed, the Commission is still on schedule to meet the hiring goals given by Congress. However, just because we will not be able to spend our *entire* annual budget (all $118 million) as originally planned does not mean we must invent other ways to spend it mid-year.

As a Commissioner, I am responsible not only for fulfilling the safety mission of this agency, but also for being a good steward of the taxpayers' hard-earned dollars. Not a day goes by when a headline in a major newspaper does not mention the growing federal deficit (projected to be $1.4 trillion this fiscal year),[2] the staggering national debt, or exploding entitlements that threaten to bankrupt our country.

Seven million dollars may not be a large figure for the federal government. In truth, no single federal agency or department can even come close to solving our country's fiscal crisis, and it would be easy for the CPSC to do nothing and assume "it's not our problem." On the other hand, if every federal agency this year were to allow its unspent funds to revert to the Treasury instead of going on a new spending spree, it would make a difference.

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[1] "Leap in U.S. Debt Hits Taxpayers with 12% More Red Ink," Dennis Cauchon, *USA Today*, May 29, 2009. <http://www.usatoday.com/news/washington/2009-05-28-debt_N.htm>

[2] "Gross National Debt: $13 Trillion and Counting," May 21, 2010, <http://rpc.senate.gov/public/?p=TaxesSpending&ContentRecord_id=4d03cb57-aa3a-494c-9559-c6ba246e7e57&ContentType_id=3d1f05d6-ed37-4dea-897e-e41bafd0e109&d77c912a-2c22-4843-a17b-96c2f091d607&52b58cdf-6a90-410a-b4d7-fead13c38a57&48a8ecc4-33df-4bce-b6bd-710c426ab3e1&Group_id=dc98959b-ee1e-4f26-af39-0b90effcf1d2>

According to the Congressional Budget Office, the federal government currently is spending 67 percent more than it is earning. For an average household, that equates to earning $62,000 per year but spending $105,000 per year[3]—and of course doing so every year with no plan to stop. I regret that my colleagues did not join in supporting my decision today to make a small contribution toward reducing the federal deficit—and a significant statement in support of fiscal responsibility.

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[3] Ibid.