



UNITED STATES
 CONSUMER PRODUCT SAFETY COMMISSION
 WASHINGTON, DC 20207

BALLOT VOTE SHEET

DATE: OCT 30 2002

TO: The Commission
 Todd A. Stevenson, Secretary

THROUGH: Patricia Semple, Executive Director
 Jacqueline Elder, Acting Assistant Executive Director,
 Office of Hazard Identification and Reduction

FROM: Melissa V. Hampshire, Acting General Counsel
 Stephen Lemberg, Assistant General Counsel for Administrative Law
 Lowell F. Martin, Attorney-Advisor, GCAL (ext. 2217)

SUBJECT: Draft Policies and Procedures for Compliance with Regulatory Flexibility Act

Ballot Vote Due: NOV 6, 2002

The Directorate for Economics has developed the attached draft policies and procedures to document the procedures followed by the Commission to comply with the requirement of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 601, *et seq.*, that the Commission consider the potential impacts of the CPSC's rules on small businesses, small governmental jurisdictions, and small organizations during the rulemaking process. The RFA requires that this consideration begin at the Notice of Proposed Rulemaking (NPRM) stage of the rulemaking process. Please review the draft policies and procedures document and indicate your approval, approval with changes as noted, or disapproval of the draft on this ballot vote sheet.

Executive Order No. 13272, *Proper Consideration of Small Entities in Agency Rulemaking*, 67 Fed. Reg. 53,461 (2002), copy attached, requires that federal agencies, including the CPSC, develop these written draft policies and procedures and provide them to the Chief Counsel for Advocacy of the Small Business Administration (Advocacy) for review and comment not later than November 12, 2002. Agencies are then required to consider any comments received from Advocacy within 60 days thereafter in preparing the final version of their policies and procedures. The policies and procedures are to be finalized by February 10, 2003. They are then to be made available to the public through the Internet or other easily accessible means.

The CPSC is an "agency" required by statute to comply with the RFA. 5 U.S.C. § 601. The attached draft policies and procedures document states that it is the policy of the Commission to assure "maximum notice to and participation by small entities in its rulemaking process." The draft document then goes on to describe the procedures that the

NOTE: This document has been reviewed or accepted by the Commission.
 Initial rlh Date 10/30/02
 CPSC Hotline: 1-800-638-CPSC(2772) ★ CPSC's Web Site: <http://www.cpsc.gov>

CPSC 6 (10/01) Cleared
 10-30-02
 No Mfrs/Private or Products Identified
 Exempted by Procedure

Commission is required by the RFA statute to follow and has been implementing since enactment of the RFA in 1980. 5 U.S.C. §§ 603 - 609.

The Office of the General Counsel recommends that the Commission approve the policies and procedures document as drafted for transmittal to Advocacy for review and comment.

Please indicate your vote on the following options.

- I. Approve the draft policies and procedures document as drafted.

(Signature)

(Date)

- II. Approve the draft policies and procedures document with the following changes (please specify).

(Signature)

(Date)

- III. Do not approve the draft policies and procedures document.

(Signature)

(Date)

Attachments:

1. E.O. 13272, *Proper Consideration of Small Entities in Agency Rulemaking*, 67 Fed. Reg. 53,461 (August 16, 2002)

2. Draft Policies and Procedures for Ensuring Proper Consideration of Small Entities in CPSC Rulemaking, October 28, 2002

DRAFT (10/28/02)

U.S. Consumer Product Safety Commission Procedures and Policies to Account for Small Business in the Rulemaking Process¹

It is the policy of the U.S. Consumer Product Safety Commission (CPSC) to consider fully the potential impact of its draft rules on small entities by thoroughly reviewing its draft rules to assess and take appropriate account of their potential impact on small businesses, small governmental jurisdictions, and small organizations, and to ensure maximum notice to and participation by small entities in its rulemaking process. The following procedures implement this policy.

1. When a Notice of Proposed Rulemaking (NPRM) is being considered, the CPSC Directorate for Economic Analysis (EC) staff will prepare a preliminary economic assessment of the draft proposal. The preliminary economic assessment will include a preliminary regulatory flexibility assessment and will state the staff's assessment of whether the rule is likely to have a significant economic impact on a substantial number of small entities.² The preliminary economic assessment will be provided to the Commission as part of a staff briefing package that contains the information developed by the CPSC staff that is pertinent to the proposed rule. The Commission will use the information in its consideration of what action to take with respect to the proposal.

¹ These draft procedures and policies are a response to Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," August 13, 2002. These draft policies and procedures are being submitted to the Office of Advocacy of the U.S. Small Business Administration (SBA) for review and comment.

² The provisions of Section 603 of the Regulatory Flexibility Act (RFA) of 1980 as amended, 5 U.S.C. §603, will be used as a guide in making this determination.

2. If the CPSC staff's preliminary economic assessment concludes that the draft proposal may have a significant economic impact on a substantial number of small entities, and the Commission concurs in that recommendation and elects to issue an NPRM, then the preamble to the NPRM will include a discussion of that impact and the CPSC will prepare and make available for public comment an initial regulatory flexibility analysis in accordance with 5 U.S.C. § 603. If the conclusion of the preliminary economic assessment is that the proposed rule will have a significant economic impact on a substantial number of small entities, then the CPSC will make a special effort to ensure that adequate opportunity is provided for small entities to comment on the NPRM. As required by 5 U.S.C. §609 (a) in this instance, opportunity for comment by small entities, and others, will be provided by one or more of the following, as appropriate, in addition to publication of the NPRM in the *Federal Register*: placing the NPRM on the Commission's worldwide web site, directly notifying small entities of the NPRM, publishing the NPRM in publications likely to be obtained by small entities, or by conducting public meetings about the proposed rule. If the preliminary economic assessment concludes that the proposal will not have a significant economic impact on a substantial number of small entities, then the preamble to the NPRM will include a discussion of the basis for that conclusion and a certification by the Commission that the rule, if published in final form as proposed, will not have a significant economic impact on a substantial number of small entities.
3. When the NPRM is published in the *Federal Register*, the Commission will submit a copy of the NPRM and the initial regulatory flexibility analysis or statement of basis and certification of no significant impact, as applicable, to the U.S. Small Business

Administration's Office of Advocacy (Advocacy) for comment. The NPRM will invite comments to be submitted from all parties, including small entities.

4. If the Commission votes to continue rulemaking and directs the staff to develop a Final Rule, then the CPSC EC staff will prepare a draft final regulatory flexibility analysis or draft final statement of basis for a Commission certification of no significant impact, as appropriate, taking into account comments received from all parties, including small entities and Advocacy.
5. If the Commission elects to publish a final rule, the comments received from Advocacy will be discussed in the preamble to the final rule, unless the CPSC Chairman certifies that it is not in the public interest to do so. The preamble to the final rule will incorporate a discussion of the final regulatory flexibility analysis as approved by the Commission or a final statement of basis for the Commission certification of no significant impact, as appropriate. If a final regulatory flexibility analysis has been prepared, then copies of it will be made available to the public via the CPSC Office of the Secretary and on the Commission's worldwide web site.

Presidential Documents

Title 3—

Executive Order 13272 of August 13, 2002

The President

Proper Consideration of Small Entities in Agency Rulemaking

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. General Requirements. Each agency shall establish procedures and policies to promote compliance with the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*) (the "Act"). Agencies shall thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Act. The Chief Counsel for Advocacy of the Small Business Administration (Advocacy) shall remain available to advise agencies in performing that review consistent with the provisions of the Act.

Sec. 2. Responsibilities of Advocacy. Consistent with the requirements of the Act, other applicable law, and Executive Order 12866 of September 30, 1993, as amended, Advocacy:

(a) shall notify agency heads from time to time of the requirements of the Act, including by issuing notifications with respect to the basic requirements of the Act within 90 days of the date of this order;

(b) shall provide training to agencies on compliance with the Act; and

(c) may provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA).

Sec. 3. Responsibilities of Federal Agencies. Consistent with the requirements of the Act and applicable law, agencies shall:

(a) Within 180 days of the date of this order, issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies' draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. Agency heads shall submit, no later than 90 days from the date of this order, their written procedures and policies to Advocacy for comment. Prior to issuing final procedures and policies, agencies shall consider any such comments received within 60 days from the date of the submission of the agencies' procedures and policies to Advocacy. Except to the extent otherwise specifically provided by statute or Executive Order, agencies shall make the final procedures and policies available to the public through the Internet or other easily accessible means;

(b) Notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities under the Act. Such notifications shall be made (i) when the agency submits a draft rule to OIRA under Executive Order 12866 if that order requires such submission, or (ii) if no submission to OIRA is so required, at a reasonable time prior to publication of the rule by the agency; and

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the Federal Register of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule that preceded the

Nov. 12, 2002 →

final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby. Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.

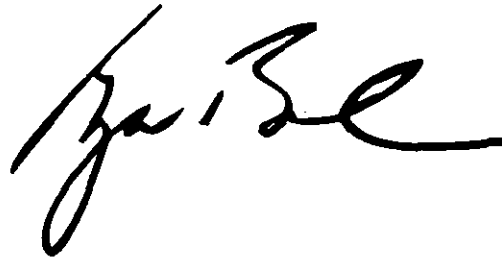
Sec. 4. Definitions. Terms defined in section 601 of title 5, United States Code, including the term "agency," shall have the same meaning in this order.

Sec. 5. Preservation of Authority. Nothing in this order shall be construed to impair or affect the authority of the Administrator of the Small Business Administration to supervise the Small Business Administration as provided in the first sentence of section 2(b)(1) of Public Law 85-09536 (15 U.S.C. 633(b)(1)).

Sec. 6. Reporting. For the purpose of promoting compliance with this order, Advocacy shall submit a report not less than annually to the Director of the Office of Management and Budget on the extent of compliance with this order by agencies.

Sec. 7. Confidentiality. Consistent with existing law, Advocacy may publicly disclose information that it receives from the agencies in the course of carrying out this order only to the extent that such information already has been lawfully and publicly disclosed by OIRA or the relevant rulemaking agency.

Sec. 8. Judicial Review. This order is intended only to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.



THE WHITE HOUSE,
August 13, 2002.