



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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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.