



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
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COMMISSIONER ANNE M. NORTHUP

October 11, 2012

**STATEMENT OF COMMISSIONER ANNE NORTHUP ON THE VOTE CONCERNING THE
CONSIDERATION OF OPPORTUNITIES TO REDUCE THIRD PARTY TESTING COSTS
CONSISTENT WITH ASSURING THE COMPLIANCE OF CHILDREN'S PRODUCTS.**

I am pleased that the Commission was able to reach a unanimous consensus on eight actions staff can take to explore potential ways to reduce the huge economic burden imposed by the CPSIA requirement that every component of every children's product be third-party tested for compliance with all applicable children's product safety rules. We know that the cost of third-party testing has already driven products and businesses from the market, reducing consumer choice and adding to the country's persistent struggle with joblessness. It is encouraging to know that there is now the possibility that something may be done to turn that tide.

The Commission passed this list of recommendations by a unanimous vote achieved through compromise. While it did not endorse all the proposals that I would have supported, I recognize that it is more important to champion the cost reductions that might result from these suggestions than to oppose the package for what it did not include. Specifically, we compromised by requiring the private sector to bear the burden and cost of initially substantiating the viability of each proposal, while recognizing CPSC staff may seek additional agency resources to conduct follow-up research. If Congress intended the CPSC to conduct a more thorough examination of the proposals the staff put forth, not limited by the scope of additional ideas to be provided by the private sector, it will have to clarify that responsibility. H.R. 2715 specified that the Commission seek public comment on opportunities to reduce the cost of third party testing and review the comments, while granting the Commission the discretion to prescribe new or revised third party testing regulations. 15 U.S.C. § 2063(i)(3). There is not majority support for a construction of this language that would require the Commission to undertake any additional independent work to identify cost reduction opportunities beyond the package that staff has prepared and the potential for additional research in response to additional private sector input. I would have preferred that the Commission commit itself to complete the examination of the ideas supported by staff and to direct staff to propose specific changes to our rules or practices where warranted. But the compromise we were able to achieve at least sends the message that we are willing (or, in my case, eager) to entertain, consider, collaborate on and, finally, endorse any possible suggestions for cost saving changes that are independently proposed.

Even these modest gains achieved through compromise still depend on the allocation by future Commissions of the resources necessary to undertake the cost reduction projects. I hope the same spirit of compromise that produced a unanimous vote to support them will prevail when actions in

pursuit of third party testing cost reduction are considered during negotiations over future operating plans. A list of potential ideas is a good start, but until resources are allocated to explore them, they amount to no more than letters on paper.

In addition, while I am gratified that a majority supported eight cost saving proposals, I must also point out that the number is only half of the cost reduction proposals recommended by staff. Other good ideas with the potential to reduce testing costs while continuing to protect consumers from the risk of harm were not supported by a majority of the Commissioners. Chief among these were establishing an exception from testing for a *de minimis* amount of paint or plasticized material, modifying the maximum periodic testing interval based on the risk of noncompliance to a regulation or portion of a regulation, and seeking Congressional authorization to permit manufacturers to use production process certification in lieu of third party testing as a basis for certifying compliance.

I do not know whether any of these ideas could successfully reduce third-party testing costs while assuring compliance, but the Commission was not called upon to make that determination through this vote. We needed only to decide whether these ideas should be abandoned forever, or explored further. Based on staff's recommendation, and in light of Congress's intent that we make every effort to reduce the costs of testing where possible consistent with assuring compliance, I can see no justification for ruling them out at this early stage.

Our narrowing the scope of potential cost reduction measures was not warranted by resource constraints. As the language of the ballot makes clear, the Commission has not committed any resources to the actions it has approved. Rather, it has merely identified a list of projects that may someday be undertaken "[s]ubject to the resources allocated by the Commission to carry them out in subsequent CPSC Operating Plans." The Commission's safety priorities as defined by future Commission majorities will always take precedence over the cost reduction projects in the allocation of future resources. And future Commissions will be able to select among the list of cost reduction projects in order to prioritize their completion in whatever order they deem advisable. Under these circumstances, current and future resource limitations do not justify refusing even to consider these additional staff recommended ideas.

Finally, we need to step back and recognize the statutory impediments staff faced in formulating their proposals, and the very limited nature of the ideas that resulted. Many of the proposals put forth by staff are caveated with admissions that their applicability may be limited to a very few products or manufacturers, or might turn out to result in only a modest reduction in testing costs, if any. Thus, while we should make the most of the opportunity presented by this exercise and staff's hard work in brainstorming cost saving measures, it is clear that real cost reduction for third party testing, certification and labeling will only be possible through much more substantial changes in the law.