

U.S. CONSUMER PRODUCT SAFETY COMMISSION 4330 EAST WEST HIGHWAY BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

August 29, 2011

The Honorable Cass R. Sunstein Administrator Office of Information and Regulatory Affairs Office of Management and Budget Eisenhower Executive Office Building 1650 Pennsylvania Avenue, NW Washington, DC 20503

Re: Memorandum for the Heads of Independent Regulatory Agencies

Dear Administrator Sunstein:

The Consumer Product Safety Commission ("CPSC") is the federal government's principal independent regulatory agency charged with protecting the public from unreasonable risks of injury or death from thousands of types of consumer products under the agency's jurisdiction. The CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard or can injure children. The CPSC's work to ensure the safety of consumer products—such as toys, cribs, power tools, cigarette lighters, and household chemicals—has contributed significantly to the decline in the rate of deaths and injuries associated with consumer products over the past 30 years.

This letter is in response to the recently issued Executive Order and accompanying memorandum on regulation and independent regulatory agencies that encourage agencies such as the Consumer Product Safety Commission to undertake, on a voluntary basis, a retrospective analysis of existing significant regulations. The retrospective analysis is intended to identify rules that may be obsolete, unnecessary, burdensome, or counterproductive with the objective of modifying, streamlining, expanding, or repealing them, as appropriate, to make regulatory programs more effective or less burdensome in achieving regulatory objectives.

Although the Executive Order does not, by its terms, apply to independent agencies such as the CPSC, I recognize the benefits of retrospective regulatory review. As Chairman of the CPSC, I am committed to President Obama's vision of creating an environment where independent agencies incorporate and integrate the ongoing retrospective review of regulations into their operations to improve the quality of existing regulations consistent with statutory requirements, maximize net benefits (including benefits that are difficult to quantify), and reduce costs and other burdens on businesses to comply with existing regulations.

In 2004, the Commission initiated an active retrospective regulatory review program. The stated objective of this program was to review Commission substantive regulations to ensure they were consistent with CPSC program goals and other CPSC regulations; current with respect to technology, economic or market conditions, and other mandatory or voluntary standards; and streamlined, as appropriate, to minimize regulatory burdens, particularly those burdens likely to affect small business entities.

This Program for Systematic Review of Commission Regulations focused on substantive rules under the Consumer Product Safety Act, the Flammable Fabrics Act, the Federal Hazardous Substances Act, and the Poison Prevention Packaging Act and gave priority to rules with the earliest effective dates and rules identified as needing change or as being problematic.

Since the inception of CPSC's Program for Systematic Review of Commission Regulations, Federal Register Notices soliciting written comments from interested persons concerning the designated substantive regulations have been published and the following rules have been reviewed by CPSC technical staff:

• FY 2004

- Walk behind power mowers
- o Electrically operated toys and other electrically operated articles intended for use by children
- o Flammability of vinyl plastic film
- Child-resistant packaging requirements
 - Aspirin
 - Methyl salicylate

• FY 2005

- Cigarette lighters
- Multipurpose lighters
- o Bicycles
- o Surface flammability of carpets and rugs
- Surface flammability of small carpets and rugs
- o Child-resistant packaging requirements for controlled drugs

• FY 2006

- o Matchbooks
- Toy rattles
- o Baby bouncers, walker-jumpers, and baby walkers

FY 2007

- Refuse bins
- Pacifiers

Beginning in fiscal year 2008, the Commission deferred the Program for Systematic Review of Commission Regulations, and no further Federal Register Notices soliciting written comments were published.

In response to the President's recent Executive Order, I have directed staff to prepare to restart CPSC's retrospective review program in fiscal year 2012, subject to Commission approval of the plan's inclusion into the 2012 Operating Plan. As part of the ongoing review project, staff would review certain substantive rules each year and present recommendations to the full Commission for consideration. As I envision it, CPSC's retrospective review program will be guided by four objectives:

- to ensure transparency in the retrospective review process;
- to increase opportunities for public participation;
- to set retrospective review priorities; and
- to strengthen the identification and analysis of regulatory options.

While the systematic review of regulations would focus in part on the elimination of rules that are no longer justified or necessary, the review would also consider strengthening, complementing, or modernizing rules where necessary or appropriate—including undertaking new rulemaking if relevant.

Subject to Commission approval, CPSC's retrospective review plan would include at the outset a request for public comment on the following elements of the plan:

- *Schedule for ongoing review*—the factors that should be considered in determining the schedule for review.
- *Public participation*—ways to further engage and increase public comment in CPSC's rulemaking.
- Analysis of costs and benefits—how CPSC might develop its analysis of costs and benefits of those rules under consideration for retrospective review.
- Coordination with other departments and agencies—ways to promote greater coordination across agencies, harmonization of regulatory requirements, and the identification of regulations that are redundant, inconsistent or overlapping.
- General comments—comments from interested persons concerning the relevance of the designated regulation to current conditions, its consistency with Commission policies and goals, and suggestions for streamlining where appropriate.

As President Obama has explained, an effective and efficient regulatory framework is important if the country is to achieve economic growth, investment flows, job creation, and competition. Accordingly, I am committed to the establishment of a robust and resilient plan for a periodic, thoughtful analysis of CPSC's existing substantive regulations and will be working in the coming weeks to ensure the Commission's 2012 Operating Plan includes a retrospective review plan. To be successful, this plan must serve to protect public health, welfare, and safety, while also resulting in a more streamlined, flexible, and less burdensome regulatory structure where appropriate. I look forward to working with my fellow Commissioners to achieve this goal.

Very truly yours,

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