



**U.S. CONSUMER PRODUCT SAFETY COMMISSION  
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**COMMISSIONER NANCY A. NORD**

April 4, 2013

Paul R. Verkuil, Chairman  
H. Russell Frisby, Chairman, Committee on Regulation  
Administrative Conference of the United States  
1120 20th Street, N.W., Ste. 706 South  
Washington, D.C. 20036

**VIA E-MAIL**

Dear Paul and Russell:

Thank you for giving me the opportunity to participate in the recent meeting of the Committee on Regulation on the use of benefit-cost analysis (BCA) at independent agencies. This letter summarizes my oral comments on the use of BCA at the U.S. Consumer Product Safety Commission and makes suggestions on the Committee's draft recommendations.

For over 30 years, the CPSC has had the statutory requirement, when issuing product-specific safety rules, to do BCAs that include the review of regulatory alternatives. Any safety rule we issue must impose the least burdensome requirement that adequately addresses the risk that prompts the rule. In 2008, Congress enacted a statute that made this analysis optional for a particular class of products.<sup>20</sup> Since that time the agency has not regularly done BCA for safety rules or for rules of general applicability. We generally have done the analyses required by the Regulatory Flexibility Act (RFA) and the Paperwork Reduction Act (PRA).

In the eight years I have served as a Commissioner at the CPSC, I have been called upon to deliberate on rules that have been subject to benefit-cost analysis and those that have not. In my experience, BCA has proved

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<sup>20</sup> Consumer Product Safety Improvement Act, Pub. L. 110-314, 122 Stat. 3016 (Aug. 14, 2008).

to be a very useful tool in helping frame rational rules that address specific quantified risks. I am also convinced that the use of BCA has helped achieve buy-in, if not support, from those being regulated. In contrast, where we have declined to do this analysis, costs and benefits have not been quantified and ways to lower costs have not been systematically addressed in the context of the rule. As a result we have imposed regulatory burdens that are more substantial than needed.

With this experience in using BCA as a regulatory tool, I offer the following comments about the draft recommendations:

- **Recommendation 3**—The suggestion that agencies consult with OIRA is useful, especially for small agencies such as the CPSC which has limited capacity for economic analysis. In addition, such consultation can provide a way to connect costs and benefits to larger priorities.
- **Recommendation 5**—I agree that BCA must include an analysis of regulatory alternatives if it is to be a useful tool for regulators. I believe that a fourth principle could be added that would encourage an explanatory statement if the agency picks an alternative that is not the most cost-effective.
- **Recommendation 6**—To the extent that costs are imposed by statutory mandates, I believe that it is helpful to call out those costs to the extent possible. While BCA is a tool for regulators, it also serves to inform the public and the Congress. In the case of the CPSC, in 2010 we proposed a rule that did not go through a full BCA but the RFA analysis we did do pointed to extraordinary costs being imposed by a rule mandated by Congress and augmented with additional requirements by the agency.<sup>21</sup> Congress's reaction was to pass Public Law 112-28 which directed the agency to seek ways to lower the costs associated with the rule and report to Congress if we needed additional authorities to achieve such results.<sup>22</sup> I give this as an example of positive Congressional reaction to having an economic analysis (albeit, an incomplete one) that included the costs associated with complying with statutory mandates as interpreted by the agency.

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<sup>21</sup> See *Testing and Labeling Pertaining to Product Certification*, 75 Fed. Reg. 28,336 (proposed May 10, 2010) (to be codified at 16 C.F.R pt. 1107).

<sup>22</sup> 125 Stat. 273 (Aug. 12, 2011).

- **Recommendation 9**—I would recommend either deleting this recommendation entirely or substantially changing it. First, it could be read to mean that ACUS takes a position on the question of the applicability of executive orders to independent agencies. While this is an important legal question which should be resolved, this recommendation should be neutral on that question. I am concerned by the recommendation that the analysis be limited to major rules. For an agency like the CPSC—which issues few “major” rules—our safety rules can have a significant impact on industry sectors and product classes, and it is for that reason that Congress requires such analyses of us. These are exactly the types of rules that benefit from this analysis. Should this recommendation stand as written, I have no doubt that it will be used to support arguments that would limit the CPSC’s use of BCA.

I recognize that ACUS is not taking a position on whether the use of BCA should be expanded. From my experience, doing this analysis is an important tool when trying to reach decisions about regulations. However, if it is to be a useful tool, the analysis must be done in a neutral manner, and not used only when it points in the direction of a favored result.

Again, thank you for affording me the opportunity to participate in your discussion of this important topic.

Sincerely,



Nancy A. Nord

Commissioner

U.S. Consumer Product Safety Commission