



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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SUPPLEMENTAL STATEMENT OF COMMISSIONER NANCY NORD ON THE VOTE OF TECHNOLOGICAL FEASIBILITY OF MOVING FROM 300 PPM TO 100 PPM OF TOTAL LEAD CONTENT

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Nearly three weeks after three members of the Consumer Product Safety Commission (CPSC) decided to impose a hyper-restrictive lead limit on children's products without any demonstrable safety benefit, one of those three, Commissioner Adler, has issued a statement that attempts to rebut my own. He omitted my name, referring to me only as one of "[his] dissenting colleagues. No matter that he did all this in a footnote.

In his footnote, my colleague misrepresents – or perhaps misunderstands – two of my arguments against the majority's under-informed decision. First, he takes issue with my observation that personal jetpacks are now commercially available. Second, he paraphrases half of the analogy I used to illustrate the fallacy of the majority's definition of technological feasibility. Commissioner Adler's straw men do not help the public understand CPSC's reality.

First, as the Commissioner should be aware, I was not the first within the agency to use the jetpack reference and it aptly demonstrates that the majority has defined commercial availability poorly. Under the Consumer Product Safety Improvement Act (CPSIA), if lead-limit compliant material is not commercially available, we have authority to give manufacturers relief from the limit. The majority defined any material for sale anywhere at any price as commercially available. Interestingly, Commissioner Adler's statement contains the phrase "reasonable price," but that phrase never escaped his lips before we cast our votes. I do not know if he forgot it or if he is retreating from his earlier position, but it is immaterial at this point. The majority declared everything commercially available to everyone and for every purpose.

I, however, do not believe commercial availability, as the CPSIA uses that term, has a limitless meaning, and the jetpack reference illustrated the absurdity of that definition. Simply stated, if a material will raise the cost of a product above the price consumers will pay, that material is not commercially available for that product.

Though I am not certain he grasped its purpose, I am glad Commissioner Adler found my *reductio ad absurdum* (illustrating an argument's weakness by highlighting its most absurd results) so "amusing." However, I do not find it amusing when an agency uses its authority to hand down dictates that offer nothing but higher prices, fewer consumer choices, lost jobs and failed businesses. I take seriously our charge to protect consumers and our responsibility to do so rationally.

Second, Commissioner Adler dismisses as nothing but a "talking point" my analogy to the construction of airplanes, omitting half of it. The portion he cites is my point that materials that are feasible and

appropriate for real planes are not necessarily feasible and appropriate for toy planes. The materials that keep us safe when we're 30,000 feet above the ground have a host of properties that are not necessary for the toy your child guides through the air, yet, because those materials do exist, the majority could find technological feasibility.

The second half of the analogy referred to one of the common responses when news breaks of a plane crash. As investigators look for and use the on-board recorders (the so-called indestructible black boxes), some wonder why we do not build the entire plane of the same material. The reason is simple: that material is so heavy the plane would never get off the ground. Similarly, there will be products and perhaps entire companies that will never get off the ground because of the weight of our regulations.

Through our definitions of commercial availability and technological feasibility we had the opportunity to provide some reasonable relief. We failed to take that opportunity, choosing instead to issue a blanket rule that had no connection to the realities producers and consumers face. As a result of our heavy-handed approach, our edict will require a burden some companies, particularly small businesses, simply will not be able to carry (again, with no demonstrable health benefit). Commissioner Adler chose to advance his position by condescendingly dismissing my arguments as "amusing" and "talking points" rather than by making a genuine attempt to grapple with the difficulties this action has created.