



## U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY  
BETHESDA, MARYLAND 20814-4408

### Record of Commission Action Commissioners Voting by Ballot\*

Commissioners Voting:     Acting Chairman Nancy A. Nord  
  Commissioner Thomas H. Moore

#### ITEM:

Request for Emergency Stay of Effective Date of CPSIA Section 101(a)(2)  
(Briefing Package dated February 3, 2009, OS No. 3695)

#### DECISION:

The Commission voted unanimously (2-0) to deny the request for a stay of the effective date of the section 101(a)(2) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), Public Law 110-314. The Consumer Product Safety Commission Coalition of the National Association of Manufacturers ("NAM CPSC Coalition") requests that Commission immediately stay the effective date of the lead content limits set forth in section 101(a)(2) of the CPSIA. The request is for a stay of 185 days or until 90 days after the Commission issues final rules implementing section 101, if later.

Acting Chairman Nord and Commissioner Moore issued the attached statements with their votes.

For the Commission:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson".

Todd A. Stevenson  
Secretary

\* Ballot vote due February 5, 2009



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

**STATEMENT OF ACTING CHAIRMAN NANCY NORD**  
**ON THE REQUEST FOR EMERGENCY STAY OF EFFECTIVE DATE OF LEAD LIMITS UNDER**  
**SECTION 101 (a)(2) OF THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008**  
**February 5, 2009**

The U.S. Consumer Product Safety Commission has a long history of addressing the hazards of lead exposure to infants and young children. Over the past three years, the agency has moved aggressively to address lead in children's jewelry and other products where lead is accessible and exposes children to risk, and the agency has also undertaken focused enforcement activities relating to the lead paint ban including strengthening our port surveillance activities and expanding our international program. The attention Congress has given to this issue was welcome. However, the retroactive nature of the lead regulatory provisions in the CPSIA has created confusion and concern in the marketplace. The request before us today illustrates the level of concern that product manufacturers and sellers have with the law. While I agree that the effective date of this provision is problematic for many, the Consumer Product Safety Commission does not have the authority to stay the effective date. Any such change must be made by Congress.

Product sellers, ranging from the largest manufacturer to home crafters and thrift stores, are subject to the retroactive effect of the law. This retroactive effect means millions of safe products are legal on February 9 and illegal on February 10. Rather than applying the lead content provision to products manufactured after the effective date, Congress applied it to all products out in the stream of commerce on February 10, sitting in container ships, in warehouses, and on store shelves. Congress has never before enacted such a sweeping consumer product provision in a retroactive manner and the disruptive results of this provision are now being seen in painful ways.

Among the issues that have come to our attention include the following:

- Inventory is being pulled from shelves because compliance cannot be confirmed.
- Retailers are requiring that distributors take back products unless compliance testing data can be provided; products which no one is suggesting are unsafe. This is in spite of our recent action staying enforcement of the testing and certification provisions.
- Lines of credit secured by inventory are subject to rescission with the potential of widespread financial disruption.

The law written by Congress does not give the CPSC the latitude to take the requested action to stay the effective date. Congress spoke clearly in setting out a regulatory regime that applies to all children's products in commerce regardless of exposure or actual risk. Congress spoke clearly about the limited nature of the exclusions and exemptions available under the law. Congress spoke clearly about the limited nature of our enforcement discretion after February 10. The agency cannot alter or amend the statute.

STATEMENT OF THE HONORABLE THOMAS H. MOORE ON THE  
REQUEST FOR EMERGENCY STAY OF THE EFFECTIVE DATE OF SECTION  
101(a)(2) of the CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008  
February 4, 2009

Eleven years ago in January of 1998, the Commission issued guidance to manufacturers which requested that they eliminate the use of lead in children's products. In 2005, the Commission's staff issued an enforcement policy in which it identified 600 parts per million (ppm) of lead in children's metal jewelry as the amount over which they would be concerned about the lead content in a piece of jewelry. In 2006, the Commission began a rulemaking on the lead content of children's jewelry, also focusing on 600ppm. In 2007, the Congress turned its attention to acceptable lead limits in children's products as part of its bill to reauthorize the Commission. Congressional resolve to do something in this area was quite strong. It would have been hard for a manufacturer of children's products to miss the clear message that they needed to get lead out of children's products well in advance of final congressional action. Thus, there should not be, and I believe certain Hill staffers were assured by various segments of the children's products industry, that there would not be a problem with meeting the 600ppm standard as most already were.

This does not mean that I am not sympathetic to resellers and small home crafters who are trying to figure out how to comply. Last Friday the Commission issued a stay of enforcement of the testing and certification requirements, which would have fallen disproportionately hard on small volume, home crafters, until February 10, 2010. This will temporarily relieve a large burden from those small manufacturers. The Commission is also working on more detailed guidance for resellers and home crafters, as well as small businesses in general that should provide them with practical solutions to some of the problems they are facing.

What the Commission cannot do, by rule or otherwise, is change the statutory effective date of a congressionally imposed ban. The Consumer Product Safety Improvement Act is quite specific as to the relief the Commission is authorized to take by way of exemptions or exceptions. Section 101(e) even goes so far as to say that the effective dates of the limits set by the Act are not to be delayed by the pendency of a Commission rulemaking proceeding for certain specific issues such as requests for exceptions or exemptions. The Congress has spoken on this issue and while the Commission will do everything in its power to ameliorate the impact of this decision, it cannot change it.