

COTM-1



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

BALLOT VOTE SHEET

Date: **FEB 3 2009**

TO : The Commission
Todd Stevenson, Secretary

THROUGH: Patricia Semple, Executive Director *PS*

FROM : Cheryl Falvey, General Counsel *CAF*
Patricia M. Pollitzer, Attorney *P.M. Pollitzer*

SUBJECT : Request for Emergency Stay of Effective Date of CPSIA Section 101(a)(2)

Ballot Vote Due: FEB 9 2009

In the attached letter, the Consumer Product Safety Commission coalition of the National Association of Manufacturers ("NAM CPSC Coalition") requests that the Commission immediately stay the effective date of the lead content limits set forth in section 101(a)(2) of the Consumer Product Safety Improvement Act ("CPSIA"). They request a stay of 185 days or until 90 days after the Commission issues final rules implementing section 101, if later.

Please indicate your vote on the following options.

I. Grant the request for a stay of the effective date of CPSIA section 101(a)(2).

Signature Date

II. Deny the request for a stay of the effective date of CPSIA section 101(a)(2).

Cheryl Falvey

Signature Date
February 5, 2009

(Please see attached statement.)

NOTE: I am treating this as a time-critical ballot with a due date of today.
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Note: This document has not been reviewed or accepted by the Commission.
Initials *rdh* Date *2/3/09*

CPSIA 6(b)(1) CLEARED for PUBLIC
NO MFRS/PRVTLBRS OR PRODUCTS IDENTIFIED
EXCEPTED BY: PETITION RULEMAKING ADMIN. PRCDG

III. Take other action (please specify):

Signature

Date

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. 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.