



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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STATEMENT OF COMMISSIONER NANCY NORD
ON THE WRITING INSTRUMENT MANUFACTURERS ASSOCIATION'S REQUEST FOR EXCLUSION FROM
THE LEAD CONTENT BAN OF THE CPSIA
June 2, 2009

With respect to the petition from the Writing Instrument Manufacturers Association for an exclusion for pens from the lead content provisions of the CPSIA, I am in strong agreement that the vast majority of pens are not children's products and therefore not subject to the reach of the law. This determination is being communicated in a letter to the petitioners from the agency General Counsel and reflects a longstanding view as expressed in an answer to a question posted on the CPSC web site last fall. While this disposes of most of the products in question, it does leave a small percent of products that may be specifically designed and marketed for children 12 years or younger. For reasons stated below, I am voting to grant the petition for rulemaking to exclude pens that are children's products.

The portion of a child's pen that violates CPSIA Section 101(a) is the tiny brass, stainless steel or nickel tip that holds the roller ball in a ball point pen. Industry has stated that there is no known substitute for the existing tip. Therefore, failure to grant the exclusion (or stay enforcement of the law) would result in ball point pens designed for children's use no longer being available. This result would occur even though agency staff is clear that they do not see a risk of lead poisoning to children from using ball point pens.

Staff has pointed out on many occasions and in a number of ways the lack of flexibility the statute gives the agency to deal with products that may contain lead over the statutory limits but that do not present a real risk to children. While the staff has stated that they are not aware of any product that could meet the definition for an exclusion from Section 101(b) of the CPSIA, it is important that we continue to struggle to give meaning to this provision, on the theory that Congress would not knowingly enact a meaningless provision. If there were any product that would seem to qualify for the exclusion, it is this one.

In the briefing package, staff indicates that the chance of children coming in contact with the tip of the pen through normal use is extremely remote. Staff states that the possible lead exposure would be through ingestion, and not dermal exposure. Staff raises a possibility that a child could come in contact with lead in the pen tip, presumably by writing on his or herself and then licking or sucking on that part of the body or by sucking on the business end of the pen. However, staff also points out that toddlers and small children who generally mouth objects are not given ball point pens to play with. Staff states that children regularly begin using ball point pens around 4th grade.

Following our regulations, the petition presents studies that argue exposure to lead from ball point pen tips is undetectable. The staff does not challenge this conclusion but apparently believes that because contact with the lead-containing tip is "not inconceivable," the statute precludes sale of this product and that it must, therefore, recommend against the exclusion. While I agree that the statute is extraordinarily rigid and I realize the staff is working within that rigid framework, I disagree with their conclusions in this case.

The Commission needs to spend its resources focusing on products that actually harm children, not chasing speculative harms that are not relevant to the real world. Removing perfectly safe products will needlessly limit consumer choice and, more importantly, not advance consumer safety. If Section 101(b) has any meaning at all, then a rulemaking proceeding to consider an exclusion for children's pens should be initiated.