



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).

Nancy Steel

Signature Date *2-5-09*

Note: This document has not been reviewed or accepted by the Commission.
Initials *rch* Date *2/3/09*

CPSA 601(1) CLEARED for PUBLIC
 NO MFRS/PRVT LBRS OR PRODUCTS IDENTIFIED
EXCEPTED BY: PETITION RULEMAKING ADMIN. PRCDG

III. Take other action (please specify):

Signature

Date



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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.