



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

STATEMENT OF THE HONORABLE THOMAS H. MOORE
ON THE REQUEST FROM THE WRITING INSTRUMENT MANUFACTURERS
ASSOCIATION (WIMA) FOR EXCLUSION FROM LEAD LIMITS UNDER
SECTION 101(b)(1) OF THE CONSUMER PRODUCT SAFETY
IMPROVEMENT ACT OF 2008
June 5, 2009

On June 3, 2009, the Commission voted to affirm the staff view that the vast majority of ball point pens are not covered by the new lead ban because they are not children's products as that term is defined in the Consumer Product Safety Improvement Act of 2008 (CPSIA). (A letter from the agency's General Counsel to WIMA stating that position will be posted on our web site.) Since those pens are not covered by the ban, they do not need to be granted an exclusion from the ban. Thus only the relatively small number of ball point pens that are designed or intended primarily for children twelve years of age or younger are subject to the lead ban.

The Commission has recognized that the lead provisions of the CPSIA are very tightly crafted. The Congress drew a clear line in terms of the parts per million of lead that it would allow in any part of a children's product and it provided for very few exceptions to that limit. In deciding on requests for exclusion pursuant to section 101(b)(1) of the Act, the Commission has found that not giving manufacturers of certain specific products additional time to bring their products into compliance can create a possible safety hazard that outweighs the safety protections in the Act's lead provisions (such as in the case of youth motorized recreational vehicles). In those cases, it is appropriate for the Commission to exercise its enforcement discretion to decide the competing safety concerns in favor of the consumer and to stay enforcement of the lead provisions while the affected manufacturers change future production to meet the lead limits.

In the case of ball point pens, however, there is no such safety tradeoff. In fact, granting a stay of enforcement would allow the pens that children are most likely to find play value in and, therefore, are most likely to handle as playthings, to be made and marketed during the period of the stay. Without a stay of enforcement children would be using ball point pens intended for the use of the general population which, while they may still have the same amount of lead in them, are more likely to be used simply as writing instruments and not as playthings. In this case, any competing safety considerations are on the side of not granting a stay. Thus I am voting to deny the exclusion request and I am not voting to direct the staff to draft a stay of enforcement.

The writing instrument manufacturers have indicated that they may be able to find a substitute for the lead in ball point pens in a couple of years. I hope they will work toward that goal. Their other alternative is simply not to make or market ball point pens with excess lead that appeal primarily to children. In the meantime, while I do not expect the agency to turn into the "pen police," manufacturers, retailers and distributors should police themselves as we move toward a marketplace where lead in children's products is dramatically reduced.