



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
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## STATEMENT OF COMMISSIONER NANCY NORD ON THE VOTE OF TECHNOLOGICAL FEASIBILITY OF MOVING FROM 300 PPM TO 100 PPM OF TOTAL LEAD CONTENT

July 13, 2011

This holiday season, parents will do as they always do, brave the traffic and the parking and the crowded stores trying to find that one perfect gift that will light up their children's eyes. And when they do, they will find fewer choices and higher prices on the shelves, thanks to the Consumer Product Safety Commission (CPSC). It didn't have to be that way.

In 2008, Congress passed the Consumer Product Safety Improvement Act (CPSIA). The Act dictated that, as of August 14, 2009, no manufacturer and no retailer could make or sell a children's product with more than 300 parts-per-million (300 ppm) of lead. That meant that a product that was 99.96% lead-free, perfectly safe and legal to sell on August 13, had to be destroyed on August 14. The CPSC had no say in that change; it was the law.

The CPSIA also mandated that, on August 14 of this year, the limit would drop to 100ppm (99.99% lead free). That means any product that is more than 0.01% lead will be illegal, and countless numbers of toys retailers are stocking have to come off the shelves.

Congress gave CPSC a job to do. The CPSIA told us to look at actual products and figure out if the 99.99% standard makes sense. If it is not technologically feasible for a product to be made reliably to the extreme new standard regulating miniscule trace amounts, then CPSC has the authority to find a standard that product can meet. Today, we decided we would rather make it tougher and more expensive for kids to have toys at the holidays than actually do the work the law requires us to do.

The majority of the Commission blithely ignored the challenges – some of them perhaps impossible to overcome – that our hasty and under-informed action will present to businesses and consumers. The majority once again ignored staff warnings that some companies will stop offering some safe products and parents will have to pay more for virtually everything they buy for their children, all with no real health benefits.

Today's new surprise is the majority's complete disregard for the significant environmental impacts of this decision. At our meeting, I offered a proposal to create some room in this extraordinarily tight restriction (remember, today's vote makes 99.98% lead-free illegal on August 14, 2011) for products that have a substantial proportion of recycled materials. For good reason, Congress has put a lot of effort into encouraging use of recycled materials. As a result, the environmentally-friendly market is booming, and our homes are greener every day. Today, the majority of the CPSC has seriously undercut much of that progress.

As the majority went through the process they used to reach their conclusion, we heard from companies big and small across the children's market that, even if it is possible to meet the 99.99% standard, it is not possible to do so reliably with recycled materials. There is just too much variability in the quality and composition of those materials. Faced with massive enforcement penalties, the companies cannot afford to risk making a product that is only 99.98% lead-free, so many will have to switch to only new or "virgin" materials. Virgin materials are more expensive and create more environmental costs, but they are far cheaper than running afoul of CPSC dictates.

Recognizing these problems, the Coalition of Northeastern Governors (CONEG), when it created its model legislation for toxins in packaging, created an allowance for recycled materials. Nineteen states have adopted that model legislation, and more are considering it, but the majority of the CPSC considered it for less time than it takes to order a pizza and then decided the untold environmental damage these rules will do isn't important. This disregard for both the environment and Congress' clear policy goals is disturbing.

This is not the first time the majority has disregarded the costs to both businesses and consumers. Businesses told us that they aren't sure they can get the materials to make products to this onerous new standard. They said, if they can even find a way, it is going to be much more expensive, and their products will be less useful and often less durable. They told us the labs they have to use under this law don't even come up with consistent test results. They told us they'll have to stop making some products, products that are safe and legal right now. Some told us they will go out of business entirely, especially small businesses who can't get the materials they need and can't risk CPSC penalties. So, consumers will have fewer and poorer choices from fewer companies and at higher prices, all at a time when the economy is struggling in ways we haven't seen for decades. And, all of this turmoil and pain comes with no demonstrable benefit to children's health.

The majority effectively said: "So what? It's the law." Well, no, to be correct, it didn't have to be that way. Congress gave CPSC the power and the responsibility to make a rational decision, but, because of the majority's scramble to meet a deadline that's been looming for three years, we didn't use that power.

We could have, as the law told us to do, looked at feasibility of the standard for individual products or categories. Instead, the majority looked only at whether the materials themselves were feasible. It didn't matter if a material was useless for an entire range of products; it existed in one place, so it was feasible in every place. This is like the idea of building entire airplanes out of the same material as the "indestructible" black boxes in the cockpits; sure, you can do it, but the plane will never get off the ground. We don't know how many children's products won't get off the ground with this new standard because the majority didn't bother to find out.

We could have looked, as the law told us to do, at whether these materials are really available. The majority decided availability only meant something could be bought anywhere in the world at any price, even if no one could afford it or the end product would be too expensive to sell. *Wired* magazine tells us that jetpacks are now "commercially available," at almost \$90,000 each. I don't think this means the skies of Washington will be filled with jetpacking commuters anytime soon, but this is exactly the logic the majority used to impose a one-size-fits-all mandate on an entire industry. The fact that someone is selling a material doesn't mean a small business toy manufacturer can afford to buy it.

Instead of making the real-world decisions the law demands, the majority suggested companies should just petition for an exemption if the standard, as predicted, does not work. Never mind that CPSC's history and its current seemingly stacked deck give them little reason to believe a CPSIA petition will get docketed, let alone succeed. If a company cannot afford to use these materials, how can that company afford the time and legal bills necessary to file a petition? And, in the length of time this process takes, how many will stop making the product or just throw in the towel?

We don't know how massive an environmental impact today's vote will have. We don't know how many products this will take off the shelves. We don't know how much more the products that stay on the shelves will cost. We don't know how many jobs will be lost. We don't know how many companies will be harmed. We don't know if companies can find the materials they need to comply. We don't know if it is even possible for different testers and different labs to get the same numbers. And we don't know – or even have reason to think – that this will make one child safer. But the majority did it anyway, without doing the homework Congress gave us three years to do.

It didn't have to be that way. But now it is. And now, it is not the Grinch but the CPSC who is needlessly taking away kid's toys, children's clothes, and parents' jobs. That's a vote no one should be proud of.