



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

MINUTES OF COMMISSION MEETING
January 6, 2010

Chairman Inez M. Tenenbaum convened at 9:00 a.m., the January 7, 2010, meeting of the U. S. Consumer Product Safety Commission in open session. Commissioners Nancy A. Nord, Robert S. Adler and Anne M. Northup were present. Commissioner Thomas H. Moore was not present. Chairman Tenenbaum made welcoming remarks and opened for discussion the decisional matters.

Final Rule on Children's Products Containing Lead; Exemptions for Certain Electronic Devices

Chairman Tenenbaum introduced the pending matter and asked the Commission if they had any questions for the staff on the subject. The Commission had no questions. Commissioner Adler made a motion seconded by Commissioner Northup to approve the draft final rule on electronic devices in the *Federal Register* ("FR") with the recommendations suggested by Commission Moore. The Chairman welcomed discussion from the Commission. There being no discussion, Chairman Tenenbaum called for the votes on the motion. The Commission voted 5-0 to approve the motion. (Commissioner Moore voted by written ballot.) Commissioner Northup and Commissioner Moore submitted the attached statements regarding their votes.

Final Rule on Guidelines and Requirements for Mandatory Recall Notices

Chairman Tenenbaum introduced the pending matter and asked the Commission if they had any questions for the staff on the subject. The Commission had no questions. Commissioner Nord made a motion seconded by Commissioner Northup to approve the draft FR notice with the recommendations suggested by Commission Nord. The Chairman welcomed discussion from the Commission. After a brief discussion, Chairman Tenenbaum called for the votes on the motion. The Commission voted 5-0 to approve the motion. (Commissioner Moore voted by written ballot.)

Commissioner Nord made a motion seconded by Commissioner Northup to approve the draft final rule on electronic devices in the *Federal Register* ("FR") with the recommendations suggested by Commission Moore. The Chairman welcomed discussion from the Commission. There being no discussion, Chairman Tenenbaum called for the votes on the motion. The Commission voted 5-0 to approve the motion. (Commissioner Moore voted by written ballot.)

Add an Agenda Item for the Commission Meeting January 13, 2010, regarding the Report to Congress

Chairman Tenenbaum offered a personal privilege to Commissioner Northup to make a motion. Commissioner Northup discussed a proposal to add to the agenda for the Commission meeting for January 13, 2010, a matter involving changes to a report to Congress regarding provision of section 101 of the Consumer Product Safety Improvement Act ("CPSIA"), as it pertains to lead.

Commissioner Northup made a motion seconded by Commissioner Nord that the Commission adds to the agenda on January 13, 2010, the recommendations that will be proposed to Congress and take a vote on those recommendations on exactly how the Commissions will frame the recommendations. The Commission discussed the proposed agenda item and the possible public discussion and debate about individual changes to the report to Congress making recommendations about the CPSIA that is due on January 15, 2010.

The Commission voted 2-2 on the motion and the motion failed for a lack of a majority.

There being no further business on the agenda, Chairman Tenenbaum adjourned the meeting at 9:55 a.m.

For the Commission:



Todd A. Stevenson
Secretary to the Commission

Attachment:

Statement of Commissioner Northup regarding the Final Rule on Exemptions for Certain Electronic Devices

Statement of Commissioner Moore regarding the Final Rule on Exemptions for Certain Electronic Devices



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

STATEMENT OF THE HONORABLE THOMAS H. MOORE
ON THE FINAL RULE ON EXEMPTIONS FROM THE LEAD LIMITS FOR CERTAIN
ELECTRONIC DEVICES
January 6, 2010

I am voting today to approve the final rule on electronic devices. Both the Interim Final Rule and the Final Rule reference European Union Directive 2002/95/EC (EU RoHS) in establishing the lead limit exemptions for children's electronic devices. Referencing certain of the exemptions in EU RoHS made it possible for the Commission to issue a rule for electronic devices prior to February 10, 2009. There was not enough time for our staff to do an independent and systematic review of all the materials and products affected by this section of the law. It should be noted, however, that the United States government has actively opposed the RoHS Directive (the purpose of which is to control hazardous waste disposal) for years. With the publication of this Rule, our agency has five years to undertake a more rigorous review of these exemptions in light of what the lead standard demands—reducing accessible lead in electronic devices intended to be used by children. We will also have the opportunity to establish the schedule required by the statute to bring such electronic devices into full compliance with the lead limits, if such compliance is technologically feasible. In the future, as with ATVs and bicycles, manufacturers will have to make the case for their inability to make the lead inaccessible or to use substitute materials based, not merely on an analysis in the RoHS Directive, but on specific information pertaining to the materials in their products and whether it is technologically feasible to replace the lead in those materials, as that term is defined by the Consumer Product Safety Improvement Act of 2008.



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STATEMENT OF COMMISSIONER ANNE M. NORTHUP REGARDING
THE FINAL RULE ON EXEMPTIONS FOR CERTAIN ELECTRONIC DEVICES
FOR CHILDREN'S PRODUCTS CONTAINING LEAD

January 6, 2010

I am second to none on this Commission in my concern for the safety of children—including my own grandchildren—when it comes to lead. No one is denying that lead is harmful to children when absorbed into the bloodstream. It can be fatal when acute lead poisoning occurs. Longer-term absorption of lead can have other devastating health consequences. These facts are not in dispute. Thus, when it comes to genuine lead risks like that posed by lead in paint, I have argued for stronger precautions even than what the CPSIA mandates—for example, for paint used on children's toys. But when it comes to lead content where the risk of absorption is very low, I have consistently supported reasonable exceptions to the statutory lead content limits in the CPSIA, as well as enforcement discretion to avoid wasting agency resources on policing lead that does not pose a safety hazard.

Congress included a very broad exception for electronic children's products when it passed the CPSIA's lead content limits a year and a half ago. The agency's proposed interpretive rule further defines the shape and application of that exemption in a reasonable way, and I support it. But it should be made very clear that this rule creates a huge exception to the CPSIA's lead content limits, both in the vast number of products that it exempts and in the amount of lead it permits electronic products to contain. For example, under this rule the exemption extends to accessible lead-containing copper-based alloy component parts that contain as much as 40,000 ppm lead, which is more than 130 times the lead limit that would otherwise apply. Lead in other electronic parts, such as optical glass, is not subject to any lead limit whatsoever.

Even though this rule creates a huge hole in the agency's enforcement of lead content limits, no one among agency staff involved in review of this rule thinks that the exemption as broadly construed will harm the health of a child. Given the unanimous vote of the Commission, apparently no Commissioner believes that the health of a child will be harmed either. Reasons given by staff for this conclusion are quite instructive:

- "The staff is not aware of any epidemiological study that suggests that these components are a significant source of childhood lead poisoning"
 - "Children are not expected to experience significant exposures to lead from these specific component parts of electronic devices, and the staff has no knowledge that such components would be associated with a significant proportion of children's overall lead exposures"
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- “[H]ealth implications of the lead content of electronic devices are minimal, and there is no basis for requiring warning labels for such products”
- “[T]he staff believes that the likelihood is low that lead exposure from exempted electronic devices would result in significant lead absorption by children”
- “[A] failure to grant the exemptions or to establish the alternative limits could potentially result in some children being exposed to more lead”
- “[T]he rule could, in some cases, ultimately result in reduced lead exposure for some children if ... parents would have substituted for their children’s use electronic products intended for the general public”
- “In the case of products intended for very young children, who are most susceptible to the harmful effects of lead, it is likely that a parent would often replace the component (*i.e.*, battery). Older children might replace the components themselves but are more likely to perform the task properly and are less likely to mouth or ingest the parts”
- “One would not expect children to mouth, swallow, or handle [electronic component parts] for significant periods”

In short, we accept this broad rule because it will not affect the blood lead levels in a child. Of course the same could be said for brass lead and for the *de minimis* interpretation of “any” I urged the Commission to adopt last November. The lead at issue there did not pose a risk to the health of a child either, and a child is no more likely to lick a brass tire valve stem than the screen of a plasma TV. The lead content is no higher in non-electronic products that are not exempted under the statute than it is here. The absorbability of lead in metal is no higher in non-electronic products that cannot take advantage of this exemption. Thus, the risk is no higher (and may well be lower) for many other products that are not exempted by this rule. To add insult to injury, the electronics rule even exempts lead-bronze bearing shells and bushings (when used in electric motors) that are not unlike the brass components denied an exemption last November. But because the brass collars at issue with toy cars served a mechanical function rather than an electronic function, they did not receive the benefit of an exemption under the statute.

The agency could have, and should have, adopted an absorbability exception every bit as broad as the electronic products exception that it accepts with this vote. Congress created an exception for inaccessible component parts, which the Commission has interpreted to extend to many products. Congress created an exception for electronic devices, which the Commission has now interpreted to cover many children’s products. The Commission erred—in the brass lead vote and earlier—when it interpreted § 101(b)(1) as a vanishingly small exception. Because the agency did not interpret the absorbability exception reasonably and because the makers of these other products do not have a strong enough lobby (or did not foresee the law’s application to them), they are now forced to spend millions or even billions of dollars to re-engineer their products to remove lead and dispose of non-compliant products.

Of course if a child were to swallow a battery, say, that would be a problem. And I have seen my six-year-old granddaughter open a battery case with a penny. But the agency has not chosen to forbid electronic devices on that basis, nor should it. We are not going to remove all lead from a child’s environment—not

from electronic products they use (like the TV remote control or the family computer), and not from everyday items to which they are exposed like keys, door knobs, and school lockers. Children don't just stay in their own "child's" room. They pull on the brass drawer handles in the kitchen and the faucet handles in the bathroom. But none of this contact with lead is epidemiologically significant. There is nothing like being the mother of six children to provide on-the-ground experience with the unpredictable behavior of kids. But people who would distort and exploit the story of a child who died swallowing a leaden charm ignore the difference between easily absorbable lead in paint and leaden jewelry and not easily absorbable lead elsewhere to serve an agenda other than child safety.

Although I believe the agency should apply the same logic to the absorbability exception as it does in the electronics rule, I am also supporting the final rule because it wisely eschews a cumbersome and unnecessary process under which the agency would have to approve every new electronic children's product before it can be introduced to the market. By instead adopting technological feasibility and electronic function tests with wider application, the final rule maintains the agency's historic role as a standard setter and enforcer of product safety rather than converting its mission into that of a product approval agency. Any similar future exception to the statute should likewise avoid requiring the agency to pre-approve the sale of consumer products.