



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
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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”

- “[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.