



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chairman Inez M. Tenenbaum
 Commissioner Thomas H. Moore
 Commissioner Nancy A. Nord
 Commissioner Anne M. Northup
 Commissioner Robert S. Adler

ITEM:

Children's Products Containing Lead; Determinations Regarding Lead Content Limits on Certain Materials or Products; Final Rule
(Briefing Package dated August 6, 2009 OS no. 3675)

DECISION:

The Commission voted 4-0 to publish the draft final rule in the *Federal Register* ("FR") with changes that issues a final rule on determinations that certain materials do not exceed the lead content limits specified under section 101(a) of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314. Chairman Tenenbaum, Commissioner Moore, Commissioner Nord and Commissioner Adler voted to publish the draft rule. Chairman Tenenbaum and Commissioners Nord and Adler submitted the attached statements with their votes. Commissioner Northup abstained from the voting and submitted the attached statement with her abstention.

For the Commission:


Todd A. Stevenson
Secretary

* Ballot vote due August 18, 2009



UNITED STATES
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BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

STATEMENT OF CHAIRMAN INEZ M. TENENBAUM
ON DETERMINATIONS REGARDING LEAD CONTENT LIMITS
ON CERTAIN MATERIALS OR PRODUCTS

August 18, 2009

Today's vote reaffirmed the fact that certain materials and children's products do not exceed the lead limits under section 101(a) of the Consumer Product Safety Improvement Act ("CPSIA"), and, therefore, are not subject to the lead limits in section 101(a) of the CPSIA or the testing requirements of section 102 of the CPSIA. Although today's rule is final, it is important to note that the Commission will continue to make similar determinations in the future based on its own scientific test data and the scientific test data provided by stakeholders seeking similar determinations for other materials or children's products. This is the first step of what will be an ongoing process, and I strongly encourage firms to present representative and relevant scientific test data to assist the Commission with making other determinations in the future.

Most of the comments received by the Commission asked that new materials be added to the determinations list, but many of these requests were not accompanied by specific data or information relevant to the lead content of the materials for which a determination was sought. The Commission has limited resources to make these types of determinations while also vigorously attempting to implement other provisions of the CPSIA and carry on the day to day business of the agency. Providing this type of scientific data, therefore, is extremely beneficial to the Commission in considering whether to make a determination that a certain material or product does not exceed the lead limits of section 101(a) of the CPSIA.

In the case of fabrics and dyes, numerous commenters provided hundreds of test reports and analyses that examined lead levels in various textile and apparel products. After reviewing and verifying this test data, the staff was able to determine that most textile products are manufactured using processes that do not introduce lead or result in an end product that would exceed the CPSIA's lead limits. Similarly, the staff was also able to determine that natural and manufactured fabrics are produced in controlled environments by processes that do not use lead or incorporate lead during their production. Further, the data provided to and verified by staff showed that this determination applied whether the textiles were dyed or undyed and, in most circumstances, regardless of whether the textile incorporated pigments. While this determination does not address every issue of every manufacturer using these kinds of materials, the Commission will take action on component testing in the future to clarify what is required of products made up of some component materials that have received a determination and other component materials that have not received a determination. In my mind, common sense dictates that only those components that cannot receive a determination would require testing.

Although the Commission could not make a determination concerning all ordinary books published after 1985, the staff assessed the scientific and industry data provided by commenters and made determinations concerning several components of children's books and the materials that comprise them. Based on these determinations, books printed with the modern four color system with a paper or cardboard cover and an inaccessible binding would not need testing unless they include other components that have not received a determination. The staff found that printing inks using the modern CMYK printing process and the paper used in books do not contain lead in excess of the CPSIA's lead limits. Also, the staff was able to determine that adhesives and binding materials used in children's books will normally be inaccessible and therefore fall within the inaccessibility exception to the lead limits. However, the staff was not able to determine that spot colors, inks not utilizing the CMYK process, foils, laminates, metal wire saddlestitch, spiral bindings, and certain after treatments would not violate the lead standard. Although every book component did not receive a determination at this time, further scientific test data and additional information about manufacturing processes may prove helpful in any future determinations concerning ordinary children's books. Also, I expect that Commission action with respect to component testing will provide relief for certain components of books that cannot receive a determination.

The Commission also recognizes that testing and certification of books published prior to 1985 is not required for libraries and resellers because they do not typically manufacture or import children's books. Because older children's books did not use the modern CMYK printing process and some have been found to contain lead, the Commission was unable to make a determination that older books or their components do not exceed the CPSIA's lead limits. The Commission continues to recognize that used children's books that are sold as collector's items to adults would not be considered to be "children's products" as defined by the CPSIA because as collector's items for adults such books would not be "designed or intended primarily for children 12 years of age or younger." Accordingly, these collector's item books may be sold to adults. With respect to older children's books that are lent out, the Commission intends to issue a separate statement of policy. It is my hope that this guidance will offer common sense solutions that alleviate undue burdens on those who lend older children's books.

I encourage our stakeholders to seek more lead determinations and provide sufficient scientific information to the staff in support of requested determinations. The current set of lead determinations will not be the last, and the Commission urges all those concerned to assist in identifying additional materials that do not exceed the CPSIA's lead limits that should be included in future determinations.



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**STATEMENT OF COMMISSIONER NANCY NORD
ON THE FINAL RULE FOR DETERMINATIONS REGARDING LEAD CONTENT LIMITS
ON CERTAIN MATERIALS OR PRODUCTS
August 19, 2009**

I am voting to issue the final rule on determinations that certain products do not contain lead and therefore do not need to be tested under Section 102 of the CPSIA. I hope that the action taken today will provide some relief from the testing burdens imposed by the Act. Using our authority under Section 3 of the CPSIA to efficiently administer the statute, we are making the common sense statement that certain products, which by their nature do not contain lead, do not need to be tested to prove that they do not contain lead.

Our final rule lists those products that will not need to be tested. Producers of other products not on the list will need to prove to us, through test data, that their products do not and cannot contain lead. While I recognize that this product-by-product determination process imposes a significant regulatory burden on product sellers, we must implement the regime imposed by Congress. A more efficient and equally protective regime would have been to give the agency the authority to impose testing requirements, independent third party or otherwise, as appropriate, which is what we originally requested of Congress. Since Congress did not take this approach, we must consider exemptions from testing on a product-by-product basis.

We have heard from so many industries about the unproductive burdens this law places on them. I hope that these determinations make it clear that certain materials found in children's products, such as fabrics, certain metals, wood, paper, certain inks and the other materials listed in the rule, do not need to be tested for lead (when we all recognize that it is not there). A very select few need worry no more that diamonds, rubies, sapphires and platinum in children's products would have to be tested; they are included in the rule since they do not contain lead. With respect to apparel, it needs to be understood that while the fabric or yarn does not need to be tested, the snaps, buttons, zippers, etc are not part of this rule and so the final article of clothing is not exempt from testing.

One issue that the final rule does not deal with adequately is the treatment of children's art materials already regulated under the Labeling of Hazardous Art Materials Act (LHAMA) which amended the Federal Hazardous Substances Act. LHAMA requires premarket testing protocols approved by the Commission. By definition, if a product contained lead over the statutory limits it would be a banned hazardous substance and could not be labeled as LHAMA compliant. Therefore children's art materials that comply with LHAMA will also comply with the lead content provisions of the CPSIA. If this is correct, it is unfortunate that redundant, expensive and unnecessary testing of children's art supplies is now occurring. It is regrettable that we did not take the opportunity presented by this rulemaking to clarify that such testing is not needed. I hope that the Commission will consider this matter at its earliest opportunity.



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COMMISSIONER ROBERT S. ADLER

STATEMENT OF THE HONORABLE ROBERT S. ADLER

I have voted to approve the final rule on lead (with changes). In doing so, I would like to make the following disclosure in order to avoid the appearance of a conflict of interest. My wife's first cousin is the executive director of the Fashion Jewelry Trade Association. He and I have studiously avoided any discussion of the issues in this package. We have agreed that we will avoid future discussions or any interaction regarding lead issues in fashion jewelry or on any other matters that pertain to the industry's concerns before the CPSC.

STATEMENT OF THE HONORABLE ANNE NORTHUP
COMMISSIONER
U.S. CONSUMER PRODUCT SAFETY COMMISSION ON CHILDREN'S
PRODUCTS CONTAINING LEAD; DETERMINATIONS REGARDING LEAD
CONTENT LIMITS ON CERTAIN MATERIALS OR PRODUCTS; FINAL RULE

August 18, 2009

Yesterday I began my tenure as a Commissioner at the United States Consumer Product Safety Commission at the end of the ballot vote period for this matter. Due to the complexity and far reaching impact of the final rule under consideration, I am abstaining from casting a vote. The issues presented in the final rule deserve far more deliberation and involvement in the entire rule making process than the twenty-four hours since my arrival will allow.