



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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COMMISSIONER ROBERT S. ADLER

**STATEMENT OF COMMISSIONER ROBERT S. ADLER ON THE COMMISSION
REPORT TO CONGRESS PURSUANT TO STATEMENT OF MANAGERS
ACCOMPANYING P.L. 111-117**

January 15, 2010

On December 16, 2009, the FY 2010 Consolidated Appropriations Act became law. This Act contained the FY 2010 appropriations for the U.S. Consumer Product Safety Commission. The Statement of Managers for the Appropriations Act directed the Commission to assess the lead provisions in section 101(a) of the recently enacted Consumer Product Safety Improvement Act (CPSIA) of 2008¹ and to recommend any improvements to the CPSIA to the House and Senate Appropriations Committees, as well as to the House Energy and Commerce Committee and the Senate Commerce, Science, and Transportation Committee by January 15, 2010.

I am pleased to join in the unanimous Commission Report to Congress. Below are my additional thoughts regarding several of the topics covered in the joint report.²

Section 101 of the CPSIA

I read the goal of Congress in section 101 of the CPSIA to be a simple one: remove as much lead from as many children's products as possible, as quickly as possible. This is not only a laudable goal, it is also one with which I strongly agree.

In addressing the risks of lead in children's products, Congress took three strong steps: (1) it set increasingly stringent limits for permissible lead levels both in children's products and in paint used on consumer products, (2) it made the lower lead limits retroactive, and (3) it set very strict limits on the Commission's ability to grant exclusions from the new lead requirements. On balance, I applaud the strong steps in the CPSIA and consider it a positive step forward in promoting consumer safety. That said, I believe that the Commission's experience in implementing the law has demonstrated a need for some greater agency discretion with respect to some of its provisions.

It appears that section 101, in striving to eliminate lead from children's products, left a number of firms in the position of having products that need to use accessible lead above the statutory threshold. Some of them have chosen to cease making children's products. Still others have asked to be exempted from the lead limits by seeking an exclusion under the provisions of

¹ Public Law 110-314, 122 Stat. 3016 (August 14, 2008).

² I have also written a longer statement setting out my thoughts on the regulation of lead under the CPSIA in general. This second statement should not be read as a direct response to the Statement of Managers for the FY 2010 Appropriations Act, but rather as an opportunity for me to set out my thoughts on these controversial issues at some length. This broader statement will soon be made publicly available.

section 101(b)(1). As to this last group, after careful consideration, the Commission has consistently denied all of these exclusion requests based on a careful reading of the language of the statute – which sets almost impossible-to-meet requirements for an exclusion. Accordingly, the Commission Report, which I support, asks for more flexibility in granting exclusions from the lead content limits. However, I wish to be very clear – this need for flexibility should not be allowed to subsume the larger and more important goal of working towards the day when no children’s product contains lead.

Until we reach that day, however, I support the CPSC’s request for Congress to provide additional discretion to the agency. I urge Congress, in modifying section 101(b), to keep three key questions in mind:

- First, does the product, component, or material, for which an exclusion might be sought truly *need* the lead? Asked another way – is there a readily available, comparable substitute for the lead? Is it possible, without incurring undue expense or undermining a product’s utility, to make the lead inaccessible?
- Second, does the accessible lead for which an exclusion is sought create a demonstrable adverse effect on public health or safety?
- Third, for how long does a firm (or industry) need an exclusion? At some point, technology surely will enable companies to make children’s products without lead. Absent some limit on the length on an exclusion, they could conceivably lock in outdated technology instead of encouraging industries to find new solutions to the problem of accessible lead.

I hope that Congress will consider these concerns in any modifications it makes to section 101(b). Our report acknowledges that there may be some instances where lead, though accessible, is necessary for a product to survive in the market. Doing so, however, should not take precedence over a demonstrable health risk to children.

As a final point, if Congress were to choose to provide more flexibility in granting exclusions under section 101(b) by adding the approach outlined above, it would be helpful if the Commission also gained greater flexibility in the process of granting exclusions. The current requirement that the Commission engage in formal rulemaking to grant section 101(b)(1) exclusions is potentially very burdensome to the CPSC and, if so, would inevitably lead to significant delays in providing relief to firms seeking an exclusion.