



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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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.