

MEETING LOG

CPSA 6 (B) Cleared

*D. 11/10/94*  
Produced Pursuant to  
Court Order in  
Case No. 94-1000  
Produced Pursuant to  
Protective Order

**DATE OF MEETING:** September 30, 1994

**PLACE OF MEETING:** CPSC - OGC Conference Room

**SUBJECT OF MEETING:** Lead testing and possible rulemaking for lead in crayons

**NAME OF PERSON MAKING LOG ENTRY:** Stephen Lemberg, OGC

**NAMES & TITLES OF MEETING PARTICIPANTS & COMMISSION UNITS REPRESENTED:**

Eric A. Rubel, General Counsel  
Alan H. Schoem, Chairman's Legal Assistant  
Murray S. Cohn, HS  
Mary Toro, CERM  
Allen F. Brauninger, OGC  
Stephen Lemberg, OGC

**NON-COMMISSION PARTICIPANTS & NAME OF ORGANIZATION:**

Deborah M. Fanning, Art and Craft Manufacturer's Institute ("ACMI")  
Mary Martha McNamara, Counsel, ACMI  
Martin Neville, Neville, Peterson & Williams  
Woodhall Stopford, Toxicologist, Duke University

**ISSUES DISCUSSED, DECISIONS MADE, ACTION TAKEN OR PLANNED:**

ACMI requested the meeting to discuss the industry's concern that action by states to regulate levels of lead in children's crayons could cause economic harm to the industry members, especially if states issued rules that banned crayons containing even a trace amount of lead. ACMI cited as an example legislation recently enacted by NY State. When Governor Cuomo vetoed legislation in NY that would have banned any lead in crayons, he directed that state regulations on this issue be developed. ACMI requested the Commission to take regulatory action to preempt state regulation of lead levels in crayons.

Eric Rubel explained that the Federal Hazardous Substances Act ("FHSA") automatically bans children's products, including crayons, that contain a "hazardous substance." He added that the Commission obtained voluntary recalls of crayons on this basis and provided the involved firms with the methodology used by the staff to make the determinations of lead content. Companies that

made crayons with somewhat lower lead levels that were still of concern were asked voluntarily to recall their crayons, and were told that the CPSC would not take any action if these companies elected not to conduct a recall. Mr. Rubel also explained that preemption alone was not sufficient justification under the FHSA for conducting rulemaking to set an actionable level of lead in crayons.

The outside participants at the meeting also raised other options for CPSC to regulate in this area or to encourage the states to defer to a national test method and action level. One possibility was to obtain further clarification from the Commission's compliance staff of the test method used to determine levels of lead in crayons and the level at which action is required. Another was to work through the ASTM committee to revise the ASTM D-4236 standard to include a suitable test method for determining lead levels in crayons. If the ASTM test method were revised, CPSC could adopt the test method through notice and comment rulemaking without making the findings needed to issue a banning rule.

The meeting continued with a technical discussion of testing for metals, including lead, in various products. Discussed were bioavailability, leaching of heavy metals from matrices such as the wax used in crayons, methods not using bioavailability, compatibility with international methods, and the use of assumptions in the assessment process.