



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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STATEMENT OF COMMISSIONER NANCY NORD
ON THE REQUEST FROM THE FASHION JEWELRY TRADE ASSOCIATION FOR EXCLUSION FROM
SECTION 101(b)(1) OF THE CPSIA
July 17, 2009

The Commission is considering a petition by the Fashion Jewelry Trade Association and others for an exclusion from the lead provisions of the Consumer Product Safety Improvements Act ("CPSIA") for crystal and glass beads in children's jewelry, apparel, accessories, and other products that may be used by children. For the reasons stated below, I believe that, in this case, the Commission should issue a stay of enforcement until Congress can address this situation.

This case presents in dramatic terms the unintended consequences of the CPSIA. While it is tempting to argue that the statute should allow for a *de minimus* amount of lead when there is no real risk of harmful exposure – i.e., determined by a measurable increase in blood lead levels – both the staff and the Commission have on several occasions in the past made clear that is not what we understand the statute to mean. At the time of its drafting, CPSC staff pointed out that lack of a *de minimus* standard could lead to arbitrary results but committee staff informed them that this flexibility was not intended. (I recognize that one of the primary sponsors of the legislation recently wrote us arguing that we can "grant exclusions for... materials that can be shown to pose no measurable increase in a child's blood lead level...". As much as I agree that this would be a more sensible policy result, the statute does not seem to allow for this flexibility.)

The result of not granting an exclusion is to remove from consumers' hands products that do not present a real risk, that consumers want to buy and that are being produced by companies, many of them small businesses, who will now be forced to incur substantial losses. This result imposes burdens on both consumers and businesses without any net increase in consumer safety.

In this case, certain things are clear:

- Our staff report indicates that there is no real risk of harmful lead exposure associated with crystals and glass beads.
- By definition, lead crystal exceeds the statutory limit, compliance is impossible and there currently is not an acceptable substitute.
- In most cases, a child who swallows a crystal bead would be exposed to lead at a level lower than if that child swallowed a similar weight of metal jewelry that complies with the statute.
- If we adopt the staff recommendation, there will be significant and severe economic injury to those who make and sell these products. Although the total impact has not been computed, we have been given enough anecdotal evidence to know that the economic loss will be severe. Here is a sample of what we have heard:
 - A major retail chain attributed a \$6.5 million loss in the first quarter to the lack of an exclusion for crystals;
 - \$200,000 of jewelry that complies with Proposition 65 in California nevertheless was pulled by another manufacturer;
 - About 2 million jewelry pieces from a different manufacturer are being returned, the loss estimated to reach millions of dollars;
 - A retailer reported \$700,000 in testing costs for crystals;
 - Substantial drop in sales reported by companies who have substituted plastic for crystal products, and
 - Examples of job losses: a small children's jewelry manufacturer with 50 employees anticipates closing down because of this law; several companies are preparing to reduce their workforce by 1/3 because of the CPSIA.

These losses are exacerbated by the retroactive effect of the law which extends the ban to inventory, including items sold in thrift stores.

Other jurisdictions in the U.S. have considered the health effects of leaded crystal and reached different results than those required by the CPSIA. In 2008, California enacted a statute which codified a consent decree among the state, consumer advocates and jewelry manufacturers that allows for the sale of jewelry with crystals less than one gram by weight for children six years or under. For children above six years of age, there is no restriction. Minnesota and several other jurisdictions have similar statutes.

The approach taken by California, which is precautionary with respect to young children but recognizes both the lack of risk and the consumer demand for these products among older children, is an approach which we do not have the flexibility under the CPSIA to adopt. The CPSIA does not recognize that risks impact children of different ages in different ways and instead takes a "one size fits all" approach. This is unfortunate, yet this is the reality. Instead of being able to craft something that works for both consumers and product sellers, we are being forced into a position that does not advance consumer safety and restricts consumer choice. In addition, we preempt several state laws that were crafted to address the concerns of all the stakeholders.

Because the statute does not give us the ability to be flexible, I cannot vote to grant an exclusion in this case. However, not granting an exclusion will result in the removal of safe products from the marketplace, causing significant economic injury. Therefore I believe there is only one equitable solution available to us and that is to grant a stay of enforcement for a limited time while Congress considers the unintended consequences of the CPSIA, e.g. products banned that have no real safety issues; economic hardship that is unnecessary to achieve consumer safety; and in this case, 10-year old girls being told by the Federal Government that they cannot have rhinestones on their jeans.

Congressional leaders have stated that they will consider "tweaks" to the CPSIA. It is time for Congress to address the serious issues created by this law in order to make it truly work for the consumer. The lead exclusion process would be one place to start.