UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
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CHAIRMAN INEZ M. TENENBAUM

STATEMENT OF CHAIRMAN INEZ M. TENENBAUM ON THE REQUEST TO EXCLUDE CRYSTAL AND GLASS BEADS IN CHILDREN'S PRODUCTS FROM THE CPSIA LEAD LIMITS

July 17, 2009

Today I voted to deny the Fashion Jewelry Trade Association's ("FJTA") request to exclude crystal and glass beads contained in children's jewelry and other products from the lead content limits set by Congress. When Congress enacted the CPSIA, it included a provision which permits the Commission by regulation to exclude a specific product or material from the lead content limits established for children's products under section 101(a) of the Act. A specific product may be excluded from section 101(a) if the Commission determines, based on scientific evidence, that the lead in the product or material will 1) neither result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable use and abuse of such product by a child, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product; nor 2) have any other adverse impact on public health or safety.

The amount of lead contained in the crystal beads that were tested ranged from 900 ppm to 23,000 ppm—well in excess of the statutory limit set by section 101(a) of the CPSIA. In requesting an exclusion for crystal and glass beads from the CPSIA lead limits (currently 600 ppm, decreasing to 300 ppm on August 14, 2009), the FJTA presented test data and analysis to show that ingestion and mouthing of leaded crystal beads would result in very low lead exposure to children such that the lead absorption may not even be detectable in a child's bloodstream. FJTA also argues that in spite of the high lead content of the beads, the potential lead exposure from the beads is less than the possible exposure from metal jewelry that is in compliance with the CPSIA lead limits.

In considering whether the exclusion should be granted under the section 101(b), I considered whether children mouthing and swallowing crystal and glass beads constitutes normal and reasonably foreseeable use and abuse of this type of product. The staff's analysis showed that mouthing and swallowing of small objects is part of the normal behavior of infants and young children. Moreover, emergency room data collected through NEISS shows that jewelry is one of the top five items ingested by children.

Because mouthing and swallowing of crystal and glass beads constitutes normal and reasonably foreseeable behavior and is not merely a conceivable use or misuse of this type of product, the question turns to whether the ingestion or mouthing of these beads would result in the absorption of any lead by a child. In making a determination, I was mindful that the statute does not use the term "harmful" amount or another term which would allow staff to utilize a risk based approach. The staff's memorandum noted that if ingestion of lead leached from the beads occurs, some portion of the lead will be absorbed into the child's body. Furthermore, the staff found that the amount of leachable lead in crystal beads is variable, and it is not necessarily true the lead exposure from crystal beads would always be lower than exposure from metal jewelry containing less than 300 ppm lead. Thus, while Commission staff recognized that most crystal and glass beads do not appear to pose a serious health risk to children, because ingested crystal beads that leach lead will result in some lead absorption, the request for an exclusion must be denied.

Further, a decision to grant the exclusion by using compliant metal jewelry as the baseline for assessing the acceptable level of exposure will reintroduce risk analysis back into consideration, including such factors as bioavailability of the lead, accessibility of the lead to children, foreseeable use and abuse, foreseeable duration of exposure, marketing, and life cycle of the product. Such an interpretation of the exclusion section of the CPSIA appears to be in direct conflict with the statutory language, which does not allow for the consideration of risk.

Finally, while the FJTA did not provide much information about the specific products mentioned in their request, nor include data or analysis about children's possible interactions with these various products, the agency will take a common sense approach to enforcement. There is a wide range of children's products that contain crystal and glass beads that are subject to the 101(a) lead limits and, as the Commission staff recognized, many of these products do not present an immediate danger of harmful lead exposure to children. Consequently, we will focus our enforcement activities on crystal and glass bead products designed and intended primarily for children six years of age and younger, the population most at risk of mouthing and swallowing small objects. While this approach does not provide the exact relief that the FJTA seeks through this request, I urge manufacturers and retailers of crystal and glass beads to remember that, especially during the implementation period of the CPSIA, the agency's primary enforcement focus will remain on noncomplying lead products that present serious health risks to children.