

Consumer Product Safety Law



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Newsletter Alert:

New CPSC Chairman Tenenbaum Rejects Lead Exposure Risk Analysis Under CPSIA; Denies Exclusion Petition for Lead Crystal and Glass Beads

[Kerrie L. Campbell](#)

In her first published statement as CPSC Chairman, [Inez Tenenbaum](#) (Democrat) explained why she voted with Commissioner Thomas Moore (Democrat) to deny the Fashion Jewelry Trade Association's (FJTA's) petition for an exclusion from the lead provisions of the Consumer Product Safety Improvement Act (CPSIA) for crystal and glass beads in children's jewelry, apparel, accessories, and other products that may be used by children. Hamstrung by the inflexibility of the CPSIA, Commissioner Nancy Nord (Republican) "could not" vote to grant the petition and instead voted to grant a stay of enforcement, a proposed action that did not receive the support of either Chairman Tenenbaum or Commissioner Moore. Commissioners [Nord](#) and [Moore](#) also issued statements explaining their votes.

- ***Tenenbaum Rejects Lead Exposure Risk as a Consideration; Does Not Address Conflict With California and Other State Lead Limits***

Mindful that Section 101 does not use the term "harmful" amount or another term that would allow the staff to utilize a risk-based approach, Chairman Tenenbaum concluded that an exclusion must be denied if exposure to the product could result in the absorption of *any* lead by a child. Rejecting the FJTA argument that the potential lead exposure from crystal beads is less than the possible exposure from metal jewelry that is in compliance with the CPSIA lead limits, Tenenbaum said "using compliant metal jewelry as the baseline" of acceptable risk appears to be "in direct conflict with the statutory language, which does not allow for the consideration of the risk." Acknowledging that most crystal and glass beads do not appear to pose a

Newsletter Editors

[Kerrie L. Campbell](#)
Partner
kcampbell@manatt.com
202.585.6526

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serious health risk to children, and without addressing the fact that state laws, including California, permit the sale of lead crystal beads, Tenenbaum said “the agency will take a common sense approach to enforcement.”

Specifically, she said that the CPSC “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.”

- ***Nord Recognizes Burdens on Both Consumers and Businesses With No Net Increase in Consumer Safety***

In Commissioner Nord’s view, this case dramatically illustrates the unintended consequences of the CPSIA. Agreeing that the statute provides no flexibility for a *de minimis* amount of lead when there is no real risk of harmful exposure, Nord voted for a stay of enforcement to allow Congress time to consider and address apparently unintended consequences created by the CPSIA, including, in this case:

- Banning products that present no real risk of harmful lead exposure
- Making compliance impossible when lead crystal, by definition, exceeds the statutory limit
- Causing “significant and severe economic injury to those who make and sell these products” to the tune of millions of dollars and job losses

Nord noted that other jurisdictions in the United States have evaluated the health effects of leaded crystal and reached different (and implicitly better-reasoned) results. For example, California allows for the sale of jewelry with crystals less than one gram by weight for children six years or under, with no restriction on crystals for children above six years of age. Minnesota and several other jurisdictions have similar statutes. The CPSIA requires a result “that does not advance consumer safety and restricts consumer choice [and] we preempt several state laws that were crafted to address the concerns of all the stakeholders.” Urging Congress to address this and other difficult issues created by the CPSIA, Nord suggested that “the lead exclusion process would be one place to start.”

- ***Commissioner Moore Votes With Chairman Tenenbaum to Focus Enforcement on Lead Crystal Products for Children Six Years of Age and Younger***

Commissioner Moore voted with Chairman Tenenbaum to deny the FJTA petition on the grounds that *any* possible lead exposure prevents an exclusion. He echoed Tenenbaum’s direction to focus enforcement on

products for younger children, who are “most likely to mouth and ingest crystals.” Moore noted that California’s approach to permit lead crystals in children’s jewelry, is predicated on “risk analysis that the CPSIA has deemed to not be protective enough of the nation’s children.”

For now, it looks like we can expect Commission votes to run 2-1 along party lines. Unlike Nord, it appears that Chairman Tenenbaum is not inclined to grant a stay of enforcement when the CPSIA yields harsh results that do not appear to address a substantial safety risk. Only time will tell how and to what extent the Commission’s enforcement activities will change under Tenenbaum’s leadership.

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FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:



[Kerrie L. Campbell](#) Ms. Campbell specializes in consumer product safety counseling and represents major manufacturers and retailers in investigation, enforcement and penalty proceedings before the U.S. Consumer Product Safety Commission (CPSC) and in matters referred to the U.S. Department of Justice. Ms. Campbell routinely counsels clients regarding compliance with the reporting requirements under the Consumer Product Safety Act, Flammable Fabrics Act and other statutes regulated by the CPSC. She advises clients on product recalls, corrective actions, responses to agency inquiries and Freedom of Information Act (FOIA) requests. She is a member of the Advisory Board for BNA’s Product Safety and Liability Reporter.

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