



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 20 2006

OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES

Mr. Ed Hopkins  
Director, Environmental Quality Program  
Sierra Club  
408 C Street, N.E.  
Washington, DC 20002

Dear Mr. Hopkins:

Thank you for your petition, dated April 17, 2006, requesting that EPA take action, in coordination with the U.S. Consumer Product Safety Commission (CPSC), regarding lead in toy jewelry. EPA is concerned about the continuing use of lead in toy jewelry and is working with CPSC to develop the most effective means to address this issue. The two Agencies have met four times since receiving your petition and have established an interagency group to identify the most effective steps to move forward.

EPA has given careful consideration to your specific requests. After receiving your petition, EPA published a Notice in the Federal Register soliciting comments and further information on the issues associated with lead in toy jewelry. 71 Fed. Reg. 30921 (May 31, 2006). EPA has carefully assessed this information, along with the information provided in your petition, and will continue to evaluate this information and conduct additional analyses to better understand the scope and severity of this issue.

EPA does not believe that the actions you requested under TSCA sections 6(b) and 8(d) would be helpful in addressing the problem presented by lead in toy jewelry, at this time. These two requests are therefore denied. Your other two requests, for actions under TSCA sections 5(a) and 9, are not petitionable under TSCA section 21. Section 21 enumerates specific sections and subsections of TSCA under which any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule or an order. Sections 5(a) and 9 are not included.

***Request to Issue Section 6(b) Quality Control Order Regarding Production of Toy Jewelry***

EPA does not believe that section 6(b) is an appropriate tool to address the risks associated with lead in toy jewelry at this time. The use of section 6(b) would be most beneficial when the Agency can identify a small number of companies who, by their unique actions, are causing unreasonable risks to be present. In the case at hand, EPA believes that this approach may be inadequate and inefficient. Information contained in several of the public comments suggests that there may be numerous instances where toy jewelry containing lead is still available in the marketplace. EPA is working in coordination with CPSC to understand the scope of the problem. A

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holistic and proactive approach may be more effective and less resource intensive than the case-by-case approach provided for under section 6(b).

In addition, the request in your petition is for orders to remedy quality control procedures where necessary. EPA is not in a position to issue such orders at this time because it has not issued any section 6(b)(1) orders that could provide the basis for section 6(b)(2) orders.<sup>1</sup>

The request that EPA identify and issue section 6(b) orders to all manufacturers and processors producing toy jewelry with greater than 0.06% lead is therefore denied. However, EPA is not foreclosing the possibility of issuing section 6(b) orders in the future should it conclude that section 6(b) is an appropriate tool to address risks presented by particular manufacturers or processors.

***Request to require TSCA section 8(d) health and safety data reporting for lead and lead salts***

TSCA section 8(d) authorizes the Agency to promulgate rules requiring that manufacturers, processors, and distributors of chemical substances or mixtures submit lists and copies of such health and safety studies to the Administrator. While this could allow the Agency to require the submission of health and safety studies on lead and lead salts, the Agency does not believe that a section 8(d) rule would provide useful information, at this time.

Extensive and detailed information on the toxicity of lead is already widely available. The Agency is already in possession of voluminous information on the health hazards of lead, and has undertaken numerous rulemakings and other actions based on this information. Along with the rest of the federal government and many other bodies, the Agency has concluded that lead can cause multiple adverse health effects, and has set a goal to eliminate lead poisoning as a major public health concern in children by 2010. While the Agency is always open to the receipt of additional information on the health and safety of various substances, it believes that the health effects of lead are already well-known and accepted. Over the course of EPA's many rulemaking and policy development efforts to address lead risks to children, including numerous notice and comment proceedings, public meetings, and other fora for exchange of information, EPA believes that it has assessed the most critical existing lead health and safety studies that EPA and/or CPSC would find most valuable for regulatory purposes.

While it is possible some new information could be obtained from a section 8(d) rule, EPA does not consider it likely that it would gain significant new information through a section 8(d) rule requiring the types of studies identified by the petitioner. In addition, it is not clear that EPA has

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<sup>1</sup> Where the Administrator has a reasonable basis to conclude that a particular manufacturer or processor is manufacturing or processing a chemical substance or mixture in a manner which unintentionally causes the chemical substance or mixture to present an unreasonable risk, TSCA section 6(b)(1) allows the Administrator to require the manufacturer or processor to provide information regarding the relevant quality control procedures followed in the manufacturing or processing. If the Administrator then determines such procedures are inadequate, TSCA section 6(b)(2) allows the Administrator to require the manufacturer or processor to revise its procedures. EPA notes that only orders under section 6(b)(2) are subject to TSCA section 21.

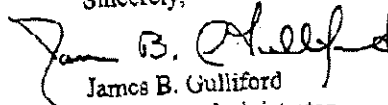
authority to obtain under section 8(d) all of the information identified by petitioner (e.g., information on marketing and patterns of use).

For the reasons described above, EPA does not believe, at this time, that the requested section 8(d) rule would be helpful in assessing the risks to children from lead in toy jewelry and is, thus, denying your request. However, EPA is continuing to work with CPSC, and would consider doing a targeted section 8(d) rule should EPA conclude in the future that it has a need for specific information that could likely be obtained through this mechanism.

Despite our reservations about the specific approaches requested in your petition, I can assure you that EPA will continue to work with CPSC to develop the most effective means to address this issue. In the short term, EPA will work with CPSC to examine approaches to outreach to retailers.

Thank you for highlighting this important issue. Please feel free to forward additional information as you feel appropriate.

Sincerely,

  
James B. Gulliford  
Assistant Administrator