



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF THE HONORABLE THOMAS H. MOORE
ON THE FINAL INTERPRETATIVE RULE ON THE TERM
“CHILDREN’S PRODUCT”
October 4, 2010

I voted to approve the interpretive rule to provide guidance as to how the Commission determines whether a product *in question* is a children’s product as defined in section 3(a)(2) of the Consumer Product Safety Act, as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA). That section requires the Commission to consider four factors, not for the purpose of “uncovering” the intent of the product manufacturer in designing or making a product, but rather so that the Commission can determine from its own perspective whether that product is primarily intended for children 12 years of age or younger. A manufacturer’s statement of intended use is certainly part of our analysis, but while the intention of the manufacturer and our ultimate determination about the product may very well lead to the same conclusion, this will not necessarily or always be the case.

The four statutory factors are not new to this Commission; they are the ones our staff has always applied and our staff has been analyzing children’s products for decades. Most manufacturers know whether or not they are making a children’s product and most products do not present a question about their primary intended user. This rule is intended to provide guidance on what the Commission will consider when making a determination on questionable products. Therefore, as the rule points out, determinations of whether some products meet the definition of a children’s product will be factually dependent and factual information that may be unique to certain products will be considered on a case-by-case basis.

We should not be confused about the goal of this interpretive rule. Some people want to introduce the concept of risk into a children’s product determination. The hazards or risks presented by any particular children’s product are not part of the statutorily mandated analysis, therefore, risk is not an appropriate consideration. Categorizing products based on the degree of risk they present, as opposed to the determination required by the Act, results in distinctions among products that defy rationalization. The consequences that may flow from a product being deemed a children’s product have been determined by Congress in other sections of our statute. Our only task in this rule is to explain how we interpret the Act’s definition of a “children’s product.”