



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

**STATEMENT OF THE  
THE HONORABLE ROBERT S. ADLER  
REGARDING THE CHILDREN'S PRODUCT RULE  
September 29, 2010**

I am pleased that today we voted to publish an interpretive rule in the Federal Register regarding the definition of children's products under the Consumer Product Safety Improvement Act (CPSIA). The changes that we have made from the proposed rule to this final rule, I believe, are thoughtful and respond, as carefully as we can, to the many comments we received from the public. I believe the changes we have made reflect an improved interpretation of the language and the intent of Congress in the CPSIA.

**THE FOUR FACTORS AND THE MANUFACTURER'S STATEMENT**

By including a statutory definition of a "children's product" Congress provided us with four factors that we must consider when determining whether a consumer product is primarily intended for a child 12 years of age or younger.<sup>1</sup> Thus, at a minimum, we must consider all four of these factors to try to determine whether a given product is primarily intended for a child 12 years of age or younger, unless a given factor obviously does not apply to a specific product. A plain language reading of the statute indicates that Congress was concerned that no product be allowed to avoid consideration as a children's product simply because a manufacturer slapped a label on the product claiming that it was not intended for children 12 years of age or younger. Congress, wisely in my view, took care to direct us to look to a variety of factors, including but not limited to, statements by a manufacturer about the intended use of a product. Additionally we will look to factors such as the marketing, packaging, promotion or advertising of the product, the common understanding of who is an intended user of the product, and then have our own Human Factors experts examine the product based on their professional expertise. In other words, we will look at products in context, and we hope that manufacturers and retailers, (and consumers for that matter) will do the same.

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<sup>1</sup> Those factors are: A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable; whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger; whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; the Age Determination Guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

To those that would argue that the Commission has supplanted manufacturers' discretion as to whether their products will be considered children's products the answer is "no." Congress appropriately recognized that manufacturers have a lot of control as to whether their products are children's products. The CPSIA requires that children's products bear tracking labels that identify the location, date of production, and other individualized information that can be most easily established at the point of manufacture. Accordingly, the statute lists the manufacturer's statement of intended use first – but it lists other factors that may be within the manufacturer's control as well. I believe this is appropriate. If a manufacturer consciously chooses to decorate an otherwise general use item with a childish theme or to label a product with a specific age grade on it (such as "8 +") this specific choice of the manufacturer as to how to market its product will be taken into consideration. In other words, what a manufacturer says should be the starting point of our analysis – but it is not the finish line.

## **RISK**

In writing the CPSIA, Congress decided that any product that is designed or intended primarily for children 12 years of age or younger is a "children's product" – regardless of the risk profile of such a product. This is a vital point because while much of the discussion surrounding this rule has centered on third-party testing, the rule itself is not about third-party testing. This particular rule is only about whether a product meets Congress's definition of a "children's product," regardless of whether that product presents a significant risk. I recognize that once a product is defined as a children's product it will generally be subject to new requirements under the CPSIA, including third party testing. From hindsight, one can certainly express some concern about this fact not because of the broad definition of children's product, but because I believe that the Commission should have been given discretion as to which types of children's products should be subject to requirements under the CPSIA, including third party testing. I have little doubt that the language in the CPSIA reflected Congress' intent to be over-inclusive in its understandable and commendable desire to protect children, and I must live with what Congress enacted, not what I wish they had passed.

Put another way, today we announced how we will decide which products meet the definition of a children's product. There may be instances where this will mean that manufacturers who never thought they made a children's product will now fall under our umbrella. I believe such instances will be few and far between because I believe that most manufacturers know preproduction whether they are designing a product mainly for children 12 years of age or younger. On the other hand, most manufacturers who wish clarity and predictability will now have a better, but not a perfect, understanding of whether their products will be considered children's products. I fully recognize that for some manufacturers this will be somewhat burdensome. However, I believe that on balance for consumers and the long term societal safety interest, this rule is a continued step in the right direction of recognizing that products intended for one of our most vulnerable populations, children, must be held to the highest standards.

## **FUTURE GUIDANCE**

I am pleased that the rule, in the interest of providing future guidance, explains the Commission will be posting on our website a list of some products that have been determined to be either children's products or general use products. It is this type of information that will go beyond the examples provided in the rule. I hope this will be useful to our stakeholders as they navigate the ins and outs of the law.

## **CONCLUSION**

I believe that the law has required us to cast a wider net than we might otherwise choose to cast. I also realize that there will be a few areas that will always require a case-by-case analysis as to whether a given product category – or a product within a category – will be considered a children's product. Yet, this is always this case when we draw lines – there is rarely a place to make a cut that will be pleasing to everyone. However, on the whole, I believe we have done the best we could with the law we were given, and will continue to do so in the future.