



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

**BP - Definition of Children's Product
Notice of Proposed Rulemaking (NPR)**
The contents of this document will be
discussed at the Open Commission Meeting
on Wednesday, March 24, 2010

MAR 17 2010

THIS MATTER IS NOT SCHEDULED FOR A BALLOT VOTE.

A DECISION MEETING FOR THIS MATTER IS SCHEDULED ON: March 31, 2010

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel *CAF*
Maruta Budetti, Executive Director *MB*

FROM: Philip Chao, Assistant General Counsel *PC*
Hyun S. Kim, Attorney, OGC *HSK*

SUBJECT: Proposed Interpretative Rule: Interpretation of Children's Product

The Office of the General Counsel is providing for Commission consideration the attached draft *Federal Register* notice on a proposed interpretative rule providing guidance on the factors that must be considered when evaluating what is a children's product.

Please indicate your vote on the following options.

- I. Approve publication of the draft proposed interpretative rule in the *Federal Register* without change.

(Signature)

(Date)

- II. Publish the draft proposed interpretative rule in the *Federal Register* with changes.
(Please specify.)

(Signature)

(Date)

III. Do not approve publication of the draft proposed interpretative rule in the *Federal Register*.

(Signature)

(Date)

IV. Take other action. (Please specify.)

(Signature)

(Date)

Attachments:

Draft *Federal Register* Notice - Proposed Interpretative Rule: Interpretation of "Children's Product."

Memorandum from Jonathon D. Midgett, Office of Hazard Identification and Reduction to Robert J. Howell, Assistant Executive Director, Health Sciences, *Definition of Children's Product*, dated March 2010.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Interpretation of "Children's Product"

[Docket No.]

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed interpretative rule.

SUMMARY: The Consumer Product Safety Commission ("CPSC," "Commission," or "we") is issuing a proposed interpretative rule that would interpret the term "children's product" as used in the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), Public Law 110-314. The proposal would provide additional guidance on the factors that must be considered when evaluating what is a children's product.

DATES: Written comments and submissions in response to this notice must be received by **[insert date that is 30 days after publication]**.

ADDRESSES: You may submit comments, identified by Docket No. **[CPSC docket number]**, by any of the following methods:
Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through www.regulations.gov.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Jonathan D. Midgett, Office of Hazard Identification,
Consumer Product Safety Commission, 4330 East West Highway,
Bethesda, Maryland 20814; telephone (301) 504-7692, email
jmidgett@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 235(a) of the CPSIA amended section 3(a)(2) the Consumer Product Safety Act ("CSPA") by creating a new definition of "children's product." 15 U.S.C. 2052(a)(2). "Children's product" is defined, in part, as "a consumer product designed or intended primarily for children 12 years of age or younger." Several CPSIA provisions use the term "children's product." For example, section 101(a) of the CPSIA provides that, by August 14, 2009, children's products may not contain more than 300 parts per million (ppm) of lead. On August 14, 2011, the limit shall be further reduced to 100 ppm, unless the Commission determines that it is not technologically feasible to have this lower limit. As another example, section 102 of the CPSIA requires third party testing of certain children's products, and section 103 of the CPSIA requires tracking labels for children's products.

The statutory definition of "children's product" also specifies certain factors that are to be taken into

consideration when making a determination about whether a product is "designed or intended primarily for children 12 years of age or younger." These 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; and
- The Age Determination Guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

The proposed interpretative rule would create a new § 1500.92, "Definition of Children's Product." The proposal would discuss the statutory definition and accompanying factors to provide guidance on how manufacturers can evaluate consumer products to determine whether such products are children's products. The additional guidance will provide a better understanding by manufacturers and the public of our approach to evaluating children's products.

II. Description of the Proposed Interpretative Rule

A. Designed or Intended "Primarily" for Children

Section 3(a)(2) of the CPSA defines a "children's product," in part, as "a consumer product designed or intended primarily for children 12 years of age or younger." We interpret the term "designed or intended primarily" to apply to those products designed and commonly recognized as intended for use by a population of consumers constituted by a significant proportion of children 12 years old or younger. We further interpret the term "for use" by children 12 years or younger to mean that children will physically interact with such products based on the reasonably foreseeable use and misuse of such product. In contrast, products intended for general use, which are products that are not being marketed to or advertised as being primarily intended for use by children 12 years old or younger and that are used by a significant proportion of the population older than 12 years of age, would not be considered children's products in most cases.

For example, most pens, or other office supplies, are not considered children's products because they are sold to the general public. The fact that pens or other office supplies may be used by children does not convert them into children's products. However, when a general use product, such as a pen, is decorated or embellished by adding certain features which

may appeal to children, such as childish themes or play value, the general use product may be converted or transformed into a children's product due to these additional features or characteristics. A further evaluation would be made regarding whether, in fact, a child would be likely to physically interact with such a pen, and how such interactions would occur, including the reasonably foreseeable use and misuse of the product by the child. If a child is unlikely to interact with the pen because the theme would not be of interest, or if an older child or adult is as likely, or more likely to interact with the pen than a child, such a pen would not be a product designed or intended primarily for children 12 years of age or younger, and thus, would not be considered a children's product.

In evaluating whether a particular product is "primarily" designed or intended for a child, the CPSC Human Factors staff makes an age determination for the product which considers all of the facets of a product to arrive at a determination of the reasonably foreseeable group or groups of consumers for whom the product will have appeal and for whom the product is likely to be purchased. In making such a determination, the following statutory factors are considered.

B. Factors Considered (Proposed § 1500.92(a)(1) through (a)(4))

1. Manufacturer's Statement

Section 3(a)(2)(A) of the CPSA lists a statement by a manufacturer about the product's intended use, "including a label on such product if such statement is reasonable," as a factor to be considered in determining whether a product is primarily intended for a child 12 years of age or younger. 15 U.S.C. 2052(a)(2)(A). A manufacturer's statement about the product's intended use, including the product's label, should be reasonably consistent with the expected use patterns for a product. A manufacturer's statement that the product is not intended for children does not preclude a product from being a children's product if consumers would commonly use that product for children 12 years of age or younger. We discuss common use patterns in further detail under part I.B.3 of this preamble below.

2. Product Presentation

Another factor, at section 3(a)(2)(B) of the CPSA, is whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger. 15 U.S.C. 2052(a)(2)(B). These representations can be express (such as product advertising declaring that the product is for use by children 12 years of age or younger) or implied (such as product advertising showing the product being used

by infants or toddlers). These representations may be found in packaging, text, illustrations and/or photographs depicting consumers using the product, instructions, assembly manuals, or advertising media used to market the product.

Besides labeling and illustrations, a product's physical location in a retail outlet or visual associations in the pages of an online distributor's website could imply its suitability for a certain age group. The close association of a children's product with other products (such as toys) in a store or on a website that is clearly intended for children 12 years of age or younger also could affect consumer perceptions of the intended age group for that product. However, the retail location of a product would not be dispositive to a children's product determination. For example, if an electronic media device, such as video game console, was sold at a toy store, if it also was sold in electronics stores or department stores and marketed to older children and adults, that video game console would be considered a general use product rather than a children's product.

On occasion, manufacturers combine several different toys in a single product, such as a multi-game activity cube for infants or a set of party favors in a bag or

combine a children's product with an adult product. Although the items packaged may be intended for different age groups, each individual product should meet the applicable regulations for the individual products in the group set based on the age determination of the individual product. For example, a stuffed animal packaged with a adult razor and razor blades must still meet the regulations under the applicable children's safety rules for the stuffed animal (i.e., small parts and sharp edges under 16 CFR 1500.49-53, the lead content or lead paint limits under section 101 of the CPSIA and 16 CFR part 1303.) While it is obvious that children do not shave, the manufacturer should expect that an adult will use the razor and razor blade and may give the stuffed animal to a child.

In general, we will consider a product as a whole and weigh all potential uses of a product before making an age determination. In cases where different age grades may be represented in a combination of products sold together, such as the stuffed animal sold with a razor and razor blades, each product must conform to the appropriate regulation as if the product was sold individually to help ensure that the marketing and distribution of children's products reflect the appropriate age determination

associated with the product and are in compliance with all applicable children's product safety rules.

3. Commonly Recognized by Consumers

Another factor, at section 3(a)(2)(C) of the CPSA, in determining whether a consumer product is designed or intended primarily for a child 12 years of age or younger is whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger. 15 U.S.C. 2052(a)(2)(C). To assess whether a product is intended primarily for a child, a manufacturer should evaluate the actual use and reasonably foreseeable uses and misuses of a product to determine how the product will be perceived and used by consumers of that product. Manufacturers may rely on market analyses, focus groups, or other marketing studies for their analyses of the likely ages of consumers of their products.

(i) Features and Characteristics of Children's Products

A consumer product will commonly be recognized by consumers as being intended for use by a child 12 years of age or younger based on certain product features or characteristics. Certain childish features or characteristics of children's products can be defined generally, although there may be exceptions. Features that

distinguish children's products from adult products

include, but are not limited to, such factors as:

- Small sizes that would not be comfortable for the average adult,
- Exaggerated features (large buttons, bright indicators) that simplify the product's use,
- Safety features that are not found on similar products
- Colors commonly associated with childhood (pinks, blues, pastels, bright primary colors),
- Decorative motifs commonly associated with childhood (such as animals, insects, small vehicles, alphabets, dolls, clowns, and puppets),
- Features that do not enhance the product's utility, (such as decorations, beads, cartoons), but contribute to its attractiveness, and
- Play value, i.e., features that promote interactive exploration and imagination for fanciful purposes (whimsical activities lacking utility for accomplishing mundane tasks; actions performed for entertainment and amusement).

The more of these types of characteristics that a product has, the greater the likelihood that the product is a children's product. For example, a pen which is decorated

or whose advertising and marketing features themes that correspond to obvious children's interests, i.e., preschool characters, will greatly influence the purchase for preschool children. CPSC Human Factors staff also found a wide variety of pens decorated with characters from a very popular pre-teen movie. The pens were clearly targeted to children 12 years of age and younger.

However, there also are "novelty" pens that could appeal to children 12 years and younger as well as older children and adults; such novelty pens would not be considered to be primarily intended for children. For example, a simple ball point stick pen bearing an elementary school's name, without any other decorations, would likely appeal to anyone (i.e. students, teachers, parents) connected with the school. A pen with a silly head on the top, not associated with any particular mass media (and not sold in toy stores), may have just as much appeal to adults as it would to children. Pens with puzzle features that allow the user to take it apart and reconfigure the design also are likely to appeal to children and adults alike, and thus, are not likely to be considered be a children's product because they are not primarily intended for children.

(ii). Principal Affordances

Where there is uncertainty as to a product's uses, when making a determination about the intended age of a product's users, an evaluation of the product's reasonably foreseeable uses and misuses should take into account the possible actions that are afforded by a product. In essence, this is an analysis of what a subject product does, even if what the product does is unintended. The analysis of affordances (a term used in ecological psychology) outlines the product's reasonably foreseeable uses and misuses. For example, a 10-ounce plush animal affords hugging, posing, role playing, and carrying around in a manner that a chainsaw does not. Saws afford cutting wood, but not cuddling. The principal affordance of a broom is "floor cleaning," but a broom may also afford some role playing activities if used as a imaginary knight's lance, a horse, or a magical flying vehicle. However, in the age determination analysis, the principal affordances take precedence over actions that are less likely to be performed with a product, so even though a product could present some affordances that are appealing to children, like the broom being used as an imagined magical flying vehicle, that fact does not necessarily mean that the broom is a children's product. The individual features of a product may be weighted in the analysis with the most

obvious features given a higher priority than less obvious features.

For products with many potential uses, a hierarchy of affordances may be included in the analysis, with less likely uses weighted less in the final decision than the principal affordances. For example, a candy dispenser shaped like a small plastic car with rubber wheels that roll and make entertaining noises when rolling, where the car also happens to have a slot in the top of it that allows it to be used as a coin bank once the candy is gone, presents a number of affordances such as consumption of candy, playing with the car, and saving coins. Eating the candy is appropriate for children and adults. Playing with the car is appropriate for children in early and middle childhood. Saving coins is appropriate for children during middle childhood, but inappropriate for children younger than 3 years. To complicate matters, the bank feature is obscured at the point of purchase by a plastic wrapper, and the candy's size and shape is not discernable inside the car. The age grading analyst is justified in weighting the most obvious appearance and affordances of the product. In this case, the small car features make this product a children's product, over the less obvious features of the size and shape of the candy and the coin bank feature of

the product. Sorting through the mixed messages presented by a complex product and giving precedent to obvious features over hidden ones is appropriate and necessary.

(iii). Cost Considerations

A product's cost may also be considered in evaluating whether a consumer product is primarily intended for use by a child or an adult. The cost of a given product may influence the determination of the age of intended users. Very expensive items are less likely to be given to children 12 years of age or younger, depending on the product. We have not identified a price point where any given product achieves automatic adult status but, in general terms, within a given product category (like models or remote controlled vehicles), products intended for adults cost more than products intended for children because children are often less careful with their belongings than adults and therefore more likely to be entrusted with less expensive models.

(iv). Children's Interaction with the Product

In making an age determination, the foreseeable use or misuse of the product by a child must be evaluated. Although most products intended for children will involve the child having physical interaction with the product, there are a few products that are intended for use in a

child's environment, but such products are not for use by a child. These products are unlikely to be handled by children and children do not physically interact with such products. Such products may include a nursery themed lamp or clock, or nursery decorations that are manufactured for use to be placed in an infant's room but are not operated or handled by children, because such young children lack the motor skills or physical capacity to interact with such items. These types of products are considered to be home furnishings or decorations primarily intended for use by adults, rather than products intended for use by children, since such products are not physically accessible to the child. To the extent that such products are embellished with features or characteristics that incorporate elements of play value (a toy train on a lamp) for an older child, or "grow" into an older child's environment (a clock with movable arms) such products would be evaluated to ascertain the appropriate age group for whom the product was intended given the product's design, marketing and advertising, the child's physical interaction, if any, with the product, and consideration of any other factors which may be relevant to the age grading determination. Other products that are intended for use by adults with children, such as diaper bags, wipe warmers, baby monitors, would not be considered

to be children's products because such products are primarily designed and intended for use by the adult or caregiver.

4. The Age Determination Guidelines (2002)

The final factor, at section 3(a)(2)(D) of the CPSA, is the Age Determination Guidelines ("Guidelines") issued by the Commission staff in 2002. 15 U.S.C. 2052(a)(2)(D). The Guidelines help answer questions regarding children's interactions with consumer products. The Guidelines can be downloaded in a searchable file format on the CPSC website at this link: <http://www.cpsc.gov/businfo/corrective.html>. The Guidelines address questions such as, "Does the subject product appeal to children?" and "Can a child properly use the subject product?" The Guidelines describe the capabilities and skills that children of various age groups can be reasonably expected to use in interactions with consumer products. We consider those actions that children of certain ages can successfully perform when making determinations about the appropriate user groups for products even if the specific product or type of product is not specifically mentioned by the Guidelines.

i. Appeal of the Product for Different Age Groups.

When making an age determination for a given product's intended user group, the Guidelines provide information about the primary goals of play that are seen for different age children throughout childhood. For example, toddlers consistently want to mouth objects because mouthing is a primary strategy for exploration of any object at that age. Early childhood entails lots of exploration and discovery. High levels of detail in their toys are not necessary, and toddlers like bright colors. However, during middle childhood children become very interested in role-playing and they desire increasingly more realistic props during their playtime, and more realistic colors become important. After a certain age, children do not consider the simplistic, brightly colored toys intended for toddlers to be intended for them and may find them very unappealing or even insulting. These disparate goals and the factors that make various objects appealing to children of various ages are discussed at length in the Guidelines.

ii. Capabilities of Various Age Groups.

Whether or not a product appeals to a child is just one consideration because the child also needs to be able to manipulate and operate a product in the manner that takes advantage of most, if not all, of that product's affordances for that product to be appropriate for that age

child. The physical, social and cognitive milestones that contribute to a child's ability to play with various types of products are described in detail in the Guidelines to help match a product with the user group of the proper age. For example, a magnifying glass is very attractive to a toddler, but toddlers usually are unable to position a magnifying glass in the proper manner to magnify objects to their eye. A toddler's hand-eye coordination and his or her visual attention are usually not developed enough for a toddler to find the focal point needed to see something magnified in the glass. Despite this, a toddler might hold and chew on a magnifying glass. This appeal does not make the magnifying glass appropriate for toddlers but may be used by older children who have the necessary hand-eye coordination. However, a magnifying glass that is generally marketed to the adult population would not be considered a children's product because they are not intended primarily for children 12 years of age or younger.

III. Examples (Proposed § 1500.92(b)(1) through (b)(9))

To help manufacturers and other interested parties understand the concepts discussed above (in part II of this document) for evaluating what is a children's product under the CPSA, we provide the following additional examples.

(A) Furnishings and Fixtures

General home furnishings, such as lamps, rocking chairs, shelving units, televisions, digital music players, fans, humidifiers, air purifiers, window curtains, tissue boxes, clothing hooks and racks, often are found in children's rooms or schools. To the extent that the furnishings and fixtures are intended for adult use in a children's room or classroom, they would be considered general use products. For example, a humidifier may be used in a children's room, but this does not make it for children to use; instead, adult caregivers use the humidifier to modify the air in a child's room. Similarly, a hook used to hang coats is a general use item, even if a child's coat is occasionally hung on the hook at home or at school. However, if a manufacturer attaches the hook to a children's product, such as a child sized desk, or embellishes the hook with a child's theme (thereby making it clear that the hook is intended to be used primarily by a child), then that hook would be considered to be a children's product.

Some home or school furnishings, such as changing tables, infant tubs, bath seats, small bean bag chairs with childish decorations, bunk beds with cartoon themes, child-sized desks, and child-sized chairs, are intended primarily for use by children. Accordingly, furnishings that are

primarily intended for use by children 12 years old or younger would need to comply with all applicable children's product safety rules.

Other products may have a childish theme incorporated unto the product. For example, a lamp with a fire station that has posable figurines of firefighters has play value and would likely to be considered a children's product. If a lamp has no features that add play value, or other features that would invite physical interaction with the lamp beyond turning the lamp on or off, it would likely be considered a general use product, since it would be indistinguishable from a lamp for older children or adults. Similarly, decorations (i.e., party settings) or props (a train that does not have movable wheels) used for display that do not have play value are not generally considered children's products because they often have features that make them unsuitable for child's play (such as rigidity, fragility, or sharp edges) and are generally intended for adult use in a child's room or classroom and are generally kept out of the reach of children 12 years of age or younger.

(B) Collectibles

Certain products that were originally intended for children may become collector's items and find an adult

market. However, many collectibles are interesting to children, and children 12 years of age or younger often have collections. Adult collectibles are intended solely for use by adults as display items and are often labeled in such a manner that conveys this intention. They may be (but are not always) distinguished from collectibles intended for children by themes that are inappropriate for children 12 years of age or younger. Adult collectibles also have features that preclude use by children during play, such as high costs, limited production, and display features like hooks or pedestals, and are not marketed alongside children's products. For example, collectible plush bears have highly detailed and fragile accessories, display cases, platforms to pose and hold the bear, and very high costs. Plush bears intended for children are more affordable and have more simple accessories that children can handle without damage to the product or to the accessory.

(C) Jewelry

Jewelry intended for children is sized, themed, and marketed to children. Many features of adult jewelry may be attractive to children 12 years old or younger, but potential attractiveness to children, alone, does not make a piece of jewelry into a product intended for children.

One or more of the following characteristics of jewelry could cause an item to be considered primarily a children's product:

- Size;
- Cost - it would be unusual for an adult to wear jewelry that is available at very low cost;
- Marketing in conjunction with other children's products, such as a child's dress, children's book, or toy;
- Play value;
- Sale at an entertainment or educational event (such as a circus) attended primarily by children;
- Use of childish themes, such as animals, vehicles, or toys;
- Sale at a store containing mostly children's products; and
- Sale in a vending machine.

In addition, many aspects of an item's design and marketing are considered when determining the age of consumers for whom the product is intended and will be purchased. These aspects include:

- Marketing, advertising, and promotional materials;
- Packaging graphics and text;

- Size;
- Dexterity requirements for wearing;
- Appearance (coloring, textures, materials, design themes, licensing, level of realism); and
- Cost.

These aspects or characteristics will help inform jewelry manufacturers and consumers determine whether a particular piece of jewelry is primarily intended for children 12 years of age or younger, or whether it more appropriately appeals to and is designed and sold to older children and adults.

(D) DVDs, Video Games and Computers

Most computer products and electronic media devices, such as CDs, DVDs, and DVD players, are considered general use products. However, some CDs and DVDs may have encoded content that is intended for and marketed to children, such as children's movies, games or educational software. Age grading analysts may consider ratings given by entertainment industries and software rating systems when making an age determination. However, we note that among the CDs and DVDs that have content embedded that is intended for children, certain CDs and DVDs that contain content for very young children (under 4 years of age) would not be handled or otherwise touched by children

because they do not have the motor skills to operate media players and because such products, by themselves, do not have any appeal to children. These types of DVDs or CDs are not considered to be children's products because they are not used "by" children and children do not physically interact with such products. However, DVDs and CDs and other digital media may be handled by older children (4 years and older), and would be considered to be children's products if such movies, video games, or music are specifically aimed at and marketed to children 4 years old through age 12, and have no appeal to older audiences.

Video game consoles also are considered general use products because a significant portion of the market for such items consists of teenagers and young adults. However, handheld video games with software intended for children 12 years of age or younger would fall within the scope of a children's product if the products are produced without software available that is appealing to older children and adults. Such products would be more likely to be perceived as intended for children 12 years of age or younger. Also, the controllers for certain console games or other accessories of electronic equipment that are sized for or otherwise intended for only children's games could be a children's product because of their size (or other

childish features), even though the game console could be a general use product. Likewise, keyboards, computer input devices, and other peripherals that are sized, decorated, or otherwise marketed for children 12 years of age or younger would be considered children's products, even though the computer itself is a general use item.

(E) Art Materials

Materials sized, decorated, and marketed to children 12 years of age or younger, such as crayons, finger paints and modeling dough, would be considered to be children's products. Crafting kits and supplies that are not specifically marketed to children 12 years of age or younger would likely be considered to be products intended for general use. The marketing and labeling of raw materials may often be given high priority in an age determination for art materials because the appeal and utility of art materials has such a wide audience.

(F) Books

The content of a book can determine its intended audience. Children's books have themes, vocabularies, illustrations, and covers that match the interests and cognitive capabilities of children 12 years of age and younger. Librarians, education professionals, and publishers commonly make determinations regarding the

expected audiences for books based on vocabulary, grammar, themes, and content. Some children's books have a wide appeal to the general public, and, in those instances, further analysis may be required to assess who the primary intended audience is based on consideration of relevant additional factors such as product design, packaging, marketing and sales data.

(G) Science Equipment

Microscopes, telescopes, and other scientific equipment would not be considered a children's product unless the primary marketing strategy for the item emphasized the product's simplicity or suitability for children. Toy versions of such items, however, are considered to children's products.

(H) Sporting Goods and Recreational Equipment

Regulation-sized sporting equipment, such as basketballs, baseballs, bats, racquets, and hockey pucks, are general use items even though some children 12 years of age or younger will use them. Sporting goods become children's products when they are sized to fit children or are otherwise decorated with childish features that are intended to attract child consumers.

Likewise, recreational equipment, such as roller blades, skateboards, bicycles, camping gear, and fitness

equipment, are considered general use products unless they are sized to fit children 12 years of age or younger and/or are decorated with childish features. For example, scooters have been made for children and for adults. Children's scooters are distinguished by shorter handlebar heights and have lower maximum weight limits than adult scooters. Children's scooters also may have childish decorations with themes that appeal to children.

Wading pools are commonly intended for children and can be distinguished from general use pools by their depth. Children's pools are shallower and have extra play features that promote playful interactions beyond the primary use of holding water for a bather.

Aquatic toys intended for children can be distinguished from general use recreational equipment for deep water, such as towables and rafting equipment, by design, cost and intended use. Children's aquatic products are relatively low-cost, small items intended for individual use and are decorated with childish themes and colors. Recreational equipment, such as towables and rafting equipment, have durable materials and high-capacity, weight-bearing capabilities.

(I) Musical Instruments

Musical instruments intended for children can be distinguished from adult instruments by their size and marketing themes. Instruments suited for an adult-sized musician as well as a child are general use items. Products with a marketing strategy that targets schools, such as instrument rentals, would not convert such products into children's products if such products are intended for general use, regardless of how the instruments are leased, rented, or sold. These instruments are intended by the manufacturer for use primarily by adults, although there also may be incidental use by children through such programs. However, products that produce music or sounds in a manner that simplifies the process so that children can pretend to play an instrument are considered toys intended primarily for children 12 years of age or younger. In general, instruments that are specifically sized for children and/or have childish themes or decorations intended to attract children are considered to be children's products.

IV. Request for Comments and Effective Date

We are providing a thirty (30) day opportunity for public comment, although we recognize that, as an interpretative rule, the proposal is exempt from the notice and comment provisions of the Administrative Procedure Act

(15 U.S.C. 553). We believe it is important to invite comment from interested parties before issuing a final interpretative rule.

However, because this is an interpretative rule, a delayed effective date is not required by the Administrative Procedure Act (5 U.S.C. 553(d)). Therefore, any final rule based on this proposal would become effective upon publication of a final interpretative rule in the FEDERAL REGISTER.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

V. Conclusion

For the reasons stated above, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

PART 1500 - HAZARDOUS SUBSTANCES AND ARTICLES:

ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261-1278, 122 Stat. 3016.

2. Add a new section 1500.92 to read as follows:

§ 1500.92 Definition of Children's Product:

(a) *Definition of "Children's Product"* - Under section 3(a)(2) of the Consumer Product Safety Act (CPSA), a children's product means a consumer product designed or intended primarily for children 12 years of age or younger. The term "designed or intended primarily" applies to those products designed and commonly recognized as intended for use by a population of consumers constituted by a significant proportion of children 12 years old or younger. Products intended for use by children 12 years or younger applies to those products children will physically interact with based on the reasonably foreseeable use and misuse of such products.

(b) *Definition of "General Use Product"* - For purposes of this part, consumer products intended for general use are products that are not being marketed to or advertised as being primarily intended for use by children 12 years old or younger and that are used by a significant proportion of the population older than 12 years of age.

(c) *Factors Considered* - To determine whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors must be considered:

(1) A statement by a manufacturer about the intended use of such product, including a label on such

product if such statement is reasonable. A manufacturer's statement about the product's intended use, including the product's label, should be reasonably consistent with the expected use patterns for a product. A manufacturer's statement that the product is not intended for children does not preclude a product from being a children's product if consumers would commonly use that product for children 12 years of age or younger.

(2) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.

(a) These representations may be express or implied. For example, advertising declaring that the product is intended for children 12 years of age or younger will support a determination that a product is a children's product. Advertising showing children 12 years of age or younger using the product may support a determination that the product is a children's product. These representations may be found in packaging, text, illustrations and/or photographs depicting consumers using the product, instructions, assembly manuals, or advertising media used to market the product.

(b) The product's physical location near or visual association with other children's products may be a

factor in making an age determination, but is not determinative. For example, a product displayed in a children's toy section of a store may support a determination that the product is a children's product. However, where that same product is sold in department stores and marketed for general use, further evaluation would be necessary.

(c) The product's association or marketing in conjunction with non-children's products may not be determinative as to whether the product is a children's product. For example, packaging and selling a stuffed animal with an adult product would not preclude a determination that the stuffed animal is a children's product since stuffed animals are commonly recognized as being primarily intended for children.

(3) Whether the product is commonly recognized by consumers as being intended for use by children 12 years of age or younger. Consumer perception of the product's use by children, including its reasonably foreseeable use and misuse, will be evaluated. Market analyses, focus group testing, and other marketing studies may help support a determination regarding this factor. Additional considerations that may help distinguish children's products from non-children's products include:

- (a) Product size;
- (b) Exaggerated features that simplify the product's use;
- (c) Safety features;
- (d) Colors commonly associated with childhood;
- (e) Decorative motifs commonly associated with childhood;
- (f) Features that do not enhance a product's utility, but contribute towards the product's attractiveness to children 12 years of age or younger;
- (g) Play value or features that promote interactive exploration and imagination for fanciful purposes;
- (h) Principal affordance(s) of the product;
- (i) Cost; and
- (j) Children's interactions, if any, with the product.

(4) The Age Determination Guidelines issued by the Consumer Product Safety Commission staff in September 2002, and any successor to such guidelines. The product's appeal to different age groups and the capabilities of those age groups may be considered when making

determinations about the appropriate user groups for products.

(b) *Examples* - To help manufacturers understand the concepts of what constitutes a children's product under the CPSA, the following additional examples are offered.

(1) *Furnishings and Fixtures* - general home furnishings (including, but not limited to: lamps, rocking chairs, shelving units, televisions, digital music players, fans, humidifiers, air purifiers, window curtains, tissue boxes, clothing hooks and racks) that often are found in children's rooms or schools would not be considered to be children's products unless they are decorated or embellished with a childish theme, have play value, and/or sized for a child. Examples of home or school furnishings that are intended primarily for use by children and considered to be "children's products" include changing tables, infant tubs, bath seats, small bean bag chairs with childish decorations, bunk beds with cartoon themes, child-sized desks, and child-sized chairs. Decorative items that are intended only for display, with which children are not likely to interact, are generally not considered children's products, since they are intended to be used by adults.

(2) *Collectibles* - Adult collectibles may be distinguished from children's collectibles by themes that

are inappropriate for children 12 years of age or younger, have features that preclude use by children during play, such as high cost, limited production, display features (such as hooks or pedestals), and are not marketed alongside children's products. For example, collectible plush bears have high cost, are highly detailed, with fragile accessories, display cases, platforms on which to pose and hold the bears. Children's bears have lower costs and simple accessories that can be handled without fear of damage to the product.

(3) Jewelry - Jewelry intended for children is generally sized, themed, and marketed to children. One or more of the following characteristics of jewelry may cause a piece of jewelry to be considered primarily a children's product: size; very low cost; play value; childish themes on the jewelry; sale with other children's products (such as a child's dress); sale with a child's book, a toy, or party favors; sale with children's cereal or snacks; sale at an entertainment or educational event attended primarily by children; sale in a store that contains mostly children's products; and sale in a vending machine.

In addition, many aspects of an item's design and marketing are considered when determining the age of consumers for whom the product is intended and will be purchased:

marketing; advertising; promotional materials; packaging graphics and text; size; dexterity requirements for wearing; appearance (coloring, textures, materials, design themes, licensing, level of realism); and cost. These characteristics will help inform jewelry manufacturers and consumers determine whether a particular piece of jewelry is primarily intended for children 12 years of age or younger, or whether it more appropriately appeals to, and is designed and sold to, older children and adults.

(4) DVDs, Video Games, and Computers - Most computer products and electronic media devices, such as DVDs, DVD players, and video game consoles are considered to be general use products because they are not primarily intended for use by children. Certain CDs, DVDs, and handheld video games with software intended for children older than 4 years and younger than 12 years may fall within the scope of a children's product if intended for, and marketed to that audience, and do not contain content or software that has general appeal to older children or adults. In addition, electronic products that are sized, decorated, or otherwise marketed for children 12 years of age or younger would be considered to be children's products. CD and DVDs intended for children younger than 4 years of age are not considered to be "children's

products," because young children lack the capacity to use media playing devices and CDs or DVDs are not handled by such children.

(5) Art Materials - Materials sized, decorated, and marketed to children 12 years of age or younger such as crayons, finger paints and modeling dough would be considered be children's products. Crafting kits and supplies that are not specifically marketed to children 12 years of age or younger would likely be considered to be products intended for general use. The marketing and labeling of raw materials may often be given high priority in an age determination for art materials because the appeal and utility of art materials has such a wide audience.

(6) Books - The content of a book can determine its intended audience. Children's books have themes, vocabularies, illustrations, and covers that match the interests and cognitive capabilities of children 12 years of age and younger. The age guidelines provided by librarians, education professionals, and publishers may be dispositive for determining the intended audience. Some children's books have a wide appeal to the general public, and in those instances, further analysis may be necessary to assess who the primary intended audience is based on

consideration of relevant additional factors such as product design, packaging, marketing and sales data.

(7) Science Equipment - Microscopes, telescopes and other scientific equipment would not be considered to be children's products unless the primary marketing strategy for the item emphasized simplicity or suitability for children, either in advertising or packaging. Toy versions of such items would be considered to be children's products.

(8) Sporting Goods and Recreational Equipment - Regulation-sized sporting equipment, such as basketballs, baseballs, bats, racquets, and hockey pucks, are general use items although some children younger than 12 years of age may use them sometimes. Sporting goods become children's products when they are sized to fit children or are otherwise decorated with childish themes that are intended to attract child consumers by the manufacturer. Likewise, recreational equipment, such as roller blades, skateboards, bicycles, camping gear, and fitness equipment, would be considered to be general use products unless they are sized to fit children 12 years of age or younger and/or are decorated with childish themes by the manufacturer.

(9) Musical Instruments - Musical instruments intended for children can be distinguished from adult

instruments by their size and marketing themes.

Instruments that may be used by an adult, as well as a child, are considered general use items, regardless of whether such instruments are leased, rented, or sold.

Instruments that are sized for children, greatly simplified, and/or have childish themes or decorations intended to attract children would be considered to be children's products.

Dated: _____

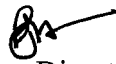
Todd A. Stevenson, Secretary
Consumer Product Safety Commission



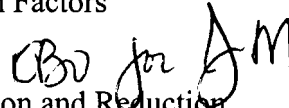
UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

Memorandum

Date: **MAR 17 2010**

TO : Robert J. Howell 
Assistant Executive Director
Office of Hazard Identification and Reduction

THROUGH: Robert B. Ochsman, Ph.D. 
Director, Division of Human Factors

FROM : Jonathan D. Midgett, Ph.D. 
Office of Hazard Identification and Reduction

SUBJECT : Definition of *Children's Product*

I. Introduction

On August 14, 2008, the Consumer Product Safety Improvement Act (hereafter referred to as the "Act" or the "CPSIA") was signed into law [Public Law 110-314]. Several requirements of this law refer to *children's products*. As defined in section 3(a)(16) of the Consumer Product Safety Act (CPSA)(15 U.S.C. 2052(a)(16), a *children's product* is "a consumer product designed or intended primarily for children 12 years of age or younger." The Act also specifies certain factors that should be taken into consideration when making a determination about whether a product is "intended primarily for children," specifically:

- (A) A statement by a manufacturer about the intended use of such product, including a label on such product if such a statement is reasonable.
- (B) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.
- (C) Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.
- (D) The Age Determination Guidelines issued by the Commission staff in September 2002, and any successor to such guidelines.

Since this definition could encompass many consumer products, the Commission faces the challenge of interpreting this definition in a manner that will help industry identify the products covered by the Act. This memorandum explores some concepts relevant to the interpretation of the scope of products addressed by the term *children's product* that can be used by the Commission in its deliberations.

OK 3/17/2010
CLEARED FOR PUBLIC RELEASE
UNDER CPSA 6(b)(1)

THIS DOCUMENT HAS NOT BEEN
REVIEWED OR ACCEPTED BY THE
COMMISSION.

II. Principles for Making Age Determinations

Deciding whether a product is intended for children 12 years of age or younger is commonly referred to by technical staff within the agency as “making an age determination,” which means that an appropriate team of analysts consider all the facets of a product and arrive at a determination of the reasonably foreseeable group(s) of consumers for whom the product will have appeal and for whom the product is likely to be purchased. This section describes principles that have been followed by Human Factors staff for decades when evaluating products to ascertain the appropriate age group for whom a product is intended, given the products design, marketing, packaging, and any other factors deemed relevant to determine the purchaser and user of any given product. Such analyses have been required for the regulation of many types of products within the jurisdiction of the CPSC. The issues below are typically considered by a team of experts in the Office of Compliance, the Office of the General Counsel, and the technical directorates within the Office of Hazard Identification and Reduction (EXHR).

Reasonable Intentions and Labels

Staff interprets the definition of *children's products* in the CPSA to mean those products designed and commonly recognized as intended for use by a population of consumers constituted by a significant proportion of children 12 years old or younger. The fact that a product may also be attractive to and used by adults does not necessarily remove a given product from the scope of the CPSA definition. However, products intended *for general use*, meaning products that are not being marketed to or advertised as being intended for use by children 12 years old or younger, are not usually considered *children's products*.

- **All product uses and all product users are included in the analysis.**

If a product has multiple uses and is intended for multiple age user groups, staff considers *all* of the intended uses of a product and *all* of the intended user populations when making a determination. This includes reasonably foreseeable uses and abuses of a subject product. Products intended *primarily* for children 12 years of age or younger would fall within the scope of the definition. Products intended primarily for adults may have a small percentage of potential users who are 12 years of age or younger; however, this would not make these products a *children's product*.

- **The manufacturer's stated intent on a label is important, but it must be *reasonable*.**

An analyst trying to make an age determination should consider a manufacturer's stated intended use for their product. However, a product's labeling must be reasonably consistent with the expected use patterns for a product. A manufacturer's statement that the product is not intended for children would not exempt a product from the requirements of the Act if consumers would commonly use that product for children 12 years of age or younger. How to determine common use patterns is discussed more below.

- **The marketing of a product, including its proximity to other products, may be considered.**

Any product uses that are implied by the display, promotion and advertising of the product are considered, such as the kind of information commonly seen on packaging in text, illustrations and/or photographs depicting consumers using the product, in instructions or assembly manuals,

or within advertising media used to market the product. Besides labeling and illustrations, any given product's physical location in a retail outlet or visual associations in the pages of an online distributor's website could imply its suitability for a certain age group. For example, many items sold in a toy store are likely to be construed to be intended for children 12 years of age or younger. However, if the product is also sold in other stores (such as DVDs, video games and computers), further evaluation of the product would be required to assess if the item is for general use, rather than intended primarily for children. The close association of a subject product with other products in the store or on a website that are clearly intended for children 12 years of age or younger could affect consumer perceptions of the intended age group for that product and bring the product into the scope of a *children's product*.

- **A product's cost may be considered.**

The cost of a given product may also influence the determination of the age of intended users. Very expensive items are less likely to be given to children 12 years of age or younger, depending on the product. Staff has not identified a specific price where any given product achieves automatic adult status but in general terms within a given product category (like models or remote controlled vehicles), products intended for adults cost more than products intended for children because children are often less careful with their belongings than adults and therefore less likely to be entrusted with more expensive models.

Commonly Recognized by Consumers

Staff considers the intended uses of a subject product as perceived by the normal consumer of that product. To make this determination, human factors psychologists refer to peer-reviewed, published articles on the issue when available and professional opinion about the foreseeable uses of a product when published literature is not available. The Division of Human Factors was created to aid the Commission in understanding how consumers interact with products. "Human factors" is the science of the human-environment and human-machine interface with a history of multidisciplinary collaboration between the fields of engineering, education, physiology, medicine, and psychology. Common human factors science references are available that describe anthropometric measurements, strength, locomotion, manual dexterity, cognitive development, visual skills, reasoning behaviors, risk perceptions, behavioral expectancies, and interactions with warnings and instructions. The field of child development also provides information about the capabilities and interests of children of various ages. Manufacturers may also rely on market analyses, focus groups, or other marketing studies for their analyses of the likely ages of consumers of their products.

- **The principal *affordances* of a subject product should be considered.**

When making a determination about the intended age of a product's users, human factors psychologists consider what possible actions a product affords or seems to afford. In essence, this is an analysis of what a subject product is truly able to do and what does it look like it should be able to do, intended or not. The analysis of *affordances* (a term used in ecological psychology, c.f. Gibson (1979)) outlines the foreseeable uses and misuse of a subject product. For example, a 10-ounce plush animal affords hugging, posing, role-playing and carrying around in a manner that a chainsaw does not. Saws afford cutting wood, but not cuddling. The principal *affordance* of a broom is "floor cleaning," but a broom may also afford some role-playing activities if employed as a knight's lance, a horse, or a magical flying vehicle. However, in the age

determination analysis, the principle affordances take precedence over actions that are less likely to be performed with a product, so even though a product could present some affordances that are appealing to children, like the broom, that fact does not necessarily mean that it is a *children's product*.

- **The individual features of a product may be weighted in the analysis with the most obvious features given a higher priority than less obvious features.**

For products with many potential uses, a hierarchy of affordances may be included in the analysis, with less likely uses weighted less in the final decision than the primary affordances. For example, a candy dispenser shaped like a small plastic car with rubber wheels that roll and make entertaining noises when rolling that also happens to have a slot in the top of it that allows it to be used as a coin bank once the candy is gone presents a number of affordances. It can afford eating the candy, playing with the car, and saving coins. Eating the candy is appropriate for children and adults. Playing with the car is appropriate for children in early and middle childhood (approximately between 1 and 8 years). Saving coins is appropriate for children during middle childhood, but inappropriate for children younger than 3 years. To complicate matters, the bank feature is obscured at the point of purchase by a plastic wrapper and the candy's size and shape is not discernable inside the car. The age grading analyst is justified in weighting the most obvious appearance and affordances of the product, the small car features, over the less obvious features of the size and shape of the candy and the coin bank feature of the product. Sorting through the mixed messages presented by a complex product and giving precedent to obvious features over hidden ones is appropriate and necessary.

- **Childish features can be defined in general, but none are without exceptions.**

Features that distinguish *children's products* from *adult products* include, although not exclusively, such factors as:

- small sizes that would not be comfortable for the average adult,
- exaggerated features that simplify usage of a product (large buttons, bright indicators)
- safety features that are not found on similar products,
- colors commonly associated with childhood (pinks, blues, pastels, bright primary colors),
- decorative motifs commonly associated with childhood (animals, insects, small vehicles, alphabets, dolls, clowns, puppets),
- features that do not enhance the utility of a product but contribute to its attractiveness (cartoon characters on a lunch box),
- play value, i.e., features that promote interactive exploration and imagination for fanciful purposes (whimsical activities lacking utility for accomplishing mundane tasks; actions performed for entertainment and amusement.)

The more of these types of characteristics that a product has, the higher is the likelihood that a product would fall within the scope of a *children's product*.

Consulting the Age Determination Guidelines (2002)

The Guidelines help an analyst answer the questions, "Does the subject product appeal to children?" and "Can a child properly use the subject product?" The Guidelines describe the capabilities and skills that children of various age groups can be reasonably expected to use in

interactions with consumer products. The chapters of the Guidelines address various types of toys, art supplies, musical instruments, sports, and electronic media. The Guidelines can be downloaded in a searchable file format on the CPSC website at this link:

<http://www.cpsc.gov/businfo/corrective.html>

- **The *appeal* of a product for various age groups is considered.**

When making an age determination for a given product's intended user group, staff refers to this document for information about the primary goals of play that are seen for different age children throughout childhood. For example, toddlers consistently want to mouth objects because mouthing is a primary strategy for exploration of any object at that age. Early childhood entails lots of exploration and discovery. High levels of detail in their toys are not necessary and they like bright colors. However, during middle childhood children become very interested in role-playing and they desire increasingly more realistic props during their playtime and more realistic colors become important. After a certain age, children do not consider the simplistic, brightly colored toys intended for toddlers to be intended for them and may find them very unappealing (even insulting). These disparate goals and the factors that make objects appealing to children of various ages are discussed at length in the Guidelines.

- **The *capabilities* of various age groups are considered.**

Whether or not a product appeals to a child is just one consideration because the child also needs to be able to manipulate and operate a product in the manner that takes advantage of most, if not all, of that product's affordances for that product to be appropriate for that age child. The physical, social and cognitive milestones that contribute to a child's ability to play with various types of products are described in detail in the Guidelines to help match a product with the user group of the proper age. For example, a magnifying glass is very attractive to a toddler, but toddlers are (usually) unable to position a magnifying glass in the proper manner to magnify objects to their eye. A toddler's hand-eye coordination and their visual attention are usually not developed enough for them to find the focal point needed to see something magnified in the glass. Despite this, a toddler would be thrilled to hold and chew on a magnifying glass. This appeal does not make the magnifying glass appropriate for toddlers. The Guidelines describe at length those actions that children of certain ages can successfully perform. Staff considers this information when making determinations about the appropriate user groups for products even if the specific product or type of product is not specifically mentioned by the Guidelines.

III. Examples of Challenging Age Determinations

The following examples highlight types of products that typically produce the most difficult age determinations. This list is for illustration purposes and cannot be considered exhaustive. Given the large number of product types within CPSC jurisdiction, a comprehensive list of children's products is beyond the scope of this memorandum.

Combination Products

Sometimes manufacturers combine several different toys in a single product, such as a multi-game activity cube for infants or a set of party favors in a bag. Each individual component of a combination product must meet the appropriate regulations for the commonly-recognized user population in the U.S. and cannot be given an exceptional age determination just because it is

packaged with products commonly recognized as being intended for a different age group. For example, a stuffed animal packaged with shaving razor blades must still meet the regulations for stuffed animals despite the fact that children are not going to be shaving. The manufacturer must expect that the razors will be used by an adult who may give the stuffed animal to a child. A pacifier packaged in a party favor bag with a whistle and a game of checkers is not exempt from the regulations intended for pacifiers just because infants cannot use the other two products in the bag. Manufacturers must expect that the pacifier will be given to an infant unlike the other two products in the package. As a general rule, Human Factors staff considers a product as a whole and weighs all of the potential uses of a product before making an age determination and usually when there are goals that are appropriate for multiple age groups in the same product, the preponderance of uses falling into one age range usually settles the argument. However, in that rare case that involves very different age grades in a combination of products sold as a single product, such as the teddy bear sold with a shaving razor, the products usually need to conform to the regulations for each portion of the product as if they were sold separately. Marketing teddy bears with razors does not exclude the teddy bears from needing to be made without small parts, sharp edges, etc.

Decorations

Products intended only for decoration should not also have features that give them play value. Decorations have features that facilitate their display (hooks, pedestals) and that make them obviously unsuitable for child's play (such as rigidity, fragility, or sharp edges). For example, if a small rattle is intended to be used as a cake decoration, it should not have anything inside it that actually rattles since this would promote other uses contrary to the designer's intentions. Products that facilitate play may deserve a juvenile age determination. For instance, old-fashioned toys are commonly produced for decorative purposes. A wooden train intended for decoration does not need to have wheels that roll and embedded magnets for hooking the cars together. Those two features add play value. An old-fashioned "jumping jack," a wooden figure with arms and legs that can be moved up and down by pulling a string that hangs through the figurine, does not need to have moving appendages to be a decoration. The model that works like a toy is a toy, for all intents and purposes, and despite having been intended by the manufacturer for display only, the fact that it is identical to the toy version of such products invalidates the argument that it is only a decoration and therefore not subject to toy regulations.

Adult Collectibles

Many products that were originally intended for children become collectible and find an adult market. Sometimes these items are not regulated as children's products. However, many collectibles are interesting to children and children 12 years of age or younger often have collections. Manufacturers of adult collectibles may try to differentiate their products from children's products because they want an exemption from the regulations intended for them. Adult collectibles are intended solely as display items and may be labeled in such a manner that conveys this intention. They may sometimes be distinguished from collectibles intended for children by themes that are inappropriate for children 12 years of age or younger, like adult or violent themes, or features that preclude use by children during play (such as high costs, limited productions, display features like hooks or pedestals). Collectibles for adults are also not commonly marketed alongside children's products. For example, collectible plush bears have highly detailed, fragile accessories, display cases, platforms to pose and hold the bear, and very

high costs. Plush bears intended for children are more affordable and have more simple accessories that can be handled by children without fear of damage to the product.

Home Furnishings

General home furnishings are often found in children's rooms: lamps, rocking chairs, shelving units, televisions, digital music players, fans, humidifiers, air purifiers, window curtains, tissue boxes, clothing hooks and racks. If these products have a childish theme employed as decoration on them, these items may be *children's products*. If they are intended for adult use in a children's room and are generally not operated by young children, then they could be general use products. A humidifier may be used in a children's room, but this does not make it for children to operate, rather, adult caregivers operate it to modify the air in their children's room. On the other hand, a lamp shaped like a fire station may be considered a *children's product* if it is intended to be operated by children 12 years of age or younger. A lamp with a fire station that has posable figurines of firefighters also has play value and would be even more likely to be considered a *children's product*. If a lamp has no features that add play value and no features that depict childish themes (as discussed above), it would likely be considered a general use product, even though some consumers may incidentally place it in a children's room. A nursery-themed lamp or clock is a special case because it has a childish theme but would not be operated by children. If children who are old enough to operate a lamp or clock would not find such a product appealing because it was too baby-ish, the nursery lamp may be categorized as a general use product. Some home furnishings are intended for use with children, such as changing tables, infant tubs, bath seats, beanbag chairs with childish decorations, bunk beds with cartoon themes, child-sized desks and chairs, etc. Such products are intended for use by children 12 years of age or younger and would need to comply with the Act.

Jewelry

Many aspects of an item's design and marketing are considered when determining the age of consumers for whom the product is intended and will be purchased. These aspects include: marketing, advertising, and promotional materials; packaging graphics and text; size; dexterity requirements for wearing; appearance (coloring, textures, materials, design themes, licensing, level of realism); and cost. Jewelry intended for children is sized, themed, and marketed to children. Many features of adult jewelry may be attractive to children 12 years of age or younger, but this alone does not make a product intended for children. Any of the following features or a combination of these features could cause an item of jewelry to fall within the scope of the Act:

- Jewelry sized for children
- Jewelry with very low cost that would be generally unusual for an adult to wear
- Jewelry sold with other children's products, such as a child's dress
- Jewelry sold with a child's book, a toy, or party favors
- Jewelry sold with children's cereal or snacks
- Jewelry with play value
- Jewelry sold at an entertainment or educational event attended primarily by children, such as a school, daycare, sporting event, circus, or fair
- Jewelry designed with childish themes such as animals, vehicles, or toys
- Jewelry sold in a store that contains mostly children's products
- Jewelry sold in a vending machine

DVDs, Video Games and Computers

Computers, peripherals, Computer and electronic media devices, such as CDs, DVDs and DVD players, are considered general use products. However, some electronic media storage devices may have encoded content that is intended for and marketed to children, such as children's movies, games, or educational software. Analysts may consider ratings given to such content rated by entertainment industries and software rating systems when making an age determination. Some children 12 years of age or younger may typically be allowed to insert digital storage media into a general use media player or a computer. Children begin to be allowed to operate media players around 4 years of age. The implications of this fact are that digital storage media marketed to children may be considered a *children's product* if they are intended for an audience between the ages of 4 years (48 months) and 12 years, but software and entertainment media for children 4 years (48 months) of age or younger could be considered as general use products for caregivers to use with children. In other words, the primary user of the disc encoded with software intended for children 4 years of age or younger is actually an adult, not children. Children will be the consumer of the decoded and displayed media in the player (the actual video or game), but the disc itself is only handled by the caregivers. Media storage devices (CDs or DVDs) may not become *children's products* until primarily intended for "use" by a child in the sense of being placed into the player by children, not just watched by children. Although the encoded digital content is intended for children to watch, the necessity of decoding it with a device that is *not* intended for use by children younger than 4 years may exclude that product from the category of *children's product*. This means that the word "use" in 15 U.S.C. 2052(a)(16)(A), (B), and (C) is interpreted as meaning "to touch or handle" rather than "to watch."

Video game consoles could be considered general use products because a significant portion of the market for such items consists of teenagers and young adults. However, child-themed media players with more robust controls or other features specifically for young children or handheld video games with software intended for children 12 years of age or younger would fall within the scope of a *children's product* if they are produced without software available that is appealing to adults. Such products would be more likely to be perceived as intended for children 12 years of age or younger and therefore fall within the scope of the Act.

Also, the controllers of console games or other *accessories* of electronic equipment that are sized for or otherwise intended for children's games could fall within the scope of a *children's product* because of their size (or other childish features), even though the CPU of the game console could be housed in a general use product. Likewise, keyboards, computer input devices, and other peripherals that are sized, decorated, or otherwise marketed for children 12 years of age or younger would be considered *children's products*, even though the computer itself is a general use item.

Science Equipment

Microscopes, telescopes and other scientific equipment would not be considered a *children's product* unless the primary marketing strategy for the item emphasized simplicity or suitability for children, either in advertising or packaging. However, toy versions of such items are children's products.

Art Materials

Crafting kits and supplies that are not specifically marketed to children 12 years of age or younger would likely be considered products intended for general use. The marketing and labeling of raw materials may often be given high priority in an age determination for art materials because the appeal and utility of art materials has such a wide audience.

Sporting Goods and Recreational Equipment

Regulation-sized sporting equipment such as basketballs, baseballs, bats, racquets, hoops, and pucks, are general use items despite the fact that some children 12 years of age or younger will use them. Sporting goods become children's products when they are sized to fit children or are otherwise decorated with childish features (as discussed above) that are intended to attract child consumers. Likewise, recreational equipment, such as roller blades, skateboards, bicycles, camping gear, and fitness equipment, are general use products unless they are sized to fit children 12 years of age or younger and/or are decorated with childish features (as discussed above).

For example, scooters have been made for children and for adults. Children's scooters are defined by shorter handlebar heights and have lower maximum weight limits than adult scooters. They may also have childish decorations with themes that appeal to children.

Wading pools are commonly intended for children and can be distinguished from general use pools by depth, children's pools are shallower, and those extra play features that promote playful interactions beyond the primary use of holding water for a bather.

Aquatic toys intended for children can be distinguished from general use recreational equipment for deep water, such as towables and rafting equipment, by design, cost and intended use. Children's aquatic products are relatively low-cost, small items intended for individual use and are decorated with childish themes and colors. Recreational equipment, such as towables and rafting equipment, have durable materials and high-capacity, weight-bearing capabilities.

Family-oriented, outdoor games such as bocce ball sets, horseshoes, and croquet sets are commonly marketed to families and show children using the products on the product packaging. When they are sized to fit children or are otherwise decorated with childish features (as discussed above) that are intended to attract child consumers, these sets are considered *children's products*. If they have no children on the packaging or other childish features that help make the product more accessible to children, staff believes such products are general use products. Professional models of such equipment that are also not *children's products* are sometimes available for purchase from specialized outlets.

Books

Librarians, education professionals, and publishers commonly determine the expected audiences for books based on vocabulary, grammar, themes and content. Some books may have a wide appeal across the lifespan and such analyses will need to account for the *primary* intended audience, as specified by the definition of "children's product" in the Act.

Musical Instruments

Musical instruments intended for children can be distinguished from adult instruments by their size and marketing themes. Instruments that are children's products are sized for children and/or have childish themes or decorations intended to attract children. Products with a marketing strategy that targets children, such as leasing to schools, are not necessarily children's products if the instruments would be suited for an adult-sized musician as well as a child. Products that produce music or sounds in a manner that simplifies the process so that children can pretend to play an instrument are *children's products* and would usually be treated as toys intended for children.

IV. Conclusion

Human Factors staff believes that identifying a *children's product* is a reasonable and achievable task for manufacturers of consumer products if the manufacturers follow the analytical principles discussed above and consult the reference documents available in the public domain.

V. References

CPSC (2002). Age Determination Guidelines: Relating Children's Ages to Toy Characteristics and Play Behavior. T. P. Smith (Ed.) at <http://www.cpsc.gov/businfo/adg.pdf>. Accessed 9/1/2009.

Gibson, J.J. (1979). The Ecological Approach to Visual Perception. Boston: Houghton Mifflin.