



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

September 29, 2010

**STATEMENT OF CHAIRMAN INEZ M. TENENBAUM ON THE
FINAL INTERPRETATIVE RULE PROVIDING GUIDANCE ON THE
DEFINITION OF A “CHILDREN’S PRODUCT”**

I am pleased to vote today to approve a final interpretative rule providing guidance on the factors to be considered in determining when a consumer product is a “children’s product,” as defined by the Consumer Product Safety Improvement Act of 2008 (CPSIA). The guidance we approved today represents a measured, consistent, and logical basis for the Commission and interested parties to move forward under the CPSIA.

Keeping consistency and logic in mind, instead of, as urged by some, shrinking the scope of this interpretation until it fades from the realm of responsible statutory interpretation, I have voted to support a rule that imparts common sense to the meaning of the term “children’s product.” At the same time, this interpretation remains true to the purpose and intent of the statute and the legal bounds of the definition and four factors¹ that bind the Commission. As an agency charged with enforcing and implementing the law this is our mandate – and nothing less.

Unfortunately, before and during the issuance of this final interpretative rule, an abundance of hyperbole has been used to describe the allegedly expanded scope of the final rule. The fact is that the Commission rested on common sense, rather than an outcome based rationale, to remove an artificial age distinction between infants and older children that affected a small number of products in the proposed rule. Other than this *one* change, the final interpretative rule does not expand the scope of the products considered to be children’s products and, in fact, narrows the scope of those products in many ways from the interpretation that we originally proposed by a unanimous vote of the Commission.

It is disappointing that this fact has been lost amid a campaign aimed to stoke the fears of the regulated community. Any claim that the final rule greatly expands the scope of products covered by the proposed rule not only is untrue, but also ignores the reality that the final rule narrows the products considered children’s products by removing misuse of a product as a consideration, stating that childish embellishments alone do not necessarily convert a general use product into a children’s product, excluding products intended for hobbyists, and clarifying that the marketing of general use products to schools will not automatically convert those products into children’s products.

¹ Those factors are: 1) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable; 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; 3) whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and 4) the Age Determination Guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

Some have complained that the final rule fails to establish bright line rules for particular classes of products. It is important to remember that Congress provided a four factor test to determine whether a product is a children's product and the marketplace is filled with millions of different products, each with thousands of variations under the four factors the agency must consider. Therefore, it is understandably very difficult for the Commission to establish bright line rules or create a one-size-fits-all approach to the definition of a children's product. Most items will fit squarely within or outside the definition, while many others will require a more careful fact-based analysis. Today's decision arises from a collaborative effort between the Commission and its stakeholders, and our staff who have worked tirelessly, over many weeks, to develop guidance designed to provide our stakeholders with as much consistency and predictability as we could in a marketplace so rich and diverse in consumer products.

Considerable attention has surrounded particular products requesting bright line or blanket exemptions. One such example is the science kit containing ordinary general use items, such as paper clips. Whether or not the general use items included in a science kit become components of a children's product will depend on an evaluation of the full product based on all of the four statutory factors. Some of the science kits presented to me over the last year I would not necessarily consider children's products based on their distribution, marketing, packaging, and primary use as instructional aides. On the other hand, many of the science kits on the shelves of popular retail stores and sold over the internet I would consider children's products when evaluating the ways in which they are sold, marketed, and used. These kinds of distinctions, based largely on factors difficult to account for in every circumstance, demonstrates why establishing a bright line approach to blanket an entire product category would prove very difficult and, more than likely, inaccurate in many cases. The truth of the matter is that much of the determination of whether an item like a science kit is a children's product lies in the decisions made by a manufacturer at the manufacturing and marketing stages, meaning manufacturers, and not the Commission, have the most say in whether or not a particular item is a children's product.

The Commission was not required by the CPSIA to create an interpretive rule to provide further guidance to aid stakeholders in understanding how the Commission will approach this issue. The Commission, however, heard and responded to requests for additional guidance beyond what the statute already provided, and I believe the rule offered today provides much of the clarification that our stakeholders sought in how the Commission approaches these determinations. To the extent, however, that our stakeholders may still need further guidance on whether certain products fit within the definition of a children's product, I believe that our new Office of Education, Global Outreach, and Small Business Ombudsman will play an important role in facilitating the exchange of such information and strengthening our future education and outreach initiatives. When operational, this office will make the agency more accessible to stakeholders and will play a vital role in helping the CPSC fulfill its mission. In particular, the Small Business Ombudsman will serve as a dedicated resource to facilitate better understanding and compliance with applicable safety and testing standards and other regulatory requirements.

Finally, the important implications of this final rule reflect the fact that Congress has created a new paradigm for children's products. Under the CPSIA, when a manufacturer creates a children's product, that manufacturer must ensure that the product meets mandatory safety requirements before it is sold. The item must be tested for compliance, must be accompanied by a certificate of compliance, must not contain excessive levels of lead, and must contain tracking information so that it can be more effectively recalled should it ever prove hazardous to children. We should not forget that passage of the CPSIA followed a time during which consumers experienced record numbers of recalled toys and other children's products due to excessive levels of lead and other hazards. The new law sought to restore public confidence in the safety of the children's products found on stores shelves and in homes around the country.