

*** Consumer Federation of America * Consumers Union *
* Kids in Danger * Public Citizen ***

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Office of the Secretary
Consumer Product Safety Commission
Room 820
4330 East-West Highway
Bethesda, Maryland 20814
Via e-mail: <http://www.regulations.gov>
Docket No. CPSC-2010-0029

**Comments of Consumer Federation of America, Consumers Union, Kids in Danger,
and Public Citizen to the U.S. Consumer Product Safety Commission
on
“Interpretation of “Children’s Product”**

Introduction

Consumer Federation of America (CFA), Consumers Union of U.S., Inc. (CU), Kids in Danger, and Public Citizen (jointly “We”) submit the following comments in response to the U.S. Consumer Product Safety Commission (“CPSC” or “Commission”) in the above-referenced matter (“Proposed Interpretive Rule” or “Interpretation”).¹ The CPSC has issued this proposed interpretation of the term “children’s product” as used in the Consumer Product Safety Improvement Act (CPSIA) of 2008.² We submit these comments in response to the CPSC’s proposed interpretive rule.

Background

Section 235(a) of the CPSIA amended section 3(a)(2) of the Consumer Product Safety Act (CPSA) and created a new definition of “children’s product.”³ A “children’s product” is now defined as “a consumer product designed or intended primarily for

¹ “Interpretation of “Children’s Product,” 75 Fed. Reg. 20533 (April 20, 2010).

² Public Law 110-314.

³ 15 U.S.C. 2052(a)(2)

children 12 years of age or younger.” This term and how it is interpreted is critical to the implementation of the CPSIA. Most significantly, the term, “children’s product” is used in sections 101 and 102 of the CPSIA which thus require that children’s products must comply with the lead limits of the CPSIA as well as with third party testing to ensure compliance with mandatory safety standards. How “children’s product” is interpreted impacts whether a product must comply with and be tested for certain mandatory safety standards. Given the significance of compliance with these provisions and the impact on public health and safety, the importance of this interpretation cannot be overstated.

The CPSIA includes four factors that should be considered in evaluating whether a product is or is not a “children’s product:”

- 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.⁴

The interpretive guidance proposed by the Commission seeks to “provide guidance on how manufacturers can evaluate consumer products to determine whether such products are children’s products,” and also “will provide a better understanding by manufacturers and the public of [CPSC’s] approach to evaluating children’s products.”⁵

⁴Section 235 (a) of the Consumer Product Safety Improvement Act.

⁵ Federal Register, Volume 75, No., 75, Tuesday, April 20, 2010, page 20534.

Recommendations

Overall, we support the CPSC's proposed interpretive rule and applaud CPSC for their work on this comprehensive and effective interpretation. We support the goals of the interpretive rule which seek to provide guidance to manufacturers about how to determine whether a product is a children's product as well as provide insight as to how the CPSC makes these determinations. We urge the Commission to broaden the goals of this interpretation by including the goal of providing consumers with clear guidance and certainty about whether a product is covered by this definition. Consumers' awareness of a product's treatment as a "children's product" will provide assurance to them that these products have undergone rigorous testing and are likely safe for their children's use.

The Commission's interpretative rule includes the phrase, "as likely" and "just as appealing" in the context of comparing how children of different ages would interact with a product in order to determine whether a product is a "children's product." The interpretive rule states that "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."⁶ We are concerned that determinations based upon whether an older child is "as likely" to interact with a product as a younger child adds subjectivity, complexity as well as uncertainty into this determination process and could weaken the intent of this language.

If younger children play with a product that meets all of the prongs included in the statute, such as a pen that would have an icon that would be primarily be an attraction for children 12 and under, but that an older child or adult could also use, then that product should be considered a children's product and should be subject to mandatory safety standards.

⁶ Federal Register, Volume 75, No., 75, Tuesday, April 20, 2010, page 20534.

Whether or not a product falls under this definition has significant implications for consumers. If a product is determined to be a children's product, a consumer knows that it complies with the mandatory standards applicable to that product and have been tested to ensure compliance with that standard. This can include lead, for example. If a parent knows that a particular product does or does not contain lead, the parent can choose whether a younger child should have access to the product. We are also concerned that different manufacturers may apply the "as likely" test and come up with different results, making this determination inconsistent in the marketplace. The "as likely" standard muddies these waters for consumers and will make it harder to ascertain whether the product is in fact a children's product.

Additionally, products intended for adults that would also have intrinsic play value for young children, should also be held to the requirements that apply to "children's product." Examples of this are the Rubic's Cube puzzle and Buckyballs magnetic building toy.

Further, we are concerned that some manufacturers, hopefully in rare instances, may interpret these rules to avoid compliance with mandatory standards. Products that may have been age graded as appropriate for 10 years old and up may now be marked on the package as over 12 to avoid compliance even though the product is identical to others with lower age grading. The CPSC must minimize manufacturers' incentive to manipulate their labeling, and hold those responsible for noncompliance when it occurs.

Respectfully submitted,

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