

20-mile arc of I-HPI to the point of beginning.

Area F. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL starting at point lat. 41°16'17" N., long. 82°16'56" W., then southwest to point lat. 41°09'35" N., long. 82°27'23" W., then southeast along the 30-mile arc of I-HPI to point lat. 41°04'24" N., long. 82°22'43" W., then northeast to point lat. 41°10'52" N.,

long. 82°12'37" W., then northwest along the 20-mile arc of I-HPI to the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 8,000 feet MSL starting at point lat. 41°06'13" N., long. 82°05'07" W., then southwest to point lat. 40°59'08" N., long. 82°15'03" W., then northwest along the 30-mile arc of I-HPI to point lat. 41°04'24" N., long. 82°22'43" W.,

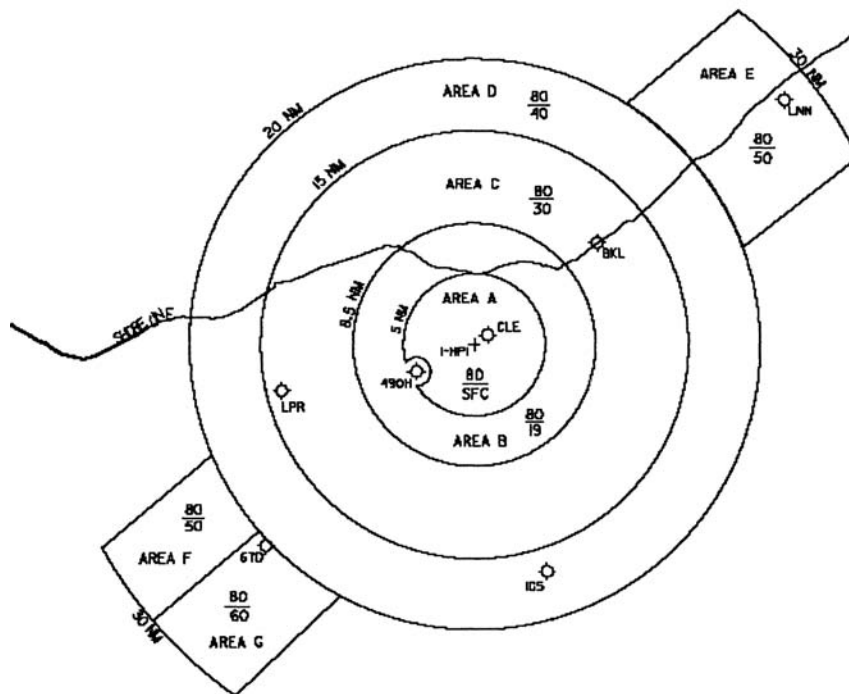
then northeast to point lat. 41°10'52" N, long. 82°12'37" W, then southeast along the 20-mile arc of I-HPI to the point of beginning.

Issued in Washington, DC, on April 13, 2010.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

## PROPOSED CLEVELAND CLASS B



NOT FOR NAVIGATION

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### CONSUMER PRODUCT SAFETY COMMISSION

#### 16 CFR Part 1500

[Docket No. CPSC-2010-0029]

#### Interpretation of "Children's Product"

**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 June 21, 2010.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC-2010-0029, 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 <http://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

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 jmidgett@cpsc.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 235(a) of the CPSIA amended section 3(a)(2) the Consumer Product Safety Act ("CPSA") by creating a new definition of "children's product." 15 U.S.C. 2052(a)(2). "Children's product" is defined 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, as of 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 reduced to 100 ppm, unless the Commission determines that it is not technologically feasible to move to this lower limit for a particular product or product category. 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 consumer product is primarily intended for a child 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."<sup>1</sup> The proposal would discuss the statutory definition and accompanying factors to

<sup>1</sup> The Commission voted 5-0 to publish this proposed interpretative rule, with changes, in the *Federal Register*. Chairman Inez M. Tenenbaum, and Commissioners Thomas H. Moore, Nancy Nord, Robert Adler, and Anne Northup voted to publish the notice with changes. Chairman Tenenbaum issued a statement, and the statement can be found at <http://www.cpsc.gov/PR/tenenbaum03312010.pdf>. Commissioner Northup also issued a statement, and the statement can be found at <http://www.cpsc.gov/pr/northup03312010.pdf>.

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" 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 consumer products mainly for children 12 years old or younger. A determination of whether a product is a "children's product" will be based on consideration of the four specified statutory factors as further described in the discussion and examples provided in this interpretative rule. Because each of those four factors incorporates the concept of "use" by the child in some manner, we further interpret the term "for use" by children 12 years or younger to generally 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, are products that are not designed or intended primarily for use by children 12 years old or younger. General use products are those consumer products mainly for consumers older than 12 years of age. Some products may be designed or intended for consumers of all ages, including children 12 years old or younger, but are intended mainly for consumers older than 12 years of age. The Commission has given examples of what it considers to be general use products. For example, most pens, or other office supplies, are not considered children's products because they are mainly used by the general public. The fact that pens or other office supplies may also 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 that 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.

Where a product such as a backpack or certain recreational equipment may be just as appealing for a child older than 12, or if consumers older than 12 years of age are as likely or more likely to use the product, those products may not be considered children's products. Although these products can be used by children under the age of 12, the long-term use of these products would extend to consumers older than 12 years of age. However, other products used by 12-year-olds (e.g., child-themed lunchboxes) have a declining appeal for teenagers. Where a product's appeal lessens as a child moves past the age of 12, it is likely that the product may be considered as designed or intended primarily for children 12 years of age or younger.

Other products are specifically not intended for use by children 12 years of age or younger. These products, such as cigarette lighters, candles, and fireworks, which the Commission has traditionally warned adults to keep away from children, are not subject to the CPSIA's lead limits, tracking label requirement, and third-party testing and certification provisions. Similarly, we have indicated that products that incorporate performance requirements for child resistance are not children's products as they are designed specifically to ensure that children cannot access the contents. This would include products such as portable gasoline containers and special packaging under the Poison Prevention Packaging Act.

In evaluating whether a particular product is designed or intended primarily for a child, the CPSC staff makes an age determination for the product which considers all of the facets of a product and the following statutory factors.

###### B. *Factors Considered (Proposed § 1500.92(a) Through 1500.92(d))*

###### 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 that the product is not intended for children does not preclude a product from being regulated as a children’s product if the primary appeal of the product is to children 12 years of age or younger. Similarly, a label indicating that a product is for ages 10 and up does not necessarily make it a children’s product if it is a general use product. Such a label may recommend 10 years old as the earliest age for a prospective user, not necessarily the age for which the product is primarily intended.

A manufacturer’s statement about a product’s intended use, including the product’s label, should be reasonably consistent with the expected use patterns for a product. The Commission will examine the labeling to determine whether a product is appropriately age graded consistent with the foreseeable uses and abuses of that product. The Commission has never considered a manufacturer’s label with regard to age to be determinative where the stated age does not take into account the foreseeable use and abuse of a product attractive to children. The manufacturer’s label, in and of itself, is not considered to be determinative. 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 young children). 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. The prominence, conspicuousness, and other emphasis given to each portrayal of a product’s uses or intended users on packaging or in advertising media can be weighted differently according to which images or messages are the strongest and most obvious to the consumer at the point of purchase. For example, labeling in large, high contrast letters on the front of a package sends a stronger message than

block letters in a small box on the package’s side panel.

Besides labeling and illustrations, a product’s physical location in a retail outlet or visual associations in the pages of an online distributor’s Web site could imply its suitability for a certain age group. The close association of a product in a store or on a Web site with other products that are clearly intended for children 12 years of age or younger could affect consumer perceptions of the intended age group for that product. However, the retail location of a product may not be dispositive of a children’s product determination. For example, if an electronic media device, such as a video game console, were sold at toy stores, but were also sold in electronics stores or department stores and marketed to consumers older than 12 years of age, then that video game console likely would be considered a general use product rather than a children’s product. The Commission recognizes that manufacturers need some certainty about whether their products are children’s products long before they reach store shelves, as tracking labels must be applied and third-party testing must occur much earlier in the chain of commerce. The Commission generally evaluates products based on the entire domestic market as opposed to conducting a shelf-by-shelf or store-by-store analysis. As a result, for instance, inclusion in a catalogue focused exclusively on furnishings for babies and toddlers does not necessarily convert a product that may have more general appeal, such as a plain light blue, yellow, or ivory rug, into a children’s product.

Manufacturers may also include a general use item as one of several items packaged together, such as a paper clip included in a magnet set primarily intended for children ages 7 through 10 years old. The paper clip may be a general use item but when included as part of the magnet set, it would need to be tested to the applicable children’s product safety rules since the product is targeted primarily to children 12 years of age or younger.

Sometimes a product commonly recognized as primarily intended for children is packaged with an adult product complicating the determination of the intended recipient. Take, for example, a stuffed animal packaged with a candle as a sentimental gift for Valentine’s Day or some other holiday. The candle is not a children’s product and need not comply with the requirements for children’s products. The stuffed animal, on the other hand, is likely to be considered a children’s product even though it has been

combined in a promotion with a general use or adult product. The stuffed animal must meet all the applicable children’s safety rules for the stuffed animal (*i.e.*, small parts and sharp edges under 16 CFR 1500.49 through 1500.53, the lead content or lead paint limits under section 101 of the CPSIA and 16 CFR part 1303). The manufacturer should expect that an adult will use the candle but likely might give the stuffed animal to a child. In other words, a children’s product that is packaged with a general use product is likely to remain a children’s product.

## 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). For example, traditional board and table games like chess, checkers, backgammon, playing cards, or Chinese checkers are commonly recognized as equally attractive to children and adults because the level of difficulty increases or decreases depending on the player’s skill. Versions of these games, and similar games commonly considered by consumers to appeal to a general audience, are not considered children’s products. However, if a manufacturer adds marketing portrayals or other features to the game or its packaging that make it more attractive to or suitable for children than a general use product would normally be, then the game could be considered a children’s product. Specifically, where a product such as a board game exists in junior and regular versions, the junior version likely would be considered a children’s product and the regular version likely would be considered a general use product.

To assess whether a product is commonly recognized by consumers as being primarily intended for a child, a manufacturer should evaluate the reasonably foreseeable uses and misuses of a product to determine how the product will be perceived and used by consumers of that product. Manufacturers could also refer to sales data, market analyses, focus groups, or other marketing studies for their analyses of consumer perceptions of their products as described further below.

## (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 intended for adults;
- Colors commonly associated with childhood (pinks, blues, 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 cartoons), but contribute to its attractiveness to children 12 years of age or younger; and
- Play value, *i.e.*, features primarily attractive to children 12 years of age or younger 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, *e.g.*, preschool characters, will greatly influence the purchase for preschool children.

However, there also are "novelty" pens that could appeal to children 12 years of age or 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 them apart and reconfigure the design also are

likely to appeal to children and adults alike, and thus, are not likely to be considered children's products because they are not primarily intended for children.

## (ii). Principal Perceived 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 a product makes available. In essence, this is an analysis of what uses a consumer perceives a subject product affords, even if what the product does is unintended. For example, the principal use of a screwdriver is turning screws, but it may also be used to stir paint. The principal use for a broom is floor cleaning, but a broom may also be used as an imaginary knight's lance, a horse, a magical flying vehicle, or another role-playing prop. However, in the age determination analysis, the principal uses take precedence over other actions that are less likely to be performed with a product, so even though a product could present some uses that appeal 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 more obvious uses given a greater weight than less obvious uses.

## (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 are 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. 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 placement in an infant's room but are not operated or handled by children, because such infants 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.

Home furnishings or fixtures that are embellished with features or characteristics that incorporate elements of play value (a toy train on a lamp) for an older child, would be evaluated to ascertain the appropriate age group for which 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, diaper pails, wipe warmers, bottle warmers, and baby monitors would not be considered 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 statutory factor, at section 3(a)(2)(D) of the CPSA, is the Age Determination Guidelines ("Guidelines") issued by the CPSC 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 Web site 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 ages 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. Nine to 12 year old children are interested in developing new motor skills and exercising their increasingly complex problem solving abilities. They consistently want to learn and practice new skills to approximate adult performances in activities like playing sports, working with hand tools and simple machines, and solving complex puzzles. During this age range, children progress from concrete to abstract thinking. Their consumer behaviors are more heavily influenced than younger children by peers and popular mass media celebrities and events. The factors that make various objects appealing to children of different 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 features to be appropriate for a child that age. 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 because it is novel, visually intriguing, and has an easily grasped handle with easily mouthed edges, but toddlers are usually unable to position a magnifying glass in the proper manner to magnify objects to their eyes. 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 want to hold and mouth a magnifying glass. This appeal does not make the magnifying glass appropriate for toddlers. Magnifying glasses are suitable for older children and individuals older than 12 years of age who have the necessary hand-eye coordination to use the product for magnification without the risk of breaking it. Because a magnifying glass is generally marketed to the adult population, it would not be considered a children's product.

**III. Examples (Proposed § 1500.92(d)(1) through (d)(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 and fixtures, such as rocking chairs, shelving units, televisions, digital music players, ceiling fans, humidifiers, air purifiers, window curtains, tissue boxes, clothing hooks and racks, often are found in children's rooms or schools. The Commission will generally consider such furnishings and fixtures to be intended for adult use even if they happen to be used in a children's room or classroom, as they would be considered general use products. 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 a children's product.

Some home or school furnishings, such as infant tubs, bath seats, small beanbag chairs with childish decorations, bunk beds with children's themes, child-sized desks, and child-sized chairs, are primarily intended for use by children 12 years of age or younger and would need to comply with all applicable children's product safety rules.

Other products may have a childish theme incorporated into the product. For example, a lamp featuring a fire station that has posable figurines of firefighters has play value and would likely be considered a children's product. If a lamp has no features that add play value, or any 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 consumers older than 12 years of age. Decorative items, such as holiday decorations and household seasonal 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.

*(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) distinguishable 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 damaging the product or 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 whether a particular piece of jewelry is designed or intended primarily for children 12 years of age or younger, or whether it more frequently appeals to consumers older than 12 years of age.

#### (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. CPSC staff 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 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 would not be considered 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 that may be handled by older children could be considered children's products

if such movies, video games, or music were specifically aimed at and marketed to children 12 years of age or younger 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 children's products. 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 (such as modeling clay and paint) may often be given high priority in an age determination for these art materials because the appeal and utility of these raw 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 or 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 that would be used by an adult, as well as a child, are considered general use products. Equipment with a marketing strategy that targets schools, such as scientific instrument rentals, would not convert such products into children's products if such products are intended for general use, regardless of how the equipment is leased, rented, or sold. This equipment is intended by the manufacturer for use primarily by adults, although there may be incidental use by children through such programs. In general, scientific equipment that is specifically sized for children and/or has childish themes or decorations intended to attract children is considered a children's product. Toy versions of such items are also considered children's products.

#### (H) Sporting Goods and Recreational Equipment

Sporting goods that are primarily intended for consumers older than 12 years of age are considered general use items. 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 primarily intended for children and can be distinguished from general use pools by their depth. Children's pools are shallow and have extra play features that promote playful interactions beyond the primary use of holding water for a bather.

Aquatic products primarily 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 generally 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 suited for an adult musician as well as a child are general use products. Instruments primarily intended for children can be distinguished from adult instruments by their size and marketing themes. 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 primarily intended 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 children's products.

#### IV. Request for Comments and Effective Date

We are providing a sixty (60) 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. The Commission also seeks comments on how manufacturers generally determine the age of the consumers for whom their products are primarily intended. In addition, comments are sought on what other criteria, if any, should be considered in determining whether a consumer product is a children's product. 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 Chapter II of Title 16 of the Code of Federal Regulations as follows:

#### PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

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

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

2. Add a new § 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 consumer products mainly for children 12 years old or younger. Whether a product is a children's product is determined by considering the four specified statutory factors. The examples discussed herein may also be illustrative in making such determinations. The term "for use" by children 12 years or younger generally means that children will physically interact with such products based on the reasonably foreseeable use and misuse of such product.

(b) *Definition of "general use product"*—

(1) A general use product means a consumer product that is not designed or intended primarily for use by children 12 years old or younger. General use products are those consumer products mainly for consumers older than age 12. Some products may be designed or intended for consumers of all ages, including children 12 years old or younger, but are intended mainly for consumers older than 12 years of age. Examples of general use products may include products that a child would not be likely to interact with, or products that consumers older than 12 would be as likely, or more likely to interact with. Products used by children 12 years of age or younger that have a declining appeal for teenagers are likely to be considered children's products.

(2) Other products are specifically not intended for use by children 12 years of age or younger. These products, such as cigarette lighters, candles, and fireworks, which the Commission has traditionally warned adults to keep away from children, are not subject to the CPSIA's lead limits, tracking label requirement, and third-party testing and certification provisions. Similarly, products that incorporate performance requirements for child resistance are not children's products as they are designed specifically to ensure that children cannot access the contents. This would include products such as portable gasoline containers and special packaging under the Poison Prevention Packaging Act.

(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 regulated as a children's product if the primary appeal of the product is to children 12 years of age or younger. Similarly, a label indicating that a product is for ages 10 and up does not necessarily make it a children's product if it is a general use product. The manufacturer's label, in and of itself, is not considered to be determinative.

(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.

(i) These representations may be express or implied. For example, advertising expressly 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.

(ii) The product's physical location near or visual association with



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 also sold in department stores and marketed for general use, further evaluation would be necessary. The Commission generally evaluates products based on the entire domestic market as opposed to a shelf-by-shelf or store-by-store analysis.

(iii) The product's association or marketing in conjunction with nonchildren'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 a candle 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. Sales data, market analyses, focus group testing, and other marketing studies may help support an analysis regarding this factor.

(i) Features and Characteristics—additional considerations that may help distinguish children's products from nonchildren's products include:

(A) Small sizes that would not be comfortable for the average adult;

(B) Exaggerated features (large buttons, bright indicators) that simplify the product's use;

(C) Safety features that are not found on similar products intended for adults;

(D) Colors commonly associated with childhood (pinks, blues, bright primary colors);

(E) Decorative motifs commonly associated with childhood (such as animals, insects, small vehicles, alphabets, dolls, clowns, and puppets);

(F) Features that do not enhance the product's utility, (such as cartoons), but contribute to its attractiveness to children 12 years of age or younger; and

(G) Play value, *i.e.*, features primarily attractive to children 12 year of age or younger that promote interactive exploration and imagination for fanciful purposes (whimsical activities lacking utility for accomplishing mundane tasks; actions performed for entertainment and amusement).

(ii) Principal use of the product—just because an item could be used as a children's product, such as when a

child pretends that a broom is a horse, does not mean the item should be regulated as a children's product where the principal use is for sweeping;

(iii) Cost—the cost of a given product may influence the determination of the age of intended users; and

(iv) Children's interactions, if any, with the product—products for use in a child's environment by the caregiver but not for use by the child would not be considered primarily intended for a child 12 years of age or younger.

(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.

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

(1) *Furnishings and fixtures*—general home furnishings and fixtures (including, but not limited to: rocking chairs, shelving units, televisions, digital music players, ceiling 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 children's products unless they are decorated or embellished with a childish theme, have play value, and/or are sized for a child. Examples of home or school furnishings that are primarily intended for use by children and considered children's products include infant tubs, bath seats, small bean bag chairs with childish decorations, bunk beds with children's themes, child-sized desks, and child-sized chairs. Decorative items, such as holiday decorations and household seasonal 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 distinguishable 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*—

(i) 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 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.

(ii) 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 jewelry manufacturers and consumers determine whether a particular piece of jewelry is designed or intended primarily for children 12 years of age or younger, or whether it more frequently appeals to consumers older than 12 years of age.

(4) *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. CPSC staff 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 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 would not be considered 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



that may be handled by older children could be considered children's products if such movies, video games, or music were specifically aimed at and marketed to children 12 years of age or younger and have no appeal to older audiences.

(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 children's products. Crafting kits and supplies that are not specifically marketed to children 12 years of age or younger likely would be considered products intended for general use. The marketing and labeling of raw materials (such as modeling clay, paint and paint brushes) may often be given high priority in an age determination for these art materials because the appeal and utility of these raw 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 or 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 that would be used by an adult, as well as a child, are considered general use products. Equipment with a marketing strategy that targets schools, such as scientific instrument rentals, would not convert such products into children's products if such products are intended for general use, regardless of how the equipment is leased, rented, or sold. This equipment is intended by the manufacturer for use primarily by adults, although there may be incidental use by children through such programs. In general, scientific equipment that is specifically sized for children and/or has childish themes or decorations intended to attract children is considered a children's product. Toy versions of such items are also considered children's products.

(8) *Sporting goods and recreational equipment*—Sporting goods that are primarily intended for consumers older than 12 years of age are considered general use items. 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 by the manufacturer.

(9) *Musical instruments*—Musical instruments suited for an adult musician as well as a child are general use products. Instruments primarily intended for children can be distinguished from adult instruments by their size and marketing themes. 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 primarily intended 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 children's products.

Dated: April 7, 2010.

**Todd A. Stevenson,**  
Secretary, Consumer Product Safety Commission.

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 577

[Docket No. FR-5333-P-01]

RIN 2506-AC26

### Homeless Emergency Assistance and Rapid Transition to Housing: Defining "Homeless"

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development.

**ACTION:** Proposed rule.

**SUMMARY:** This rule commences HUD's regulatory implementation of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009. The HEARTH Act consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program and creates the Emergency Solutions Grant Program and the Rural Housing Stability Program. The HEARTH Act also codifies in statutory law the Continuum of Care planning process, long a part of HUD's application process to assist homeless persons by providing greater coordination in responding to their needs. The HEARTH Act defines the terms "homeless," "homeless individual," "homeless person," and "homeless individual with a disability," but these definitions contain terms that require further elaboration. Since the scope of these terms is essential to the development of an appropriate regulatory structure for the homeless assistance programs as consolidated and amended by the HEARTH Act, HUD is initiating the rulemaking process with this proposed rule, which solely addresses the definition of these terms.

**DATES:** *Comment Due Date.* June 21, 2010

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street, SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the