

not be considered inaccessible through the use of fabric coverings, including sheets and mattress pads.

(d) The accessibility probes specified for sharp points or edges under the Commission's regulations at 16 CFR 1500.48–1500.49 should be used to assess the accessibility of phthalate-containing component parts of a children's toy or child care article. A phthalate-containing component part would be considered accessible if it can be contacted by any portion of the specified segment of the accessibility probe. A phthalate-containing component part would be considered inaccessible if it cannot be contacted by any portion of the specified segment of the accessibility probe.

(e) For children's toys or child care articles intended for children that are 18 months of age or younger, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.51 (excluding the bite test of §1500.51(c)), should be used to evaluate accessibility of phthalate-containing component parts of a children's toy or child care article as a result of normal and reasonably foreseeable use and abuse of the product.

(f) For children's toys or child care articles intended for children that are over 18 months, but not over 36 months of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.52 (excluding the bite test of §1500.52(c)), should be used to evaluate accessibility of phthalate-containing component parts of a children's toy or child care article as a result of normal and reasonably foreseeable use and abuse of the product.

(g) For children's toys intended for children that are over 36 months, but not over 96 months of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.53 (excluding the bite test of §1500.53(c)), should be used to evaluate accessibility of phthalate-containing component parts of a children's toy as a result of normal and reasonably foreseeable use and abuse of the product.

(h) For children's toys intended for children over 96 months through 12

years of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.53 (excluding the bite test of §1500.53(c)) intended for children ages 37–96 months should be used to evaluate accessibility of phthalate-containing component parts of a children's toy as a result of normal and reasonably foreseeable use and abuse of the product.

(i) Because the Commission adopts the same guidance with respect to inaccessibility for phthalates that was adopted by the Commission with regard to inaccessibility of lead, paint, coatings, and electroplating may not be considered a barrier that would render phthalate-containing component parts of toys and child care articles inaccessible. A children's toy or child care article that is or contains a phthalate-containing part that is enclosed, encased, or covered by fabric and passes the appropriate use and abuse tests on such covers, is considered inaccessible to a child, unless the product or part of the product, in one dimension, is smaller than 5 centimeters. However, vinyl (or other plasticized material) covered mattresses/sleep surfaces that contain phthalates that are designed or intended by the manufacturer to facilitate sleep of children age 3 and younger, are considered accessible and would not be considered inaccessible through the use of fabric coverings, including sheets and mattress pads.

(j) The intentional disassembly or destruction of products by children older than age 8 years, by means or knowledge not generally available to younger children, including use of tools, will not be considered in evaluating products for accessibility of phthalate-containing components.

## **PART 1200—DEFINITION OF CHILDREN'S PRODUCT UNDER THE CONSUMER PRODUCT SAFETY ACT**

Sec.

1200.1 Purpose.

1200.2 Definition of children's product.

AUTHORITY: 15 U.S.C. 2052(2).

## Consumer Product Safety Commission

## § 1200.2

SOURCE: 75 FR 63077, Oct. 14, 2010, unless otherwise noted.

### § 1200.1 Purpose.

This part provides guidance on the definition of children's product and the factors the Commission will consider when making determinations regarding children's products as set forth under 15 U.S.C. 2052(2).

### § 1200.2 Definition of children's product.

(a) *Definition of "Children's Product"*—(1) 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 primarily intended for children 12 years of age or younger is determined by considering the four specified statutory factors. These factors are:

(i) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.

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

(iii) Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.

(iv) The Age Determination Guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

(2) The examples discussed herein may also be illustrative in making such determinations; however, the determination of whether a product meets the definition of a children's product depends on factual information that may be unique to each product and, therefore, would need to be made on a case-by-case basis. 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 of such product. Toys and articles that are subject to the small parts regula-

tions at 16 CFR Part 1501 and in ASTM F963 would fall within the definition of children's product since they are intended for children 12 years of age or younger. Toys and other articles intended for children up to 96 months (8 years old) that are subject to the requirements at 16 CFR 1500.48 through 1500.49 and 16 CFR 1500.50 through 1500.53 would similarly fall within the definition of children's product given their age grading for these other regulations. Therefore, a manufacturer could reasonably conclude on the basis of the age grading for these other regulations that its product also must comply with all requirements applicable to children's products including, but not limited to, those under the Federal Hazardous Substances Act, ASTM F963, "Standard Consumer Safety Specification for Toy Safety," and the Consumer Product Safety Improvement Act of 2008.

(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 designed or intended primarily for consumers older than age 12. Some products may be designed or intended for use by 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 with which a child would not likely interact, or products with which consumers older than 12 would be as likely, or more likely to interact. 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 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 four specified statutory factors must be considered together as a whole. The following four 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, as indicated, for example, by decorations or embellishments that invite use by the child, being sized for a child or being marketed to appeal primarily to children. Similarly, a label indicating that a product is for ages 9 and up does not necessarily make it a children's product if it is a general use product. Such a label may recommend 9 years old as the earliest age for a prospective user, but may or may not indicate the age for which the product is primarily intended. 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 by the manufacturer 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. While, for example advertising by the manufacturer showing children 12 years of age or younger using the product may support a determination that the prod-

uct 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 recognizes that manufacturers do not necessarily control where a product will be placed in a retail establishment and such lack of control will be considered. The Commission evaluates products more broadly than on a shelf-by-shelf or store-by-store basis.

(iii) 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 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, 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 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).

(ii) Principal use of the product—the principal uses of a product take precedence over other actions that are less likely to be performed with a product. For example, when a child pretends that a broom is a horse, that does not mean the item is a children's product because the broom's 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 to be 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 regarding specific product categories 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, hu-

midifiers, air purifiers, window curtains, tissue boxes, rugs, carpets, lamps, 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 and invite use by a child 12 years of age or younger, are sized for a child, or are marketed to appeal primarily to children. Examples of home or school furnishings that are designed or intended primarily for use by children and considered children's products include: Infant tubs, bath seats, small bean bag chairs with childish decorations, 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 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, fragile features, display features (such as hooks or pedestals), and are not marketed alongside children's products (for example, in a children's department) in ways that make them indistinguishable from children's products. For example, collectible plush bears have high cost, are highly detailed, with fragile accessories, display cases, and 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. Another example of collectible items includes model railways and trains made for hobbyists.

(3) *Jewelry*—Jewelry intended for children is generally sized, themed, and marketed to children. The following characteristics may cause a piece of jewelry to be considered 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. 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 including: Advertising; promotional materials; packaging graphics and text; dexterity requirements for wearing; appearance (coloring, textures, materials, design themes, licensing, and 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.

(4) DVDs, Video Games, and Computer Products—Most computer products and electronic media, such as CDs, DVDs, and video games, are considered general use products. However, CDs and DVDs with encoded content that is intended for and marketed to children, such as children's movies, games, or educational software may be determined to be children's products. CPSC staff may consider ratings given by entertainment industries and software rating systems when making an age determination. In addition, electronic media players and devices that are embellished or decorated with childish themes that are intended to attract children 12 years of age or younger, are sized for children, or are marketed to appeal primarily to children, are not likely to fall under the general use category where children 12 years or younger likely would be the primary users of such devices. However, electronic devices such as CD players, DVD players, game consoles, book readers, digital media players, cell phones, digital assistant communication devices, and accessories to such devices that are intended mainly for children older than 12 years of age or adults are products for general use.

(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 prod-

ucts. 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. Consideration of the marketing and labeling of raw materials and art tools (such as modeling clay, paint, and paint brushes) may often be given high priority in an age determination because the appeal and utility of these raw materials has such a wide audience. If a distributor or retailer sells or rents a general use product in bulk (such as a raw art materials or art tools) through distribution channels that target children 12 years of age or younger in educational settings, such as schools, summer camps, or child care facilities, this type of a distribution strategy would not necessarily convert a general use product into a children's product. However, if the product is packaged in such a manner that either expressly states or implies with graphics, themes, labeling, or instructions that the product is designed or intended primarily for children 12 years of age or younger, then it may be considered a children's product if the required consideration of all four statutory factors supports that determination. The requirements of the Labeling of Hazardous Art Materials Act are similar to the labeling requirements of the FHSA, of which it is a part. Therefore, third party testing to LHAMA is not required. An art material designed or intended primarily for children 12 years of age or younger would have to be tested by a third party laboratory to demonstrate compliance with CPSIA, but it would not require third party testing and certification to the LHAMA requirements. For the same reasons, no general conformity certificate is required for general use art materials.

(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 that is intended by the manufacturer for use primarily by adults, although there may be use by children through such programs, is a general use product. Toy versions of such items are considered children's products. If a distributor or retailer sells or rents a general use product in bulk through distribution channels that target children 12 years of age or younger in educational settings, such as schools or summer camps, this type of a distribution strategy would not necessarily convert a general use product into a children's product. However, if the product is packaged in such a manner that either expressly states or implies with graphics, themes, labeling, or instructions that the product is designed or intended primarily for children 12 years of age or younger, then it may be considered a children's product if the required consideration of all four statutory factors supports that determination. Products mainly intended for use by the instructor would not be considered children's products. In general, scientific equipment that is specifically sized for children, such as protective gear, eyewear, gloves, or aprons and/or has childish themes or decorations and invites use by a child 12 years of age or younger or is marketed to appeal primarily to children is considered a children's product.

(8) Sporting Goods and Recreational Equipment—Sporting goods that are intended primarily for consumers older than 12 years of age are considered general use items. Sporting equipment, sized for adults, are general use items even though some children 12 years of age or younger will use them. Unless such items are specifically marketed to children 12 years of age or younger, or have extra features that make them more suitable for children 12 years of age or younger than for adults, they

would be considered general use products. If children 12 years or younger would mainly use the product because it would be too small or inappropriate for older children to use, then it likely would be considered a children's product. 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, including electronically-aided instruments suited for an adult musician, are general use products. Instruments intended primarily for children can be distinguished from adult instruments by their size and marketing themes. The Commission notes that if a distributor or retailer sells or rents in bulk, a general use musical instrument through distribution channels that target children 12 years of age or younger in educational settings, such as schools or summer camps, this type of a distribution strategy would not necessarily convert a general use product into a children's product. However, if the product is packaged in such a manner that either expressly states or implies with graphics, themes, labeling, or instructions that the product is designed or intended primarily for children 12 years of age or younger, then it may be considered a children's product if the required consideration of all four statutory factors supports that determination.

## PART 1201—SAFETY STANDARD FOR ARCHITECTURAL GLAZING MATERIALS

### Subpart A—The Standard

#### Sec.

- 1201.1 Scope, application and findings.
- 1201.2 Definitions.
- 1201.3 General requirements.
- 1201.4 Test procedures.
- 1201.5 Certification and labeling requirements.
- 1201.6 Prohibited stockpiling.
- 1201.7 Effective date.

### Subpart B [Reserved]