

*** Consumer Federation of America * Consumers Union *
* Kids in Danger * National Research Center for Women &
Families * Public Citizen * U.S. Public Interest Research Group ***

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Office of the Secretary
Consumer Product Safety Commission
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**Comments of Consumer Federation of America, Consumers Union, Kids in Danger,
National Research Center for Women & Families, Public Citizen and the U.S.
Public Interest Research Group to the U.S. Consumer Product Safety Commission
regarding
“Section 101 Inaccessible Component Parts”**

Introduction

Consumer Federation of America (CFA), Consumers Union of U.S., Inc. (CU), Kids in Danger, National Research Center for Women & Families, Public Citizen and the U.S. Public Interest Research Group (jointly “We”) submit the following comments in response to the U.S. Consumer Product Safety Commission (“CPSC” or “Commission”) in the above-referenced matter (“Section 101 Inaccessible Component Parts”).¹ The CPSC has published this Notice of Requirements in order to implement section 101(b)(2) of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, (“CPSIA”) which amends the Consumer Product Safety Act. In this Interpretative Rule, the CPSC “is proposing an interpretive rule providing guidance on inaccessible component parts.”

Background

Section 101(a) of the CPSIA provides for specific lead limits in children’s products and section 101(b)(2) of the CPSIA states that the lead limits are not applicable

¹ “Children’s Products Containing Lead; Interpretative Rule on Inaccessible Component Parts: Proposed Interpretative Rule, 74 Fed. Reg. 2439 (January 15, 2009).”

to any component part of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse. Further, Section 101(b)(2)(B) directs the Commission to promulgate a rule by August 14, 2009 that provides guidance about what component parts are considered to be inaccessible.

Recommendations

We urge the CPSC to adopt the following recommendations in its promulgation of an Interpretative Rule on inaccessible component parts consistent with the implementation of section 101(a) and 101(b)(2) of the CPSIA:

1. Definition of Accessible and Inaccessible Component Part of a Children's Product

The Commission preliminarily determines that "an accessible component part includes a part that a child may touch or place in the mouth, not just a component that a child might ingest, since exposure to lead may occur during direct mouthing of an object or mouthing of fingers/hands." The Commission has also preliminarily found that basing a definition of accessibility on exposure to lead such as through leaching or degradation is not consistent with the definition of accessibility in the CPSIA. We agree with these preliminary findings of the Commission since they are consistent with the plain language and intent of the CPSIA and are protective of public health.

The Commission has also preliminarily defined that an "inaccessible component part is one that is located inside the product that a child cannot touch." However, parts that can be exposed through reasonable foreseeable use and abuse will be considered accessible.

2. Methods for Testing Accessibility

A. Accessibility Probes

The Commission further preliminarily accepts staff's recommendation to access inaccessibility through both the use of accessibility probes and use and reasonable foreseeable use and abuse testing.

We agree with the Commission that accessibility probes that are defined in CPSC's regulations for evaluating sharp points or sharp edges could be used to determine

whether a component part is accessible to a child. The accessibility probes are designed to emulate the ability of a child's fingers to touch a product. We recommend that the Commission undertake further study to confirm that the use of both existing probes (the probe for children 36 months and younger as well as the probe for children up to eight years old) is adequate to evaluate the accessibility of a product to a child between 8 and 12 years old. While the Commission notes that older children's fingers would likely have more limited access to small holes, gaps or recesses, older children's fine motor skills are more developed and may be more nimble, thus overcoming a potentially larger size by increased agility. Further, as both CPSC's regulations and ASTM F 963 standards indicate, accessibility should be determined using these probes, both before and after use and abuse testing.

B. Use and Abuse Testing

The Commission preliminarily finds that appropriate use and abuse tests as defined in current CPSC regulations could be used to evaluate accessibility of a component part to a child through reasonably foreseeable use and abuse of the product. The Commission excludes the bite tests of 1500.51(c) and 1500.52(c) from consideration for use and abuse testing but does not provide an explanation for the exclusion. We request that such an explanation as biting is a reasonably foreseeable use of a children's product. While we generally support the Commission's preliminarily finding that use and abuse tests are appropriate for simulating children's use of a product, we are concerned with certain inherent limitations of existing use and abuse tests. For example, we believe that the test conditions for use and abuse testing be appropriate for the age of the child for which the product is intended. The CPSIA covers products intended for children up to and including age 12, therefore it is important to consider the strength and dexterity of older children when determining whether they could access lead-laden parts through foreseeable use and abuse.

We recommend that the Commission conduct further research including review of peer-reviewed human factors and child development studies to determine whether the existing use and abuse tests adequately encompass use of a product by an 8 to 12- year-old child. While the Commission has preliminarily concluded that applying use and abuse

tests described for products for children up to 8 years old to products for children through 12 years old is appropriate, we urge the Commission to further study this issue.

In addition, as the Commission points out, such use and abuse tests often fail to simulate aging of a consumer product. If aging or wear and tear would expose lead-laden components, we would expect the CPSC to consider these components accessible.

3. Barriers Rendering Component Parts Inaccessible

The CPSIA clearly specifies that accessibility is defined as physical contact with a component part and further specifies that the use of a surface coating such as paint or electroplating as a barrier is prohibited. We agree with the Commission that the critical aspect of this determination is physical access and not visibility. We further agree that an acceptable barrier to physical access includes enclosure of the component in a plastic, rubber, or metal material. The Commission is seeking comment about whether a fabric covering would be an acceptable barrier rendering a component inaccessible to a child. While it is reasonable that fabrics could provide an acceptable barrier, it is essential that the Commission determine that the barrier cannot be compromised through foreseeable use and abuse such that it would give access to any underlying lead-laden components. Further, the Commission must determine that a fabric barrier would effectively prevent the leaching of any lead enclosed within such fabric.

Conclusion

For the foregoing reasons, we urge the Commission to adopt these recommendations in its future implementation of section 101(a) and 101(b)(2) of the CPSIA.

Respectfully submitted,

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