



## Ankin Law Office LLC

Protecting the Rights of Injured Workers

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## CPSC Attempts to Clarify Definition of “Children’s Product”

The Consumer Product Safety Improvement Act of 2008 (CPSIA), a “children’s product” is defined as “a consumer product designed or intended for use primarily by children 12 years of age or younger,” but, until recently, there was little clarification about the interpretation of the definition. Because “children’s products” are subject to [strict product safety guidelines](#) under the CPSIA, including lead content limits, third-party laboratory testing certification and tracking labels, companies have been struggling to determine what is considered a “children’s product” since the CPSIA was enacted in 2008.

Accordingly, the Consumer Protection and Safety Commission enacted a new rule, which took effect on October 14, 2010, clarifying that a product will generally be considered “for use” by children ages 12 and under if it is “reasonably foreseeable,” or expected, that they will physically interact with the product. The rule also specifies the following four factors to be taken into consideration when evaluating whether a particular product is deemed a “children’s product:”

- 1. A statement by a manufacturer about the intended use of such product, including a label on the product, if the statement is reasonable.** The product’s label or the manufacturer’s statement will be considered pertinent if it is reasonably consistent with the expected use of the product. A product may be considered a children’s product despite a manufacturer’s statement to the contrary if it designed to appeal to children through characteristics like decorations or embellishments that appeal to children or is of such a size that it appeals to children.
- 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.** The product’s packaging and display, including its location in a retail store, is evaluated even though the manufacturer may have no control over where the product is physically placed by the retailer.
- 3. Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.** The CPSC will consider whether the product is commonly recognized as a “children’s product” based on its features and characteristics (such as size, exaggerated features, safety features, colors and play value), its principal use, its cost and the intended child interactions with the product. There are many products that are frequently around babies or children, such as bottle warmers and diaper bags, that are not considered “children’s products” because they are intended to be used by adults caring for children rather than by the children themselves.
- 4. The Age Determination Guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.** These guidelines primarily address the characteristics, age suitability and regulations for toys and appropriate children’s play. The guidelines may be used by manufacturers when considering the proper age range for a particular product.

The determination of whether a product is a “children’s product” is made on a case-by-case basis. No one factor is entitled to greater weight than the others and the four factors are considered as a whole when making the determination. Although the rule provides some clarification about what is considered a “children’s product,” the definition continues to be somewhat uncertain since the CPSC chose to retain flexibility by analyzing products on an individual case-by-case basis rather than making categorical, rigid interpretations of the rule.

In fact, two commissioners even voted against the rule claiming that the definition fails to provide the necessary clarification of what is deemed a children’s product and, in some cases, overextends the definition of what is



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considered a children's product. Therefore, despite the CPSC's intention to provide manufacturers, importers and other interested parties with a "better understanding," the new rule may fall short. The CPSC attempted, however, to provide guidance regarding what will and will not be considered a children's product by including some examples of "children's products" in its Final Interpretive Rule.

In contrast to "children's products" are "general use products," which are [consumer products](#) "designed or intended primarily for consumers older than 12." Unlike the proposed rule, the CPSC stated in the final rule that products with themes geared toward very young children but for which children lack the motor skills to operate, such as a lamp with a nursery theme or children's music CDs, may still be considered children's products based on a case-by-case evaluation of the four factors.

Because "children's products" are subject to additional safety requirements designed to [advance consumer protection](#), manufacturers that erroneously believe their product to be a "general use product" when it is, in fact, a "children's product" could be [liable](#) for any accidents or injuries that are caused by the product. An experienced [product liability attorney](#) can help you determine whether there is potential product liability cause of action that can be asserted against the product's manufacturer.

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