

Where appropriate, criteria used for assessing risks to children may be the same as those used for adults.

(3) The Commission shall periodically review the guidelines established under paragraph (1) to determine whether the guidelines reflect relevant changes in scientific knowledge and in the formulations of art materials, and shall amend the guidelines to reflect such changes.

(e) Informational and educational materials; development and distribution

The Commission shall develop informational and educational materials about art materials and shall distribute the informational and educational materials to interested persons.

(f) Injunctions

The Commission may bring an action under section 1267 of this title to enjoin the purchase of any art material required to be labeled under this chapter which is for use by children in pre-kindergarten, kindergarten, or grades 1 through 6.

(Pub. L. 86-613, §23, as added Pub. L. 100-695, Nov. 18, 1988, 102 Stat. 4568.)

REFERENCES IN TEXT

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (b)(1), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

CODIFICATION

Pub. L. 100-695 enacted section 23 of Pub. L. 86-613, classified to this section, without a prior enactment of a section 22 of Pub. L. 86-613.

§ 1278. Requirements for labeling certain toys and games

(a) Toys or games for children who are at least 3

(1) Requirement

The packaging of any toy or game intended for use by children who are at least 3 years old but not older than 6 years (or such other upper age limit as the Commission may determine, which may not be less than 5 years old), any descriptive material which accompanies such toy or game, and, in the case of bulk sales of such toy or game when unpackaged, any bin, container for retail display, or vending machine from which the unpackaged toy or game is dispensed shall bear or contain the cautionary statement described in paragraph (2) if the toy or game—

(A) is manufactured for sale, offered for sale, or distributed in commerce in the United States, and

(B) includes a small part, as defined by the Commission.

(2) Label

The cautionary statement required by paragraph (1) for a toy or game shall be as follows:



WARNING:

**CHOKING HAZARD—Small parts.
Not for children under 3 yrs.**

(b) Balloons, small balls, and marbles

(1) Requirement

In the case of any latex balloon, any ball with a diameter of 1.75 inches or less intended for children 3 years of age or older, any marble intended for children 3 years of age or older, or any toy or game which contains such a balloon, ball, or marble, which is manufactured for sale, offered for sale, or distributed in commerce in the United States—

(A) the packaging of such balloon, ball, marble, toy, or game,

(B) any descriptive material which accompanies such balloon, ball, marble, toy, or game, and

(C) in the case of bulk sales of any such product when unpackaged, any bin, container for retail display, or vending machine from which such unpackaged balloon, ball, marble, toy, or game is dispensed,

shall bear or contain the cautionary statement described in paragraph (2).

(2) Label

The cautionary statement required under paragraph (1) for a balloon, ball, marble, toy, or game shall be as follows:

(A) Balloons

In the case of balloons, or toys or games that contain latex balloons, the following cautionary statement applies:



WARNING:

CHOKING HAZARD—Children under 8 yrs. can choke or suffocate on uninflated or broken balloons. Adult supervision required.

**Keep uninflated balloons from children.
Discard broken balloons at once.**

(B) Balls

In the case of balls, the following cautionary statement applies:



WARNING:

**CHOKING HAZARD—This toy is a small ball.
Not for children under 3 yrs.**

(C) Marbles

In the case of marbles, the following cautionary statement applies:

**WARNING:**

**CHOKING HAZARD—This toy is a marble.
Not for children under 3 yrs.**

(D) Toys and games

In the case of toys or games containing balls, the following cautionary statement applies:

**WARNING:**

**CHOKING HAZARD—Toy contains a small ball.
Not for children under 3 yrs.**

In the case of toys or games containing marbles, the following cautionary statement applies:

**WARNING:**

**CHOKING HAZARD—Toy contains a marble.
Not for children under 3 yrs.**

(c) Advertising**(1) Requirement****(A) Cautionary statement**

Any advertisement by a retailer, manufacturer, importer, distributor, or private labeler (including advertisements on Internet websites or in catalogues or other printed materials) that provides a direct means for the purchase or order of a product for which a cautionary statement is required under subsection (a) or (b) shall include the appropriate cautionary statement displayed on or immediately adjacent to that advertisement, as modified by regulations issued under paragraph (3).

(B) Application to retailers**(i) Requirement to inform**

A manufacturer, importer, distributor, or private labeler that provides such a product to a retailer shall inform the retailer of any cautionary statement requirement applicable to the product.

(ii) Retailer's requirement to inquire

A retailer is not in violation of subparagraph (A) if the retailer requested information from the manufacturer, importer, distributor, or private labeler as to whether the cautionary statement required by subparagraph (A) applies to the product that is the subject of the advertisement and the manufacturer, importer, distributor, or private labeler provided false information or did not provide such information.

(C) Display

The cautionary statement required by subparagraph (A) shall be prominently displayed—

(i) in the primary language used in the advertisement;

(ii) in conspicuous and legible type in contrast by typography, layout, or color with other material printed or displayed in such advertisement; and

(iii) in a manner consistent with part 1500 of title 16, Code of Federal Regulations.

(D) Definitions

In this subsection:

(i) The terms “manufacturer”, “distributor”, and “private labeler” have the meaning given those terms in section 2052 of this title.

(ii) The term “retailer” has the meaning given that term in section 2052 of this title, but does not include an individual whose selling activity is intermittent and does not constitute a trade or business.

(2) Effective date

The requirement in paragraph (1) shall take effect—

(A) with respect to advertisements on Internet websites, 120 days after August 14, 2008; and

(B) with respect to catalogues and other printed materials, 180 days after August 14, 2008.

(3) Rulemaking

Notwithstanding any provision of chapter 6 of title 5 or the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Commission shall, not later than 90 days after August 14, 2008, promulgate regulations to effectuate this section with respect to catalogues and other printed material. The Commission may, under such regulations, provide a grace period of no more than 180 days for catalogues and other printed material printed prior to the effective date of paragraph (1) during which time distribution of such catalogues and other printed material shall not be considered a violation of such paragraph. The Commission may promulgate regulations concerning the size and placement of the cautionary statement required by paragraph (1) of this subsection as appropriate relative to the size and placement of the advertisements in such catalogues and other printed material. The Commission shall promulgate regulations that clarify the applicability of these requirements to catalogues and other printed material distributed solely between businesses and not to individual consumers.

(4) Enforcement

The requirements in paragraph (1) shall be treated as a consumer product safety standard promulgated under section 2058 of this title. The publication or distribution of any advertisement that is not in compliance with paragraph (1) shall be treated as a prohibited act under section 2068(a)(1) of this title.

(d) General labeling requirements**(1) In general**

Except as provided in paragraphs (2) and (3), any cautionary statement required under subsection (a) or (b) shall be—

(A) displayed in its entirety on the principal display panel of the product's package, and on any descriptive material which accompanies the product, and, in the case of bulk sales of such product when unpackaged, on the bin, container for retail display of the product, and any vending machine from which the unpackaged product is dispensed, and

(B) displayed in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on such package, descriptive materials, bin, container, and vending machine, and in a manner consistent with part 1500 of title 16, Code of Federal Regulations (or successor regulations thereto).

(2) Exception for products manufactured outside United States

In the case of a product manufactured outside the United States and directly shipped from the manufacturer to the consumer by United States mail or other delivery service, the accompanying material inside the package of the product may fail to bear the required statement if other accompanying material shipped with the product bears such statement.

(3) Special rules for certain packages

(A) A cautionary statement required by subsection (a) or (b) may, in lieu of display on the principal display panel of the product's package, be displayed on another panel of the package if—

(i) the package has a principal display panel of 15 square inches or less and the required statement is displayed in three or more languages; and

(ii) the statement specified in subparagraph (B) is displayed on the principal display panel and is accompanied by an arrow or other indicator pointing toward the place on the package where the statement required by subsection (a) or (b) appears.

(B)(i) In the case of a product to which subsection (a), subsection (b)(2)(B), subsection (b)(2)(C), or subsection (b)(2)(D) applies, the statement specified by this subparagraph is as follows:

**SAFETY WARNING**

(ii) In the case of a product to which subsection (b)(2)(A) applies, the statement specified by this subparagraph is as follows:

**WARNING—CHOKING HAZARD****(e) Treatment as misbranded hazardous substance**

A balloon, ball, marble, toy, or game, that is not in compliance with the requirements of this subsection¹ shall be considered a misbranded hazardous substance under section 1261(p) of this title.

(Pub. L. 86-613, §24, as added Pub. L. 103-267, title I, §101(a), June 16, 1994, 108 Stat. 722; amended Pub. L. 110-314, title I, §105, Aug. 14, 2008, 122 Stat. 3031.)

REFERENCES IN TEXT

The Paperwork Reduction Act of 1980, referred to in subsec. (c)(3), is Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104-13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

AMENDMENTS

2008—Subsecs. (c) to (e). Pub. L. 110-314 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE

Pub. L. 103-267, title I, §101(d), June 16, 1994, 108 Stat. 725, provided that: "Subsections (a) and (b) [enacting this section and provisions set out as a note under section 1261 of this title] shall take effect January 1, 1995, and section 24 of the Federal Hazardous Substances Act [this section] shall apply only to products entered into commerce on or after January 1, 1995."

REGULATIONS

Pub. L. 103-267, title I, §101(c), June 16, 1994, 108 Stat. 725, provided that: "The Consumer Product Safety Commission (hereinafter referred to as the 'Commission') shall promulgate regulations, under section 553 of title 5, United States Code, for the implementation of this section [enacting this section and provisions set out as notes under this section and section 1261 of this title] and section 24 of the Federal Hazardous Substances Act [this section] by July 1, 1994, or the date that is 6 months after the date of enactment of this Act [June 16, 1994], whichever occurs first. Subsections (f) through (i) of section 3 of the Federal Hazardous Substances Act (15 U.S.C. 1262) shall not apply with respect to the issuance of regulations under this subsection."

PREEMPTION

Pub. L. 103-267, title I, §101(e), June 16, 1994, 108 Stat. 725, provided that:

"(1) IN GENERAL.—Subject to paragraph (2), a State or political subdivision of a State may not establish or enforce a requirement relating to cautionary labeling of small parts hazards or choking hazards in any toy, game, marble, small ball, or balloon intended or suitable for use by children unless such requirement is identical to a requirement established by amendments made by this section to the Federal Hazardous Substances Act [enacting this section] or by regulations promulgated by the Commission.

"(2) EXCEPTION.—A State or political subdivision of a State may, until January 1, 1995, enforce a requirement described in paragraph (1) if such requirement was in effect on October 2, 1993."

¹ So in original. Probably should be "this section".

§ 1278a. Children's products containing lead; lead paint rule

(a) General lead ban

(1) Treatment as a banned hazardous substance

Except as expressly provided in subsection (b) beginning on the dates provided in paragraph (2), any children's product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a))) that contains more lead than the limit established by paragraph (2) shall be treated as a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.).

(2) Lead limit

(A) 600 parts per million

Except as provided in subparagraphs (B), (C), (D), and (E), beginning 180 days after August 14, 2008, the lead limit referred to in paragraph (1) is 600 parts per million total lead content by weight for any part of the product.

(B) 300 parts per million

Except as provided by subparagraphs (C), (D), and (E), beginning on the date that is 1 year after August 14, 2008, the lead limit referred to in paragraph (1) is 300 parts per million total lead content by weight for any part of the product.

(C) 100 parts per million

Except as provided in subparagraphs (D) and (E), beginning on the date that is 3 years after August 14, 2008, subparagraph (B) shall be applied by substituting "100 parts per million" for "300 parts per million" unless the Commission determines that a limit of 100 parts per million is not technologically feasible for a product or product category. The Commission may make such a determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products.

(D) Alternate reduction of limit

If the Commission determines under subparagraph (C) that the 100 parts per million limit is not technologically feasible for a product or product category, the Commission shall, by regulation, establish an amount that is the lowest amount of lead, lower than 300 parts per million, the Commission determines to be technologically feasible to achieve for that product or product category. The amount of lead established by the Commission under the preceding sentence shall be substituted for the 300 parts per million limit under subparagraph (B) beginning on the date that is 3 years after August 14, 2008.

(E) Periodic review and further reductions

The Commission shall, based on the best available scientific and technical information, periodically review and revise downward the limit set forth in this subsection, no less frequently than every 5 years after promulgation of the limit under subpara-

graph (C) or (D) to require the lowest amount of lead that the Commission determines is technologically feasible to achieve. The amount of lead established by the Commission under the preceding sentence shall be substituted for the lead limit in effect immediately before such revision.

(3) Application

Each limit set forth in paragraph (2) (except for the limit set forth in subparagraphs (A) and (B)) shall apply only to a children's product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a))) that is manufactured after the effective date of such respective limit.

(b) Exclusion of certain materials or products and inaccessible component parts

(1) Functional purpose exception

(A) In general

The Commission, on its own initiative or upon petition by an interested party, shall grant an exception to the limit in subsection (a) for a specific product, class of product, material, or component part if the Commission, after notice and a hearing, determines that—

(i) the product, class of product, material, or component part requires the inclusion of lead because it is not practicable or not technologically feasible to manufacture such product, class of product, material, or component part, as the case may be, in accordance with subsection (a) by removing the excessive lead or by making the lead inaccessible;

(ii) the product, class of product, material, or component part is not likely to be placed in the mouth or ingested, taking into account normal and reasonably foreseeable use and abuse of such product, class of product, material, or component part by a child; and

(iii) an exception for the product, class of product, material, or component part will have no measurable adverse effect on public health or safety, taking into account normal and reasonably foreseeable use and abuse.

(B) Measurement

For purposes of subparagraph (A)(iii), there is no measurable adverse effect on public health or safety if the exception described in subparagraph (A) will result in no measurable increase in blood lead levels of a child. The Commission may adopt an alternative method of measurement other than blood lead levels if it determines, after notice and a hearing, that such alternative method is a better scientific method for measuring adverse effect on public health and safety.

(C) Procedures for granting exception

(i) Burden of proof

A party seeking an exception under subparagraph (A) has the burden of demonstrating that it meets the requirements of such subparagraph.