



**Office of Compliance
U.S. Consumer Product Safety Commission
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Toy Premium Guidance

The staff of the Office of Compliance of the U.S. Consumer Product Safety Commission (CPSC) is providing guidance to firms that sell or distribute toys or other children's products as premiums with food¹ or at restaurants. Premiums intended for use by children must meet all applicable mandatory requirements. We encourage firms to assure that the premium items also meet applicable voluntary standards and are not hazardous for the children who use them in a normal or reasonably foreseeable manner. To avoid the possibility of injury, premiums should also be appropriate for use by children of the age for whom the premiums are intended.

Children's Premiums

Children's premiums are typically toys or other items intended for use by children that are given away with food purchases to increase sales. Premiums must, at a minimum, comply with all applicable mandatory regulations, and we recommend that they comply with all applicable voluntary safety standards. However, premiums differ significantly from products sold at retail. At retail, a parent or guardian typically encounters a wide selection of toys from which he or she can select an item suitable for a child, based on the child's age and maturity. In the retail environment, age grading labels and safety warnings on the toys provide valuable guidance to assist parents in their purchasing decisions. In contrast, a parent or guardian often does not have a choice of alternative products when companies offer premiums with food. This lack of choice may place very young children at risk. A premium that is appropriate for a child of an older age may be unsuitable or even dangerous when given to a child of a younger age. For example, premiums containing small parts would generally not be hazardous for children age 3 and above, but would present a risk of choking, aspiration, or ingestion when given to children under 3 years of age. Similarly, a toy appropriate for a child aged 24 to 36 months may not be suitable for a child under 24 months and may present a risk of serious injury to a younger child.

Single Items

¹ Toys partially or completely imbedded within an edible confectionery product may be considered an adulterated food under section 402(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 342(d).

If only one premium intended for use by children is distributed or sold with food products, it is reasonably foreseeable that the premium will be given to children of all ages. Premiums may include children's articles prepackaged with food items such as cereal, candy, soft drinks and other similar products, as well as children's premiums distributed with food at restaurants or other food outlets.

The Office of Compliance presumes that, if only one premium is distributed or sold with food, that premium is marketed for use by children of all ages. A firm that markets such a premium should take steps to assure that:

1. The premium is appropriate for children of all ages;
2. The premium complies with all applicable mandatory standards;
3. It meets the safety-related requirements of any applicable voluntary standards; and
4. It will not create any additional risks to children during normal use or reasonably foreseeable abuse.

If a food company wants to provide a children's premium for children ages 3 and over for a marketing program that does not include children under 3, the staff recommends that they do so through mail order, toll-free telephone service, or internet sales and that the company include the ages of children for whom the premium is appropriate in its marketing materials. If applicable, the item must be labeled in accordance with 16 C.F.R. § 1500.19.

Multiple Items

A. A restaurant or food outlet may wish to provide different premiums for different age groups. The staff recommends that such firms take the following steps:

1. Offer consumers a choice of different toys, at least one of which is intended for younger children, and each of which is appropriately age-graded and complies with all mandatory and voluntary safety standards for its recommended age range.
2. Offer toys intended for children under 3 years of age that are comparable in safety and play value to the toys intended for children 3 years of age and over.

3. Assure that any premium toy or game for children at least 3 years of age, but not older than 6, that has small parts, is labeled clearly and conspicuously on the front panel of its package (16 C.F.R. § 1500.19):

**" WARNING:
CHOKING HAZARD-Small Parts.
Not for children under 3 yrs."**

4. Inform consumers through advertising and store notices about the availability of the different children's premiums. Promotional material should describe each premium and the appropriate age group for whom it is intended, and should identify for customers which of the premiums intended for use by older children contain small parts or present other hazards to younger children. Some examples of promotional material firms might use are: counter cards, posters, menu board signs, written notice on the children's meal containers, wall signs, tray liners, banners, and drive-through window notices.

5. The restaurant or food outlet instructs all managers and employees about the difference between the premiums and the importance of giving the right premium to a consumer who requests a toy for children under age 3.

B. Food companies may also want to provide a choice of premiums with packaged food items. The staff recommends that these companies offer consumers such premiums by mail order, toll-free telephone service, or internet web site. We recommend that the companies take the following steps:

1. Assure each item is appropriately age-graded and complies with all mandatory and voluntary safety standards for its recommended age range.
2. If distributing toys for different age groups, offer toys intended for children under 3 years of age that are comparable in safety and play value to the toys intended for children 3 years of age and over.
3. Assure that any premium toy or game for children at least 3 years of age, but not older than 6, that has small parts, is labeled clearly and conspicuously on the front panel of its package (16 C.F.R. § 1500.19):

**" WARNING:
CHOKING HAZARD-Small Parts.
Not for children under 3 yrs."**

4. Provide information to consumers. Promotional material should describe each premium and the appropriate age range for whom it is intended, and should identify for customers which of the premiums intended for use by older children contain small parts or present other hazards to younger children.

Importance of Age Grading

Proper age grading is critical for all toys whether they are to be sold by retailers or distributed as premiums. Consumers need to know the appropriate age grade for a toy in order to make informed decisions in selecting toys for their children. Manufacturers, importers, retailers, and distributors of toys need to know the appropriate age grade for a toy in order to know what federal and industry standards apply to the toy and what tests to perform to determine if the toy complies with applicable standards. If a firm markets premiums, it should age grade each premium to make sure that the characteristics of each product match the physical, mental, and other developmental capabilities of the children for whom it is intended. Children, unlike adults, are in a state of developmental flux, with their abilities changing frequently. As they develop, their gross and fine motor skills, along with their mental abilities, increase rapidly. If a toy is either too advanced or not challenging enough, children often experiment with ways to play with the toy other than those envisioned by its manufacturer. An improperly matched toy would not only frustrate a child but may also be hazardous. For example, some games of skill, construction sets, and intricate puzzles that are suitable for children ages 3 years and above would not only be difficult for children under 3 years of age to use but, in some circumstances, may even be hazardous to those children. Such toys may be hazardous to younger children even if they comply with all applicable safety regulations. Because these children lack the ability to play with the toy as intended, they may poke it into an eye, ear or nose, or otherwise use it in a hazardous manner. Children under 3 years of age are especially at risk from mismatched toys because of their mouthing behavior and their undeveloped or limited physical and mental maturation.

Age grading is also critical for manufacturers, importers, retailers, and distributors in determining the applicability of mandatory toy regulations to toys they sell or give away as premiums. For example, toys age-graded for children under 3 years of age are subject to the small parts regulation. Toys and games age-graded for children at least 3 years of age, but not older than 6 that contain small parts are subject to labeling requirements, and there are tests for identifying hazardous sharp edges and points in toys and children's products age-graded for children under 8 years of age. Similarly many of the requirements in industry voluntary standards apply to toys for children of specific age ranges.

The Commission staff has published a comprehensive discussion on the classification of toys by children's age categories. This document can help firms in age grading. The publication is titled, Age Determination Guidelines: Relating Children's Ages to Toy Characteristics and Play Behavior. The industry standard, ASTM F963, "Standard Consumer Safety Specification on Toy Safety," includes information on age grading toys. In addition to these documents, firms should consult child developmental experts and literature and consider strategies such as focus groups or controlled observation studies with their products to ensure a match of their toys with the target age group.

Products Represented as Being Intended for Children of All Ages

Many firms distributing premium toys select toys that meet all of the CPSC's mandatory regulations, regardless of the age child for whom the product is intended. For example, a firm may require that none of the products it intends to distribute as premiums contain small parts even if the products are age graded for children over 3. The Commission staff encourages this practice because premiums may be given to younger children. However, the staff advises companies not to put labels on products that say they have been tested for all ages unless the product is also appropriate for all ages.

Labels such as the following:

"Safety tested for children of all ages"

"Tested and recommended for children of all ages"

"Meets safety requirements for children of all ages"

"Birth and up"

"0+"

on a product that is not appropriate for children of all ages can result in the product being given to a child too young to play safely with it. To consumers, these labels mean that the product is intended for children of all ages, starting right from birth. Many premium toys are appropriate for children 18 months of age and up but can be hazardous to a younger child. If a toy is labeled that it has been safety tested for children of all ages, it is reasonable to expect that consumers will give it to children only a few months old.

General Requirements for Toys and Other Children's Products

Toys and other articles intended for use by children are subject to a number of standards, some mandatory, others voluntary. In addition, such products should be independently evaluated to determine whether they present hazards that the mandatory and voluntary requirements do not cover. Toys, including premiums, that present a substantial risk of injury to children during normal use or when subjected to reasonably foreseeable damage or abuse may be subject to recall under section 15(c) of the FHSA.

Mandatory Requirements for Children's Articles

Toys and other children's articles are regulated under the provisions of the Federal Hazardous Substances Act (FHSA). 15 U.S.C. §§ 1261 et seq. Such articles intended for use by children under 3 years of age are subject to the prohibition of small parts. 16 C.F.R. Part 1501. This means that these articles may not contain small parts when distributed or produce small

parts during normal use or as a result of reasonably foreseeable damage or abuse. In determining what toys and children's articles are subject to the small parts requirement, the following factors are relevant: "[T]he manufacturer's stated intent (such as on a label) if it is a reasonable one; the advertising, promotion, and marketing of the article; and whether the article is commonly recognized as being intended for children under 3." 16 C.F.R. § 1501.2(b). Use-and-abuse test procedures found in 16 C.F.R. §§ 1500.50-53 and summarized below simulate normal or reasonably foreseeable use and abuse of children's products.

<i>USE AND ABUSE TESTING</i>					
<i>16 C.F.R. §§ 1500.50-53</i>					
<i>AGE CATEGORY</i>	<i>IMPACT</i>	<i>FLEXURE</i>	<i>TORQUE</i>	<i>TENSION</i>	<i>COMPRESSION</i>
<i>0 - 18 MONTHS</i>	<i>10 DROPS FROM 4.5 FEET±0.5"</i>	<i>120 ARC 30 CYCLES</i>	<i>2 IN-LBF.</i>	<i>10 LBF.</i>	<i>20 LBF.</i>
<i>19 - 36 MONTHS</i>	<i>4 DROPS FROM 3 FEET ±0.5"</i>	<i>120 ARC 30 CYCLES</i>	<i>3 IN-LBF.</i>	<i>15 LBF.</i>	<i>25 LBF.</i>
<i>37 - 96 MONTHS</i>	<i>4 DROPS FROM 3 FEET ±0.5"</i>	<i>120 ARC 30 CYCLES</i>	<i>4 IN-LBF.</i>	<i>15 LBF.</i>	<i>30 LBF.</i>

Products intended for children under 8 years of age are subject to sharp point technical requirements, 16 C.F.R. § 1500.48, and sharp edge technical requirements, 16 C.F.R. § 1500.49. Toys and children's products that have paint or similar surface coating material that contains in excess of 0.06% lead are banned. 16 C.F.R. Part 1303. Children's articles are also banned if they bear or contain any toxic or otherwise hazardous substance that is accessible to the user. 15 U.S.C. § 1261(f)(1)(A) and 16 C.F.R. § 1500.3.

Firms are not required to test toys and children's articles for compliance with regulations. However, they are responsible for making sure that the toys and children's articles they distribute comply with those regulations. We strongly encourage testing as the best way to determine compliance with regulations. Firms may conduct their own testing or have a third party conduct the testing.

The FHSA also imposes specific warning label requirements for certain toys and games containing small parts intended for use by children over 3 years of age but not older than 6 years of age; for small balls and marbles intended for children three years of age or older; and for balloons. These requirements warn purchasers that these products are not suitable for children under 3 years of age because the products present risks of choking or, in the case of balloons, that children under 8 can choke or suffocate on uninflated or broken balloons. The FHSA also bans small balls for children under 3 years of age that pass through a circular hole with a diameter of 1.75 inches (44.4mm).

Other Requirements

Section 15(c) of the FHSA, 15 U.S.C. § 1274(c), addresses hazards presented by toys and children's products that are not covered by the mandatory regulations. The Commission can order a firm that manufactures, distributes or sells a children's article that has a defect that creates a substantial risk of injury to children, after providing an opportunity for a hearing, to provide public notice and to repair or replace the product or to refund its purchase price. Injuries resulting from normal use or reasonably foreseeable damage or abuse of a premium are among the factors the Commission staff uses in evaluating premiums under Section 15(c) of the FHSA.

In addition to complying with mandatory requirements, children's articles should fully meet any applicable requirements under the Standard Consumer Safety Specification on Toy Safety, ASTM F963. While the ASTM F963 standard references the CPSC mandatory requirements for toys and children's products, it also contains additional provisions addressing hazards not covered by CPSC requirements. The standard may be purchased from: ASTM International, 100 Barr Harbor Dr., West Conshohocken, PA 19428, telephone number 610-831-9585, web address: www.astm.org.