

year-olds are able to open CR packages, is a surrogate for whether normal adults of all ages will have difficulty using such packaging. Certain commenters contended, however, that it would be unlawful to include older adults on the panel because they allegedly are not "normal adults" under the statute. These commenters further argued that section 4 of the PPPA exempts the "elderly" and "handicapped" ⁷ from being considered as "normal adults." The Commission disagrees with these claims that older people are not normal adults or that the proposed panel is unlawful.⁸

2. The term "normal adults" does not exclude all "elderly" persons. The statute does not define "normal adults." However, the legislative history of the PPPA indicates that the term normal adults is not limited to the 18–45 year-olds who make up the current test panel.

"The definition of special packaging leaves it to the Secretary [of Health, Education, and Welfare, now the Commission] to determine specifically the parameters of special packaging in each case. The [Senate] Committee [on Commerce], however, set limits to the parameters by specifying that special packaging must be significantly difficult [for children] to open . . . , that it need not keep out all children, that it not be difficult for normal adults—the broad range of the adult population not having handicaps hindering their use of special packaging to use properly, and that the target age-group is children under six [five, as enacted] years of age."

S. Rep. No. 91–845 at 9 (emphasis added). Any claim that the term is limited to persons age 45 and below is inconsistent with this description of normal adults. Furthermore, the description of "normal adults" as including "the broad range of the adult population" implies that there will be considerable variation in the abilities of persons across that range.

In addition, human factors considerations also indicate that the broad range of normal adults includes the elderly. The Division of Human Factors notes that there is considerable overlap in the physical capabilities of younger and older adults. [287]

One industry commenter appeared to equate normal adult with the "norm" of

the adult population, and questioned how that can be determined if only the "extremes" of the population are tested. The Commission's Human Factors staff noted that the commenter inappropriately applied the concept of norm. The term norm, as used by the commenter, is a point value and cannot be used to determine the qualities of a range, such as the capabilities of normal adults. If norm were interpreted only as the average (i.e., mean) value, it would be age 41 for the U.S. adult population. If norm were interpreted as the most common age, it would be age 29 for the U.S. adult population. Under either interpretation, structuring a test panel comprised only of subjects of a single age would be impracticable and uninformative about large segments of the population. Moreover, the age chosen could change with each census. Another commenter similarly described "normal" as only those of average or better capabilities. Because average is typically the halfway point, this commenter would exclude half the population from being considered normal. Congress could not have intended such results.

Also, the 60–75 test panel does not consist of the upper extreme, which generally is considered to be the 95th percentile of the studied population. According to Human Factors, the 95th percentile of U.S. adults is above age 75. Thus, the revised protocol specifically excludes the extreme.

3. Section 4 of the PPPA does not limit the meaning of "normal adults" in section 2. Some commenters argued that section 4 of the PPPA, in effect, defines normal adults to exclude the "elderly" or "handicapped." This is incorrect.

As explained above, section 4 allows manufacturers and packagers to market regulated substances in non-CR packaging in certain circumstances. The reason for this exemption is to make "any household substance which is subject to a standard * * * readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard." 15 U.S.C. 1473(a) (emphasis added).

There will always be people who, regardless of the adult test protocol in force, cannot use CR packaging. This is the segment of the population—whose size is determined not by age but by the state of the art of CR packaging and the degree of difficulty allowed by the standard—that non-CR packaging is intended to serve. Section 4 simply assures that companies will be permitted to make non-CR packaging available to these people. It does nothing more.

Certain industry commenters interpreted section 4 to mean that the statute divides the entire adult population into three distinct groups: "normal adults," the elderly, and the disabled. These commenters argue that section 4 defines "normal adults" to exclude elderly people, and that they therefore may not be on the test panel. This argument is based on the premise that section 4 defines the term "normal." However, it does no such thing.

One of these commenters has also argued that section 4 is designed to make packaging available not only to the elderly or disabled, but to all adults for whom "child resistant packages would be difficult * * * to open." [277, pp. 2–3] While it is true that section 4 is designed to assist anyone who cannot open CR packaging, this is inconsistent with the argument that section 4 defines the term "normal adult." That is, if section 4 defined "normal" and if it excluded the elderly, disabled, and anyone else who had difficulty using CR packaging, then each of these groups would have to be excluded from the test panel. However, this would mean that every CR package would pass the adult test with a score of 100% because anyone who had difficulty opening the package would, by definition, be ineligible to test it.

The debate between the two houses of Congress concerning the scope of the exempt size provision of the act also provides insight concerning the population of adults that Congress regarded as being normal. The House of Representatives favored a provision that would have made CRP the exception rather than the rule, requiring CRP for only one size intended for use in households with young children. This position was based on data indicating that 75% of all U.S. households had no children between the ages of 1 and 5. According to the House rationale, requiring members of these households to purchase products in CRP would be illogical. H.R. Rep. No. 1642, 91st Cong., 2d Sess. 6 (1970). Thus, the adults whom the House expected to use child-resistant packaging were those who actually had children, i.e., adults roughly 18 to 45 years of age.

The Senate, on the other hand, recognized that the problem of accidental poisoning was not limited to the immediate households in which children reside. It therefore favored legislation that would generally require CRP for all products subject to CR standards, with a limited exception providing non-CRP for those individuals physically unable to use products in CRP. S. Rep. No. 91–845 at 11. Under

⁷ The term "handicapped" is hereafter referred to as "disabled," except where context requires the use of the statutory term.

⁸ It should be noted that the Coalition for Responsible Packaging and its members were the proponents of this argument with respect to the previously proposed panel of 60–75 year-olds. However, the Coalition has publicly endorsed the Commission's decision to adopt a panel of 50–70 year-olds. [299] Thus, these industry commenters apparently now agree that the adult panel adopted by the Commission is permissible under the PPPA.