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Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2012-0035]

16 CFR Part 1500

Revocation of Certain Requirements Pertaining to Caps Intended for Use with Toy Guns and Toy Guns Not Intended for Use with Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 106 of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”) considers the provisions of ASTM International Standard F 963, “Standard Consumer Safety Specifications for Toy Safety” (“ASTM F 963”), to be consumer product safety standards issued by the U.S. Consumer Product Safety Commission (“CPSC,” “Commission,” or “we”). Among other things, ASTM F 963 contains provisions regarding sound-producing toys. The ASTM F 963 provisions for sound-producing toys allow manufacturers to use more options with readily available test equipment for sound measurement to determine compliance than our existing regulations pertaining to caps intended for use with toy guns and toy guns not intended for use with caps, which were included in the regulations under the Federal Hazardous Substances Act (“FHSA”) that were transferred to the Commission’s jurisdiction in 1973. The test methodology also refers to obsolete equipment. Consequently, we are proposing to revoke our existing banning regulations pertaining to caps intended for use with toy guns

and toy guns not intended for use with caps because they are obsolete and have been superseded by the requirements of ASTM F 963.

DATES: Comments must be received by [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments, identified by Docket No. CPSC-2012-0035, may be submitted by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through <http://www.regulations.gov>.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal

information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Richard McCallion, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987-2222; e-mail: rmccallion@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Revocation of Certain Regulations Pertaining to Toy Caps and Toy Guns Not Intended for Use with Caps

In September 1973, the FHSA and its implementing regulations, which included provisions pertaining to caps for use with toy guns and toy guns not intended for use with caps, were transferred from the U.S. Food and Drug Administration (“FDA”) to the CPSC. *See* 38 FR 27012 (September 27, 1973). One of the transferred regulations includes a ban on caps intended for use with toy guns and toy guns not intended for use with caps “if such caps when so used or such toy guns produce impulse-type sound at a peak pressure level at or above 138 decibels” *See* 16 CFR 1500.18(a)(5).

Another transferred regulation, 16 CFR 1500.86(a)(6), contains provisions for exemptions from the classification of a banned toy under 16 CFR 1500.18(a)(5) for toy caps with a sound level from 138 decibels up to a maximum decibel level of 158. Manufacturers participating in this decibel-reduction program are required to report their intention to participate in the program, include a specific warning statement on the

product packaging, and report quarterly on the progress regarding the production of caps with a maximum noise level of 138 decibels. This exemption is included in the revocation because there are no manufacturers participating in this program.

Additionally, a third transferred regulation, 16 CFR 1500.47, provides the test method for determining the sound pressure level produced by toy caps and toy guns. The method specifies the use of certain equipment, such as a microphone, preamplifier, and two types of oscilloscopes with specific response and calibration ranges, and it also addresses the manner in which one would measure peak sound pressure levels.

Section 106 of the CPSIA considers the provisions of ASTM International Standard F 963, “Standard Consumer Safety Specification for Toy Safety,” to be consumer product safety standards issued by the Commission under section 9 of the Consumer Product Safety Act (“CPSA”). References to ASTM F 963 in this document refer to ASTM F 963-11, which became effective on June 12, 2012. Section 4.5 of ASTM F 963 establishes requirements for “sound-producing toys,” and section 8.19 of ASTM F 963 establishes “Tests for Toys Which Produce Noise.” In general, the ASTM F 963 requirements for sound-producing toys are at least equivalent to, and more reflective of potential damage to human hearing, than 16 CFR §§ 1500.18(a)(5) and 1500.47. For example, section 4.5.1.5 of ASTM F 963 states that the peak sound pressure level of impulsive sounds produced by a toy using percussion caps or other explosive action “shall not exceed 125” decibels at 50 centimeters, whereas, 16 CFR 1500.18(a)(5) imposes a ban at or above 138 decibels at 25 centimeters. As another example, section 8.19.2.4 of ASTM F 963 uses a weighted scale based on human hearing damage from the type of impulse noise being generated by the toy, whereas, 16 CFR

1500.47 uses an unweighted scale for measuring pressure level generated by impulse-type sound.

Additionally, the ASTM F 963 test method involves the use of modern equipment (microphones meeting a particular specification), whereas, 16 CFR 1500.47 specifies the use of a microphone, a preamplifier (if required), and an oscilloscope. The equipment specifications in 16 CFR 1500.47 have never been updated.

Consequently, because section 106 of the CPSIA mandates the provisions of ASTM F 963 to be consumer product safety standards, and because we believe that the provisions of ASTM F 963, with respect to paper or plastic caps intended for use with toy guns, are at least equivalent to 16 CFR 1500.18(a)(5), we propose to revoke 16 CFR 1500.18(a)(5). Similarly, because ASTM F 963 establishes a test method for toys that produce sound, and because our existing regulation refers to obsolete or unnecessary test equipment, we propose to revoke 16 CFR 1500.47. Finally, because we are proposing the revocation of 16 CFR 1500.18(a)(5), we are also proposing the revocation of the exemptions from the requirements of 16 CFR 1500.18(a)(5) contained in 16 CFR 1500.86(a)(6).

B. Paperwork Reduction Act

This rule would not impose any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

C. Regulatory Flexibility Act

We have examined the impacts of the proposed rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act requires agencies to

analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule would revoke outdated regulatory requirements, the Commission certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

D. Environmental Considerations

This rule falls within the scope of the Commission's environmental review regulation at 16 CFR 1021.5(c)(1), which provides a categorical exclusion from any requirement for the agency to prepare an environmental assessment or an environmental impact statement for rules that revoke product safety standards.

E. Executive Order 12988

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. The preemptive effect of regulations such as this proposal is stated in section 18 of the FHSA. 15 U.S.C. 1261n.

F. Effective Date

The Commission is proposing that the rule revoking 16 CFR 1500.18(a)(5), 1500.47, and 1500.86(a)(6) would become effective 30 days after publication of the final rule in the *Federal Register*.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and recordkeeping requirements, Toys.

For the reasons stated in the preamble, and under the authority of 15 U.S.C. 1261–1262 and 5 U.S.C. 553, the Consumer Product Safety Commission proposes to amend 16 CFR part 1500 as follows:

PART 1500--HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION
AND ENFORCEMENT REGULATIONS

1. The authority citation for 16 CFR part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

§ 1500.18 [Amended]

2. Section 1500.18 is amended by removing and reserving paragraph (a)(5).

§ 1500.47 [Removed]

3. Section 1500.47 is removed entirely.

§ 1500.86 [Amended]

4. Section 1500.86 is amended by removing and reserving paragraph (a)(6).

Dated: June 20, 2012.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety
Commission.

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