# CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1500

Final Rule to Ban Small Balls Intended for Children Younger Than Three Years of Age and To Require Labeling of Certain Toys and Games

**AGENCY:** Consumer Product Safety

Commission.

ACTION: Final Rule.

**SUMMARY:** The Child Safety Protection Act of 1994 (CSPA) amended the Federal Hazardous Substances Act (FHSA) by adding a new section 24 which, inter alia, imposes labeling requirements on certain balls, balloons, marbles, and certain toys and games intended for use by children three years of age and older. The amendment also bans certain balls intended for use by children younger than three years of age. Although the requirements imposed by the amendments are generally selfexecuting, the Commission is publishing this regulation to incorporate the requirements of the CSPA into the Code of Federal Regulations (CFR) and to interpret or clarify certain provisions of that legislation.

**DATES:** This regulation becomes effective on August 28, 1995 for products manufactured or imported into the United States.

FOR FURTHER INFORMATION CONTACT: Francis Krivda, Compliance Officer, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207–0001; telephone (301) 504–0400, ext. 1372.

# SUPPLEMENTARY INFORMATION:

# A. Background

## 1. Previous Commission Actions

In 1979, the Commission issued regulations to ban toys and other articles which are intended for use by children younger than three years of age and which present an aspiration, ingestion, or choking hazard because of small parts. The small parts regulations are codified at 16 CFR 1500.18(a)(9) and Part 1501. Toys and children's articles subject to the regulations must be placed in a truncated cylinder with a diameter of 1.25 inches (31.7 mm.) and a depth ranging from 1 to 2.25 inches (25.4 mm to 57.1 mm). If the product or any independent or detachable component of the product fits entirely within the cylinder, it is banned. Additionally, a toy or children's article is banned if any component or piece of such a product becomes detached during "use and abuse" testing. The

"use and abuse" tests are codified at 16 CFR 1500.50–1500.53.

The small parts regulations apply only to toys and articles intended for use by children younger than three years of age. Some products, including balloons, are excluded from the scope of these regulations because they cannot be manufactured to function as intended and still comply with the requirements of the regulations.

Previously, the Commission received information indicating that an average of seven children a year choke to death on balloons or parts of balloons. The agency also received reports of children younger than three choking on small toys or games, or the parts of such products, which were intended for children three years of age and older. For example, small balls and marbles are generally considered to be intended for such older children, but have been associated with choking fatalities involving children under three.

In some cases, choking incidents involving children younger than three years of age occurred after an adult purchased a product labeled to indicate that the article was suitable for children three years and older, but gave the article to a child younger than three. In such cases, it is possible that the purchaser believed that the labeling statement was not a safety message, but instead referred to the age at which the child could use or enjoy the product.

The origins of the ČŠPA rest in rulemaking activities in which the Commission engaged between 1988 and 1992. In 1988, the Commission published an advance notice of proposed rulemaking (ANPR) to initiate regulatory action to enlarge the dimensions of the cylinder used to evaluate whether toys or other articles intended for children under three contain small parts that could present a choking hazard. In 1990, the Commission terminated that proceeding. It determined that the use of the test cylinder specified in the existing small parts regulation had been effective in preventing choking deaths and injuries to children under three associated with toys intended for that age group. At the same time, however, the Commission published four ANPRs that, *inter alia*, solicited preliminary comment on proposals to require labeling on small balls, balloons, marbles, and toys and other articles with small parts intended for children aged three to approximately six. In 1991, after analyzing the comments received in response to the ANPRs, the Commission staff recommended that the Commission propose rules prescribing labeling under the FHSA for the

products that later became the subject of the CSPA. The Commission, however, terminated all four proceedings because it felt that it could not make the findings required by the FHSA.

#### 2. The Child Safety Protection Act

On June 16, 1994, Congress enacted the CSPA. The legislation establishes substantially the same labeling requirements for balloons, marbles, small balls, and toys and games containing small parts that the staff recommended in 1991. The primary purpose of the legislation is to warn purchasers of the potential hazards for children under three that products intended for older children may present. The CSPA prescribes labeling statements for balloons, for balls with a diameter of 1.75 inches or less ("small balls") and marbles intended for children three years or over, and for toys or games that contain such items. The law also requires labeling for toys or games that contain small parts and that are intended for children at least three years old but not older than six. Under the CSPA, small balls intended for children under three are banned. The statute specifies the text of the required label statement for each of the enumerated products and requires that labeling appear on the principal display panel of product packages. For unpackaged, unlabeled items sold in bulk, any bin in which they are displayed, and any container for retail display or vending machine from which they are sold or dispensed must bear the required labeling. The law also directs the Commission to promulgate regulations to implement the statutory requirements.

On July 1, 1994, the Commission published in the Federal Register a proposed rule (59 FR 33932). The proposed rule clarified and interpreted certain provisions of the CSPA. It included definitions of terms such as "ball," "small part," and "descriptive material," and established criteria for determining the age of children for which a game or toy is intended. It also clarified the applicability of the type size and conspicuousness requirements of the regulation codified at 16 C.F.R. 1500.121 to the products that are subject to the CSPA. It further contained provisions to assure that labeling statements would appear prominently on product packages.

## **B.** Response to Comments

In response to the proposed rule, the Commission received almost 300 comments, most from individual consumers. Major consumer groups supported many of the provisions of the