small parts banning rule (16 CFR Part 1501). This revision states that the reporting requirements apply to toys and games that would otherwise be exempt from the Commission's small parts regulation. The revision also clarifies that firms must report any time a child chokes on a small part from a toy or game regardless of whether the part was a small part at the time the product was distributed or sold.

**DATES:** This regulation becomes effective on September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Eric L. Stone, Office of Compliance and Enforcement, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (Mailing address: Washington, D.C. 20207), telephone (301) 504–0626 extension 1350.

### SUPPLEMENTARY INFORMATION:

#### A. Background

Section 102 of the Child Safety Protection Act of 1994 (Public Law 103-267, 108 Stat. 722, June 16, 1994) requires, inter alia, that each manufacturer, distributor, retailer and importer of a toy or game that contains a small part report to the Commission information that reasonably supports the conclusion that an incident occurred in which a child choked on the small part and died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional. On February 27, 1995, the Commission published a final interpretative rule defining several terms and resolving ambiguities and uncertainties in the statutory reporting scheme. 60 FR 10490. The Commission left unresolved one issue raised by commenters. Those commenters had questioned whether the reporting requirement applied to toys and games that are exempt from the Commission's small parts banning rule. 16 CFR Part 1501.

A subsequent industry inquiry also indicated some confusion over the definition of the term "small part" in the regulation. The Commission has decided to clarify that definition.<sup>1</sup>

# 1. Products Exempt From the Small Parts Regulation

Several industry commenters originally suggested that the Commission exempt from the choking hazard reporting requirement any products that are exempt from the small parts banning regulation (see 16 CFR 1501.3). The banning regulation, which applies to toys and other articles intended for children under 3 years of age, exempted items such as balloons, books, writing materials, and certain children's grooming, hygiene, and feeding items because the Commission believed that the functional benefits of these products outweighed the risk of injury they presented.

The Commission believes that Congress enacted the reporting requirements of the CSPA to assure that the Commission receives as much information as possible about serious choking incidents. Only then, can the Commission know whether some remedial action is necessary to protect children. Absent compelling reasons to do so, the Commission believes it should not carve out exceptions to the reporting obligations imposed by Congress.

Congress required firms to report choking incidents involving small parts from toys and games. Congress did not limit this reporting obligation to products subject to the Commission's small parts banning regulation (16 CFR 1501). The Commission believes that no persuasive policy arguments support limiting the requirement imposed by Congress. Unlike a ban, the reporting requirement does not interfere with the sale of the exempt product or place an extraordinary burden on the reporting firm. The scope of the reporting obligation is limited, the report is protected from public disclosure, and the information may not be used as an admission against the firm. Therefore, the Commission sees no reason to limit reporting to products that would be subject to 16 CFR Part 1501.

## 2. Definition of "Small Part"

The CSPA requires reporting when a child chokes on a small part contained in a toy or game. The final regulation defines a small part as any object which, when tested in accordance with the procedures of 16 CFR 1501.4(a) and 1501.4(b)(1) fits entirely within the cylinder shown in Figure 1 appended to 16 CFR Part 1501. When the Commission issued rules interpreting the CSPA reporting requirements, the Commission intended that firms report to the Commission if the part involved in the choking incident fit within the small parts test cylinder. The Commission expected firms to report choking incidents involving parts that broke off a toy or game as well as those involving parts that were small parts at the time the toy or game was distributed or sold.

Although firms who are reporting under this provision seem to understand

the Commission's rule, one firm has suggested it is not clear. That firm thought the reporting provision should only apply to parts that are independent small parts at the time the toy or game is sold. It suggests that the phrase "contained in such toy or game" in section 102 limited the obligation to distinct small parts contained in the toy or game at the time of distribution or sale of the toy or game.

The focus of the choking hazard reporting provision is upon the choking incident. If a small part causes a choking incident a manufacturer, importer, distributor, or retailer is obligated to report if that part was contained in its toy or game. The phrase "contained in" is an indicator of the origin of the part. The part was contained in the toy or game whether it was a separate small part at the time of distribution, or a component or piece of a toy that broke off during play. Limiting the reporting obligation to items that were small parts at the time of distribution would shift the focus away from reporting of choking incidents. Further, it would only capture a fraction of the choking incidents that occur each year involving parts of toys and games.

In administering the small parts banning regulation, the Commission has seen that the great majority of violations arise because small parts detach from toys as a result of use or abuse. Excluding such parts from the reporting requirements could result in significant violations of the small parts regulation being undetected and uncorrected, even though those violations resulted in death or serious injury—the precise consequences that the reporting requirements were enacted to address.

Accordingly, to resolve the confusion over the scope of the term "small part," the Commission is revising the interpretative rule to clarify that the inquiry as to whether an object involved in a choking incident is a small part should focus only on whether that object fits entirely within the small parts testing cylinder. How the object came to be a small part is irrelevant for the purposes of reporting, although such information may certainly be relevant in determining whether any remedial measures are appropriate.

## C. Notice

Because this is an interpretative rule, the Commission is not required to issue a notice of proposed rulemaking. 5 U.S.C. 553(b)(A). Nevertheless, the Commission did publish a notice of proposed rulemaking ("NPR") concerning the reporting requirements under the CSPA on July 1, 1994. 59 FR

<sup>&</sup>lt;sup>1</sup>On both of these issues, Commissioner Mary Gall dissented from the Commission's decision. A copy of her statement and those of the other Commissioners may be found in the Commission's Office of the Secretary.