



UNITED STATES
 CONSUMER PRODUCT SAFETY COMMISSION
 4330 EAST WEST HIGHWAY
 BETHESDA, MD 20814

This document has been electronically approved and signed.

VOTE SHEET

Date: June 22, 2011

THIS MATTER IS NOT SCHEDULED FOR A BALLOT VOTE.

A DECISION MEETING FOR THIS MATTER IS SCHEDULED ON: June 29, 2011.

TO : The Commission
 Todd A. Stevenson, Secretary

THROUGH: Kenneth R. Hinson, Executive Director
 Cheryl A. Falvey, General Counsel
 Philip L. Chao, Assistant General Counsel, RAD

FROM : Barbara E. Little, Attorney

SUBJECT : Substantial Product Hazard List: Children’s Upper Outerwear in Sizes 2T to 12 with Neck or Hood Drawstrings and Children’s Upper Outerwear in Sizes 2T to 16 with Certain Waist or Bottom Drawstrings; Final Rule

The Consumer Product Safety Improvement Act of 2008 (“CPSIA”) added a new subsection (j) to section 15 of the Consumer Product Safety Act (“CPSA”). This new subsection gives the Commission authority to specify by rule for a consumer product or class of consumer products, characteristics whose presence or absence the Commission considers a substantial product hazard. Staff is forwarding to you a briefing package recommending that the Commission issue a final rule that designates children’s upper outwear in sizes 2T to 12, or the equivalent, with neck or hood drawstrings, and children’s upper outerwear in sizes 2T to 16, or the equivalent, with certain waist or bottom drawstrings, substantial product hazards under section 15(j) of the CPSA. (The proposed rule was published in the *Federal Register* on May 17, 2010.) We provide a draft final rule for your consideration.

Please indicate your vote on the following options.

- I. Approve publication in the *Federal Register* of the draft final rule without change.

 Signature

 Date

II. Approve publication in the *Federal Register* of the draft final rule with changes (please specify changes):

Signature

Date

III. Do not approve publication in the *Federal Register* of the draft final rule.

Signature

Date

IV. Take other action (please specify):

Signature

Date

[Billing Code 6355-01-P]

U.S. CONSUMER PRODUCT SAFETY COMMISSION

16 CFR PART 1120

Substantial Product Hazard List: Children’s Upper Outerwear in Sizes 2T to 12 with Neck or Hood Drawstrings and Children’s Upper Outerwear in Sizes 2T to 16 with Certain Waist or Bottom Drawstrings

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 (“CPSIA”), authorizes the U.S. Consumer Product Safety Commission (“Commission,” “CPSC,” or “we”) to specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence shall be deemed a substantial product hazard under certain circumstances. We are issuing a final rule to determine that children’s upper outerwear garments in sizes 2T to 12 or the equivalent, which have neck or hood drawstrings, and in sizes 2T to 16 or the equivalent, which have waist or bottom drawstrings that do not meet specified criteria, present substantial product hazards.

DATE: The rule takes effect [insert date that is 30 days after publication in the *Federal Register*]. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of [insert date that is 30 days after publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Tanya Topka, Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7594, ttopka@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

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The Consumer Product Safety Improvement Act of 2008 (“CPSIA”) was enacted on August 14, 2008. Pub. Law 110-314, 122 Stat. 3016 (August 14, 2008). The CPSIA amends statutes that the Commission administers and adds certain new requirements.

Section 223 of the CPSIA expands section 15 of the Consumer Product Safety Act (“CPSA”) to add a new subsection (j). That subsection delegates authority to the Commission to specify by rule, for a consumer product or class of consumer products, characteristics whose presence or absence the Commission considers a substantial product hazard. To issue such a rule, the Commission must determine that those characteristics are readily observable and have been addressed by an applicable voluntary standard. The Commission also must find that the standard has been effective in reducing the risk of injury and that there has been substantial compliance with it. 15 U.S.C. 2064(j).

Drawstrings in children’s upper outerwear can present a hazard if they become entangled with other objects. Drawstrings in the neck and hood areas of children’s upper outerwear present a strangulation hazard when the drawstring becomes caught in objects, such as playground slides. Drawstrings in the waist or bottom areas of children’s upper outerwear can catch in the doors or other parts of a motor vehicle, thereby presenting a “dragging” hazard when the operator of the vehicle drives off without realizing that someone is attached to the vehicle by the drawstring. The injury data associated with drawstrings is discussed below in section C of this preamble.

In 1994, at the urging of the CPSC, a number of manufacturers and retailers agreed to modify or eliminate drawstrings from hoods and necks of children’s clothing. In 1997, the American Society for Testing and Materials (now ASTM International)

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addressed the hazards presented by drawstrings on upper outerwear by creating a voluntary consensus standard, ASTM F 1816-97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear*, to prohibit drawstrings around the hood and neck area of children's upper outerwear in sizes 2T to 12, and also to limit the length of drawstrings around the waist and bottom of children's upper outerwear in sizes 2T to 16 to 3 inches outside the drawstring channel when the garment is expanded to its fullest width. For waist and bottom drawstrings in upper outerwear sizes 2T to 16, the Standard prohibited toggles, knots, and other attachments at the free ends of drawstrings. The Standard further required that waist and bottom drawstrings in upper outerwear sizes 2T to 16 that are one continuous string be bartacked (*i.e.*, stitched through to prevent the drawstring from being pulled through its channel).

We have estimated that the age range of children likely to wear garments in sizes 2T to 12 is 18 months to 10 years. The age range of children likely to wear garments in sizes 2T to 16 is 18 months to 14 years.

On July 12, 1994, we announced a cooperative effort with a number of manufacturers and retailers who agreed to eliminate or modify drawstrings on the hoods and necks of children's clothing.

In February 1996, we issued guidelines for consumers, manufacturers, and retailers that incorporated the requirements that became ASTM F 1816-97.

On May 12, 2006, the CPSC's Office of Compliance posted a letter on CPSC's website to the manufacturers, importers, and retailers of children's upper outerwear, citing the fatalities that had occurred and urging compliance with the industry standard, ASTM F 1816-97. The letter explained that we consider children's upper outerwear with

drawstrings at the hood or neck area to be defective and to present a substantial risk of injury under section 15(c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1274(c).

The 2006 letter also indicated that we would seek civil penalties if a manufacturer, importer, distributor, or retailer distributed noncomplying children's upper outerwear in commerce and/or failed to report that fact to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). From 2006 through 2010, we participated in 115 recalls of noncomplying products with drawstrings and obtained a number of civil penalties based on the failure of firms to report the defective products to CPSC, as required by section 15(b) of the CPSA.

On May 17, 2010, we published a proposed rule (75 FR 27497) that would deem children's upper outerwear garments in sizes 2T to 12, or the equivalent that have neck or hood drawstrings, and in sizes 2T to 16 or the equivalent that have waist or bottom drawstrings that do not meet specified criteria, substantial product hazards. We received seven comments in response to the proposed rule. We describe and respond to the comments in section E of this preamble.

B. Readily Observable Characteristics that Have Been Addressed by a Voluntary Standard

As mentioned in section A of this preamble, ASTM F 1816-97 addresses upper outerwear garments in sizes 2T to 12 that have neck or hood drawstrings, and in sizes 2T to 16 that have waist or bottom drawstrings that do not meet specified criteria. All of the requirements of the ASTM voluntary standard can be evaluated with simple physical manipulations of the garment, simple measurements of portions of the garments, and

unimpeded visual observation. Thus, the product characteristics defined by the voluntary standard are readily observable.

C. The Voluntary Standard Has Been Successful in Reducing the Risk of Injury

a. Hood and Neck Drawstring Incidents

We examined reports of fatalities and injuries for the age groups whose upper outerwear is subject to the voluntary standard. We are aware of 56 reports of neck/hood drawstring entanglements occurring between January 1985 and April 2011. Eighteen (32%) of these entanglements were fatal. The majority of the entanglements involved the neck/hood drawstrings snagging on slides. Neck/hood drawstrings also became entangled on parts of cribs in several incidents. Of the 38 nonfatal incidents involving children between the ages of 18 months and 10 years, 30 incidents resulted in injuries. In the remaining eight incidents, the neck/hood drawstring snagged or entangled the child, but no injury was reported. The year with the highest number of reported fatalities—three—is 1994. The three years with the highest number of reported incidents (including fatal and nonfatal incidents) were 1992 (11), 1993 (9), and 1994 (9). Slides were associated with 10 of the fatalities, 26 of the injury incidents, and all 8 of the noninjury incidents (the jackets or sweatshirts snagged by the hood or neck drawstring on playground slides prior to escape or rescue).

The Standard for drawstrings on children's upper outerwear, ASTM F 1816-97, was approved in June 1997, and published in August 1998. We are aware of 12 fatalities and 33 nonfatal incidents involving children ages 18 months to 10 years of age, who were entangled by a neck/hood drawstring of upper outerwear during the 12 years (1985–1996) prior to the Standard. On average, this results in one reported fatality and about three

nonfatal incidents a year. In the eight years (1999–2006) for which reporting is complete after ASTM F 1816-97 was published, we received reports of two fatal and two nonfatal neck/hood drawstring incidents. On average, this is approximately one fatality every four years and about one nonfatal entanglement every four years. For the years for which reporting is complete, the data show a reduction in the annual average number of reported fatalities after the ASTM standard of approximately 75 percent. The corresponding reduction in the annual average number of reported nonfatal entrapments is 91 percent. It should be noted that we are continuing to receive incident reports for the years 2007–2010. We are aware of three fatalities between 2007–2010. No fatalities have been reported to date for 2011. When reporting 2010 is considered complete, the percent reduction in the annual average number of reported fatalities associated with neck/hood drawstrings, at most, will be 58 percent, if no additional fatal incidents are reported.

b. Reported Incidents Associated with Waist/Bottom Drawstring Entanglements

Between January 1985 and April 2011, we received 28 reports of entanglement incidents associated with a waist/bottom drawstring on children’s upper outerwear. Of these 28 incidents, 8 (29%) were fatal; 11 (39%) resulted in injuries; and 9 (32%) constituted snags or entanglements that did not result in injuries. No waist/bottom drawstring incidents were reported to us before 1991. All eight fatalities (7 involving a bus, 1 involving a slide) associated with waist/bottom drawstrings occurred between 1991 and 1996. During 1991 to 1996, there were a total of 19 waist/bottom drawstring incidents, of which 13 involved buses (7 bus fatalities and 6 nonfatal bus incidents). We are not aware of any bus-related drawstring incidents after the year 1996. There were

nine waist/bottom drawstring incidents from 1997 to the present (all nonfatal), of which three involved children whose waist/bottom drawstring caught on car doors.

All of the reported fatalities associated with waist/bottom drawstrings on children's upper outerwear occurred prior to the approval and publication of ASTM F 1816-97. For years in which reporting is considered complete, the number of reported fatalities associated with waist and bottom drawstrings have fallen from the eight reported fatalities between 1985 and 1996 to zero since adoption of the ASTM voluntary standard in 1997. For corresponding periods for which reporting is complete (1985 through 1996 and 1999 through 2006), reported nonfatal injuries fell from 11 in 12 years to 6 in 8 years. These data suggest that after the ASTM standard was adopted, for waist and bottom drawstrings the annual average of reported fatalities fell by 100 percent and the annual average of reported nonfatal incidents fell by about 18 percent. Reporting is ongoing for 2007-2011. CPSC staff is not aware of any reported fatalities for this time. Staff has two reports of non-fatal incidents occurring between 2007-2011. These numbers may change in the future.

D. Substantial Compliance

There is no statutory definition of "substantial compliance" in either the CPSIA or the CPSA. Legislative history of the CPSA provision that is related to issuance of consumer product safety standards indicates that substantial compliance should be measured by reference to the number of complying products, rather than the number of manufacturers of products complying with the standard. H.R. Rep. No. 208, 97th Cong., 1st Sess. 871 (1981). Legislative history of this CPSA rulemaking provision also indicates that there is substantial compliance when the unreasonable risk of injury

associated with a product will be eliminated or adequately reduced “in a timely fashion.” *Id.* *The Random House Dictionary of the English Language* defines “substantial” as “of ample or considerable amount, quantity, size, etc.” Thus “substantial” refers to an amount less than “all” or “total.” The Commission has not taken the position that there is any particular percentage that constitutes substantial compliance. Rather than any bright line, the Commission has indicated in the rulemaking context that the determination needs to be made on a case-by-case basis.

Table 1 shows information about the CPSC recalls involving drawstrings on children’s upper outerwear for the years 2006–2010. The number of compliance cases related to recalls of children’s upper outerwear garments with drawstrings numbered 115 for that period, involving about 2.5 million units.

The number of recalls in 2008, 2009, and 2010, was more than the number of recalls in 2006 and 2007, with the number of recalls in 2010 representing the largest of those five years; however, fewer units of children’s outerwear garments were recalled in 2010, than in 2006, 2007, and 2009.

Table 1
CPSC Office of Compliance Recalls
Drawstrings on Children’s Upper Outerwear
2006–2010

Year	Number of Recall Cases	Number of Units of Upper Outerwear Recalled
2006	17	676,597
2007	14	626,172
2008	24	227,868

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2009	23	526,193
2010	37	431,145
Total	115	2,487,975

Source: Communication from CPSC Office of Compliance, March 18, 2010, and May 2, 2011.

In response to a comment to the proposed rule regarding whether ties are included in the definition of drawstring (discussed in more detail in section E of this preamble), staff reviewed the recall data to determine how many recall cases involved ties. For the 2006–2010 time period, there were six recalls (occurring in 2009 and 2010) of children’s upper outerwear that involved ties, accounting for 135,406 units. However, we do not have enough information to determine if this indeed accounts for all of the recall cases involving ties.

Using population data, garment sizing information, and assumptions about purchase and use, one can calculate the number of units recalled as a proportion of sales. This calculation provides a rough estimate of the extent of compliance with the voluntary standard.

As explained in the preamble to the proposed rule (75 FR at 27498) and in section A of this preamble, the voluntary standard applies to sizes 2T to 12 for neck and hood drawstrings and sizes 2T to 16 for drawstrings at the waist and bottom of upper outerwear. Information available to us indicates that a child’s age generally matches the child’s clothing size or is a year or two below the clothing size. For example, a child 12 years old might wear a size 12 or a size 14 garment. Similarly, for smaller sizes, children who are as young as 18 months might wear size 2T clothing. Thus, the ages of children wearing size 2T to 12 (the sizes covered by the voluntary standard for upper outerwear

with hood or neck drawstrings) would be 18 months to 10 years. The age range of children who typically wear sizes 2T to 16 (the sizes covered by the voluntary standard for upper outerwear with waist or bottom drawstrings) would be 18 months to 14 years.

For each of the years 2006 through 2010, the population of children ages 18 months to 10 years old (those wearing sizes 2T to 12, as noted above) was about 39 million. The population of children ages 18 months to 14 years old (those wearing sizes 2T to 16, as noted above) was about 55 million.¹

No numerical data about recent annual sales of children's upper outerwear is available. However, given children's growth patterns, it may be that, on average, at least one new piece of upper outerwear is purchased each year for each child. If so, then sales of upper outerwear with neck and hood drawstrings or with waist and bottom drawstrings could total the population of children who wear children's sizes 2T to 16, or approximately 55 million units.

Assuming that: (1) all garments violating the drawstring voluntary standard were recalled in the years 2006 through 2010; (2) at least one new piece of upper outerwear, on average, is purchased for each child each year; and (3) annual unit sales of upper outerwear with neck or hood drawstrings totaled 55 million, then it would appear that the number of children's upper outerwear garments that complied with the drawstring requirements of ASTM F 1816-97 was in the very high 90 percent range. While the number of recalled units in the years 2006 through 2010 totaled about 2.5 million, the

¹ For the years 2006 through 2009, this number is based on Bureau of the Census, U.S. Department of Commerce data, which can be found in "Table 1. Annual Estimates of the Resident Population by Sex and Five-Year Age Groups for the United States: April 1, 2000 to July 1, 2009" at www.census.gov/popest/national/asrh/NC-EST2009/NC-EST2009-01.xls. For 2010, the number is based on Bureau of the Census, U.S. Department of Commerce data found in "Table 1. Population by Age and Sex: 2010" at www.census.gov/population/www/socdemo/age/age_sex_2010.html.

number of units sold during those five years, under the assumptions above, totaled 275 million. Thus, for the period 2006 through 2010, the units recalled by the CPSC (with ties included or excluded, insofar as that data are complete) would account for about 1 percent of all units sold; in other words, given the assumptions above, there was about 99 percent compliance with the voluntary standard. Even if these assumptions are not entirely accurate, the Commission concludes that compliance with ASTM F 1816-97 is very high and constitutes substantial compliance, as that term is used in section 15(j) of the CPSA.

E. Comments on the Proposed Rule and CPSC's Responses

In the **Federal Register** of May 17, 2010 (75 FR 27497), we published a proposed rule that would specify that children's upper outerwear garments in sizes 2T to 12 or the equivalent that have neck or hood drawstrings, and in sizes 2T to 16 or the equivalent that have waist or bottom drawstrings that do not meet specified criteria, have characteristics that constitute substantial product hazards. We received seven comments on the proposed rule. We summarize and respond to the issues raised by those comments here. To make it easier to identify the comments and our responses, the word "Comment," in parentheses, will appear before the comment's description, and the word "Response," in parentheses, will appear before our response. We also numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value, or importance, or the order in which it was received.

1. Request for a Mandatory Ban

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(Comment 1) - One commenter characterized the proposed rule as an “effort to urge voluntary compliance with the garment industry” and asked that we “institute an outright mandatory ban on the types of drawstring garments [the Commission] describe[s] in [the] proposed rule” instead.

(Response 1) - The commenter’s characterization of the rule as an effort to urge “voluntary compliance” from the garment industry is misplaced. Section 15(j) of the CPSA, 15 U.S.C. § 2064(j), authorizes the Commission to deem characteristics of any consumer product or class of consumer products to be a substantial product hazard under section 15(a)(2) of the CPSA, if we determine that: (A) such characteristics are readily observable and have been addressed by voluntary standards; and (B) such voluntary standards have been effective in reducing the risk of injury from the consumer product(s) and that there is substantial compliance with such standards. A product that is or has a substantial product hazard is subject to the reporting requirements of section 15(b) of the CPSA. 15 U.S.C. § 2064(b). A manufacturer who fails to report a substantial product hazard to the Commission is subject to civil penalties under section 20 of the CPSA and possibly to criminal penalties under section 21 of the CPSA. *Id.* §§ 2069 and 2070.

A product that is or contains a substantial product hazard is also subject to corrective action under section 15(c) and (d) of the CPSA. *Id.* § 2064(c) and (d). Thus, we can order the manufacturer, distributor, or retailer of the product to offer to repair or replace the product, or refund the purchase price to the consumer. Finally, a product that is offered for import into the United States and is or contains a substantial product hazard shall be refused admission into the United States under section 17(a) of the CPSA. *Id.* § 2066(a).

2. Range of Sizes Covered by the Standard

(Comment 2) - One commenter recommended that the rule should cover sizes smaller than 2T and should prohibit drawstrings in pants as well as upper outerwear.

(Response 2) - Both recommendations are outside the scope of this rulemaking. The voluntary standard applicable to drawstrings does not cover sizes smaller than 2T and does not apply to drawstrings in pants. Section 15(j) of the CPSA only allows a determination of a substantial product hazard for product characteristics that have been addressed by voluntary standards with which there is substantial compliance. Therefore, we cannot adopt the commenter's recommendations. If information becomes available showing that such action is needed, then we could consider whether we could make the findings to issue a standard or ban drawstrings in sizes smaller than 2T or in pants, or to support industry in the implementation of a voluntary standard addressing these issues.

3. Age of Children at Risk

(Comment 3) - Two commenters stated that product safety standards should refer to the ages of the children at risk and not to the sizes of the garments.

(Response 3) - This suggestion is outside the scope of this rulemaking. Only those characteristics of a product that have been addressed by a voluntary standard may be deemed to be a substantial product hazard in a rule made under section 15(j) of the CPSA. The applicable voluntary standard for drawstrings in children's upper outerwear, ASTM F 1816-97, addresses garment sizes but not children's ages. Therefore, the Commission cannot take the action requested in this rulemaking.

However, the preamble to the proposed rule (75 FR at 27501 through 27502) discussed what the corresponding ages are—namely, that size 2T would be worn by

children about 18 months of age; size 12 would be worn by children about 10 years of age; and size 16 would be worn by children about 14 years of age. Furthermore, although the voluntary standard on which the proposed rule is based (ASTM F 1816-97) refers to children's clothing sizes only, it also references age in the Rationale (Appendix, section X1). That section reports the ages of the victims in incidents involving hood and neck drawstrings (14 months to 8 years) and incidents involving waist and bottom drawstrings (7 years to 14 years). The CPSC Directorate for Epidemiology staff's review of the data on related incidents shows that little has changed with regard to age since the Standard was developed. Those incidents associated with neck drawstrings involved children 10 years old and younger. Incidents associated with waist or bottom drawstrings involved children 14 years old and younger. The ages reported in the incident data correlate well with information from retailer size charts, anthropometric body measurement data, and standard tables of body measurements developed by ASTM. These sources show that the age range of children likely to wear garments in sizes 2T to 12 is 18 months to 10 years, and the age range of children likely to wear garments sizes 2T to 16 is 18 months to 14 years. These are the ages the Standard is intended to cover because children of those ages are most at risk.

4. Adult Apparel and Marketing Concerns

(Comment 4) - Two commenters also requested "that CPSC clearly state that adult apparel, marketed to adults, or merchandised in adult departments will not be subject to this rule." These commenters stated that "adult apparel sized small or extra small could easily pass for a larger sized child's garment. . . . [a] generic adult's sized extra small hooded sweatshirt could easily be mistaken as a children's garment."

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(Response 4) - We agree that garments intended for adults and marketed to adults only would not be subject to the rule because they are not *children's* garments. We do not believe, however, that consideration of the manufacturer's intended wearer should supersede consideration of the actual or reasonably foreseeable wearers. While a manufacturer, retailer, or distributor may intend that only adults should wear the garment, we will consider the reasonably foreseeable uses and misuses of garments that are labeled ambiguously, including uses by those whom it is reasonably foreseeable will wear it. Many factors could confound a manufacturer's, retailer's, or distributor's intent that only adults would wear a garment.

We believe that consumers make their buying and wearing decisions based primarily on a garment's size and characteristics, including fabric, color, print, texture, and other features, independent of label information related to the intended wearer. We agree that smaller adult apparel could easily pass for an older child's garment. This is evidenced in the overlap of body dimensions used in industry sizing charts to define smaller adult sizes and larger children's sizes. Further, children at the pre-teen and teen stages often want to dress like adults, and adults sometimes wear clothing that appeals to children and is available in sizes for both children and adults (*e.g.*, clothing with designs relating to cartoon characters and theme-related characters). Because of the overlap in sizes and appeal, it is foreseeable that ambiguously labeled apparel could pass for a child's garment and may be purchased for use by children. Therefore, we believe that such clothing should meet the Standard's drawstring requirements and should be subject to the 15(j) rule for drawstrings and that it would be inappropriate to exclude all "adult apparel" from the rule.

In addition, relying on where or how a given retailer may display a garment would present practical problems. One retailer may offer the garment in the women's section; another retailer may offer the same garment in the children's section; and yet another retailer may offer the garment in a grouping by garment type, without reference to age or gender (*e.g.*, all sweatshirts). Some retailers may not differentiate at all between departments within their store based on age or gender. It would be impractical and unwise to rely on presumptions about the retail treatment.

For these reasons, if upper outerwear is labeled ambiguously or not marketed clearly for adults only and is equivalent to a size within the range of 2T to 16, then that upper outerwear should meet the Standard's drawstring requirements and should be subject to the 15(j) rule for drawstrings. If a manufacturer, retailer, or distributor has any doubt, it should report the garment to the Commission in accordance with section 15 of the CPSA.

5. Definition of Drawstring

(Comment 5) - Two commenters jointly requested clarification regarding the definition of a "drawstring" as stated in the Standard. Specifically, these commenters stated that the common industry understanding of a drawstring is a cord that passes through a channel, and the commenters raised concerns about the 2009 recall of children's hooded sweatshirts with ties sewn in at the base of the hood. The commenters stated that these ties do not pass through a channel or necessarily provide for closure. They expressed concern about the potential for confusion in the marketplace regarding which closures meet the "drawstring" definition in the Standard.

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(Response 5) - The Standard defines a “drawstring” as “a non-retractable cord, ribbon, or tape of any material to pull together parts of upper outerwear to provide for closure.” The Standard’s “drawstring” definition is not limited to cords, ribbons, or tapes *that pass through a channel*. Further, the definition does not exclude ties. In fact, more than 15 years ago, the Commission warned about strangulation risks to children from hood and neck strings generally. The Commission has long believed that nonretractable cords, ribbons, or tapes of any material that pull together parts of upper outerwear to provide for closure constitute drawstrings, regardless of whether they pass through a channel. Those that do not pass through a channel (*i.e.*, ties that fail to comply with or that result in an article of children’s upper outerwear failing to comply with the Standard’s performance requirements) constitute defects that create a substantial risk of injury to children. The Commission has also long understood that such ties have fallen within the Standard’s definition of the term “drawstring” and been covered by the Standard. In the Commission’s recall and other enforcement efforts, CPSC has interpreted and applied the Standard in a manner consistent with these beliefs.

If, however, as the commenters suggest, the common understanding in industry of a drawstring is a cord that passes through a channel, then that raises the question of whether there has been substantial compliance with the Standard as it pertains to ties without channels. While we do not agree with the interpretation advanced by the commenters, the Commission staff intends to work with the ASTM subcommittee to clarify the Standard to remove any possible ambiguity and ensure substantial compliance by industry. Therefore, for the sole purpose of this rulemaking, we will limit the garments subject to this CPSA section 15(j) substantial product listing to products with a

nonretractable cord, ribbon, or tape of any material *inside a channel* to pull together parts of upper outerwear to provide for closure until substantial compliance can be confirmed with respect to closures such as ties that do not pass through a channel. The Commission continues to believe that children's upper outerwear with ties is subject to the Standard and presents a substantial product hazard. At a later date, we intend to revisit the matter of substantial compliance with respect to ties.

Further, we believe that, under section 15 of the CPSA, manufacturers, retailers, and distributors have had a continuing duty to report to the Commission regarding ties and that firms will continue to have such a duty. Reporting will increase the safety of children, a vulnerable population, and, as warranted, we will continue to seek recalls of children's upper outerwear with ties given the substantial risk of injury these garments present to children.

6. Manufacturers' Sizing Systems

(Comment 6) - A commenter expressed concern about how the Commission would evaluate whether a children's garment falls within the size range stated in the Standard. Noting that apparel sizing varies among companies, the commenter questioned the Commission's position in proposed § 1120.3(b)(2)(v) that a firm's statement of what sizes are equivalent to sizes 2T to 16 may not be used to show that the size of a garment is not equivalent to a size in the range of 2T to 16. The commenter stated that the Commission's position is inconsistent with the CPSIA's definition of the term "children's product," which lists a statement of the manufacturer's intended use as a factor to be considered. The commenter stated that a manufacturer's statement, if reasonable, should be the primary consideration of whether a garment is covered by the Standard.

(Response 6) - After further evaluation, we are removing § 1120.3(b)(2)(v) in its entirety. We will consider a manufacturer’s statement about the intended use of a children’s garment, if such statement is reasonable. We do not believe, however, that a manufacturer’s statement, even if reasonable, should be the primary consideration in determining whether a garment is covered by the Standard. Rather, in any given matter, we will consider all of the relevant factors and will weigh them appropriately.

7. Definition of “Upper Outerwear”

(Comment 7) - A commenter recommended that “Lightweight garments worn on the upper body, but intended as an inner layer, or intended for warmer weather climates that do not use outerwear should be excluded.”

(Response 7) - The Standard defines “upper outerwear” as “*clothing, such as jackets and sweatshirts, generally intended to be worn on the exterior of other garments.*” This definition excludes underwear and inner layers, but includes lightweight outerwear that is appropriate for use in warmer climates. The hazards presented by drawstrings on children’s upper outerwear are not limited to heavyweight outerwear. Any drawstring that can dangle from the neck or waist area of outerwear during play activities presents the hazard, even if the garment’s fabric is lightweight. Pants, shorts, and skirts are not intended for the upper portion of the body and are excluded from the scope of the Standard.

F. Description of the Final Rule

The final rule for drawstrings creates a new § 1120.3(b)(1) to specify that items of children’s upper outerwear that are subject to ASTM F 1816-97, but that do not comply with it, are substantial product hazards under section 15(a)(2) of the CPSA. The

rule also creates a new § 1120.2(c) to define a “drawstring” as “a non-retractable cord, ribbon, or tape of any material to pull together parts of outerwear to provide for closure.”

To facilitate determining which garments that are sized under a sizing system other than the numerical system (2T to 16) are equivalent to sizes 2T to 16, § 1120.3(b)(2)(i) provides that garments in girls’ size Large (L) and boys’ size Large (L) are equivalent to size 12. Section 1120.3(b)(2)(ii) specifies that garments in girls’ size Extra-Large (XL) and boys’ size Extra-Large (XL) are equivalent to size 16.

Section 1120.3(b)(2)(iii) provides that if a garment is labeled for a range of sizes, the garment will be considered subject to ASTM F 1816-97, if any size within the range is subject to ASTM F 1816-97. Section 1120.3(b)(2)(iv) provides that, in order to fall within the scope of § 1120.3(b)(2)(i) through (iii), a garment need not state anywhere on it, or on its tags, labels, package, or any other materials accompanying it, the term “girls” or the term “boys” or whether the garment is intended for girls or boys. Last, § 1120.3(b)(v) states that the Commission may use any other evidence that would tend to show that an item of children’s upper outerwear is a size that is equivalent to sizes 2T to 16.

G. Effect of Section 15(j) Rule

Section 15(j) of the CPSA authorizes us to issue a rule specifying that a consumer product (or class of consumer products) has characteristics whose presence or absence creates a substantial product hazard. This rule, which falls under section 15 of the CPSA, is not a consumer product safety rule and does not create a consumer product safety standard. Thus, the rule does not trigger any testing or certification requirements under section 14(a) of the CPSA.

Although the final rule does not establish a consumer product safety standard, placing a consumer product on this substantial product hazard list has certain consequences. A product that is or has a substantial product hazard is subject to the reporting requirements of section 15(b) of the CPSA. 15 U.S.C. 2064(b). A manufacturer who fails to report a substantial product hazard to the Commission is subject to civil penalties under section 20 of the CPSA and possibly is subject to criminal penalties under section 21 of the CPSA. 15 U.S.C. 2069, 2070.

A product that is or contains a substantial product hazard is subject to corrective action under section 15(c) and (d) of the CPSA. 15 U.S.C. 2064(c), (d). Thus, the Commission can order the manufacturer, distributor, or retailer of the product to offer to repair or replace the product, or to refund the purchase price to the consumer.

Finally, a product that is offered for import into the United States, and is or contains a substantial product hazard, must be refused admission into the United States under section 17(a) of the CPSA. 15 U.S.C. 2066(a).

H. Regulatory Flexibility Certification

The Regulatory Flexibility Act (“RFA”) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses. 5 U.S.C. 601–612. In the preamble to the proposed rule (75 FR at 27503), we noted that Commission staff estimates that a very high percentage of small businesses that manufacture or sell children’s upper outerwear already sell only garments that comply with, ASTM F 1816-97. Also, the Commission’s Office of Compliance and Field Operations already considers children’s upper outerwear with hood or neck area drawstrings that are subject to, but do not comply with, ASTM F 1816-97 to be a

substantial product hazard and would seek recalls of such products, regardless of whether they are added, by rule, to the list of substantial product hazards under Section 15(j) of the CPSA. Finally, conformance to ASTM F 1816-97 is achieved for many garments distributed in commerce simply by eliminating drawstrings from the manufacturing process with minimal or no increase in resulting production costs. Therefore, we certified that, in accordance with section 605 of the RFA, the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

We received no comments concerning the rule's impact on small businesses, and we are not aware of any information that would change our certification.

I. Environmental Considerations

The Commission's environmental review regulation at 16 CFR part 1021 has established categories of actions that normally have little or no potential for affecting the human environment and therefore do not require either an environmental assessment or an environmental impact statement. This rule is within the scope of the Commission's regulation, at 16 CFR 1021.5(c)(1) that provides a categorical exclusion for rules to provide design or performance requirements for products. Thus, no environmental assessment or environmental impact statement for this rule is required.

J. Paperwork Reduction Act

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

K. Effective Date

The preamble to the proposed rule indicated that a final rule would take effect 30 days from its date of publication in the **Federal Register**, such that, after that date, all items of children’s upper outerwear that are subject to, but do not comply with, ASTM F 1816-97, would constitute a substantial product hazard.

We received no comments regarding the effective date. Accordingly, the effective date for this rule is **[insert date 30 days after the date of publication in the FEDERAL REGISTER]**.

L. Preemption

Under section 26(a) of the CPSA, 15 U.S.C. 2075(a), if a “consumer product safety standard under [the CPSA]” is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury, unless the state requirement is identical to the federal standard. A rule under section 15(j) of the CPSA is not a “consumer product safety standard.” Accordingly, the preemptive effect of section 26(a) of the CPSA does not apply to a rule under section 15(j) of the CPSA.

List of Subjects in 16 CFR 1120

Administrative practice and procedure, Consumer protection, Household appliances, Imports, Incorporation by reference.

Conclusion

For the reasons stated above, and under the authority of 15 U.S.C. 2064(j), 5 U.S.C. 553, and section 3 of Public Law 110-314, 122 Stat. 3016 (August 14, 2008), the U.S. Consumer Product Safety Commission amends title 16 of the Code of Federal Regulations as follows:

PART 1120 – SUBSTANTIAL PRODUCT HAZARD LIST

1. The authority citation for part 1120 continues to read as follows:

Authority: 15 U.S.C. 2064(j); Sec. 3, Pub. L. 110-314, 122 Stat. 3016.

2. Amend § 1120.2 by adding a new paragraph (c) to read as follows:

§ 1120.2 Definitions.

* * * * *

(c) *Drawstring* means a non-retractable cord, ribbon, or tape of any material to pull together parts of upper outerwear to provide for closure.

3. In § 1120.3, add paragraph (b) to read as follows:

§ 1120.3 Substantial product hazard list.

* * * * *

(b) (1) Children’s upper outerwear in sizes 2T to 16 or the equivalent, and having one or more drawstrings, that is subject to, but not in conformance with, the requirements of ASTM F 1816–97, *Standard Safety Specification for Drawstrings on Children’s Upper Outerwear*. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428-2959 USA, telephone: 610-832-9585; <http://www2.astm.org/>. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the

availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(2) The Commission limits the products covered in paragraph (b) of this section to products with a nonretractable cord, ribbon, or tape of any material inside a channel to pull together parts of upper outerwear to provide for closure until the Commission revisits the issue of substantial compliance by industry with respect to closures such as ties that do not pass through a channel.

(3) At its option, the Commission may use one or more of the following methods to determine what sizes of children's upper outerwear are equivalent to sizes 2T to 16:

(i) Garments in girls' size Large (L) and boys' size Large (L) are equivalent to girls' or boys' size 12, respectively. Garments in girls' and boys' sizes smaller than Large (L), including Extra-Small (XS), Small (S), and Medium (M), are equivalent to sizes smaller than size 12. The fact that an item of children's upper outerwear with a hood and neck drawstring is labeled as being larger than a size Large (L) does not necessarily mean that the item is not equivalent to a size in the range of 2T to 12.

(ii) Garments in girls' size Extra-Large (XL) and boys' size Extra-Large (XL) are equivalent to size 16. The fact that an item of children's upper outerwear with a waist or bottom drawstring is labeled as being larger than size Extra-Large (XL) does not necessarily mean that the item is not equivalent to a size in the range of 2T to 16.

(iii) In cases where garment labels give a range of sizes, if the range includes any size that is subject to a requirement in ASTM F 1816-97, the garment will be considered subject, even if other sizes in the stated range, taken alone, would not be subject to the requirement. For example, a coat sized 12 through 14 remains subject to the prohibition

DRAFT

of hood and neck area drawstrings, even though this requirement of the ASTM standard only applies to garments up to size 12. A coat size 13 through 15 would not be considered within the scope of the ASTM standard's prohibition of neck and hood drawstrings, but would be subject to the requirements for waist or bottom drawstrings.

(iv) To fall within the scope of paragraphs (b)(2)(i) through (2)(iii) of this section, a garment need not state anywhere on it, or on its tags, labels, package, or any other materials accompanying it, the term "girls," the term "boys," or whether the garment is designed or intended for girls or boys.

(v) The Commission may use any other evidence that would tend to show that an item of children's upper outerwear is a size that is equivalent to sizes 2T to 16.

Dated: _____

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



Staff Briefing Package

Drawstrings 15(j) Action
June 22, 2011

CPSC Hotline: 1-800-638-CPSC(2772) CPSC's Web Site: <http://www.cpsc.gov>

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Briefing Memo



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

This document has been electronically
approved and signed.

Memorandum

Date: June 21, 2011

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel
Kenneth R. Hinson, Executive Director

FROM : DeWane Ray
Deputy Assistant Executive Director
Office of Hazard Identification and Reduction (EXHR)

Jonathan Midgett, Ph.D.
Project Manager for 15(j) Drawstrings
Office of Hazard Identification and Reduction (EXHR)

SUBJECT : Drawstrings Draft Final Rule

I. Introduction

On Aug. 14, 2008, the Consumer Product Safety Improvement Act of 2008 (hereafter referred to as the "Act" or the "CPSIA") was enacted into law [Public Law 110-314]. Section 223(a) of the Act amends section 15 of the Consumer Product Safety Act ("CPSA") (15 U.S.C. § 2064) by adding a new subsection (j). Section 15(j) of the CPSA authorizes the U.S. Consumer Product Safety Commission ("CPSC" or "Commission") to designate, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence shall be deemed "a substantial product hazard." To do so, the Commission must determine that:

- the characteristics are readily observable and have been addressed by voluntary standards;
- such standards have been effective at reducing the risk of injury; and
- industry is in substantial compliance with such standards.

On May 17, 2010, the Commission published a notice of proposed rulemaking titled, "Determination That Children's Upper Outerwear in Sizes 2T to 12 With Neck or Hood Drawstrings and Children's Upper Outerwear in Sizes 2T to 16 With Certain Waist or Bottom Drawstrings Are a Substantial Product Hazard," CPSC Docket No. CPSC-2010-0043 (75 Fed. Reg. 27,497).

The relevant industry consensus Standard for this rulemaking is ASTM International's ("ASTM," formerly American Society for Testing and Materials) ASTM F 1816-97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear* ("Standard"). The Standard defines a "drawstring" as a "non-retractable cord, ribbon, or tape of any material to pull

CPSC Hotline: 1-800-638-CPSC(2772) CPSC's Web Site: <http://www.cpsc.gov>

together parts of upper outerwear to provide for closure.” The Standard prohibits the use of drawstrings at the hood and neck areas of children’s upper outerwear in sizes 2T to 12 and requires that waist/bottom drawstrings on upper outerwear in sizes 2T to 16 not exceed 75 mm (3 inches) in length outside the drawstring channel when the garment is expanded to its fullest width. In addition, the drawstrings can have no toggles, knots, or other attachments at the free ends. If the drawstring is one continuous string, it must be bartacked or sewn to the garment so that it cannot be displaced and thereby extend from the garment farther than the allowable maximum length when the garment is expanded to its fullest width. Fully retractable drawstrings are exempt from these requirements.

The Commission received seven comments on the proposed rule. This memorandum contains staff responses to those comments.

II. Staff Responses to Public Comments

Request for Mandatory Ban

A commenter characterized the proposed rule as an “effort to urge voluntary compliance with the garment industry” and asked that the Commission instead “institute an outright mandatory ban on the types of drawstring garments [the Commission] describe[s] in [the] proposed rule.”

Staff Response

The commenter’s characterization of the rule as an effort to urge “voluntary compliance” from the garment industry is misplaced. Section 15(j) of the CPSA, 15 U.S.C. § 2064(j), authorizes the Commission to deem characteristics of any consumer product or class of consumer products to be a substantial product hazard under section 15(a)(2) of the CPSA if the Commission determines that: (A) such characteristics are readily observable and have been addressed by voluntary standards; (B) such voluntary standards have been effective in reducing the risk of injury from the consumer product(s); and (C) there is substantial compliance with such standards. A product that is or has a substantial product hazard is subject to the reporting requirements of section 15(b) of the CPSA. 15 U.S.C. § 2064(b). A manufacturer who fails to report a substantial product hazard to the Commission is subject to civil penalties under section 20 of the CPSA and possibly to criminal penalties under section 21 of the CPSA. *Id.* §§ 2069 and 2070.

A product that is or contains a substantial product hazard is also subject to corrective action under section 15(c) and (d) of the CPSA. *Id.* § 2064(c) and (d). Thus, the Commission can order the manufacturer, distributor, or retailer of the product to offer to repair or replace the product, or refund the purchase price to the consumer. Finally, a product that is offered for import into the United States and is or contains a substantial product hazard shall be refused admission into the United States under section 17(a) of the CPSA. *Id.* § 2066(a).

Range of Sizes Covered by the Standard

A commenter recommended that the rule should cover sizes smaller than 2T and should prohibit drawstrings in pants as well as upper outerwear.

Staff Response

Both of these suggestions are outside the scope of the present rulemaking. The voluntary Standard applicable to drawstrings does not cover sizes smaller than 2T and does not apply to drawstrings in pants. Section 15(j) of the CPSA only allows a determination of a substantial product hazard for product characteristics that have been addressed by voluntary standards with which there is substantial compliance. Therefore, staff believes that the Commission cannot adopt the commenter's recommendations in this rulemaking. If information becomes available showing that such action is needed, the Commission then could consider whether it could make the findings to issue a standard or ban drawstrings in sizes smaller than 2T or in pants, or to support industry in the implementation of a voluntary standard addressing these issues.

Age of Children at Risk

Two commenters stated that product safety standards should refer to the ages of the children at risk and not to the sizes of the garments.

Staff Response

This suggestion is outside the scope of this rulemaking. Only those characteristics of a product that have been addressed by a voluntary standard may be deemed to be a substantial product hazard in a rule made under section 15(j) of the CPSA. The applicable voluntary Standard for drawstrings in children's upper outerwear, ASTM F 1816-97, addresses garment sizes but not children's ages. Therefore, staff believes that the Commission cannot take the requested action in this rulemaking.

However, the preamble to the proposed rule (75 Fed. Reg. at 27501-27502) discussed what the corresponding ages are—namely, that size 2T would be worn by children about 18 months of age; size 12 would be worn by children about 10 years of age; and size 16 would be worn by children about 14 years of age. Furthermore, although the voluntary Standard on which the proposed rule is based (ASTM F 1816-97) refers to children's clothing sizes only, it also references age in the Rationale (Appendix, section X1). That section reports the ages of the victims in incidents involving hood and neck drawstrings (14 months to 8 years) and incidents involving waist and bottom drawstrings (7 years to 14 years). The CPSC Directorate for Epidemiology staff's review of the data on related incidents shows that little has changed with regard to age since the Standard was developed. Those incidents associated with neck drawstrings involved children 10 years old and younger. Incidents associated with waist or bottom drawstrings involved children 14 years old and younger. The ages reported in the incident data correlate well with information from retailer size charts, anthropometric body measurement data, and standard tables of body measurements developed by ASTM. These sources show that the age range of children likely to wear garments in sizes 2T to 12 is 18 months to 10 years, and the age range of children likely to wear garments sizes 2T to 16 is 18 months to 14 years. These are the ages the Standard is intended to cover because children of those ages are most at risk.

Adult Apparel and Marketing Concerns

Two commenters also requested "that CPSC clearly state that adult apparel, marketed to adults, or merchandised in adult departments will not be subject to this rule." These commenters stated that "adult apparel sized small or extra small could easily pass for a larger sized child's garment.

. . . [a] generic adult's sized extra small hooded sweatshirt could easily be mistaken as a children's garment."

Staff Response

CPSC staff agrees that garments intended for adults and marketed to adults only would not be subject to the rule because they are not *children's* garments. Staff does not believe, however, that consideration of the manufacturer's intended wearer should supersede consideration of the actual or reasonably foreseeable wearers. While a manufacturer, retailer, or distributor may intend that only adults should wear the garment, staff believes that the Commission should consider the reasonably foreseeable uses and misuses of garments that are labeled ambiguously. This includes uses of the garments by those whom the Commission reasonably foresees will wear it. Many factors could confound a manufacturer's, retailer's, or distributor's intent that only adults would wear a garment.

CPSC staff believes consumers make their buying and wearing decisions based primarily on a garment's size and characteristics, including fabric, color, print, texture, and other features, independent of label information related to the intended wearer. CPSC staff agrees that smaller adult apparel could easily pass for an older child's garment. This is evidenced in the overlap of body dimensions used in industry sizing charts to define smaller adult sizes and larger children's sizes. Further, children at the pre-teen and teen stages often want to dress like adults, and adults sometimes wear clothing that appeals to children and is available in sizes for both children and adults (*e.g.*, clothing with designs relating to cartoon characters and theme-related characters). Because of the overlap in sizes and appeal, it is foreseeable that ambiguously labeled apparel could pass for a child's garment and may be purchased for use by children. Therefore, staff believes that such clothing should meet the Standard's drawstring requirements and should be subject to the 15(j) rule for drawstrings and that it would be inappropriate for the Commission to exclude all "adult apparel" from the rule.

In addition, relying on where or how a given retailer may display a garment is fraught with problems. One retailer may offer the garment in the women's section; another retailer may offer the same garment in the children's section; and yet another retailer may offer the garment in a grouping by garment type, without reference to age or gender (*e.g.*, all sweatshirts). Some retailers may not differentiate at all between departments within their store based on age or gender. Commission staff believes it would be impractical and unwise to rely on presumptions about the retail treatment.

For these reasons, staff believes that if upper outerwear is labeled ambiguously or not marketed clearly for adults only and is equivalent to a size within the range of 2T to 16, then that upper outerwear should meet the Standard's drawstring requirements and should be subject to the 15(j) rule for drawstrings. If a manufacturer, retailer, or distributor has any doubt, it should report the garment to the Commission in accordance with section 15 of the CPSA.

Definition of Drawstring

Two commenters jointly requested clarification regarding the definition of a "drawstring" as stated in the Standard. Specifically, these trade associations stated that the common industry understanding of a drawstring is a cord that passes through a channel, and the commenters raised

concerns about the 2009 recall of children's hooded sweatshirts with ties sewn in at the base of the hood. The commenters stated that these ties do not pass through a channel or necessarily provide for closure. They expressed concern about the potential for confusion in the marketplace regarding what closures meet the "drawstring" definition in the Standard.

Staff Response

The Standard defines a "drawstring" as "a non-retractable cord, ribbon, or tape of any material to pull together parts of upper outerwear to provide for closure." The Standard's "drawstring" definition is not limited to cords, ribbons, or tapes *that pass through a channel*. Further, the definition does not exclude ties. In fact, more than 15 years ago, the Commission warned about strangulation risks to children from hood and neck strings generally. CPSC staff has long believed that nonretractable cords, ribbons, or tapes of any material that pull together parts of upper outerwear to provide for closure are drawstrings, regardless of whether they pass through a channel. Those that do not pass through a channel (*i.e.*, ties that fail to comply with or that result in an article of children's upper outerwear failing to comply with the Standard's performance requirements) constitute defects that create a substantial risk of injury to children. Staff has also long understood that such ties have fallen within the Standard's definition of the term "drawstring" and been covered by the Standard. In the Commission's recall and other enforcement efforts, staff has interpreted and applied the Standard in a manner consistent with these beliefs.

If, however, as the commenters suggest, the common understanding in industry of a drawstring is a cord that passes through a channel, then that raises the question of whether there has been substantial compliance with the Standard as it pertains to ties without channels. Therefore, for the sole purpose of this rulemaking, staff will limit the garments subject to this CPSA section 15(j) substantial product listing to products with a cord, ribbon, or tape of any material *inside a channel* to pull together parts of upper outerwear to provide for closure until there can be a demonstration of substantial compliance by industry with respect to closures such as ties that do not pass through a channel. However, staff continues to believe that children's upper outerwear with ties is subject to the Standard and presents a substantial product hazard. If industry understood the definition of a "non-retractable cord, ribbon, or tape of any material to pull together parts of upper outerwear to provide for closure" as not including ties, then CPSC recommends that the ASTM subcommittee revise the definition to clarify this point in the Standard. Staff intends to work with the subcommittee to ensure such clarification. In addition, at a later date, staff intends to revisit the matter of substantial compliance with respect to ties.

Further, staff believes that, under section 15 of the CPSA, manufacturers, retailers, and distributors have had a continuing duty to report to the Commission regarding ties and that firms will continue to have such a duty. Reporting will increase the safety of children, a vulnerable population, and, as warranted, staff will continue to seek recalls of children's upper outerwear with ties given the substantial risk of injury these garments present to children.

Manufacturer's Sizing Systems

A commenter expressed concern about how the Commission would evaluate whether a children's garment falls within the size range stated in the Standard. Noting that apparel sizing varies among companies, the commenter questioned the Commission's position in proposed §

1120.3(b)(2)(v) that a firm's statement of what sizes are equivalent to sizes 2T to 16 may not be used to show that the size of a garment is not equivalent to a size in the range of 2T to 16. The commenter stated that the Commission's position is inconsistent with the CPSIA's definition of the term "children's product," which lists a statement of the manufacturer's intended use as a factor to be considered. The commenter believed that a manufacturer's statement, if reasonable, should be the primary consideration of whether a garment is covered by the Standard.

Staff Response

After further evaluation, CPSC staff recommends that the Commission remove § 1120.3(b)(2)(v) in its entirety. Staff recommends that the Commission consider a manufacturer's statement about the intended use of a children's garment, if such statement is reasonable. Staff does not believe, however, that a manufacturer's statement, even if reasonable, should be the primary consideration in determining whether a garment is covered by the Standard. Rather, in any given matter, the Commission should consider all of the factors and should weigh them as appropriate.

Definition of "Upper Outerwear"

A commenter recommended that "Lightweight garments worn on the upper body, but intended as an inner layer, or intended for warmer weather climates that do not use outerwear should be excluded."

Staff Response

The definition of "upper outerwear" in the Standard is "*clothing, such as jackets and sweatshirts, generally intended to be worn on the exterior of other garments.*" Staff believes that this definition excludes underwear and inner layers, but also includes lightweight outerwear that is appropriate for use in warmer climates. The hazards presented by drawstrings on children's upper outerwear are not limited to heavyweight outerwear. Any drawstring that can dangle from the neck or waist area of outerwear during play activities presents the hazard, even if the garment's fabric is lightweight. Pants, shorts, and skirts are not intended for the upper portion of the body and are excluded from the scope of the Standard.

III. Conclusion

Staff believes that the foregoing discussion addresses the public comments and recommends that the Commission finalize the rule to deem children's upper outerwear with drawstrings a substantial product hazard.

TAB A: Reported Frequencies of Fatal and Nonfatal Incidents Related to Drawstrings on Children's Upper Outerwear Between January 1985 and April 2011

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UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Memorandum

Date: June 21, 2011

TO : Jonathan Midgett
Children's Hazards Team Coordinator,
Office of Hazard Identification and Reduction

THROUGH: Kathleen Stralka
Associate Executive Director, Directorate for Epidemiology

FROM : John Topping,
Mathematical Statistician, Division of Hazard Analysis

SUBJECT : Reported Frequencies of Fatal and Nonfatal Incidents Related to Drawstrings
on Children's Upper Outerwear Between January 1985 and April 2011

Introduction:

This memorandum presents tabulated frequencies of fatalities, injuries, and noninjury entanglement incidents associated with drawstrings (including tie strings) on children's upper outerwear. The incidents, extracted from the CPSC's epidemiological databases, occurred between January 1985 and April 2011. Children's upper outerwear includes coats, jackets, and sweatshirts.

Neck/hood drawstring entanglements present strangulation hazards, while waist/bottom drawstrings typically present "dragging" hazards. Therefore, the frequency of reported entanglements associated with neck/hood drawstrings is recorded separately from entanglements associated with waist/bottom drawstrings on the upper outerwear.

The age ranges of victims entangled by drawstrings on children's upper outerwear that are included in the statistics differ based on the location of the drawstring. ASTM F 1816-97 *Standard Safety Specification for Drawstrings on Children's Upper Outerwear* applies to sizes 2T to 12 for neck/hood drawstrings and sizes 2T to 16 for waist/bottom drawstrings. Because drawstring entanglement incidents reported to CPSC staff do not include the size of the upper outerwear, CPSC staff conducted an analysis of sizing charts (see Tab B). Staff concluded that the 2T to 12 sizes covered by ASTM's neck/hood drawstring requirements should fit children in the 18 months to 10 years of age range, while the 2T to 16 sizes covered by the waist/bottom drawstring requirements should fit children in the 18 months to 14 years age range.¹ For that reason, the incidents in this memo are tabulated only for incidents with victims in the age ranges corresponding to the respective size specifications (18 months to 10 years for neck/hood drawstrings, 18 months to 14 years for waist/bottom drawstrings). The Standard exempts upper

¹ "Extent of Compliance with ASTM F 1816 - 97: Standard Safety Specification for Drawstrings on Children's Upper Outerwear" Memo by Elizabeth Leland.

outerwear that has drawstrings that are fully retractable. There is insufficient information in the reported incidents for CPSC staff to distinguish between incidents associated with fully retractable and nonretractable drawstrings.

It should be noted that tabulated frequencies are based on anecdotal incidents reported to CPSC staff. They are neither statistically based nor do they constitute national estimates. They represent the minimum number of hazardous incidents that occur annually and over time.

Reported Incidents Associated with Neck/Hood Drawstring Entanglements

CPSC staff is aware of 56 reports of neck/hood drawstring entanglements occurring between January 1985 and April 2011. Table 1 records the frequency of reported neck/hood drawstring entanglements by year and according to severity of the incident. Eighteen (32%) of these entanglements were fatal. The majority of the entanglements involved the neck/hood drawstrings snagging on sliding boards. Neck/hood drawstrings also became entangled on parts of cribs in several incidents. Of the 38 nonfatal incidents involving children between the ages of 18 months to 10 years, 30 incidents resulted in injuries. In the remaining eight incidents, the neck/hood drawstring snagged or entangled the child, but no injury was reported. The year with the highest number of reported fatalities—three—is 1994. The three years with the highest number of reported incidents (including fatal and nonfatal incidents) were 1992 (11), 1993 (9), and 1994 (9). Sliding boards were associated with 10 of the fatalities, 26 of the injury incidents, and all 8 of the noninjury incidents (the jackets or sweatshirts snagged by the hood or neck drawstring on playground sliding boards prior to escape or rescue).

The Standard for drawstrings on children's upper outerwear, ASTM F 1816-97, was approved in June 1997, and published in August 1998. CPSC staff is aware of 12 fatalities and 33 nonfatal incidents involving children ages 18 months to 10 years of age who were entangled by a neck/hood drawstring of upper outerwear during the 12 years (1985–1996) prior to the Standard. On average, this results in one reported fatality and about three nonfatal incidents a year. In the eight years (1999–2006) for which reporting is complete after ASTM F 1816-97 was published, CPSC staff received reports of two fatal and two nonfatal neck/hood drawstring incidents. On average, this is approximately one fatality every four years and about one nonfatal entanglement every four years. For the years for which reporting is considered complete, the data show a reduction in the annual average number of reported fatalities after the ASTM standard of approximately 75 percent. The corresponding reduction in the annual average number of reported nonfatal entrapments is 91 percent. It should be noted that CPSC staff is continuing to receive incident reports for the years 2007–2010. CPSC staff is aware of three fatalities during the years 2007–2010. The number of reported incidents for these years may change in the future. No fatalities have been reported to date for 2011. When reporting through 2010 is considered complete, the percent reduction in the annual average number of reported fatalities associated with neck/hood drawstrings, at most, will be 58 percent, if no additional fatal incidents are reported.

**Table 1. Hood or Neck Drawstring Entanglements on Upper Outerwear
Reported to CPSC Staff
Children Ages 18 Months–10 Years
(Ages Likely to Wear Sizes 2T to 12)**

Incident Year	Fatal	Injury Indicated	No Injury (Snag or Entrapment)	Non-fatal Incidents (Injury + No Injury)	Total (Fatal + Injury + No Injury)
1985	2	0	0	0	2
1986	1	0	0	0	1
1987	0	0	0	0	0
1988	0	0	0	0	0
1989	0	2	0	2	2
1990	1	1	1	2	3
1991	0	0	0	0	0
1992	2	8	1	9	11
1993	1	6	2	8	9
1994	3	5	1	6	9
1995	1	3	1	4	5
1996	1	2	0	2	3
1997	0	1	0	1	1
1998	1	0	2	2	3
1999	1	0	0	0	1
2000	0	1	0	1	1
2001	0	0	0	0	0
2002	0	0	0	0	0
2003	0	0	0	0	0
2004	0	0	0	0	0
2005	0	1	0	1	1
2006	1	0	0	0	1
2007	0	0	0	0	0
2008	2	0	0	0	2
2009	1	0	0	0	1
2010	0	0	0	0	0
2011	0	0	0	0	0
Total	18	30	8	38	56

Source: CPSC EPIR. Based on incidents with reports entered into any of CPSC’s IPII, DTHS, NEISS, or INDP databases before April 25, 2011 (Source descriptions are provided in the Methods Section). *Reporting for 2007–2011 is ongoing.*

Reported Incidents Associated with Waist/Bottom Drawstring Entanglements

Between January 1985 and April 2011, CPSC staff received 28 reports of entanglement incidents associated with a waist/bottom drawstring on children’s upper outerwear. Of these 28 incidents, 8 (29%) were fatal; 11 (39%) resulted in injuries; and 9 (32%) constituted snags or entanglements that did not result in injuries. As Table 2 illustrates, no waist/bottom drawstring incidents were reported to CPSC staff prior to 1991. All eight fatalities (7 bus, 1 slide) identified with waist/bottom drawstrings occurred between the years 1991–1996. During 1991 to 1996, there were a total of 19 waist/bottom drawstring incidents, of which 13 involved buses (7 bus

fatalities and 6 bus nonfatal incidents). CPSC staff is not aware of any bus incidents after the year 1996. There were nine waist/bottom drawstring incidents from 1997 to the present (all nonfatal), of which three involved children caught on car doors. Six of these nonfatal incidents occurred during the years 1999-2006 (years following the Standard for which reporting is considered complete). These data suggest that after the ASTM Standard was adopted, for waist and bottom drawstrings the annual average of reported fatalities fell by 100 percent and the annual average of reported nonfatal incidents fell by about 18 percent.

**Table 2. Waist or Bottom Entanglements on Upper Outerwear
Reported to CPSC Staff
Children Ages 18 Months–14 Years
(Ages Likely to Wear Sizes 2T to 16)**

Incident Year	Fatal	Injury Indicated	No Injury (Snag, Entrapment, or Entanglement)	Non-fatal Incidents (Injury + No Injury)	Total (Fatal + Injury + No Injury)
1985	0	0	0	0	0
1986	0	0	0	0	0
1987	0	0	0	0	0
1988	0	0	0	0	0
1989	0	0	0	0	0
1990	0	0	0	0	0
1991	2	1	0	1	3
1992	0	1	0	1	1
1993	1	2	4	6	7
1994	1	1	1	2	3
1995	2	0	0	0	2
1996	2	1	0	1	3
1997	0	1	0	1	1
1998	0	0	0	0	0
1999	0	1	0	1	1
2000	0	2	1	3	3
2001	0	0	1	1	1
2002	0	0	0	0	0
2003	0	0	0	0	0
2004	0	1	0	1	1
2005	0	0	0	0	0
2006	0	0	0	0	0
2007	0	0	1	1	1
2008	0	0	0	0	0
2009	0	0	0	0	0
2010	0	0	1	1	1
2011	0	0	0	0	0
Total	8	11	9	20	28

Source: CPSC EPIR. Based on incidents with reports entered into any of CPSC’s IPII, DTHS, NEISS, or INDP databases before April 25, 2011 (Source descriptions are provided in the Methods Section). *Reporting for 2007–2011 is ongoing.*

All of the reported fatalities associated with waist/bottom drawstrings on children's upper outerwear occurred prior to the approval and publication of ASTM F 1816-97. In the 12 years (1999–2010) following the 1998 publication of the ASTM Standard addressing drawstrings, CPSC staff received 8 (40%) of the 20 reports of nonfatal incidents in which a waist/bottom drawstring on a child's upper outerwear was snagged or entrapped. For the year 2011, still in progress, CPSC staff is not aware of any new incidents.

Ages of Children Involved in Reported Upper Outerwear Drawstring Entanglements

Tables 3 and 4 present the ages of children entangled by upper outerwear drawstrings as reported to CPSC staff. The tables record the frequency of reported incidents by victim age and incident severity for neck/hood and waist/bottom drawstring entanglements, respectively. Several reported incidents did not specify the victim's age but indicated that the victim was school age. These incidents are recorded in the "school age" category.

Within each table, the frequencies of reported incidents by victim age are recorded for incidents that occurred prior to the 1998 publication of ASTM F 1816-97 separately from those that occurred after the Standard was published. There are too few reported incidents after the Standard was published to support an age analysis. However, incidents that occurred prior to the ASTM Standard suggest that the majority of neck/hood entanglements involved children younger than 6 years old, while the majority of the reported incidents related to waist/bottom drawstring entanglements involved children 6 years old and older.

**Table 3. Ages of Children in Reported Upper Outerwear Incidents
Neck/Hood Drawstring Entanglements**

<u>Pre-Standard (1985–1998)</u>					
Age	Fatal	Injury Indicated	No Injury (Snag or Entrapment)	Nonfatal Incidents (Injury + No Injury)	Total (Fatal + Injury + No Injury)
School age	0	0	2	2	2
18–23 months	2	1	0	1	3
2	4	6	0	6	10
3	3	3	2	5	8
4	1	3	0	3	4
5	1	2	2	4	5
6	1	6	1	7	8
7	0	5	1	6	6
8	0	2	0	2	2
9	0	0	0	0	0
10	1	0	0	0	1
Total	13	28	8	36	49
<u>Post-Standard (1999–April 2011)</u>					
Age	Fatal	Injury Indicated	No Injury (Snag or Entrapment)	Nonfatal Incidents (Injury + No Injury)	Total (Fatal + Injury + No Injury)
School age	0	0	0	0	0
18–23 months	0	0	0	0	0
2	1	0	0	0	1
3	3	0	0	0	3
4	0	0	0	0	0
5	1	0	0	0	1
6	0	1	0	1	1
7	0	0	0	0	0
8	0	0	0	0	0
9	0	1	0	1	1
10	0	0	0	0	0
Total	5	2	0	2	7

Source: CPSC EPIR. Based on incidents with reports entered into any of CPSC’s IPII, DTHS, NEISS, or INDP databases before April 25, 2011 (Source descriptions are provided in the Methods Section). *Reporting for 2007–2011 is ongoing.*

**Table 4. Ages of Children in Reported Upper Outerwear Incidents
Waist/Bottom Drawstring Entanglements**

<u>Pre Standard (1985–1998)</u>					
Age	Fatal	Injury Indicated	No Injury (Snag or Entrapment)	Nonfatal Incidents (Injury + No Injury)	Total
School age	0	0	1	1	1
18–23 months	0	0	0	0	0
2	0	0	0	0	0
3	0	0	0	0	0
4	0	0	2	2	2
5	0	0	1	1	1
6	0	0	1	1	1
7	1	1	0	1	2
8	2	1	0	1	3
9	1	1	0	1	2
10	0	1	0	1	1
11	0	2	0	2	2
12	1	1	0	1	2
13	1	0	0	0	1
14	2	0	0	0	2
Total	8	7	5	12	20
<u>Post Standard (1999–April 2011)</u>					
Age	Fatal	Injury Indicated	No Injury (Snag or Entrapment)	Nonfatal Incidents (Injury + No Injury)	Total
School age	0	0	0	0	0
18–23 months	0	1	0	1	1
2	0	0	1	1	1
3	0	0	1	1	1
4	0	0	1	1	1
5	0	0	0	0	0
6	0	0	0	0	0
7	0	0	0	0	0
8	0	1	0	1	1
9	0	0	0	0	0
10	0	0	0	0	0
11	0	1	0	1	1
12	0	1	1	2	2
13	0	0	0	0	0
14	0	0	0	0	0
Total	0	4	4	8	8

Source: CPSC EPIR. Based on incidents with reports entered into any of CPSC’s IPII, DTHS, NEISS, or INDP databases before April 25, 2011 (Source descriptions are provided in the Methods Section). *Reporting for 2007–2011 is ongoing.*

Additional Reported Incidents Associated with Neck/Hood Drawstring Entanglements

CPSC staff identified four incidents related to neck/hood drawstring entanglements where the victim's age was either unknown or outside of the age range mapped to the upper outerwear sizes covered by ASTM F 1816-97. These incidents are not included in the frequencies reported in Tables 1 or 3. They are presented for consideration in Table 5.

Table 5. Hood or Neck Drawstring Child Entanglements from Upper Outerwear Not Counted Due to Age

Age Unknown	<ul style="list-style-type: none">• One 1991 fatality with no specific age reported was not counted in the hood/neck table because there is insufficient information available to determine that the boy was older than 18 months, but it reportedly involved an upper drawstring from upper outerwear. A BOY DIED FROM STRANGULATION WHEN THE TIE STRING ON THE NECK OF HIS JACKET BECAME ENTANGLED ON A BACKYARD SLIDE.
Under 18 months	<ul style="list-style-type: none">• One 15-month-old boy died after the strings from the hood of his parka tangled around a truck turn signal lever inside a vehicle (1986).• Another 15-month-old boy was found dead after the hood of his sweatshirt was caught on a crib bar (1990).• In 1991, a 15-month-old had wrapped around her neck a drawstring that came out of a jacket hood (no injury).

Methods

Reported incidents quantified for this memorandum are housed in the CPSC's Epidemiological Reporting (EPIR) databases. EPIR is comprised of the Injury and Potential Injury Incidents (IPII) database; the Death Certificates (DTHS) database; the National Electronic Injury Surveillance System (NEISS); and the In-depth Investigations (INDP) database. These databases and the sources of the reports contained in them are discussed below.

CPSC's IPII is a database containing reports of injuries or potential injuries made to the Commission. These reports come from news clips, consumer complaints received by mail or through the CPSC's telephone hotline, or website, Medical Examiners and Coroners Alert Program (MECAP) reports, letters from lawyers, and other similar sources. While the IPII database does not constitute a statistical sample, it can provide CPSC staff with guidance or direction in investigating potential hazards.

CPSC purchases death certificates from all 50 states, New York City, the District of Columbia, and some territories. These death certificates reside in the CPSC's DTHS database. Only those certificates in certain E-codes (based on the World Health Organization's International Classification of Diseases ICD-10 system) are purchased. These are examined for product involvement before being entered into the CPSC's death certificate database. The result is neither a statistical sample nor a complete count of product-related deaths; nor does it constitute a national estimate. The database provides only counts for product-related deaths from a subset of E-codes. For this reason, these counts tend to be underestimates of the actual numbers of product-related deaths. The year that death certificates are delivered to the CPSC differs by state. The most recently available information indicates that certificate collection was considered 87 percent complete for 2007; 77 percent complete for 2008; 61 percent complete for 2009; and 19 percent complete for 2010.

The Commission operates the National Electronic Injury Surveillance System (NEISS), a probability sample of about 100 U.S. hospitals with 24-hour emergency departments (EDs) and more than six beds. These hospitals provide the CPSC with data on all consumer product-related injury victims seeking treatment in the hospitals' EDs. Injury and victim characteristics, along with a short description of the incidents, are coded at the hospital and sent electronically to the CPSC. Upper outerwear drawstring cases in NEISS were too few to project the number of incidents to a national estimate.

The CPSC's In-depth Investigations (INDP) database tracks the findings of CPSC-initiated investigations. Investigations may be conducted on the basis of incidents identified by staff in the field or in response to IPII reports, death certificates, or injury reports from the NEISS system. While the INDP database does not constitute a statistical sample, it can provide CPSC staff with in-depth information regarding potential hazards.

CPSC staff identified children's upper outerwear drawstring incidents by applying the following selection criteria to records entered into EPIR between Jan. 1, 1985 and April 25, 2011.

Product Codes:

- 1646 Outerwear
- 1645 Day wear
- 1644 Nightwear
- 1677 Other clothing
- 1658 Clothing, not specified
- 1647 Clothing accessories
- 1342 Costumes or masks

[Some additional searches not limited by product code were also used in search of records containing strong keyword indicators, such as "drawstring," in case any relevant records were not coded as above.]

Keyword indicators:

string, cord, rope, chord, ribbon, ties, tie, straps, fasten, draw, drawstring, draw string, draw-string, hood string, hoodstring, pull cord, pullcord, around his neck, around her neck, on his neck, on her neck, entangle, wrapped around, wrapped about, caught, ligature

IPII hazard type indicators:

- 8 (strangulation or suffocation)
- D (collision with motor vehicle)

Records matching any keyword or hazard type indicator above were considered, but records with multiple indicators, fatalities, and/or with strong indicators were given additional scrutiny ("drawstring," for example, is a stronger keyword indicator than just "string").

Reported incidents that involved children with the age ranges specified in the memorandum were identified. Incidents appearing to indicate other types of clothing (pants, shorts, and nightgown) were excluded, as were incidents that indicated that the drawstring became wrapped around a finger, or the child was hit in the eye with the drawstring. Incidents that were reported by multiple sources were associated and only counted as one incident.

Entanglement incidents associated with drawstrings on children's upper outerwear were then reviewed and classified as fatal and nonfatal. The nonfatal incidents were further separated into injury and no injury incidents. Strangulation incidents reporting sustained blockage of the airway (*e.g.*, reporting that the victim changed color or lost consciousness) are counted as injury incidents, even if no permanent injuries were sustained. However, in several of the incidents involving snagging or entanglement of a drawstring around a victim's neck (particularly for hood/neck drawstrings on slides), the victim was quickly rescued by an adult or immediately escaped entrapment. Although there may have been momentary blockage of the airway, if no injuries were indicated, these near-immediate rescues or escapes are counted as no injury incidents.

**TAB B: Extent of Compliance with ASTM F 1816-97:
Standard Safety Specification for Drawstrings on Children's
Upper Outerwear**

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UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Memorandum

June 21, 2011

TO : Jonathan D. Midgett, Ph.D., Engineering Psychologist, Division of Human Factors

THROUGH: Gregory B. Rodgers, Ph.D., Associate Executive Director, Directorate for Economic Analysis
Deborah V. Aiken, Ph.D., Supervisory Economist, Directorate for Economic Analysis

FROM : Elizabeth W. Leland, Economist, Directorate for Economic Analysis

SUBJECT : Extent of Compliance with ASTM F 1816-97: Standard Safety Specification for Drawstrings on Children's Upper Outerwear

Introduction

This memorandum provides an update of CPSC data on recalls involving drawstrings on children's upper outerwear. A previous memorandum² provided data for the years 2006 through 2009; this memorandum includes data for 2010. The conclusion reached in the previous memorandum—that there appears to be a high level of compliance with the ASTM F 1816-97 Standard—remains the same when 2010 data are included in the analysis.

Background

In 1997, ASTM approved F 1816-97, Standard Safety Specification for Drawstrings on Children's Upper Outerwear; the Standard was published in 1998. This voluntary Standard provides performance requirements for drawstrings on "children's upper outerwear," which is defined by the Standard as girls' and boys' clothing that is generally intended to be worn on the exterior of other clothing. Garments covered by the Standard include jackets, sweatshirts, and "hoodies." The sizes covered by the Standard are sizes 2T (Toddler) to 12 for neck and hood drawstrings, and sizes 2T to 16 for drawstrings at the waist and bottom of children's outerwear. Upper outerwear with fully retractable drawstrings is exempt from the Standard.

To meet the voluntary Standard, there must be no drawstrings in the hood and neck area of children's upper outerwear. Drawstrings at the waist and the bottom of children's upper outerwear shall not exceed 3 inches in length outside the drawstring channel when the garment is expanded to its fullest width. In addition, the drawstrings can have no toggles, knots, or other attachments at the free ends, and if the drawstring is one continuous string, it must be bartacked,

² "Extent of Compliance with ASTM F 1816-97, Standard Safety Specification for Drawstrings on Children's Upper Outerwear," memorandum from Elizabeth W. Leland, Economist, Directorate for Economic Analysis, CPSC, to Jonathan D. Midgett, Ph.D., Engineering Psychologist, Division of Human Factors, CPSC. April 14, 2010.

or sewn to the garment at the midpoint of the channel so that it cannot be pulled out of the channel.

Extent of Compliance with ASTM F 1816-97

CPSC Recall Data

Table 1 (below) shows information about the CPSC recalls involving drawstrings on children's upper outerwear for the years 2006–2010. The number of Compliance cases related to recalls of children's upper outerwear garments with drawstrings numbered 115 for that period, involving about 2.5 million units.

The number of recalls in 2008, 2009, and 2010, was more than the number of recalls in 2006 and 2007, with the number of recalls in 2010 representing the largest of those five years; however, fewer units of children's outerwear garments were recalled in 2010, than in 2006, 2007, and 2009.

Table 1
CPSC Office of Compliance Recalls
Drawstrings on Children's Upper Outerwear
2006–2010

Year	Number of Recall Cases	Number of Units of Upper Outerwear Recalled
2006	17	676,597
2007	14	626,172
2008	24	227,868
2009	23	526,193
2010	37	431,145
Total	115	2,487,975

Source: Communication from CPSC Office of Compliance, March 18, 2010, and May 2, 2011.

Two commenters jointly provided comments to the May 17, 2010, Notice of Proposed Rulemaking (NPR) and requested clarification regarding the definition of a "drawstring." Specifically, these commenters stated that the common industry understanding of a "drawstring" is a cord that passes through a channel; and they raised concerns about a 2009 recall of children's hooded sweatshirts with ties sewn in at the base of the hood. The commenters stated that these ties do not pass through a channel or necessarily provide for closure; and they expressed concern about the potential for confusion in the marketplace concerning what closures meet the "drawstring" definition in the Standard.

In considering this comment, staff reviewed the recall data above to determine how many recall cases involved ties. For the 2006–2010 time period, there were six recalls (occurring in 2009 and 2010) of children's upper outerwear that involved ties, accounting for 135,406 units. However, CPSC staff does not have enough information to determine if this indeed accounts for all of the recall cases involving ties.

CPSC Staff Estimate of Extent of Compliance with the Voluntary Standard

Using garment sizing information, population data, and assumptions about purchase and use of children's upper outerwear, it is possible to calculate the number of units recalled as a proportion of sales and as a proportion of upper outerwear garments in use. These calculations may provide a rough estimate of the extent of compliance with the voluntary Standard.

A. Garment Sizing Information

As mentioned earlier, the voluntary Standard applies to sizes 2T to 12 for neck and hood drawstrings and sizes 2T to 16 for drawstrings at the waist and bottom of upper outerwear. The age of a child, however, does not correlate directly with garment size (*i.e.*, a child who is 6 years old does not necessarily wear a size 6 garment). The size determination of a child's garment takes into account the height and weight of the child and other physical characteristics, such as chest size. When a consumer purchases a child's garment, they are often directed to a size chart that correlates weight, height, and sometimes other physical characteristics of the child.³

Using anthropometric body measurement data and standard tables of body measurements developed by ASTM, the CPSC Division of Human Factors (ESHF) staff found that a child's age *roughly* matches the clothing size, give or take a year or two.⁴ For example, a child who is 12 years old might wear a size 10, size 12, or a size 14 garment. A child who is 5 years old might wear a size 3, size 4, size 5, size 6, or size 7.

Using this information, it appears that the ages of children wearing sizes 2T to 12 (the sizes covered by the voluntary Standard for garments with hood and neck drawstrings) could generally be considered to be 18 months to 10 years. The ages of children wearing sizes 2T to 16 (the sizes covered by the voluntary Standard for garments with waist and bottom drawstrings) could generally be considered to be 18 months to 14 years.

B. Number of Children Who Wear Sizes 2T–16

For each of the years 2006 through 2010, the population of children ages 18 months to 10 years old (those wearing sizes 2T to 12, as noted above) was about 39 million. The population of children ages 18 months to 14 years old (those wearing sizes 2T to 16, as noted above) was about 55 million.⁵

³ A review of children's upper outerwear size charts for 24 retailers showed that 4 used age as a determinant of clothing size and 20 used height, weight, and/or other anthropometric characteristics as determinants of clothing size.

⁴ "Standard Tables of Body Measurements for Boys, Sizes 8 to 14 Slim and 8 to 20 Regular," ASTM International, February 2006.

⁵ For the years 2006 through 2009, this number is based on Bureau of the Census, U.S. Department of Commerce data, which can be found in "Table 1. Annual Estimates of the Resident Population by Sex and Five-year Age groups for the United States: April 1, 2000 to July 1, 2009" at www.census.gov/popest/national/asrh/NC-EST2009/NC-EST2009-01.xls. For 2010, the number is based on Bureau of the Census, U.S. department of Commerce data, which can be found in "Table 1. Population by Age and Sex: 2010" at www.census.gov/population/www/socdemo/age/age_sex_2010.html. Adjustments to the data were made to account for the portion of children who are included in the data age categories, but who would not wear upper outerwear of sizes covered by the voluntary standard.

C. Sales of Upper Outerwear Garments in Sizes 2T–16

No numerical data about recent annual sales of children's upper outerwear is available. A 1994 CPSC press release concerning a cooperative agreement between the CPSC and the manufacturers and retailers of children's clothing suggests that annual sales of garments with hood and neck drawstrings was 20 million, although no source for that number is provided.⁶

However, given children's growth patterns, it may not be unlikely that, on average, at least one new piece of upper outerwear is purchased each year for each child.⁷ If so, then sales of upper outerwear with neck and hood drawstrings or with waist and bottom drawstrings could total the population of children who wear children's sizes 2T to 16, or approximately 55 million units, as calculated above.

D. Estimated Extent of Compliance

Assuming that (1) all garments violating the drawstring voluntary Standard were recalled in the years 2006 through 2010, (2) at least one new piece of upper outerwear, on average, is purchased for each child each year, and (3) annual unit sales of upper outerwear with neck or hood drawstrings totaled 55 million (as calculated above), then it would appear that the number of children's upper outerwear garments that complied with the drawstring requirements of ASTM F 1816-97 was in the very high 90 percent range. While the number of recalled units in the years 2006 through 2010 totaled about 2.5 million, the number of units sold during those 5 years, under the assumptions above, totaled 275 million. Thus, for the period 2006 through 2010, the units recalled by the CPSC (with ties included or excluded, insofar as that data are complete) would account for about 1 percent of all units sold; in other words, given the assumptions above, there was about 99 percent compliance with the voluntary Standard.

⁶ "CPSC Works With Industry to Remove Drawstring Hazard," News from CPSC, July 12, 1994, www.cpsc.gov/CPSCPUB/PREREL/PRHTML94/94103.html.

⁷ In some areas of the country, children may purchase more than one piece of upper outerwear due to seasonal variations in the weather. However, there are also children who are likely to wear "hand-me-downs" and for whom a new item of upper outerwear would not be purchased each year.

TAB C: Inclusion of Drawstrings on Children’s Outerwear on the List of Substantial Product Hazards: Small Business Consideration

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UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Memorandum

Date: June 21, 2011

TO : Jonathan D. Midgett, Ph.D., Engineering Psychologist, Division of Human Factors;
Leader, Children's Program Area Team

THROUGH : Gregory B. Rodgers, Ph.D., Associate Executive Director, Directorate for
Economic Analysis
Deborah V. Aiken, Ph.D., Senior Staff Coordinator,
Directorate for Economic Analysis

FROM : Charles L. Smith, Economist, Directorate for Economic Analysis

SUBJECT : Inclusion of Drawstrings on Children's Outerwear on the List of Substantial
Product Hazards: Small Business Considerations

This memorandum addresses small business considerations related to a prospective U.S. Consumer Product Safety Commission (CPSC) rule that would include children's upper outerwear with drawstrings at the hood or neck and certain uses of drawstrings at the waist on the list of substantial product hazards under section 15(j) of the Consumer Product Safety Act (CPSA). Such uses of drawstrings on children's upper outerwear would not conform to the currently applicable voluntary consensus safety Standard, ASTM F 1816-97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear*.

Background

Section 223 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) amended section 15 of the CPSA by creating a new section 15(j) of the CPSA, 15 U.S.C. § 2064(j). The amendment states that the Commission may specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence shall be deemed a substantial product hazard under subsection (a)(2), if the Commission determines that—(A) such characteristics are readily observable and have been addressed by voluntary standards; and (B) such voluntary standards have been effective in reducing the risk of injury from consumer products and that there is substantial compliance with such standards.⁸

On May 17, 2010, the Commission published a Notice of Proposed Rulemaking (NPR) titled, "Determination That Children's Upper Outerwear in Sizes 2T to 12 With Neck or Hood Drawstrings and Children's Upper Outerwear in Sizes 2T to 16 With Certain Waist or Bottom Drawstrings Are a Substantial Product Hazard," CPSC Docket No. CPSC-2010-0043 (75 Fed.

⁸ Consumer Product Safety Improvement Act of 2008, Section 223: Substantial Product Hazard List and Destruction of Noncompliant Imported Products. 122 STAT. 3016 PUBLIC LAW 110-314—AUG. 14, 2008.

Reg. 27,497). The relevant industry consensus Standard for this rulemaking, ASTM International's ASTM F 1816-97, prohibits the use of drawstrings on the hood and neck areas of children's clothing sizes 2T to 12, and it limits the use of waist/bottom drawstrings on articles of clothing in sizes 2T to 16.⁹

Comments Received in Response to the Notice of Proposed Rulemaking

The Commission received seven comments on the proposed rule. These comments were largely related to definitions of products that would fall within the scope of the rule. None of the comments specifically addressed the issue of impacts on small businesses.

Small Business Impact

The Commission, in the preamble to the proposed rule, certified that the rule would not result in a significant impact on a substantial number of small businesses (75 Fed. Reg. at 27503). That decision was reached, in part, because CPSC staff estimated that a very high percentage of small businesses that manufacture or sell children's upper outerwear already sell garments that conform to ASTM F 1816-97. Therefore, they would not be adversely affected if children's upper outerwear garments with drawstrings are added to the list of substantial product hazards under section 15(j) of the Consumer Product Safety Act (CPSA). Also, the Commission's Office of Compliance and Field Operations already considers children's upper outerwear with drawstrings to constitute a substantial product hazard, and would seek recalls of such products, regardless of whether they are added, by rule, to the list of substantial product hazards under section 15(j) of the CPSA. Finally, conformance to ASTM F 1816-97 is achieved for many garments distributed in commerce simply by eliminating drawstrings from the manufacturing process with minimal or no increase in resulting production costs.

Based on these factors, and the absence of comments in response to the NPR specifically addressing impacts of the rule on small businesses, the Commission may certify that adding children's upper outerwear garments with drawstrings to the list of substantial product hazards under section 15(j) of the CPSA will not have a significant economic impact on a substantial number of small entities.

⁹ ASTM F 1816-97 specifies that waist/bottom drawstrings must not exceed 75 mm (3 inches) in length outside the drawstring channel when the garment is expanded to its fullest width. In addition, the drawstrings can have no toggles, knots, or other attachments at the free end, and if the drawstring is one continuous string, it must be bartacked or sewn to the garment at the midpoint of the channel so that it cannot be pulled out of the channel. Fully retracting drawstrings are contained within the garment and are exempt.