



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

This document has been electronically
approved and signed.

BALLOT VOTE SHEET

DATE: October 23, 2013

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Stephanie Tsacoumis, General Counsel
Elliot F. Kaye, Acting Executive Director

FROM: Patricia A. Pollitzer, Assistant General Counsel
David M. DiMatteo, General Attorney

SUBJECT: Final Rule: Revocation of Certain Requirements Pertaining to Caps Intended for
Use with Toy Guns

Ballot Vote Due: October 30, 2013

Attached for Commission consideration is a draft final rule that would revoke certain requirements under 16 C.F.R. part 1500 pertaining to caps intended for use with toy guns. These requirements are obsolete or have been superseded by requirements for toys caps specified in ASTM F 963-11, "Standard Consumer Safety Specifications for Toy Safety." The draft final rule is unchanged from the proposed rule published in the Notice of Proposed Rulemaking (NPR). No comments on the NPR were received.

Please indicate your vote on the following options:

- I. Approve publication of the draft final rule in the *Federal Register*, as drafted.

(Signature)

(Date)

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

(Signature)

(Date)

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

(Signature)

(Date)

IV. Take other action. (Please specify.)

(Signature)

(Date)

Attachment: Draft Notice of Final Rule “Revocation of Certain Requirements Pertaining to Caps Intended for Use with Toy Guns”

Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2012-0035]

16 CFR Part 1500

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

AGENCY: Consumer Product Safety Commission.

ACTION: Final Rule.

SUMMARY: Section 106 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) deemed the provisions of ASTM International Standard F963, “Standard Consumer Safety Specifications for Toy Safety” (ASTM F963), to be consumer product safety standards issued by the U.S. Consumer Product Safety Commission (CPSC, Commission, or we). Among other things, ASTM F963 contains provisions regarding sound-producing toys. Existing CPSC regulations pertaining to caps intended for use with toy guns refer to obsolete equipment, but the ASTM F963 provisions for sound-producing toys allow the use of a broader array of more precise and more readily available test equipment for sound measurement. In addition, the ASTM standard requires fewer measurements and permits use of more automated equipment that would increase the efficiency of testing. Because the existing regulations are obsolete and have been superseded by the requirements of ASTM F963, the final rule revokes the existing regulations pertaining to caps intended for use with toy guns and toy guns not intended for use with caps. The final rule is unchanged from the rule as proposed in the notice of proposed rulemaking (NPR).

DATES: The rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

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

SUPPLEMENTARY INFORMATION:

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

On June 25, 2012, the Commission published in the *Federal Register* an NPR to revoke certain regulations pertaining to toy caps and toy guns not intended for use with caps. 77 FR 77834. The comment period for the NPR closed on August 24, 2012. The Commission received no comments on the NPR.

The regulations pertaining to caps intended for use with toys guns in 16 C.F.R. §§ 1500.18(a)(5), 1500.47, and 1500.86(a)(6) were originally promulgated by the U.S. Food and Drug Administration (FDA). In September 1973, the Federal Hazardous Substances Act (FHSA) and the statute's implementing regulations were transferred from the FDA to the CPSC. *See* 38 FR 27012 (September 27, 1973). One of the regulations transferred to CPSC included a ban on caps intended for use with toy guns and toy guns not intended for use with caps "if such caps when so used or such toy guns produce impulse-type sound at a peak pressure level at or above 138 decibels" *See* 16 CFR 1500.18(a)(5). Another regulation transferred from FDA to CPSC, 16 CFR 1500.86(a)(6), exempts toy caps that produce peak sound levels of 138 to 158 decibels if: the packaging material

contains a warning regarding proper use, the manufacturer notifies CPSC, and the manufacturer participates in a program to develop toy caps that produce peak pressure levels below 138 decibels. Manufacturers participating in this program are required to provide a status report to CPSC on their progress every three months. We are revoking this exemption because there are currently no manufacturers participating in this program.

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

Section 106 of the CPSIA mandated that the provisions of ASTM International Standard F963, “Standard Consumer Safety Specification for Toy Safety,” be considered consumer product safety standards issued by the Commission under section 9 of the Consumer Product Safety Act (CPSA). References to ASTM F963 in this *Federal Register* notice are to version ASTM F963-11, which became effective on June 12, 2012. Section 4.5 of ASTM F963 establishes requirements for “sound-producing toys,” and section 8.19 of ASTM F963 establishes “Tests for Toys Which Produce Noise.” In general, the ASTM F963 requirements for sound-producing toys are more stringent than 16 CFR §§ 1500.18(a)(5) and 1500.47. For example, section 4.5.1.5 of ASTM F963 states that the peak sound pressure level of impulsive sounds produced by a toy using percussion caps or other explosive action “shall not exceed 125” decibels at 50 centimeters, whereas, 16 CFR 1500.18(a)(5) imposes a ban at or above 138 decibels at 25

centimeters. As another example, section 8.19.2.4 of ASTM F963 specifies a weighted scale based on human hearing damage from the type of impulse noise being generated by the toy, whereas, 16 CFR 1500.47 specifies an unweighted scale for measuring pressure level generated by impulse-type sound. Additionally, the ASTM F963 test method specifies the use of modern equipment (microphones meeting a particular specification), whereas, 16 CFR 1500.47 specifies the use of a microphone, a preamplifier (if required), and an oscilloscope. The equipment specifications in 16 CFR 1500.47 have never been updated.

Therefore, because section 106 of the CPSIA mandates the provisions of ASTM F963 to be consumer product safety standards, and because we believe that the provisions of ASTM F963, with respect to caps intended for use with toy guns, are more stringent than 16 CFR 1500.18(a)(5), the final rule revokes 16 CFR 1500.18(a)(5). Similarly, because ASTM F963 establishes a test method for toys that produce sound, and because our existing regulation refers to obsolete or unnecessary test equipment, the final rule revokes 16 CFR 1500.47. Finally, because the final rule revokes 16 CFR 1500.18(a)(5), we are also revoking the exemptions from the requirements of 16 CFR 1500.18(a)(5) contained in 16 CFR 1500.86(a)(6). The final rule is unchanged from the NPR.

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

The Commission certified under the Regulatory Flexibility Act (5 U.S.C. 601–612) that the proposed rule would not have a significant economic impact on a substantial number of small entities because the rule would revoke outdated regulatory requirements. We have received no information to change that certification.

D. Environmental Considerations

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

E. Executive Order 12988

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

F. Effective Date

The Commission proposed that the rule revoking 16 CFR 1500.18(a)(5), 1500.47, and 1500.86(a)(6) become effective 30 days after publication of the final rule in the *Federal Register*. We received no comments on the effective date. Therefore, the final rule will become effective 30 days after publication in the *Federal Register*.

List of Subjects in 16 CFR Part 1500

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

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

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

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

Authority: 15 U.S.C. 1261–1278.

§ 1500.18 [Amended]

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

§ 1500.47 [Removed]

3. Section 1500.47 is removed.

§ 1500.86 [Amended]

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

Dated: _____.

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



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

This document has been electronically
approved and signed.

Memorandum

Date: 10/22/2013

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Stephanie Tsacoumis, General Counsel
Elliot Kaye, Executive Director
Robert J. Howell, Deputy Executive Director for Safety Operations

FROM : George A. Borlase, Ph.D., P.E.
Assistant Executive Director
Office of Hazard Identification and Reduction

Richard McCallion
Mechanical, Recreational, and Sports Program Area Team Leader
Office of Hazard Identification and Reduction

SUBJECT : Toy Caps Requirement Final Rule

I. Introduction

Section 106(a) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) deemed the provisions of ASTM F963, *Standard Consumer Safety Specifications for Toy Safety* (except for section 4.2 and Annex 4 or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the U. S. Consumer Product Safety Commission (CPSC, Commission) or by statute) to be a mandatory consumer product safety standard under section 9 of the Consumer Product Safety Act (CPSA). This mandatory toy standard, which incorporates the most current version of the ASTM toy safety standard, ASTM F963-11, contains provisions that restate or incorporate existing CPSC regulations. For most provisions of the ASTM F963 standard in which overlap occurs between the toy standard and CPSC regulations, requirements either reference the existing federal regulation or restate the existing requirements of the existing federal regulation. The only exception is in the case of toy caps. Section 4.5, *Sound Producing Toys*, of ASTM F963-11 provides requirements for percussion caps (toy caps) that vary from the requirements of the existing federal regulation, 16 C.F.R. § 1500.18(a)(5), which was transferred from the FDA to CPSC in 1973.

Toy caps that produce a peak pressure level above 138 decibels measured at a distance of 25 centimeters (or the distance at which the sound source would ordinarily be from the ear) are a banned product under 16 C.F.R. § 1500.18(a)(5), with certain exceptions. The CPSC's regulation at 16 C.F.R. § 1500.86(a)(6) exempts toy caps that produce peak sound levels of 138

to 158 decibels if: the packaging material contains a warning regarding proper use, the manufacturer notifies CPSC, and the manufacturer participates in a program to develop toy caps that produce peak pressure levels below 138 decibels. Manufacturers participating in this program are required to provide a status report to CPSC on their progress every three months.

CPSC's regulations at 16 C.F.R. § 1500.47 specify a test procedure to determine the peak pressure level produced by toy caps. This procedure provides specifications for equipment necessary to perform the tests, including a microphone, preamplifier system, and storage type oscilloscope with camera. Peak sound measurements are recorded at a distance of 25 centimeters from six orientations, 90 degrees apart. A total of 10 measurements are required at each of the six orientations, and the results of the 10 measurements for each of the six orientations are averaged. The orientation that yields the maximum average value is used to determine regulatory compliance.

ASTM F963-11, Section 4.5.1.5, states that the C-weighted¹ peak sound pressure level ($L_{C_{peak}}$) of impulsive sounds produced by toys using percussion caps or other explosive action shall not exceed 125 decibels. The test procedure broadly specifies an instrumentation system that meets class 1 or class 2 requirements of International Electrotechnical Commission (IEC) 61672-1 and IEC 61672-2. Measurements are taken at six positions, 90 degrees apart, and at a distance of 50 centimeters from the toy. Three measurements are required to be recorded at each test location. Any sound pressure level measurement across the 18 measurements that is above 125 decibels is considered noncompliant.

II. Discussion

On June 25, 2012, a notice of proposed rulemaking (NPR) was published in the *Federal Register* (77 FR 37834), proposing to revoke certain requirements pertaining to caps intended for use with toy guns and toy guns not intended for use with caps.

The requirements and test methods contained in ASTM F963-11 represent the most up-to-date method to determine the maximum sound level produced by a toy cap. The existing federal regulation covering toy caps requires testing methods and equipment that are out dated, thus allowing less precise and less accurate sound level measurements.

The CPSC regulation at 16 C.F.R. § 1500.18(a)(5) specifies a peak pressure based on an unweighted measurement. ASTM F963-11 specifies a C-weighted sound level measurement that more accurately predicts the human hearing sensitivity to noise levels. These scales differ at the high and low frequency ranges but are the same for the mid ranges frequencies where toy caps sound levels are measured. Therefore, sound level measurements for toy caps in each standard are equivalent.

The distance that sound levels are measured and the maximum allowable sound levels between ASTM F963-11 and the CPSC regulation at 16 C.F.R. § 1500.18(a)(5) are different but ASTM F963-11 is more restrictive. Under the ASTM standard, measurements are taken at 50

¹ The C-weighted frequency refers to a particular sensitivity scale for noise measurement. The C-weighting provides a scale to predict hearing damage to human hearing based on the decibel level and frequency of the impulse noise.

centimeters, as opposed to 25 centimeters in 16 C.F.R. § 1500.47. The maximum peak sound pressure is independent of distance and therefore not a factor. Sound pressure drops 6db when the distance is doubled. The ASTM requirement of 125db is equivalent to a maximum sound level of 131db in the existing CPSC regulation. Staff opinion is that this increases the safety of toy caps by reducing the peak sound level allowable.

Additionally, the existing federal regulation requires an average of 10 sound level readings to determine compliance; this allows for an individual reading in excess of the maximum level. A single test above the maximum sound level reading in accordance with the ASTM standard would result in noncompliance. Thus, the ASTM F963-11 requirement is more stringent than the current CPSC requirement.

Laboratories testing to the ASTM requirements have the ability to choose any sound measuring device or system that meets the current IEC standards. The existing federal regulation mandates specific equipment that may no longer be readily available and produces less accurate results. The equipment specified in 16 C.F.R. § 1500.47 was the accepted method for measuring sound at the time the regulation was implemented. However, the more precise, accurate sound measuring devices currently available do not meet the regulation and cannot be used. CPSC staff believes ASTM's approach, by specifying internationally recognized IEC standards for sound measuring devices, allows a broader array of sound measuring devices that result in more accurate measurements.

Staff believes the ASTM standard employs a simpler procedure that will reduce the possibility of inaccurate results. The ASTM standard requires fewer measurements at each point and allows use of more automated equipment that can automatically calculate peak sound pressures. The ASTM procedure will increase the efficiency of testing.

II. Comments

In the NPR, the Commission solicited comments concerning the proposed rule. The Commission did not receive any comments.

111. Recommendation

CPSC staff recommends that the Commission revoke the existing federal regulation for toy caps, so that the ASTM standard would govern.