



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

MINUTES OF COMMISSION MEETING

March 30, 1983

Third Floor Hearing Room
1111 - 18th Street, N.W.
Washington, D.C.

The March 30, 1983, meeting of the U.S. Consumer Product Safety Commission was convened by Chairman Nancy Harvey Steorts. Commissioners Stuart M. Statler, Edith Barksdale Sloan and Sam Zagoria were present.

Ballot Vote Decisions. Chairman Steorts read into the record the following decisions made by ballot vote of the Commissioners since the last open meeting of the Commission.

1. Semi-Annual Regulatory Agenda

The Commission voted unanimously (4-0) to approve publication of the semi-annual regulatory agenda in the Federal Register.

2. Thermostat Controls Document Disclosure

The Commission voted unanimously (4-0) to withhold under Section 6(b) of the CPSA certain documents and information relating to Emerson Thermostat Controls.

3. Toy Chest Proposed Rule

The Commission by unanimous vote, 4-0, approved the Federal Register document proposing a toy chest rule to address a strangulation risk presented by certain toy chests.

Agenda Matters.

Space Heaters - Revocation or Exemption Applications

The Commission considered 23 applications from state and local jurisdictions for exemption from the preemptive effects of the Commission's unvented gas-fired space heater safety standard. The staff briefed the Commission on various options, including whether to grant or deny the applications or whether to defer the applications and direct the staff to draft a Federal Register notice initiating a rulemaking proceeding that could result in a revocation of the standard.

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Minutes of Commission Meeting - March 30, 1983 (Continued)

Following extended discussion, Commissioner Statler moved and Commissioner Zagoria seconded that the Commission go into closed meeting to obtain legal advice on the issue. The discussion would be closed under exemption 9 of the Sunshine Act. The closed meeting was not to last for more than 15 minutes. The motion was passed by unanimous (4-0) vote.

Reconvening in open session 15 minutes later, Chairman Steorts asked that the issue of revocation be brought to a vote.

Commissioner Zagoria then moved to revoke the safety standard for unvented gas-fired space heaters and Commissioner Statler seconded. The issue of revocation of the safety standard was brought to a vote.

Commissioners Statler and Zagoria voted to revoke the standard. Chairman Steorts and Commissioner Sloan voted against the revocation. A majority was not obtained and, therefore, a decision was not reached.

Commissioner Statler then moved to terminate the discussion and reschedule the issue within the next six weeks. Commissioner Zagoria seconded the motion and after a brief discussion it was passed by unanimous (4-0) vote.

There being no further business on the Agenda the meeting was adjourned.

For the Commission:

April 11, 1983
Date



Sheldon D. Butts
Acting Secretary

chests with hinged lids present a strangulation risk to children and that a mandatory rule may be necessary to address that risk. The Commission is therefore proposing a rule, supported by a preliminary regulatory analysis, and soliciting public comment.

DATES: Comments and submissions are due no later than April 18, 1983. The rule is proposed to become effective and to apply to toy chests in the channels of distribution after expiration of the 90 calendar day period of continuing session of Congress following final issuance of the rule.

ADDRESS: Comments and submissions should be sent, preferably in five copies, to Office of Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Tyrrell, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

I. Advance Notice of Proposed Rulemaking

In April 1982 the Commission issued an advance notice of proposed rulemaking (ANPR) concerning a strangulation risk that certain toy chests with hinged lids present to children. 47 FR 16041 (April 14, 1982). The ANPR, the first of three required stages in the issuance of a mandatory rule for children's articles under the Federal Hazardous Substances Act, discussed the statutory framework of the rulemaking proceeding; the scope of the proceeding; the strangulation risk; and the alternatives to a mandatory rule:¹

A. Statutory Framework

Under the Federal Hazardous Substances Act (FHSA), the Consumer Product Safety Commission has authority to regulate the safety of articles intended for use by children. 15 U.S.C. 1261 *et seq.* Alternatively, if the Commission finds that it is in the public interest to regulate a risk associated with a particular children's article under the Consumer Product Safety Act, it may regulate such article under that statute. 15 U.S.C. 2079(d).

¹ Six documents in the record of the rulemaking proceeding were listed at the end of the ANPR. Those six and some additional documents are listed at the end of this proposed rule. The numbers in parentheses throughout the text of this document refer to that list. All documents on the list are available from the Commission's Office of the Secretary.

During 1981 Congress amended both acts to require a three-stage proceeding for the regulation of consumer products (including children's articles). Consumer Product Safety Amendments of 1981 (Pub. L. 97-35). The proceeding must begin with an advance notice of proposed rulemaking, and that notice must include information about the product, the risk, any existing voluntary standards and the regulatory alternatives under consideration. 15 U.S.C. 1262(f).

The required second stage involves a Federal Register document that includes the text of a proposed rule, any alternatives, and a preliminary regulatory analysis that contains (a) a preliminary description of the potential benefits and potential costs of the proposal; (b) a discussion of the reasons that a voluntary standard submitted in response to the ANPR was not published as the proposal; (c) a discussion of why the Commission believes preliminarily that a submitted plan for a voluntary standard "would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injury identified. . . ."; and (d) a description and discussion of any reasonable alternatives to the proposal. 15 U.S.C. 1262(h).

A final rule, the third stage, must be accompanied by a final regulatory analysis. 15 U.S.C. 1261(i)(1). It must also be supported by a number of findings concerning any then-existing voluntary standard and the benefits, costs, and burden of the mandatory rule. 15 U.S.C. 1262(i)(2).

Under the Federal Hazardous Substances Act, the Commission may determine by regulation (according to the three-stage proceeding just described) that "[a]ny toy or other article intended for use by children . . . presents an electrical, mechanical, or thermal hazard" 15 U.S.C. 1261(f)(1)(D). The Commission may conclude that an article presents a mechanical hazard if "in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness . . . from . . . openings or closures, . . . from moving parts, . . . because of instability, or . . . because of any other aspect of the article's design or manufacture." 15 U.S.C. 1261(s). If the Commission makes such a determination about a toy or other children's article, the article is deemed a "hazardous substance" and a "banned hazardous substance," and its

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1513

Requirements to Address Strangulation Risk Presented by Toy Chests

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: Based on available information, the Commission preliminarily believes that certain toy

introduction or delivery for introduction into interstate commerce is prohibited. 15 U.S.C. 1261(f)(1)(D), 1261(q)(1)(A), and 1263(a).

B. Scope

The ANPR applied to all toy chests that met the working definition of "containers with hinged lids that are marketed for storing children's toys." A refinement of this definition to address size is discussed in section IIIB below.

The ANPR explained the Commission's awareness that many products, such as trucks and old packing cartons, are used as toy chests but are not included within the definition (12). The inclusion of such products would make a mandatory rule both unworkable and unenforceable because of the many different types of products that can be—and are—used as toy chests.

C. Risk of Injury

In the ANPR, the Commission stated that it has documented 21 fatalities and one case of permanent brain damage from falling toy chest lids (3). The pattern generally involves a toy chest lid falling on a child while he or she is leaning into the chest (4). If the child's neck is extended across the upper edge of the front of the chest when the lid falls, the child can be caught and strangled (4).

The ANPR also stated that most of the victims in the documented incidents were between ages of 10 and 12 months, with one victim 16 and one 19 months of age (4). As discussed in section IIIA below, this age distribution was incorrect.

The most likely hazard scenario occurs when the toy chest lid is left open or the child is attracted to the toy chest and opens it himself or herself (4). At the age of many of the victims, children are reasonably mobile and may be walking to some degree, but are basically unsteady on their feet (4). Because of this, the child may push or lean on the toy chest while looking in (4). If this occurs, the lid may fall and strike the child if there is not an adequate lid support device attached to the toy chest (4).

If the child is not found immediately, the consequences can be fatal. It is not known, however, whether the initial impact causes death or whether the child ultimately strangles because of the entrapment.

D. Alternatives for Addressing Risk

In issuing the ANPR, the Commission recognized that a mandatory rule was not necessarily the only way to address the toy chest strangulation risk. The

ANPR specifically discussed (1) the voluntary standard effort that the American Society for Testing and Materials, in cooperation with the Toy Manufacturers of America, had initiated and (2) an information and education approach.

E. Solicitation of Public Input

The ANPR solicited public comments on the identified risk of injury and on the other subjects discussed. In particular, the ANPR sought comments on possible alternatives to a mandatory rule. As required by the Federal Hazardous Substances Act, the Commission invited: (1) The submission of any existing standard or portion of a standard that addresses the risk of strangulation from toy chests and (2) the submission of any statements of intention to develop a voluntary standard or to modify an existing standard that addresses that risk, along with a plan to do so.

II. Response to the ANPR

The Commission received seven comments in response to the ANPR. One of them consisted of 47 individual comments from members of a Legal Environment of Business class at Ohio State University (16). Three of the comments concerned a voluntary standard for toy chests that is being developed by the American Society for Testing and Materials (ASTM), under the sponsorship of the Toy Manufacturers of America (TMA). These comments were from TMA's attorney (17), TMA's president (19), and ASTM's president (20). Two comments came from toy chest manufacturers, Nu-Line Industries (18) and Gerad, Inc. (22). The Public Action Coalition on Toys also submitted a comment (21).

A. Ohio State Comments

With one exception, the comments from the Ohio State students supported the issuance of a mandatory rule for toy chests or an information and education approach to warn the public, or both. Many of the comments discussed possible requirements that could be imposed on toy chests to address the strangulation risk, such as mandating the use of "slow-closing" devices like the ones used on screen and storm doors.

The one exception was a comment from Ms. Cynthia Bavaria who, first, challenged the Commission's authority to regulate toy chests under the Federal Hazardous Substances Act, an act that provides regulatory authority over "toys and other articles intended for use by children." She stated that toy chests are not toys that children play with, but

rather products that "[m]others use * * * to store toys." Second, Ms.

Bavaria contended in her comment that a regulation for only some products used as toy chests (referring to the limited definition discussed in the ANPR) will raise the consumers' costs and encourage them to buy toy chest products that will not be regulated. As a result, competition will be unfairly hindered and the regulation will be ineffective. Third, this comment pointed out that the three fatalities each year from toy chest strangulation cannot be evaluated without comparing that figure to the fatalities caused by other products.

The Commission responds as follows to Ms. Bavaria's comments:

1. Toy chests are articles intended for use by children, within the statutory authority because they are used by both children and adults. The 21 fatalities of children who were using toy chests, apparently unsupervised by any adult, is the best evidence of their use by children. A product that is used by both children and adults—like toy chests—is an article intended for use by children under the FHSA, according to a judicial decision in a case that challenged the Commission's bicycle regulation. *Forest v. CPSC*, 559 F.2d 774 at 783-6 (C.A.D.C. 1977).

2. As discussed in section IIIF(1) below, the Commission believes that any increased cost resulting from compliance with a mandatory standard for toy chests will be minimal. It is therefore unlikely that there will be any effect on competition or any incentive for consumers to purchase, for use as a toy chest, a product that is not covered by the rule.

3. Based on its experience with many injuries and deaths caused by consumer products, the Commission believes that three fatalities each year (the updated figure is now closer to two) is a large number to be caused by a particular hazard presented by a product that is not inherently dangerous. This is especially true when the total number of toy chests on the market and in consumers' hands is much smaller than the number of some other children's products like cribs and strollers. In any case, the risk presented must be balanced against the costs associated with the "fix," which are minimal for this particular risk (see section IV below). Finally, the Commission notes (a) that there may be more fatalities and "near misses" than it now knows of and (b) that children who are too young to protect themselves deserve the greatest possible protection from a hazard, even

if a government-imposed rule is necessary to provide it.

B. Comments on Voluntary Standard Development

The comments from TMA, Nu-Line, and ASTM generally supported a voluntary standard for toy chests as an alternative to a mandatory rule (18), (19), (20). The Commission has closely monitored the voluntary standard development proceeding, and the following is a description of all recent voluntary efforts:

In March 1981 the Commission staff contacted the ASTM Committee on Consumer Products (F15) about the development of a voluntary standard for toy chests (8). The Committee chairman explained that toy chests had been dropped as a possible project because there had been little interest expressed by industry (8). ASTM had contacted two children's products trade associations, TMA and Juvenile Products Manufacturers Association (JPMA) but they were not interested because they did not represent a majority of the manufacturers of toy chests (8).

In June 1981 the Commission staff wrote to all known manufacturers of toy chests, soliciting support and commitment to participate in developing a voluntary standard (8). After about two-thirds of the manufacturers responded favorably, ASTM agreed to call an organizational meeting to establish a task group to develop a standard. Manufacturers, consumers and other interested persons were invited to attend a meeting on September 16, 1981 (8). However, only two manufacturers sent representatives to the meeting and, because of this poor attendance by manufacturers, no task group was formed (8).

Following a Commission briefing in December 1981, TMA offered to sponsor a voluntary standard for toy chests and to invite all manufacturers to participate (9). Commission staff provided a list of 34 firms believed to be producers or distributors of toy chests. TMA contacted ASTM and arranged for a meeting on May 4, 1982 to establish a task group. The task group formed at that meeting decided to develop a voluntary standard for toy chests and to incorporate identical provisions into an existing voluntary standard for toy safety (13).

Commission staff provided to the task force injury data and recommendations to address the risk of strangulation from falling toy chest lids (13, 15). A draft standard that incorporated staff recommendations was circulated for ballot vote by ASTM in July 1982, with a

request that all ballots and comments be returned by August 1982 (23). ASTM mailed the draft standard and ballot forms to all known manufacturers of toy chests, regardless of whether they were able to attend the May 4 meeting.

By September 18, 1982, ASTM had received only 11 responses to their request for ballots and only three of these were from manufacturers of toy chests (27). In response to Commission staff concerns about the small number of manufacturers who voted on the draft standard, TMA attempted to contact each manufacturer directly. TMA found that some manufacturers were no longer producing toy chests and that there was some duplication on the list of firms (36). TMA provided to ASTM a revised list of 28 manufacturers and, after contacting them, the President of TMA indicated to Commission staff that the majority of manufacturers supported the voluntary standard (27).

Based on submitted comments, the voluntary standard was revised. On October 29, 1982 ASTM distributed this revised second draft standard and a ballot, with a due date of November 30, 1982 (43). In telephone conversations with Commission staff in January 1983, ASTM staff reported that the response to the second ballot was "good." Thirteen toy chest manufacturers and two lid support producers responded; all of these were affirmative votes or abstentions (27).

ASTM considered these second ballot results to provide task group approval, and therefore planned to send the draft standard concurrently to its Standards Development Subcommittee and the main Consumer Products Committee (F-15) by the end of January 1983 (57). If those two committees approve the revised standard, ASTM estimates that the ballot for final ASTM approval could take place in May or June 1983 (57). If no negative votes are received on this ballot, the standard could be published in late 1983.

The Commission discusses in section IIIF(2) below whether a voluntary standard can be expected to address adequately the toy chest strangulation risk.

C. PACT and Gerad Comments

The comment received from the Public Action Coalition on Toys (PACT) urged the Commission to issue a mandatory standard because the alternative of a voluntary standard has not proven to be either timely or effective (21). Specifically, PACT stated that the lack of cohesiveness of the toy chest manufacturers provides "no assurance that all toy chest manufacturers would help develop and conform to the

requirements of a voluntary standard." As just noted, the adequacy of a voluntary standard is discussed in section IIIF(2) below.

PACT additionally stated that an information and education effort alone would place "an undue burden on the shoulders of the consumer." Section IIIF(3) below discusses information and education activities. Finally, PACT supported the approach of requiring "a non-adjustable device that would need an external downward force to lower a toy chest lid." This is basically the approach taken by the proposed standard (see section III C below).

The comment from Gerad, Inc. supported a regulation for toy chests, but suggested that it include an exemption for light-weight lids, such as the one on the chest that Gerad manufactures (22). The Commission has considered this suggestion and does not now believe that any hinged lid would be so light that it would not pose an unreasonable risk of death or injury to children from entrapment resulting in strangulation. However, the Commission staff will be evaluating Gerad's toy chest during the comment period, and may reach a different conclusion. Comments on this issue are solicited from other manufacturers and members of the public.

III. Proposed Rule

A. Risk of Injury

When the Commission issued the ANPR, it had documented 21 deaths and one case of permanent brain damage that were caused by falling toy chest lids (see section I C above). Since that time, another serious accident has occurred and come to the Commission's attention. It involved a 20-month-old child who suffered blindness and partial paralysis when a toy chest lid fell on his head or neck (61). Based on the Commission's preliminary investigation, the toy chest involved had a friction-type lid support device that failed to prevent the lid from falling (61).

In addition, the Commission has documented three "near misses," incidents in which a toy chest lid fell on a child who was rescued and escaped permanent injury (61).

The Commission has found that it incorrectly reported in the ANPR the age distribution of the victims (see section I C above). Including the most recent incident, eight of the victims were between 10 and 12 months of age, and all but two of the 23 victims were under two years of age (61).

B. Scope

As mentioned earlier, the working definition of toy chest requires refinement to account for size (see section IB). If no minimum size were included for toy chests, certain containers for toys that are too small to present the identified risk would be covered by the proposed rule. For example, certain brands of small toy cars and action figures are designed to fit into specialized carrying and storing cases. These cases are so small that no child could fit his or her head into them, especially since they are usually subdivided into even smaller compartments, and the strangulation risk is not presented. Therefore, it is both necessary and appropriate to propose a minimum size for toy chests covered by the rule.

In 1973 the Food and Drug Administration (FDA), which then administered the FHSA, proposed a mandatory toy chest rule (7). It would have applied to toy chests having a continuous enclosed volume greater than 1.1 cubic feet and a smallest internal dimension of six inches or more. Subsequently, TMA used the same size limitation when it developed provisions applicable to toy chests in a voluntary toy safety standard (1).

After evaluating these FDA and TMA size criteria, the Commission believes that they would effectively exclude from the rule toy chests that are too small to present the identified strangulation risk. While 1.1 cubic feet is small for a toy chest (56), this criterion on volume would exclude from the rule's coverage the specialized cases described above. It is also likely to exclude any other containers marketed for storing children's toys that are too small to present the strangulation hazard to children.

The six inch criterion is also a helpful one. All toy chest that the Commission has observed currently on the market have three dimensions—length, width, and depth (height)—each of which is larger than six inches (59). Nevertheless, it is theoretically possible that a toy chest will have a volume larger than 1.1 cubic feet and an internal dimension smaller than six inches. If such a toy chest existed, the Commission does not believe that it would present the strangulation risk because the head of the smallest child in the group at risk would be quite unlikely to fit into it. This is based on a commission staff estimate that such a head would measure approximately 4.4 inches by 5.7 inches by 6 inches (58). The six inch criterion used by the FDA and TMA is generally consistent with these dimensions and

the Commission is proposing to use it, along with the volume limitation, to define the scope of the toy chest rule.

Therefore, as described in section 1513.2 below, the proposed rule includes toy chests that have a smallest internal dimension of six inches or more² and a volume greater than 1.1 cubic feet. If any comments on the proposal indicate that these size limitations are not appropriate for toy chests, either because they include toy chests that do not present the strangulation risk or because they exclude toy chests that do present the risk, the Commission will reconsider the scope of the rule.

C. Test Procedure

The purpose of the proposed rule is to distinguish the toy chests that present the strangulation risk from those that do not, and to ban the hazardous ones (see section 1513.1). The rule does this by requiring that a lid not fall of its own weight. Whether a child or adult opens a toy chest, the lid must remain at the position to which it was opened, and not "slam shut" or otherwise close onto and entrap a child's neck or head.

The proposed rule includes a test procedure with which toy chests must comply (§ 1513.3). The procedure is framed in performance terms so that manufacturers can select from among different design approaches to achieve compliance. The Commission at this time knows of three types of lid support devices that could be used with a toy chest so that it will comply with the proposed test procedure (59):

(a) *spring-loaded support*: A device which uses a spring in either compression or tension to counterbalance the weight of the lid. Several such devices are currently marketed and some serve a dual purpose of both hinge and lid support.

(b) *friction-type support*: A device with a slotted bar, attached to the lid, which slides through a clamp attached to the chest. Friction between the clamp and bar is sufficient to support the lid.

(c) *ratchet-type device*: A bar with multiple notches, attached to the lid, and a pawl, attached to the chest, which engages the notches to prevent the lid from dropping. The pawl must be released by some means for the lid to close.

While not every lid support device that falls into one of these categories will necessarily comply with the standard, any of the three types could be used. The existence of at least three types of devices provides a

manufacturer with some freedom of choice about the design approach it wants to use.

The Commission emphasizes that neither the FHSA nor the proposed rule would require manufacturers to test toy chests. Rather, the test procedure describes the requirements that toy chests must meet in order to be in compliance and it also describes how the Commission will perform its testing for enforcement purposes. The Commission of course anticipates that manufacturers will test at least some of their toy chests.

The proposed test procedure incorporates the following criteria:

1. *Adjustment of the lid support device*. If a toy chest is sold unassembled, the consumer may have to install the lid support device. If so and if the device needs to be adjusted at the time of installation, the standard directs that such an adjustment be made, as long as it is described in the manufacturer's written instructions for consumer assembly (§ 1513.3(a)). No further adjustment of the lid support device is permitted, however, before or during the testing.

If a toy chest is sold to consumers in an assembled form, the standard permits no adjustment of the lid support device (§ 1513.3(a)). Since the chest is in a usable form when sold, it is possible (and perhaps even likely) that consumers will fail to make any adjustment that is necessary for proper functioning of the lid support device. Without the device, the lid will still open and close. Even if the manufacturer's written instructions described the adjustment, the Commission's experience is that some consumers fail to read any instructions that accompany already-assembled consumer products. Therefore, assembled toy chests must be tested as they are sold to consumers, without any adjustment at all to the lid support device.

2. *Permissible dropping motion of lid*. The purpose of the standard is to assure that the lid did not drop down when it is opened and released. However, the standard permits the lid to drop 0.25 inch or less (§ 1513.3(e)) because some dropping may occur when a ratchet-type lid support device is used to achieve compliance (59). Lid drop motion will be resisted only when the pawl is engaged in a notch in the bar, and some such motion may take place in order to achieve this engagement. The actual amount of lid drop will depend on the lid width and the pitch (number of notches per inch) of the notches on the bar.

² Even if a marketed toy chest is not a rectangular box and therefore has varying lengths, widths, or depths, this size limitation would be appropriate.

The Commission sees no reason why the ratchet-type lid support devices should not be used for compliance with the standard. Therefore, it is proposing that a drop of 0.25 inch be permitted. The Commission believes that this is reasonable because it will allow many ratchet-type devices to be used and because such a small drop will not pose a strangulation risk to any children using the toy chest.

The Commission is especially interested in receiving comments on an appropriate lid drop criterion. If comments on the proposed rule suggest and provide a supporting rationale for a different amount of permissible drop (or for no drop at all), the Commission will reconsider the proposed criterion of 0.25 inch. The Commission's overriding consideration on this issue is and will remain whether any particular dropping motion will pose an unreasonable risk to children.

3. *Exemption for half-inch openings.* If a lid is opened 0.50 inch or less, the dropping restrictions in the proposed standard do not apply (§§ 1513.3 (b) and (d)). Certain types of lid support devices, a possible example being a spring-loaded support that uses an over-center lever arrangement, might not be effective in holding the weight of the lid in positions that are 0.50 inch or less above the fully-closed position (59).

The Commission is proposing to allow the lid to drop from such positions to accommodate any devices with this limitation. Because no child's head would fit into an opening as small as a half-inch, and no child would therefore be placed at risk by this allowance, the safety of the proposed rule is not compromised (58). In fact, if any comments suggest that this exemption from the dropping restriction be expanded to openings larger than 0.50 inch and provide a supporting rationale, the Commission will consider making such a change. The Commission would evaluate whether any permitted drop would pose a risk to children by allowing strangulation to occur.

4. *7000 cycles.* Even if a toy chest lid complies with the test procedure when it is new, it would not necessarily continue to comply after it is opened and closed many times. Since the effectiveness of the procedure depends on continuing compliance, the proposal incorporates a "cycling" requirement (section 1513.3(c)).

After being tested for dropping motion, the lid must be full opened without being forced and then fully closed (one complete cycle) 7000 times. The dropping test is then performed a second time (§ 1513.3(d)), and the toy chest must still comply (§ 1513.3(e)).

The Commission's data on the number of times a toy chest is opened and closed in its normal use range from once per week to eight times per day (58). The Commission staff's professional judgment is that an average of four openings and closing per day is a reasonable estimate (58). If a chest were opened and closed four times per day for five years, it would undergo approximately 7300 such cycles. Rounding off this figure, the proposed regulation requires that a chest undergo 7000 cycles.

The Commission believes that any one child might use a toy chest for about two years (58). The same chest may be "handed-down" through the generations, given to children of friends or relatives, or sold at garage sales. This could easily result in many more than 7000 cycles during the life of one toy chest. However, the Commission's engineering staff believes that any chest that complies with the dropping requirement after 7000 cycles is likely to be sufficiently resistant to wear that it would continue to comply with the test after being subjected to a greater number of cycles (59). In other words, if a lid support device still works after 7000 cycles, it will probably continue to work long after.

The proposed test procedure requires that each cycle be completed in approximately eight seconds. If the cycling were performed faster, heat might result from friction and the functioning of the lid support device could deteriorate. The eight-second criterion is designed to avoid this problem and to complete the cycling test in a reasonable time. The Commission also believes that a laboratory cycling machine could easily be designed and adjusted to approximate an eight-second cycle.

D. Labeling

The Commission has included in the proposed rule a requirement that toy chests be clearly marked to show the name and place of business of at least one of the following: manufacturer, importer, distributor, seller (§ 1513.4(a)). The purpose of this requirement is to assist in any recall or retrofit efforts that the Commission may require or the industry may undertake voluntarily, for noncomplying toy chests.

In addition, the proposed rule would require that each toy chest have some marking—for example a number or symbol—that is particular to toy chests of identical construction, composition, and dimensions (§ 1513.4(b)). The purpose of this requirement is the same.

*E. Description of Industry*³

The Commission has identified about 30 manufacturers of toy chests as of October 1982. A few firms account for a large percentage of total production. The Commission estimates that three or four toy chest manufacturers account for as much as 70 or 80 percent of the total annual production. Other firms enter and leave the toy chest business from time to time as market conditions seem to dictate. Toy chests require little capital investment, are simple to make, and can readily be added to or dropped from product lines. Many of the smaller manufacturers produce around 1000 or fewer units a year. Most of the firms produce, in addition to toy chests, many other children's and juvenile products such as cribs, table and chair sets, doll furniture, car seats, laundry hampers, and a variety of molded plastic products.

Toy chest manufacturers and non-cohesive industry group. Some manufacturers are members of the Juvenile Products Manufacturers Association and others are members of the Toy Manufacturers of America. Many of the identified manufacturers do not belong to either of these associations.

The market for toy chests tends to be fairly stable over time since large shifts in consumer demand or style changes do not occur. Advertising by manufacturers is limited mostly to trade magazines and journals and is presented in combination with other products marketed by the firm. Retail sales tend to be spread over the whole year with a significant portion occurring in the pre-Christmas season.

The distribution system for toy chests, as it is for other juvenile products, is relatively complex because of the many sources of supply and the potentially thousands of retail outlets which may be involved. Some manufacturers distribute their product through wholesalers or other distributors, who in turn supply retailers. Retail outlets range from small local toy stores and juvenile furniture stores to large discount toy chains, mass merchandisers, variety stores, department stores, and hardware stores.

Toy chest production was estimated at 650,000 units in 1982, reflecting an increase of 50,000 units over the 600,000 units estimated for 1979. The production of toy chests declined in 1980 and 1981 but seems to have recovered in 1982. During 1982, a number of firms have experienced declines while others have

³ Unless noted otherwise, the information in this section and in section IIIF below is based on documents (26), (56), and (78).

increased their production. The retail value of current production, though difficult to estimate, is probably in the neighborhood of \$22 million. Based on a customary 100 percent markup for such products, the value of the manufacturers' shipments of toy chests is around \$11 million.

Manufacturers of toy chests normally produce more than one model and try to retain their share of the market primarily through decorative differences, though size, shape, and material used also are important factors. Toy chests with hinged lids generally have similar design characteristics. They are rectangular boxes with a volume ranging from about 7,000 to 14,000 cubic inches. They are usually constructed from hardwood, particleboard, pressed-wood, or plastic. Most toy chests are shipped in "knocked-down" condition with a lid support device enclosed in the packaging. Most toy chest retail prices range from about \$18 to \$85 and appear to have remained stable during the last two to three years.

*F. Preliminary Regulatory Analysis **

1. *Costs and benefits.* The major cost consideration of the proposed rule centers on a lid support device that would prevent the toy chest lid from dropping onto a child's neck. The rule would only apply to toy chests with hinged lids, and the Commission estimates that 300,000 of the total production of 650,000 toy chests, or a little less than 50 percent, fall within this category.

Almost all toy chests with hinged lids have lid support devices, but some models have been observed without them. Of the chests with hinged lids, about 180,000 units use adjustable lid supports and the other 120,000 units use nonadjustable lid supports. About 150,000 of the first category and 100,000 of the second category have the friction type. The remaining 30,000 units with adjustable and 20,000 units with nonadjustable lid supports use spring-loaded lid support devices.

The lid support devices are manufactured by firms producing hinges and other hardware supplies and are mostly utilized in applications other than toy chests, such as cabinets, stereo consoles, and other containers. These devices are available from several firms that have been supplying toy chest manufacturers. The cost of friction lid support devices ranges from about \$.25 to \$.60 per unit, with a weighted average cost of \$.37 per unit. The cost of spring-loaded lid support devices, currently

used, ranges from about \$.60 to \$1.50 per unit, with a weighted average cost of \$1.05 per unit.

To comply with the proposed rule, some of the toy chest manufacturers may switch from adjustable to nonadjustable supports which are slightly less expensive, thereby reducing somewhat the cost of producing toy chests. Manufacturers probably use the adjustable devices because they can be adapted to lids of varying weights and because consumers may want to adjust the friction to suit their performance preferences.

One extreme possibility is that all toy chest manufacturers will switch to nonadjustable friction lid support devices. In this case the average cost per lid support should be around the weighted average cost of \$.37 per unit. Based on the various devices currently being used by different manufacturers, the Commission staff has estimated that toy chest manufacturers would realize aggregate savings of around \$34,000, or \$.11 to \$.12 per unit, on the average. The actual amount of cost reduction will, of course, vary from manufacturer to manufacturer depending on the level of current production, cost per unit, and the effect of switching from adjustable to nonadjustable and from spring-loaded to friction lid support devices.

Another extreme possibility is that all toy chest manufacturers will switch to an upgraded version of a nonadjustable spring-loaded device which costs \$1.50 per unit. In this case, toy chest manufacturers would incur additional costs estimated at around \$320,000 or about \$1.07 per unit, on the average. Again, since the current cost of lid support devices varies from \$.25 to \$1.50 per unit, the actual cost of switching to the new device will vary from manufacturer to manufacturer. It should be noted that for some manufacturers, the actual increase in cost may be as little as \$.05 per unit over the current cost.

The two limiting possibilities suggest that the cost effects of the proposed rule could range from cost savings of \$34,000 to costs of \$320,000. The actual cost effects are likely to be in the \$80,000 to \$200,000 range, based on currently used devices and volume of production. This range of costs would represent the situation of all but very few manufacturers. On this basis, and assuming the usual 100 percent markup for such products, the corresponding aggregate costs to consumers would be somewhere between \$160,000 and \$400,000.

The test procedures specified by the proposal are expected to be relatively

easy and inexpensive to conduct, if manufacturers choose to conduct testing. The test requiring cycling of a toy chest lid at eight second time intervals over 7,000 cycles can be conducted manually or with equipment costing around \$500. Some firms may do their own testing and others may depend on their lid support suppliers for certification. No significant costs are associated with testing.

Toy chest manufacturers have indicated that they intend to pass on to consumers any additional costs they may incur in complying with a final rule. These costs to consumers have been estimated to be somewhere between \$160,000 and \$400,000, or about \$.53 to \$1.33 per unit, for chests with hinged lids. These increases represent about .6 to 7 percent of retail prices. The figures indicate that the additional costs to consumers are expected to be relatively small and not likely to affect purchases of toy chests adversely.

Toy chests will continue to be produced in many different models, allowing consumers to choose from a large variety of styles and a broad range of prices. There may be some disutility associated with the use of complying lid support devices if the friction devices cause children to have difficulty in raising the lids. However, elimination of the strangulation hazard to children (and other injuries from falling lids) will enhance the utility of the hinged toy chests.

The Commission is not aware of any domestically produced toy chests being sold abroad. Imported toy chests currently account for around 20 percent of the domestic market, about the same as in 1979. The rule is not expected to affect foreign trade in these products.

To summarize the cost factors, the potential aggregate cost to manufacturers of \$80,000 to \$200,000 are estimated to add from \$.27 to a maximum of \$.67 per unit, on the average, to the cost of all toy chests with hinged lids. The corresponding cost to consumers, i.e. the relative increase in the retail price of toy chests, is estimated to range from around \$.53 to \$1.33 per unit.

The potential benefits resulting from compliance with the proposed rule are related to the prospective number of deaths and injuries that would be eliminated or reduced. Commission records indicate that during the last nine years toy chests have been involved in 21 strangulation deaths, or an average of over two per year. A small number of injuries of varying severity have occurred each year, but no reliable estimate is available. However, on rare

*See footnote 3.

occasions, incidents have led to brain damage, paraplegia, and blindness. Avoiding such injuries can result in multi-million dollar benefits as measured by numerous large financial settlements awarded to victims and their families for lifetime disabilities of these types. The proposed rule can be expected to eliminate all strangulation deaths associated with newly-produced complying toy chests and virtually all of the injuries from falling lids. Once all chests comply with the rule, it will eliminate two deaths a year on the average, at a cost to the public somewhere between \$80,000 and \$200,000 per life saved. These costs per life saved are well within even conservative estimates of the value of life.

Another way of assessing the merits of the proposal is to compare the expected value of losses to consumers from toy chest accidents with the costs incurred. If we assume that there are about 3 million toy chests with hinged lids being used by consumers and two deaths per year, then there is a 1 and 1.5 million chance of a toy chest being associated with a fatality each year. If the expected price increases are in the middle of the estimated range, then they will average about \$.90 per unit. Assuming a product life of ten years, this yields a cost of \$.09 per year to avoid a fatality. Under these assumptions, the rule provides low cost insurance to the consuming public.

As proposed, the rule would apply to all toy chests that are in the channels of distribution after the effective date. Therefore, the Commission has considered whether the economic effect of such coverage would be greater than that of a rule applicable only to toy chests manufactured after the effective date.

Many manufacturers belonging to TMA or JPMA are already using lid support devices that probably place their toy chests in compliance with the proposed rule. These firms account for about eighty percent of shipments. Other firms also use lid support devices that are likely to qualify their toy chests for compliance with the proposed rule. In addition the publicity surrounding the proposal may increase the current level of compliance. Retailers are likely to order complying toy chests, and manufacturers that have not already begun to produce complying chests will be influenced by these orders to produce complying chests before the effective date.

Available information suggests that inventories of toy chests in the hands of retailers are turned over in about ninety-days and that manufacturer stocks on

hand are usually relatively small. Therefore, by the time any rule becomes effective, more than four months from now, almost all retail inventories now on hand should be sold. Assuming that only complying units are shipped soon after this proposal, there will be a virtual elimination of noncomplying toy chests from the market by the effective date of a final rule.

While some noncomplying toy chests may still be unsold by the effective date, the economic impacts on firms holding such inventories are likely to be small. To the extent that there are any impacts at all, upon whom the impact falls (retailer or manufacturer) will depend on circumstances such as whether repurchase of goods is an existing practice and whether chests can be retrofitted by the retailer or must be sent back to the manufacturer. Transaction costs—potentially including shipping units back to the manufacturer, opening packages, retrofitting with new lid support devices, changing assembly instructions, and repacking and shipping—could amount to more than the cost of the chests. If so, disposal may be the most efficient means of complying with the rule. Even if this extreme were required in some instances, the impact is likely to be insignificant since toy chests are a very small part of total sales of most retailers.

Under all sets of circumstances likely to arise, no substantial impact is expected to be associated with a rule that applies to toy chests in the channels of distribution after the effective date.

2. Voluntary standard effort. An alternative approach to the Commission's proposed rule for toy chests is the voluntary standard that is currently being developed by TMA, under the auspices of ASTM. This voluntary standard is quite similar to the proposed mandatory rule for toy chests. With respect to the strangulation risk, they have virtually the same performance requirements (65). As a result, adoption of the ASTM voluntary standard, if fully complied with, would provide the same degree of protection from strangulation and would have approximately the same economic impact in terms of costs and benefits as that outlined above for the Commission's proposed mandatory rule. (The voluntary standard, however, would not apply to toy chests manufactured before its effective date.)

A crucial factor to take into account in considering possible adoption of the ASTM voluntary standard for toy chests is the expected degree of compliance of toy chest manufacturers with the voluntary standard. TMA has contacted

all toy chest manufacturers that it, ASTM, and the Commission could identify to draw their attention to the requirements of the voluntary standard and to elicit their comments and support. TMA maintains it has received widespread support for the voluntary standard and that substantial compliance with its provisions will be forthcoming as soon as minor questions of language and interpretation have been clarified. A small sample of toy chest manufacturers contacted by the Commission staff confirmed that they support the voluntary standard and intend to comply with it (26) and (27).

TMA assertions notwithstanding, the Commission is concerned that compliance with the voluntary standard by domestic manufacturers and importers of toy chests may not prove to be adequate. One reason is the absence of cohesiveness in the industry and the fact that very few firms (only six identified in October 1982) are members of TMA. Another reason is that each year new firms replacing firms that leave the toy chest business may be unaware of, or decide not to comply with, the voluntary standard.

Most importantly, however, the Commission has not as yet received sufficient documentation to indicate that substantial compliance can be expected. If the number and relative size of the manufacturers who responded to TMA's and ASTM's inquiries about the standard is any indication of expected compliance, the extent of compliance might be only about 50 percent of all toy chests produced. If this should be the case, or even if the percent were somewhat higher, the degree of compliance with the voluntary standard would be too small to eliminate or adequately reduce the strangulation risk.

3. Alternatives to proposed standard. One possible alternative to the proposed standard is a ban of toy chests with hinged lids, currently estimated at about 300,000 annual production. Such a ban would probably lead to increased sales of toy chests with removable lids or sliding doors or no lids. Manufacturers' reactions to a ban are uncertain. For most firms the impact is likely to be slight, since toy chests are a small part of their product offerings. On the other hand, for a few firms, toy chests make up over a quarter of total sales. Also, a ban would eliminate from consideration the type of toy chest that about half of the buyers of these products choose. Such a ban could also result in less safety if consumers instead used such products as footlockers, deacon

benches, and other products with hinged lids for the storage of toys.

Due to the uncertainty of manufacturers' responses to a ban on toy chests with hinged lids, it is very difficult to estimate the costs likely to be incurred. Firms could react by removing hinges and putting handles on tops, redesigning to add sliding doors, or stopping production of toy chests altogether. Similarly, the benefits estimation is elusive because it depends on consumer reaction. Banning chests with hinged lids would certainly eliminate strangulation from newly-manufactured articles. However, as noted above, consumer use of close substitutes such as footlockers and deacon benches could result in strangulation incidents and reduce overall safety.

Another alternative approach to address the strangulation risk presented by toy chests is through a consumer information and education program. The Commission has already initiated a number of activities to warn consumers of the potential hazard involved, make suggestions for selecting new toy chests, and provide recommendations on making old toy chests and other items used as toy chests safer (54) and (76).

While the costs of an information and education program may be modest, the Commission believes it will be quite helpful in alerting consumers to the potential strangulation risk associated with toy chests. Such a program is particularly useful in cautioning consumers who are currently using cedar chests, footlockers, and similar items as toy chests. However, the Commission believes that information and education efforts in this case will not on their own address the strangulation risk adequately. Consumers who may not have been exposed to information programs will continue to acquire toy chests, both new and used, and may remain unaware of the strangulation risk. The Commission cannot be assured of constant and intensive information efforts that will reach all consumers. Therefore, a standard that addresses the safety of newly-manufactured toy chests is also necessary.

G. Effect on Small Business

Small manufacturers of toy chests have been able to compete successfully for a long time. The proposed rule would be likely to cause a relatively small cost increase ranging from \$.27 to \$.67 per unit on toy chests with lid support devices, and this increase is likely to be passed on to distributors and ultimately to consumers (56). The cost increase

would not be a disproportionate burden on small firms (56).

If toy chest manufacturers choose to test their products in order to assure compliance, the testing procedure, as proposed, would add slightly to their costs (56). The cost of purchasing the appropriate testing equipment is relatively low when considered in terms of the life expectancy of the equipment and the overall cost of toy chest production of a firm. It is estimated that the testing process may cost the smaller producers about \$1,000 during the first year the rule is in effect; most of the larger producers have been conducting their own testing and will probably not have to purchase additional testing equipment (56). The cost differential for compliance with the rule would not be likely to affect significantly the competition between larger and smaller manufacturers (56) and (78).

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) requires that whenever an agency of the federal government publishes a proposal under the Administrative Procedure Act (5 U.S.C. 553), it should endeavor to give particular consideration to small businesses, small nonprofit organizations and small local governments (collectively called "small entities") that may be subject to the agency's requirements.

In accordance with section 605(b) of the RFA, the Commission has certified that the proposed toy chest rule, if issued in final form, would not have a significant economic impact on a substantial number of small entities, for the reasons discussed above. Therefore, the Commission has not prepared an initial regulatory flexibility analysis of the probable effect of the proposal on small entities, in accordance with section 603 of the RFA.

H. Environmental Considerations

The toy chest proposal published below falls within the categories of Commission actions described in 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required. In any case, the Commission has considered the environmental effects, and concluded that there is little or no potential for a toy chest rule to affect the human environment.

I. Effective Date

Lid support devices of the type that will allow toy chest manufacturers to comply with the requirements of the proposed rule have been available for some time and can be obtained without

any delay (26) and (56). In fact, several toy chest manufacturers began incorporating these devices in their new product lines during the last couple of years. Other toy manufacturers have said that they intend to do the same, upon issuance of the ASTM voluntary standard (26) and (27). The testing and other equipment is also available and may be obtained immediately (56), since a final toy chest rule could apply to toy chests in the channels of distribution after the effective date, it is quite likely (as discussed in section III F(1) above) that noncomplying toy chests will disappear from the channels of distribution before the effective date (78).

Based on this information, the Commission believes that a long lead time for the mandatory rule would not be necessary. However, some time should be allowed for those toy chest manufacturers who may need to purchase the required testing equipment and effect minor mold modifications and retooling. No inventory problems are expected as a result of the rule. Toy chests are produced and sold throughout the year, although more are sold during the Christmas season (56). However, uncertainty about relative impacts increases the closer the effective date is to the issuance date.

The Commission believes that an effective date three months after the date of issuance will generally provide toy chest manufacturers sufficient time to comply with the rule without undue burden, except that some firms might be placed at a disadvantage, particularly if they have to purchase and use testing equipment for the first time, or make arrangements with commercial laboratories for the testing of their products (56). Factors affecting relative impacts include inventories of lid support devices on hand, lags in ordering and receiving new shipments of lid support devices, possible changes required in printed material such as assembly instructions, and implementation of changes at the manufacturing or assembly level (56). The Commission does not know the importance of a firm's size when these factors are considered in conjunction with a proposed effective date. However, considering the small percent of sales of toy chests relative to other products for most firms, such firms should be able to adjust to an early effective date without much difficulty.

The Commission has balanced the economic factors against the risk of injury presented by toy chests. Especially in light of the recent severe injury incident (61), the Commission

believes that a three month effective date would be appropriate.

Under the Consumer Product Safety Amendments of 1981, Congress is authorized to exercise a legislative veto over rules issued under section 2(q)(1) or 3(e) of the FHSA (Pub. L. 97-35; 95 Stat. 703; 15 U.S.C. 1275). As a result, no toy chest rule may take effect until after the period during which Congress could exercise a legislative veto of it. 15 U.S.C. 1275(b).

Congress may exercise its legislative veto during the 90 calendar day period of continuing session of Congress following issuance of the rule. Interruptions in the continuing session of Congress are likely to extend that period beyond 90 days. If so, the effective date must be more than 90 days after final issuance of the toy chest rule. In any case, the effective date cannot be less than 90 days after final issuance.

Therefore, the Commission is proposing that the effective date be the day after the expiration of the 90 calendar day period of continuing session of Congress. This is consistent with its belief that an appropriate effective date would be three months following final issuance of a toy chest rule. The Commission especially welcomes public comments, along with any supporting rationales and data, that might support any later effective date.

IV. Conclusion

Based on the discussion above and on the information contained in the record of this proceeding, the Commission has found preliminarily that certain toy chests with hinged lids present a "mechanical hazard" within the meaning of section 2(s) of the Federal Hazardous Substances Act, 15 U.S.C. 1261(s). In normal use, the design of these toy chests presents an unreasonable risk of personal injury to children.⁵

This preliminary finding of "unreasonable risk" is based on a balancing of the injury, economic, and other data in the record. The risk presented to children is that the hinged lids could fall onto children's heads or necks, resulting in death or serious

injury. This is a risk that children cannot protect themselves against and that adults may not even be aware of. The Commission is currently aware that 21 deaths and two incidents of serious permanent injury associated with the hazard of a toy chest lid falling on a child's head or neck have occurred since 1973. Such incidents have caused fatalities at a rate of more than two per year. The potential benefits from the elimination of this very serious risk of injury clearly outweigh the minimal economic harm that might result to the toy chest industry from necessary changes in hardware.

Accordingly, the Commission preliminarily finds that certain toy chests with hinged lids, in accordance with sections 2(s) and 2(f)(1)(D) of the FHSA, present a mechanical hazard and should be classified as hazardous substances. Pursuant to section 2(q)(1)(A) of the FHSA, the Commission finds that such toy chests must be banned from interstate commerce. In so finding, the Commission has considered the risk from hinged lid toy chests and the economic effects of the banning and safety requirements set forth below and has concluded that the potential reduction in risk to children from the proposed requirements bears a reasonable relationship to the costs of the rule.

List of Subjects in 16 CFR Parts 1500 and 1513

"Consumer protection, Hazardous materials, Infants and children, Toys.

Therefore, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(D), (q)(1)(A), (s); 3(e)(1), (h), 74 Stat. 372, 374, 375, as amended, 80 Stat. 1304-05, 83 Stat. 187-189, 95 Stat. 703; 15 U.S.C. 1261, 1262) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573, sec. 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a)), the Commission proposes to amend Title 16, Chapter II, Subchapter C by adding a new paragraph (a)(16) to § 1500.18 and a new Part 1513 as follows:

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

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other children's articles presenting mechanical hazards.*

Under the authority of section 2(f)(1)(D) of the act and pursuant to provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles

intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

(16) Any toy chest that falls within the scope of § 1513.2 of this chapter but does not comply with the test criteria of § 1513.3 or the requirements of § 1513.4 and that is either (a) manufactured after [the effective date] or (b), regardless of the date of manufacture, is in the channels of distribution after [the effective date] so that it has not yet been sold to a consumer.

PART 1513—[ADDED]

PART 1513—CRITERIA FOR IDENTIFYING TOY CHESTS THAT PRESENT A STRANGULATION RISK

Sec.	
1513.1	Purpose.
1513.2	Scope.
1513.3	Test procedure.
1513.4	Labeling.

PART 1513—CRITERIA FOR IDENTIFYING TOY CHESTS THAT PRESENT A STRANGULATION RISK

§ 1513.1 Purpose.

Certain hinged toy chests have caused the strangulation deaths of children when their lids closed on the children's heads or necks. The purpose of this Part is to identify, so that they can be banned under § 1500.18(a)(16) of this chapter, the toy chests that present this unreasonable risk of injury. The Commission will use the test method prescribed in § 1513.3 below to determine whether toy chests present such an unreasonable risk. However, this Part does not require any manufacturers or importers to test toy chests.

§ 1513.2 Scope.

This Part applies to all containers with hinged lids that are marketed for storing children's toys, as long as such containers have a continuous volume greater than 1.1 cubic feet and a smallest internal dimension of six inches or more.

§ 1513.3 Test procedure.

(a) If the toy chest is sold to consumers unassembled, assemble it in accordance with the manufacturer's written directions, including any specified adjustment to a lid support device. Following assembly, make no other adjustment to a lid support device.

⁵ It should be noted that while the Commission is currently regulating toy chests for a single severe risk, toy chests are already covered by a number of Commission rules. The Commission's lead-in-paint regulations ban toys bearing lead-containing paint and the small parts rule bans certain toys that present a choking, aspiration, or ingestion hazard. (See 16 CFR Part 1303 and 16 CFR Parts 1500 and 1501, respectively). The Commission has also issued technical requirements for determining sharp points in toys and similar requirements for determining sharp edges. (See 16 CFR 1500.48 and 1500.49, respectively).

If the toy chest is sold to consumers assembled, make no adjustment to any lid support device before or during the test.

(b) Place the toy chest on a level surface and lift its lid to any position in its arc of travel that is more than 0.50 inch from its fully closed position. Release the lid and measure any dropping motion of the lid by measuring the straight line distance between the original and the new positions of a point on the outermost edge of the lid.

(c) Subject the lid to 7000 opening and closing cycles. One cycle consists of raising the lid from its fully closed position to its fully open position and then returning it to the fully closed position, without forcing the lid beyond its normal arc of travel. Each cycle shall be completed within approximately eight seconds.

(d) Repeat the procedure specified in paragraph (b).

(e) Neither the measured distance in paragraph (b) nor the measured distance in paragraph (d) shall be greater than 0.25 inch. If either measure distance is greater than 0.25 inch when the lid is dropped from any point in its arc of travel (other than a point that is 0.50 inch or less from the fully closed position), the toy chest fails to comply with this test procedure.

§ 1513.4 Labeling.

Each toy chest shall be clearly marked to indicate:

(a) The name and place of business (city and state) of the manufacturer, importer, distributor, and/or seller; and

(b) A number, symbol, or other marking (e.g., model number, stock number, or catalog number) such that only toy chests of identical construction, composition, and dimensions shall bear identical markings.

Proposed Effective date: the day expiration of the 90 day calendar day period of continuing session of Congress following final issuance of the rule.

(Secs. 2 (f)(1)(D), (g)(1)(A), (s); 3 (e)(1), (h), 74 Stat. 372, 374, 375, 80 Stat. 1304-05, 83 Stat. 187-89, 95 Stat. 703; 15 U.S.C. 1261, 1262)

All comments and submissions should be sent, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Committee, Washington, D.C. 20207 no later than April 18, 1983.

Dated: March 11, 1983.

Sheldon D. Butts,
Acting Secretary, Consumer Product Safety Commission.

List of Documents in Record

1. Toy Manufacturers of America, Inc. voluntary standard PS 72-76, developed under procedures of the National Bureau of Standards; effective September 22, 1976.

2. Toy Chests Preliminary Economic Assessment, by Jacob Handelsman; October 1980.

3. Memoranda from George Rutherford on injury data for toy chests; October 12, 1979, September 10, 1980, March 1, 1982.

4. Memorandum from D. T. Van Houten on toy chests; July 3, 1980.

5. Proposed test requirement; October 21, 1980.

6. Draft Federal Register document proposing safety requirement for toy chests.

7. Proposed rule published by the Food and Drug Administration on toy chests; 38 FR 10480 (April 27, 1973).

8. Briefing package from Elaine Besson on toy chests, with ten tabs, (plus a December 9, 1981 Restricted memorandum from Stephen Lemberg); November 25, 1981.

9. Briefing package from Terri Rogers on toy chest options, with four tabs (Tab A Restricted); March 16, 1982.

10. Vote sheet on toy chest options; March 30, 1982.

11. Tapes of two Commission meetings on toy chests; April 1982.

12. Advance Notice of Proposed Rulemaking to address strangulation risk presented by toy chests; 47 FR 16041 (April 14, 1982).

13. Minutes of ASTM meeting on toy chests; May 4, 1982.

14. Letter from Roger Matice of ATF on ASTM meeting; May 18, 1982.

15. Memorandum from Terri Rogers on ASTM meeting, with attached meeting log; May 17, 1982.

16. Comment from an Ohio State University class on Legal Environment of Business; May 3, 1982.

17. Comment from Aaron Locker of TMA; June 11, 1982.

18. Comment from D. R. Poquette of Nu-Line Industries; June 11, 1982.

19. Comment from Douglas Thompson of TMA; May 4, 1982.

20. Comment from William T. Cavanaugh of ASTM; May 27, 1982.

21. Comment from De Fischler of PACT; June 14, 1982.

22. Comment from Gerad, Inc.; December 13, 1982.

23. ASTM task group letter ballot; July 6, 1982.

24. Log of meeting attended by CPSC staff and Elaine Besson of EHB Consulting Inc.; June 16, 1982.

25. Memorandum from James Thomas of ASTM, with attachments; July 1, 1982.

26. Telephone logs of conversations of George Nichols and industry representatives; April 8, 15, October 21, December 2, 3, 6, 1982 and January 21, 25, February 4, 8, and 16, 1983.

27. Telephone logs of conversations of Terri Rogers, John Liskey, and non-CPSC individuals involved in the TMA/ASTM voluntary safety standard effort; April 14, September 20, October 5, 12, November 12, 22, 1982 and January 12, 13, 21, 1983.

28. Log of meeting between James Thomas of ASTM and Terri Rogers; January 20, 1983.

29. Memoranda from George Nichols on comments to ANPR; August 2, 1982.

30. Letter from Terri Rogers to ASTM on voluntary standard; August 4, 1982.

31. Memorandum from John Preston on comments to ANPR; August 12, 1982.

32. Letter from James Thomas of ASTM on letter ballot; August 16, 1982.

33. Memoranda from Deborah Gordon on outreach activities; August 18, 1982.

34. Memoranda from Christine Nelson analyzing comments to ANPR; August 18, 1982.

35. Exchange of letters between Nancy Harvey Steorts and Douglas Thompson of TMA; September 20, 1982 and October 1982.

36. Letter from Walter W. Armatys of TMA; September 24, 1982.

37. Briefing paper from Terri Rogers, with attached chronology, on toy chests; October 5, 1982.

38. Vote sheet on toy chests; October 8, 1982.

39. Letter from Douglas Thomson of TMA to Terri Rogers on voluntary safety standard; October 13, 1982.

40. Letter from Douglas Thomson of TMA to James Thomas of ASTM on voluntary safety standard; October 14, 1982.

41. Draft ASTM voluntary standard on toy chests; October 1982.

42. Letter from James Thomas of ASTM (with attachments); October 21, 1982.

43. ASTM task group letter ballot; October 29, 1982.

44. Notes of meetings attended by Terri Rogers and toy chest manufacturers; November 2-3, 1982.

45. Letter from John Preston to ASTM commenting on draft voluntary standard; November 12, 1982.

46. Mailgram from William Kurtzner of Little Tikes, Inc. on voluntary standard; November 12, 1982.

47. Mailgram from William McMillan of JPMA on voluntary standard; November 12, 1982.

48. Mailgram from Roger Matice of ATF; November 16, 1982.

49. Memorandum from Betty-Grace Terpstra of Furniture Manufacturers Associations, with attachment; November 16, 1982.

50. Tape of Commission meeting on toy chests; November 17, 1982.

51. Mailgram from George Carlson of Carlson Capitol Manufacturing; November 17, 1982.

52. Correspondence between CPSC staff and James Cox, with attachments; November 29, 1982 and January 6, 1983.

53. ASTM memorandum on results of balloting on Draft #2 of voluntary standard, with six attached ballots; December 1, 1982.

54. Memorandum from Bessie Draper on outreach efforts concerning toy chest safety; December 22, 1982.

55. Memorandum from Christine Nelson on enforcement of proposed standard for toy chests; December 27, 1982.

56. Toy Chests: Preliminary Economic Assessment of Proposed Rule; January 1983.

57. Memorandum from John Liskey on voluntary standard; January 4, 1983.

58. Memorandum from Susan Meadows on toy chests, with attachments; January 4, 1983.

59. Memorandum from John Preston on proposed requirements for toy chests; January 5, 1983.

60. ASTM memorandum on Draft #2 of voluntary standard; January 3, 1983.
61. Memoranda from George Rutherford on injury data; November 16, 1982 (with Restricted attachment); January 17, 1983 (with Restricted attachment); and January 19, 1983.
62. Letters to toy chest manufacturers from Nancy Harvey Steorts; January 19, 1983.
63. Memorandum from Terri Rogers on a toy chest proposed rule; January 24, 1983.
64. Vote sheet on toy chest proposed rule; January 27, 1983.
65. ASTM Main Committee (F 15) letter ballot on voluntary standard, with attachments; January 27, 1983.
66. Letter from William Kurtzner of Little Tikes, Inc.; January 28, 1983.
67. Letter from Douglas Thomson of TMA, with attachments; January 31, 1983.
68. Tape of Commission meeting with representatives of toy chest manufacturers; February 3, 1983.
69. Letter from Robert Craig of COSCO; February 7, 1983.
70. Telephone log of conversation between Terri Rogers and Andrew Krulwich of ATP; February 7, 1983.
71. Letter from Aaron Locker of TMA; February 8, 1983.
72. Follow-up memorandum from Alan Shakin on toy chests (Restricted); February 8, 1983.
73. Follow-up vote sheet on toy chest proposed rule; February 8, 1983.
74. Tape of Commission meeting on toy chests; February 9, 1983.
75. Letters to toy chest manufacturers forwarding ANPR, and one response from General Fibre Products, Inc.; April 23 and May 11, 1983.
76. CPSC Safety Alert: Toy Chests; November 17, 1982.
77. Press release on ANPR; April 1982.
78. Ballot vote sheet, with attached Federal Register draft and Economics memorandum; February 1983.

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