



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

BP - CPSA 15j Rule: Drawstrings
 The contents of this document will be
 discussed at the Open Commission Meeting
 on Wednesday, April 28, 2010

THIS MATTER IS NOT SCHEDULED FOR A BALLOT VOTE.

A DECISION MEETING FOR THIS MATTER IS SCHEDULED ON: May 5, 2010

Date: April 21, 2010

TO: The Commission
 Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel *CAF*
for Maruta Budetti, Executive Director *MB*
 Philip Chao, Assistant General Counsel *PC*

FROM: Harleigh Ewell, Attorney, OGC *HE*

SUBJECT: Draft Proposed Rule to Specify That Children’s Upper Outerwear in Sizes 2T to 12 with Neck or Hood Drawstrings and Children’s Upper Outerwear in Sizes 2T to 16 with Certain Waist or Bottom Drawstrings are a Substantial Product Hazard

Attached for the Commission’s consideration is a draft proposed rule that would, pursuant to section 15(j) of the Consumer Product Safety Act, specify that children’s upper outerwear in sizes 2T to 12, or the equivalent, with neck or hood drawstrings, and children’s upper outerwear in sizes 2T to 16, or the equivalent, with certain waist or bottom drawstrings, are a substantial product hazard.

Please indicate your vote on the draft proposed rule.

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

 (Signature)

 (Date)

RA 4/21/2010
 CLEARED FOR PUBLIC RELEASE
 UNDER CPSA 6(b)(1)

THIS DOCUMENT HAS NOT BEEN
 REVIEWED OR ACCEPTED BY THE
 COMMISSION.

II. Do not approve publication of the draft proposed rule in the *Federal Register*.

(Signature)

(Date)

III. Approve publication of the draft proposed rule in the *Federal Register* with changes. (Please specify.)

(Signature)

(Date)

IV. Other. (Please specify.)

(Signature)

(Date)

Attachment: Draft Federal Register Notice of Proposed Rulemaking



Staff Briefing Package

15j Rule for Children's Upper Outerwear with
Drawstrings
April 28, 2010

RH 4/21/2010
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Briefing Memo



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

This document has been
electronically approved and signed.

Memorandum

Date: April 20, 2010

TO : The Commission
Todd Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel
Maruta Z. Budetti, Executive Director

FROM : Jonathan D. Midgett, Ph.D.
Children's Hazards Team Coordinator
Office of Hazard Identification and Reduction

Robert J. Howell
Assistant Executive Director
Office of Hazard Identification and Reduction

SUBJECT : Recommendation to Deem Children's Upper Outerwear with Drawstrings a
Substantial Product Hazard

I. Introduction

On August 14, 2008, the Consumer Product Safety Improvement Act of 2008 (hereafter referred to as the "Act" or the "CPSIA") was enacted [Public Law 110-314]. Section 223(a) of the Act amends section 15 of the Consumer Product Safety Act ("CPSA") (15 U.S.C. 2064) by adding a new section 15(j) of the CPSA, which gives the Commission the authority to specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence shall be deemed "a substantial product hazard" if the Commission determines that:

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

CPSC staff is aware of 18 deaths and 38 non-fatal incidents associated with neck/hood drawstrings on children's outerwear between January 1985 and September 2009 involving children 18 months to 10 years of age (see incident data, Tab A, Table 1). Of these, the most common incident scenario involved drawstrings getting entangled on playground slides (10 fatalities, 26 non-fatal incidents, and 8 non-injury incidents). During this same period, staff received reports of 27 waist/bottom drawstring entanglements associated with children 18 months to 14 years of age (8 fatalities, 11 non-fatal injury incidents, and 8 non-injury incidents).

Most of the fatalities occurred while the victims were exiting a vehicle and subsequently dragged on the road by their entangled clothing (Tab A, Table 2).

ASTM International (ASTM, formerly American Society for Testing and Materials) addressed the hazards presented by drawstrings on upper outerwear by creating a voluntary industry consensus standard, ASTM F 1816-97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear*. The standard prohibits the use of drawstrings on the hood and neck areas of children's clothing sizes 2T to 12 and requires waist/bottom drawstrings, on articles of sizes 2T to 16, to not exceed 75 mm (3 inches) in length outside the drawstring channel when the garment is expanded to its fullest width. In addition, the drawstrings can have no toggles, knots, or other attachments at the free end. If the drawstring is one continuous string, it must be bartacked or sewn to the garment at the midpoint of the channel so that it cannot be pulled out of the channel. Fully retracting drawstrings are contained within the garment and are exempt.

ASTM F 1816-97 defines a drawstring as “a non-retractable cord, ribbon, or tape of any material to pull together parts of upper outerwear to provide for closure.” This definition includes garments with stationary ties located at the neck or waist. The drawstring does not need to be designed to slide through a sleeve or grommet to be subject to the standard.

The U.S. Consumer Product Safety Commission (CPSC) Office of Compliance issued a letter¹ to the apparel industry on May 12, 2006, citing the fatalities and urging it to comply with the industry standard, ASTM F 1816-97. Further, the letter explained that CPSC staff considers noncompliant children's upper outerwear with drawstrings at the hood and neck area to be defective and to present a substantial risk of injury to young children under section 15(c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. § 1274(c).

This memorandum presents the staff's recommendation that the Commission publish a proposed rule to deem children's upper outerwear with drawstrings that do not comply with ASTM F 1816-97 as a “substantial product hazard” as allowed by Section 15(j) of the CPSA.

II. Readily Observable Characteristics

Drawstrings on upper outerwear, such as jackets and sweatshirts, are easily discerned. Outerwear with drawstrings at the neck or hood, or with non-compliant drawstrings at the waist, can be identified by a visual examination of the neckline, hood, or waist of a product and the numerical size label. If a manufacturer uses a non-numerical sizing system (such as small, medium, and large), correspondence to the numerical sizing system outlined in the voluntary standard may be determined based on the considerations described in Tab B (Size Determination Issues). The staff's draft proposed rule would cover any children's upper outerwear garment that is sized 2T to 12 (or that is not labeled with a numerical designation but is the equivalent size) regarding neck or hood drawstrings, or 2T to 16 (or that is not labeled with a numerical designation but is the equivalent size) regarding waist or bottom drawstrings.

¹ The letter is available online at: <http://www.cpsc.gov/BUSINFO/Drawstring.pdf>

III. Compliance with the Voluntary Standard

Based on an analysis of market information, a review of CPSC recall data, and assumptions about upper outerwear ownership and purchase rates (see Tab C), staff estimates that the proportion of children's upper outerwear garments sold in 2006-2008 that complied with the requirements of the drawstring standard was in the high 90-percent range.

IV. Effectiveness of the Voluntary Standard

CPSC staff conducted an analysis of incidents that were reported to the Commission (see Tab A) involving drawstring-related entanglements from 1985 to September 2009. CPSC staff is aware of 12 fatalities and 33 non-fatal incidents involving children aged 18 months to 10 years of age that were entangled by a neck/hood string of upper outerwear during the 12 years (1985-1996) prior to the standard. CPSC staff is aware of two fatal and two non-fatal neck/hood drawstring incidents during the eight years (1999-2006) for which reporting is complete after ASTM F 1816-97 was published.² These data suggest that after the ASTM standard was adopted for neck/hood drawstrings, the annual average of reported fatalities fell by about 75 percent and the annual average of reported non-fatal incidents fell by about 91 percent. Reporting continues for the years 2007-2009. Since January 2007, CPSC staff is aware of three fatalities associated with neck/hood drawstrings. When reporting for 2007-2009 is complete, the reduction in fatalities after the ASTM standard was adopted will be at most 55 percent if no further fatality reports are received.

For waist/bottom drawstrings, eight fatalities are on record since 1985, but none has occurred since the publication of the ASTM standard. Reported non-fatal incidents associated with waist/bottom drawstrings during the corresponding periods (1985-1996 and 1999-2006) fell from 11 in twelve years to 6 in eight years.³ These data suggest that after the ASTM standard was adopted, for waist/bottom drawstrings, the annual average of reported fatalities fell by 100 percent and the annual average of reported non-fatal incidents fell by about 18 percent. Staff attributes the reduction in reported incidents to compliance with the voluntary standard.

V. Small Business Impact

Based upon a CPSC staff analysis of available market data (see Tab D), staff concludes that the proposed addition of children's upper outerwear with drawstrings to the list of substantial product hazards will not have a significant impact on a substantial number of small entities. CPSC staff estimates that a very high percentage of small businesses that manufacture or sell children's outerwear already sell garments that conform to ASTM F1816-97; therefore, they would not be adversely affected if children's upper outerwear garments with drawstrings are

² The years 1997 and 1998 are omitted from this comparison because that was the transition period during which the ASTM standard was developed and published. In 1997, there were no reported fatalities and one reported injury. In 1998, there was one reported fatality and one reported incident involving snagging or entrapment but no injury.

³ For the omitted years 1997-1998 and 2007-2009, CPSC staff is aware of two non-fatal waist/bottom drawstring incidents (one 1997 car door incident involving injury and one 2007 incident involving snagging or entrapment but no injury).

added to the list. Also, CPSC's Office of Compliance already considers children's upper outerwear with drawstrings to constitute a substantial product hazard and would seek recalls of such products regardless of whether they were added, by rule, to the list of substantial product hazards under section 15(j) of the CPSA. Finally, conformance to ASTM F1816-97 is achieved for many garments distributed in commerce by simply eliminating drawstrings from the manufacturing process with minimal or no increase in resulting production costs.

VI. Paperwork Reduction Act

This prospective rule would not impose any information collection requirements, since it would merely add children's upper outerwear with drawstrings to the list of substantial product hazards under Section 15(j) of the CPSA to be established as 16 C.F.R. Part 1114. Accordingly, it is not subject to the Paperwork Reduction Act, 44 U.S.C. sections 3501 through 3520.

VII. Staff Recommendation

The staff recommends that the Commission publish a Notice of Proposed Rulemaking in the Federal Register under section 15(j) of the CPSA to deem children's upper outerwear that is subject to ASTM F 1816-97 but that does not comply with it to be a substantial product hazard. The Office of the General Counsel has prepared, for the Commission's consideration, a draft *Federal Register* notice that, if approved, would propose such a rule.

Appendix: Size Determination Issues

Garments with Non-numerical Sizes (such as Small, Medium, or Large):

Staff considered it necessary to establish equivalence between children's upper outerwear letter sizes and number sizes because many enforcement issues involve garments with drawstrings that have non-numerical sizes. It is fairly obvious when clothing is small enough for younger children and therefore would be included in the sizes specified in the ASTM standard. In contrast, it is not always apparent which non-numerical sizes correspond to the sizes at the upper end of the ranges in the standard, that is, size 12 and size 16, because styles and sizing systems vary.

CPSC's Division of Human Factors (HF) staff performed a search of the Web sites of retailers and brand-name companies who manufacture, distribute, or sell children's upper outerwear to locate clothing size charts which displayed equivalencies between children's non-numerical and numerical sizes. All size equivalency charts located, 31 of which were for girls' apparel and 29 for boys' apparel, were included in the review. For each firm, letter sizes were recorded for boys' and girls' sizes 10 through 18 to explore the overlap in letter sizes one size below and one above the 12 and 16 upper endpoints in the standard. The number of firms adopting each size equivalence is presented below.

Number of Firms by Number and Letter Size Equivalency⁴

	<u>Girls</u>						<u>Boys</u>				
	S	M	L	XL	XXL		S	M	L	XL	XXL
10	1	23	7			10	1	21	7		
12		17	14			12		17	11	1	
14			21	10		14		1	19	8	1
16			9	17	1	16			15	9	
18				9	1	18			1	16	2

As can be seen in the table, firms vary in the number of sizes they produce and in how they define those sizes. Note, for example, that although most firms equate children's sizes 10 and Medium, some equate size 10 with Small (S) and some with Large (L).

The purpose of the 15(j) rule is to define the features of a product that make it hazardous. In this case, those features are the presence of drawstrings on specific clothing sizes. To increase the likelihood that as many products as possible that are subject to the standard will indeed be included in the applicable size definition while minimizing the overlapping inclusion of products not subject to the standard, staff proposes that non-numerical equivalencies for sizes 12 (the standard's upper size limit for neck/hood drawstring coverage) and 16 (the standard's upper size limit for waist/bottom drawstrings) be based on the highest size equivalency that is 1) used by a substantial percent of children's apparel firms and 2) does not exclude a substantial percent of firms at a higher size equivalency.

⁴ This table is based on information from Web sites of 31 firms that link girls' numerical clothing sizes with letter sizes and on information from Web sites of 29 firms that link boys' numerical clothing sizes with letter sizes.

For example, for girls size 12 apparel, 55 percent of the size equivalencies shown in the chart above equate size 12 to size Medium, but if size 12 = Medium is selected as the upper limit size equivalency, then another 45 percent of size equivalencies (in the Large category) are *excluded*. Thus, to ensure that products covered by the standard are included, it appears to be more appropriate to select 12 = Large as the upper limit size equivalency for girls' upper outerwear. For boys size 12, 59 percent of the size equivalencies equate size Medium = 12, but if that size equivalency is selected, then another 38 percent at a high size equivalency are excluded. Thus, it appears more appropriate to select 12= Large as the upper limit size equivalency for boys upper outerwear. While there is another data point equivalency where size 12 = XL, it would constitute only 3 percent of equivalencies, and therefore it would be possible that products not covered by the standard would be included. Thus, it does not appear reasonable to include that size. Using this approach and based on the table above, staff proposes that boy's and girls' size Large (L) should be defined as size 12 and that boy's and girls' size Extra-large (XL) be defined as size 16.

Garments with a Size Range:

In cases where garment labels denote a range of sizes, e.g. "10-12," any range that includes sizes that are subject to the drawstring regulation will be considered subject even if some of the sizes in the stated size range would have been out of the scope of the regulations. For example, a coat sized 12-14 with a drawstring at the neck/hood remains subject even though the ASTM standard only covers garments up to size 12. A size 13-15 coat with a drawstring at the neck would not be considered within the scope of the ASTM standard, but would be included if it had waist or bottom drawstrings.

Garments without a Size Label:

Sometimes manufacturers do not label their garments with a size of any kind. While it may be readily apparent that very small garments are appropriate for children, ascertaining a size for larger garments in cases where a manufacturer has chosen not to place a size on the garment requires a case-by-case analysis. For the larger sizes of garments that fall within the scope of the standard (sizes 12 and 16, respectively), it is not feasible to select a single garment dimension that would effectively distinguish between children's and adult's clothing. In other words, some children's fashions will create garments that are large enough for small adults to wear and adult fashion will create some adult garments small enough for some children. It may seem possible to select a garment dimension like sleeve length or chest circumference that would universally differentiate between size 12 or size 16 children's garments and garments intended for small or medium-sized adults, but unfortunately, the dimensions of a garment are not dictated by standards. The standard defines the size of the parts of the body on which the garment may be worn, but the way the fabric is draped over those parts (loosely, tightly, short-sleeved, midriff length, or thigh length) is wholly at the whim of the garment designer and the styling he/she creates. Because of the large variability within the fashion design field, selecting a *garment dimension* that defines the larger garments that fall within the scope of the standard is not feasible. When evaluating larger garments without size labels, staff considers industry standards that list *body dimensions* associated with sizes 12 and 16 (ASTM D 6458, ASTM D 6192, and ISO 3636/3637) and other factors to provide a guide to ascertain if a subject garment is potentially subject to ASTM F 1816-97. Garments with chest dimensions, where they can be measured reliably, that are equal to or smaller than the child chest dimensions in the standards

that correspond to size 12 or 16, as appropriate, are obviously subject. Unsize clothing with larger dimensions will be evaluated as needed.

TAB A: Incident Data

**T
A
B
A**



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

Memorandum

Date: January 25, 2010

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

THROUGH: Russell Roegner
Associate Executive Director, Directorate for Epidemiology

Kathleen Stralka
Director, Division of Hazard Analysis

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

SUBJECT : Reported Frequencies of Fatal and Non-fatal Incidents Related to Drawstrings
on Children's Upper Outerwear between 1985 and 2009

Introduction:

This memorandum presents tabulated frequencies of fatalities, injuries, and non-injury entanglement incidents associated with drawstrings on children's upper outerwear. The incidents, extracted from CPSC's epidemiological databases, occurred between January 1985 and September 2009. Children's upper outerwear includes coats, jackets, and sweatshirts.

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

The age range of victims entangled by drawstrings on children's upper outerwear that are included in the statistics differ based on the location of the drawstring. ASTM F1816-97 *Standard Safety Specification for Drawstrings on Children's Upper Outerwear* applies to sizes 2T to 12 for neck/hood drawstrings and sizes 2T to 16 for waist/bottom strings. Since drawstring entanglement incidents reported to CPSC staff do not include the size of the upper outerwear, CPSC staff conducted an analysis of sizing charts (see Tab B). Staff concluded that the 2T to 12 sizes covered by ASTM's neck/hood drawstring requirements should fit children in the 18 months to 10 years of age range, while the 2T to 16 sizes covered by the waist/bottom drawstring requirements should fit children in the 18 months to 14 years age range.¹ For that reason the

¹ "Extent of Compliance with ASTM F1816 - 97: Standard Safety Specification for Drawstrings on Children's Upper Outerwear" Memo by Elizabeth Leland.

incidents in this memo are tabulated only for incidents with victims in the age ranges corresponding to the respective size specifications (18 months-10 years for neck/hood drawstrings, 18 months-14 years for waist/bottom drawstrings). The standard exempts upper outerwear that has fully retractable drawstrings. There is insufficient information in the reported incidents for CPSC staff to distinguish between incidents associated with retractable and non-retractable drawstrings.

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

Reported Incidents Associated with Neck/Hood Drawstring Entanglements:

CPSC staff is aware of 56 reports of neck/hood drawstring entanglements between January 1985 and September 2009. Table 1 records the frequency of reported neck/hood drawstring entanglements by year and by severity of the incident. Eighteen (32%) of these entanglements were fatal. The majority of the entanglements involved neck/hood drawstrings being snagged on sliding boards. Neck/hood drawstrings also became entangled on parts of cribs in several incidents. Of the 38 non-fatal incidents involving children in the 18 months to 10 years of age range, 30 incidents resulted in injuries. In the remaining eight incidents, the neck/hood drawstring snagged or entangled the child but no injury was reported. The year with the highest number of reported fatalities (3) is 1994. The three years with the highest number of reported incidents (including both fatal and non-fatal incidents) were 1992 (11), 1993 (9), and 1994 (9). Slides were associated with 10 of the fatalities, 26 of the injury incidents, and all 8 of the non-injury incidents (the jackets or sweatshirts snagged by the hood or neck drawstring on playground slides prior to escape or rescue).

The standard for drawstrings on children's upper outerwear, ASTM F 1816-97, was approved in June 1997 and published in August 1998. CPSC staff is aware of 12 fatalities and 33 non-fatal incidents involving children aged 18 months to 10 years of age that were entangled by a neck/hood string of upper outerwear during the 12 years (1985-1996) prior to the standard. On average, this results in one reported fatality and about 3 non-fatal incidents a year. In the 8 years (1999-2006) for which reporting is complete after ASTM F 1816-97 was published, CPSC staff has received reports of two fatal and two non-fatal neck/hood drawstring incidents. On average, this is approximately one fatality every four years and about one non-fatal entanglement every four years. It should be noted that CPSC staff is continuing to receive incident reports for the years 2007-2009. CPSC staff is aware of 3 fatalities for 2007-2009. The number of reported incidents for these years may change in the future.

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

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

Source: CPSC EPIR. Based on incidents with reports entered into any of CPSC's IPII, DTHS, NEISS, or INDP databases before October 8, 2009 (Source descriptions are provided in the Methods Section). *Reporting for 2007-2009 is ongoing.*

Reported Incidents Associated with Waist/Bottom Drawstring Entanglements:

Between 1985 and September 2009, CPSC staff received 27 reports of entanglement incidents associated with a waist/bottom drawstring on children's upper outerwear. Of these 27 incidents, eight (30%) were fatal, 11 (41%) resulted in injuries, and eight (30%) were snags or entanglements that did not result in injuries. As Table 2 illustrates, no waist/bottom drawstring incidents were reported to CPSC staff prior to 1991. All eight fatalities (7 bus, 1 slide) identified with waist/bottom drawstrings occurred between the years 1991-1996. During 1991-1996 there were a total of 19 waist/bottom drawstring incidents of which 13 involved buses (seven bus fatalities and six bus non-fatal incidents). CPSC staff is not aware of any bus incidents after the

year 1996. There were eight waist/bottom drawstring incidents from 1997-present (all non-fatal), of which three involved children caught on car doors.

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

Incident Year	Fatal	Injury Indicated	No Injury (Snag, Entrapment, or Entanglement)	Non-fatal Incidents (Injury + No Injury)	Total (Fatal + Injury + No Injury)
1985	0	0	0	0	0
1986	0	0	0	0	0
1987	0	0	0	0	0
1988	0	0	0	0	0
1989	0	0	0	0	0
1990	0	0	0	0	0
1991	2	1	0	1	3
1992	0	1	0	1	1
1993	1	2	4	6	7
1994	1	1	1	2	3
1995	2	0	0	0	2
1996	2	1	0	1	3
1997	0	1	0	1	1
1998	0	0	0	0	0
1999	0	1	0	1	1
2000	0	2	1	3	3
2001	0	0	1	1	1
2002	0	0	0	0	0
2003	0	0	0	0	0
2004	0	1	0	1	1
2005	0	0	0	0	0
2006	0	0	0	0	0
2007	0	0	1	1	1
2008	0	0	0	0	0
2009	0	0	0	0	0
Total	8	11	8	19	27

Source: CPSC EPIR. Based on incidents with reports entered into any of CPSC's IPII, DTHS, NEISS, or INDP databases before October 8., 2009. (Source descriptions are provided in the Methods Section). *Reporting for 2007-2009 is ongoing.*

All of the reported fatalities associated with waist/bottom drawstrings on children's upper outerwear occurred prior to the approval and publication of ASTM F1816-97. In the 11 years (1999 and 2009) since the 1998 publication of the ASTM standard addressing drawstrings, CPSC staff received seven (37%) of the 19 reports of non-fatal incidents where a waist/bottom drawstring on a child's upper outerwear was snagged or entrapped.

Ages of Children Involved in Reported Upper Outerwear Drawstring Entanglements

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

Within each table, the frequencies of reported incidents by victim age are recorded for those incidents that occurred prior to the 1998 publication of ASTM F1816-97 separately from those that occurred after the standard was published. There are too few reported incidents after the standard was published to support an age analysis. However, incidents that occurred prior to the ASTM standard suggest that the majority of neck/hood entanglements involved children younger than 6 years old, while the majority of the reported incidents related to waist/bottom string entanglements involved children 6 years old and older.

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

<u>Pre Standard (1985 – 1998)</u>					
Age	Fatal	Injury Indicated	No Injury (Snag or Entrapment)	Non-fatal Incidents (Injury + No Injury)	Total (Fatal + Injury + No Injury)
School aged	0	0	2	2	2
18-23 months	2	1	0	1	3
2	4	6	0	6	10
3	3	3	2	5	8
4	1	3	0	3	4
5	1	2	2	4	5
6	1	6	1	7	8
7	0	5	1	6	6
8	0	2	0	2	2
9	0	0	0	0	0
10	1	0	0	0	1
Total	13	28	8	36	49
<u>Post Standard (1999 – 2009)</u>					
Age	Fatal	Injury Indicated	No Injury (Snag or Entrapment)	Non-fatal Incidents (Injury + No Injury)	Total (Fatal + Injury + No Injury)
School aged	0	0	0	0	0
18-23 months	0	0	0	0	0
2	1	0	0	0	1
3	3	0	0	0	3
4	0	0	0	0	0
5	1	0	0	0	1
6	0	1	0	1	1
7	0	0	0	0	0
8	0	0	0	0	0
9	0	1	0	1	1
10	0	0	0	0	0
Total	5	2	0	2	7

Source: CPSC EPIR. Based on incidents with reports entered into any of CPSC's IPII, DTHS, NEISS, or INDP databases before October 8, 2009 (Source descriptions are provided in the Methods Section). *Reporting for 2007-2009 is ongoing.*

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

Pre Standard (1985 – 1998)					
Age	Fatal	Injury Indicated	No Injury (Snag or Entrapment)	Non-fatal Incidents (Injury + No Injury)	Total
School aged	0	0	1	1	1
18 - 23 months	0	0	0	0	0
2	0	0	0	0	0
3	0	0	0	0	0
4	0	0	2	2	2
5	0	0	1	1	1
6	0	0	1	1	1
7	1	1	0	1	2
8	2	1	0	1	3
9	1	1	0	1	2
10	0	1	0	1	1
11	0	2	0	2	2
12	1	1	0	1	2
13	1	0	0	0	1
14	2	0	0	0	2
Total	8	7	5	12	20
Post Standard (1999 – 2009)					
Age	Fatal	Injury Indicated	No Injury (Snag or Entrapment)	Non-fatal Incidents (Injury + No Injury)	Total
School aged	0	0	0	0	0
18 - 23 months	0	1	0	1	1
2	0	0	1	1	1
3	0	0	0	0	0
4	0	0	1	1	1
5	0	0	0	0	0
6	0	0	0	0	0
7	0	0	0	0	0
8	0	1	0	1	1
9	0	0	0	0	0
10	0	0	0	0	0
11	0	1	0	1	1
12	0	1	1	2	2
13	0	0	0	0	0
14	0	0	0	0	0
Total	0	4	3	7	7

Source: CPSC EPIR. Based on incidents with reports entered into any of CPSC's IPII, DTHS, NEISS, or INDP databases before October 8, 2009. (Source descriptions are provided in the Methods Section). *Reporting for 2007-2009 is ongoing.*

Additional Reported Incidents Associated with Neck/Hood Drawstring Entanglements:

CPSC staff identified 4 incidents related to neck/hood drawstring entanglements where the victim’s age was either unknown or outside of the age range mapped to the upper outerwear sizes covered by ASTM F1816-97. These incidents are not included in the frequencies reported in Tables 1 or 3. They are presented for consideration in Table 5.

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

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

Methods

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

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

CPSC purchases death certificates from all 50 states, New York City, the District of Columbia, and some territories. These death certificates reside in CPSC's DTHS database. Only those certificates in certain E-codes (based on the World Health Organization's International Classification of Diseases ICD-10 system) are purchased. These are then examined for product involvement before being entered into CPSC's death certificate database. The result is neither a statistical sample nor a complete count of product-related deaths, nor does it constitute a national estimate. The database provides only counts for product-related deaths from a subset of E-codes. For this reason, these counts tend to be underestimates of the actual numbers of product-related deaths. The year that death certificates are delivered to CPSC differs by State. The most recently available information indicates that certificate collection was considered 99% complete for 2005, 98% complete for 2006, 73% complete for 2007, and 32% complete for 2008. Percent complete estimates are not yet available for 2009.

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

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

CPSC staff identified children's upper outerwear drawstring incidents by applying the following selection criteria to records entered into EPIR between January 1, 1985 and October 8, 2009.

Product Codes:

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

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

Keyword indicators:

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

IPII hazard type indicators:

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

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

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

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

injuries were indicated, these near immediate rescues or escapes are counted as no injury incidents.

TAB B: Extent of Compliance with the Voluntary Standard

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

Memorandum

April 14, 2010

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

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

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

SUBJECT : Extent of Compliance with ASTM F1816-97: Standard Safety Specification for Drawstrings on Children's Upper Outerwear

Introduction

This memorandum provides information about the extent of compliance of children's upper outerwear with the ASTM standard for drawstrings. Readily available data appear to indicate a high level of compliance with the standard.

Background

In 1997, ASTM approved F1816-97, Standard Safety Specification for Drawstrings on Children's Upper Outerwear; the standard was published in 1998. This voluntary standard provides performance requirements for drawstrings on children's upper outerwear, which is defined by the standard as girls' and boys' clothing that is generally intended to be worn on the exterior of other clothing. Garments covered by the standard include jackets, sweatshirts, and "hoodies". The sizes covered by the standard are sizes 2T (Toddler) to 12 for neck and hood drawstrings and sizes 2T to 16 for drawstrings at the waist and bottom of children's outerwear. Upper outerwear with fully retractable drawstrings is exempt from the standard.

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

Extent of Compliance with ASTM F1816-97

The CPSC Directorate for Economic Analysis (EC) staff contacted the industry trade association, reviewed federal government industry data, and examined CPSC recall data to try to find information about the extent of compliance with the children's upper outerwear drawstring standard. Here is a summary of the information that was gathered.

Industry Opinion

EC staff contacted the American Apparel and Footwear Association (AAFA), in February 2009. A representative for AAFA would not provide an estimate of the extent of compliance with the voluntary standard, but indicated that the number of drawstring-related recalls in 2007 and 2008 is a concern to AAFA members. It is thought by some AAFA members that those recalls were due to movement by companies from other product manufacturing / distributing / retailing areas into the children's outerwear market. AAFA members are aware of and meeting the standard, but information is not available as to the share of the children's outerwear market held by AAFA members.¹

Market Data

Aggregate information about the market for children's outerwear is not readily available. U.S. Department of Commerce North American Industry Classification System (NAICS) data for manufacturing and for wholesale and retail trade in general do not provide either 1) a breakdown of outerwear apart from other garments or 2) a breakdown of children's outerwear apart from adult outerwear. Although *Current Industrial Report* data from the U.S. Department of Commerce have a more narrowly-defined breakdown of apparel by type of garment, these data are categorized as "Women's, Misses', Juniors' and Girls' Apparel" and "Men's, Junior Boys' and Little Boys' Apparel".²

Trade press information suggests that leaders in the children's wear market (including garments in addition to upper outerwear) include these 11 companies: Kids Headquarters; LT Apparel Group; Haddad Brands; Millenium Apparel; The Doneger Group; Garan Incorporated; Samara Brothers; Amerex Kids Group, Inc.; Kahn Lucas Lancaster; Baby Togs; Parigi Group; and Mayfair.³ A sampling of these companies' Web sites indicates that they represent major children's clothing brand names, such as Carter's; London Fog Kids; Youngland; Juicy Couture; DKNY Kids; Puma Kids; Baby Dior; Fisher-Price; Levi's; Dockers; Nike; OshKosh; Phat Farm Boy; Baby Phat Girlz; Disney; Garanimals; the NFL; Weather Tamer; and Mudd.

¹ The AAFA representative also indicated that AAFA members met with the Acting CPSC Chairman in July 2008 and discussed the possibility of the drawstring standard becoming a mandatory standard. AAFA members were interested in this possibility because New York and Wisconsin have their own drawstring laws which are more stringent than ASTM F1816-97. AAFA members were interested in having a national standard rather than state standards and a voluntary standard. At the time of the conversation in February 2009, the AAFA representative had recently polled the AAFA Product Safety Committee as to their opinions on a mandatory standard, but he had had no response.

² U.S. Census Bureau, *Current Industrial Report*, www.census.gov/industry/1/mq315a064.pdf.

³ "Children's Wear Industry's Young Leaders Meet to promote Increased Product Donations for Kids in Need", *Focus on Kids*, Fall 2008 newsletter, Kids in Distressed Situations, Inc., New York, New York, p.1, www.kidsdonations.org/pdfs/Fall_08_Focus_on_Kids.pdf.

Of these 11 companies, Amerex Kids Group Inc. had the largest market share in the children’s outerwear market, at least as of 2004.⁴ A review of its Web site indicates that the brands represented by this company do not appear to have upper outerwear products with drawstrings. Of the remaining 10 companies, five are members of AAFA and presumably represent children’s wear brands that meet the drawstring voluntary standard.⁵ Another company listed above, Haddad Brands, participated in the 1994 cooperative agreement between CPSC and manufacturers and retailers of children’s clothing whereby the companies agreed to remove drawstrings from the hoods and necks of children’s clothing.⁶ Inasmuch as this company still is under the same management, it is likely that its product brands meet the drawstring standard. Thus, it appears that at least seven of the 11 leaders in the children’s wear market likely meet the drawstring standard. However, the combined share of the children’s outerwear market held by these companies is not known.

CPSC Recall Data

Table 1 (below) shows information about the CPSC recalls for the years 2006 – 2009. The number of Compliance cases related to recalls of children’s upper outerwear garments with drawstrings numbered 78 for that period, involving about 2 million units.

The number of recalls in 2008 and 2009 was more than the number of recalls in 2006 and 2007; however, the annual average number of outerwear garments recalled in 2006 and 2007 (about 650,000) was about 75 percent greater than the annual average number recalled in 2008 and 2009 (about 377,000).

Table 1
CPSC Office of Compliance Recalls
Drawstrings on Children’s Upper Outerwear
2006 - 2009

Year	Number of Recall Cases	Number of Units of Upper Outerwear Recalled
2006	17	676,597
2007	14	626,172
2008	24	227,868
2009	23	526,193
Total	78	2,056,830

Source: Communication from CPSC Office of Compliance, March 18, 2010.

CPSC Staff Estimate of Extent of Compliance with the Voluntary Standard

Using garment sizing information, population data, and assumptions about purchase and use of children’s upper outerwear, it is possible to calculate the number of units recalled as a

⁴ See www.webprofile.info/jdeakins/jdeakins.pdf, p.2.

⁵ The companies are: Kids Headquarters; LT Apparel; Millenium; The Doneger Group; and Kahn Lucas Lancaster.

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

proportion of sales and as a proportion of upper outerwear garments in use. These calculations may provide a rough estimate of the extent of compliance with the voluntary standard.

A. Garment Sizing Information

As mentioned earlier, the voluntary standard applies to sizes 2T to 12 for neck and hood drawstrings and sizes 2T to 16 for drawstrings at the waist and bottom of upper outerwear. The age of a child, however, does not correlate directly with garment size, i.e., a child who is six years old does not necessarily wear a size 6 garment. The size determination of a child's garment takes into account the height and weight of the child and other physical characteristics, such as chest size. When a consumer purchases a child's garment, he or she is often directed to a size chart that correlates weight, height, and, sometimes, other physical characteristics of the child.⁷

Using anthropometric body measurement data and standard tables of body measurements developed by ASTM⁸, the CPSC Division of Human Factors (ESHF) staff found that a child's age *roughly* matches the clothing size, give or take a year or two.⁹ For example, a child who is 12 years old might wear a size 12 or a size 14 garment. A child who is 5 years old might wear a size 5, 6, or 7.

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

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

For each of the years 2006 through 2009, the population of children ages 18 months to 10 years old (those wearing sizes 2T to 12, as noted above) was about 38 million. The population of children ages 18 months to 14 years old (those wearing sizes 2T to 16, as noted above) was about 55 million.¹⁰

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

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

⁷ A review of children's upper outerwear size charts for 24 retailers showed that four used age as a determinant of clothing size and 20 used height, weight, and other anthropometric characteristics as a determinant of clothing size.

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

⁹ "Standard Tables of Body Measurements for Boys, Sizes 8 to 14 Slim and 8 to 20 Regular", ASTM International, February 2006.

¹⁰ For the years 2006 through 2008, this number is based on Bureau of the Census, U.S. Department of Commerce data, which can be found at www.census.gov/popest/national/asrh/NC-EST2008/NC-EST2008-01.xls. Adjustments were made to account for children younger than 18 months who would wear upper outerwear of sizes not covered by the voluntary drawstring standard. Data for the year 2009 were developed by using the above Bureau of the Census Data for 2008 and data on live births from the National Vital Statistics System of the National Center for Health Statistics, www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_09.pdf.

However, given children's growth patterns, it may not be unlikely that, on average, at least one new piece of upper outerwear is purchased each year for each child.¹¹ If so, then sales of upper outerwear with neck and hood drawstrings or with waist and bottom drawstrings could total the population of children who wear children's sizes 2T to 16, or approximately 55 million units as calculated above.

D. Estimated Extent of Compliance

Assuming that 1) all garments violating the mandatory drawstring standard were recalled in the years 2006 through 2009, 2) at least one new piece of upper outerwear, on average, is purchased for each child each year, and 3) annual unit sales of upper outerwear with neck or hood drawstrings totaled 55 million (as calculated above), then it would appear that the number of children's upper outerwear garments that complied with the drawstring requirements of ASTM F1816-97 was in the very high-90 percent range. While the number of recalled units in the years 2006 through 2009 totaled about 2 million, the number of units sold during those four years, under the assumptions above, totaled 220 million. Thus, for the period 2006 through 2009, the units recalled by CPSC would account for about 1 percent of all units sold; in other words, given the assumptions above, there was about 99 percent compliance with the voluntary standard.

¹¹ In some areas of the country, children may purchase more than one piece of upper outerwear due to seasonal variations in the weather. However, there also likely are children who wear "hand-me-downs" and for whom a new item of upper outerwear would not be purchased each year.

TAB C: Small Business Consideration

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

Memorandum

Date: January 26, 2010

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

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

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

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

This memorandum addresses small business considerations related to a prospective Consumer Product Safety Commission (CPSC) rule that would include children's upper outerwear with drawstrings at the hood or neck and certain uses of drawstrings at the waist on the list of substantial product hazards under Section 15(j) of the Consumer Product Safety Act (CPSA). Such uses of drawstrings on children's upper outerwear would not be in conformance with the currently applicable voluntary consensus safety standard, ASTM F1816-97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear*, which prohibits the use of drawstrings on the hood and neck areas of children's clothing sizes 2T to 12 and it limits the use of waist/bottom drawstrings on articles of sizes 2T to 16.¹

Background

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

¹ ASTM F1816-97 specifies that waist/bottom drawstrings must not exceed 75 mm (3 inches) in length outside the drawstring channel when the garment is expanded to its fullest width. In addition, the drawstrings can have no toggles, knots, or other attachments at the free end, and if the drawstring is one continuous string, it must be bartacked or sewn to the garment at the midpoint of the channel so that it cannot be pulled out of the channel. Fully retracting drawstrings are contained within the garment and are exempt.

that there is substantial compliance with such standards.”² The Commission is considering the commencement of rulemaking proceedings in order to add the children’s upper outerwear with drawstrings at the hood or neck area, and certain uses of waist/bottom drawstrings, to the list of substantial product hazards under Section 15(j) of the CPSA. The promulgation of such a rule by CPSC would facilitate a variety of potential enforcement actions by CPSC against hazardous children’s outerwear found to be distributed in commerce.

On May 19, 2006, the Commission posted on its web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urged them to make certain that all children's upper outerwear sold in the United States complied with the currently applicable voluntary consensus safety standard, ASTM F1816-97 for the following reasons: young children can be seriously injured or killed if the upper outerwear they are wearing catches and snags on other objects; there had been a marked decrease in fatalities and incidents since the ASTM F1816-97 standard took effect, and; the CPSC staff believed that many of the remaining injuries and deaths would be prevented if all children’s upper outerwear met the requirement of the ASTM standard. The 2006 letter stated that the Office of Compliance staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (FHSA) Section 15(c), 15 U.S.C. 1274(c). The letter also noted the CPSA's Section 15(b) reporting requirements.

The 2006 letter from the Director of Compliance stated the staff’s position that there is no persuasive reason for children’s upper outerwear to be manufactured with drawstrings at the hood and neck area since products without these drawstrings have been on the market for many years. It also urged responsible firms to review their product line and assure that no children’s upper outerwear that they manufacture, import, distribute and sell in the United States has drawstrings at the hood or neck area. In view of the 2006 letter, as well as the publication of multiple CPSC recalls and other actions taken under Section 15 of the CPSA and other applicable statutory provisions, manufacturers, importers, and retailers of children's upper outerwear should be aware that the Commission’s Compliance staff considers drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to children.

Market Data

Aggregate information about the market for children’s outerwear is not readily available; these types of garments are not separately reported by the U.S. Department of Commerce. Nearly all manufacturers of these garments would be considered small businesses under Small Business Administration (SBA) guidelines (fewer than 500 employees) applicable to such enterprises. According to SBA data for 2006, of 9,343 U.S. firms that manufactured cut and sew apparel, 9,286, or 99.4 percent, had fewer than 500 employees, and more than 80 percent had fewer than 20 employees.³ Firms that manufacture children’s outerwear would be a subset of the cut and sew manufacturing category, but the statistics cited above would support the assumption

² Consumer Product Safety Improvement Act of 2008, Section 223: Substantial Product Hazard List and Destruction of Noncompliant Imported Products. 122 STAT. 3016 PUBLIC LAW 110-314—AUG. 14, 2008.

³ Office of Advocacy, U.S. Small Business Administration, Firm Size Data, <http://www.sba.gov/advo/research/data_uspdf.xls>

that nearly all are small businesses. SBA firm size data for clothing retailers also show that nearly all of these firms would be considered to be small businesses.

No information about recent annual sales of children's upper outerwear is available. According to a September 23, 2009, memorandum, the Directorate for Economic Analysis estimates that annual sales of such garments could be approximately 55 million units. Regarding the level of conformance with the applicable voluntary consensus safety standard, readily available data appear to indicate that the number of children's upper outerwear garments sold in the U.S. that comply with the requirements of ASTM F1816-97 is in the high-90 percent range.⁴

Small Business Impact

Adding children's outerwear with drawstrings to the list of substantial product hazards under Section 15(j) of the CPSA, in accordance with the prospective CPSC rule discussed above, will not likely have a significant impact on a substantial number of small entities. CPSC staff estimates that a very high percentage of small businesses that manufacture or sell children's outerwear already sell garments that conform to ASTM F1816-97. Therefore, they would not be adversely affected if children's upper outerwear garments with drawstrings are added to the list. Also, as discussed in the background section above, the Commission's Office of Compliance and Field Operations already considers children's upper outerwear with drawstrings to constitute a substantial product hazard, and would seek recalls of such products regardless of whether they were added, by rule, to the list of substantial product hazards under Section 15(j) of the CPSA. Finally, conformance to ASTM F1816-97 is achieved for many garments distributed in commerce by simply eliminating drawstrings from the manufacturing process with minimal or no increase in resulting production costs.

⁴ Leland, Elizabeth W., Directorate for Economic Analysis, CPSC, "Extent of Compliance with ASTM F1816-97: Standard Safety Specification for Drawstrings on Children's Upper Outerwear." Memorandum to Jonathan D. Midgett, Division of Human Factors, CPSC. September 23, 2009.

Draft Proposed Rule – Drawstrings - Attached

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1120

[No. CPSC-2010-00__]

RIN 3041-AC79

Determination That Children's Upper Outerwear in Sizes 2T to 12 with Neck or Hood Drawstrings and Children's Upper Outerwear in Sizes 2T to 16 with Certain Waist or Bottom Drawstrings are a Substantial Product Hazard

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is proposing a rule to specify that children's upper outerwear garments in sizes 2T to 12 or the equivalent that have neck or hood drawstrings, and in sizes 2T to 16 or the equivalent that have waist or bottom drawstrings that do not meet specified criteria, have characteristics that constitute substantial product hazards. Items of children's upper outerwear with these features have been involved in a number of deaths and serious injuries from entanglement of the drawstrings with items such as playground slides, cribs, and school buses. The proposed rule would enhance understanding in the industry about how the Commission views such garments and would facilitate the process of obtaining the appropriate corrective action when such garments are found in commerce.

DATES: Submit comments by [INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2010-00__, by any of the following methods:

1. *Electronic Submissions.* Submit electronic comments to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. (To ensure timely processing of comments, the Commission is no longer directly accepting comments submitted by electronic mail (e-mail). The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.)

2. *Written Submissions.* Submit written submissions in the following ways:

- a. *FAX:* 301-504-0127.

- b. *Mail/Hand delivery/Courier* (for paper, disk, or CD-ROM submissions): Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received, including any personal information provided, may be posted without change to www.regulations.gov. Accordingly, we recommend that you

not submit confidential business information, trade secret information, or other sensitive information that you do not want to be available to the public.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov and insert the docket number, CPSC 2009-00__, into the "Search" box and follow the prompts.

FOR FURTHER INFORMATION CONTACT: *Technical information:*

Jonathan Midgett, Division of Human Factors, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301)504-7692, email jmidgett@cpsc.gov. *Legal information:* Harleigh Ewell, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301)504-7683; email hewell@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. *The hazard.* Drawstrings in children's upper outerwear can present a hazard if they become entangled with other objects [Ref. 6]. (Documents supporting statements in this notice are identified by [Ref. #], where # is the number of the reference document as listed below in section O of this notice.) Drawstrings in the neck and

hood areas of children's upper outerwear present a strangulation hazard when the drawstring becomes caught in objects such as playground slides. Drawstrings in the waist or bottom areas of children's upper outerwear can catch in the doors or other parts of a motor vehicle, thereby presenting a "dragging" hazard when the driver of the vehicle drives off without realizing that someone is attached to the vehicle. The injury data associated with drawstrings is discussed below in section D of this preamble.

2. *Previous industry actions to address the hazard.*

In 1994, at the urging of CPSC, a number of manufacturers and retailers agreed to modify or eliminate drawstrings from hoods and necks of children's clothing [Ref. 1]. In 1997, the American Society for Testing and Materials (now ASTM International) addressed the hazards presented by drawstrings on upper outerwear by creating a voluntary consensus standard, ASTM F 1816-97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear*, to prohibit drawstrings around the hood and neck area of children's upper outerwear in sizes 2T to 12, and also to limit the length of drawstrings around the waist and bottom in sizes 2T to 16 to 3 inches outside the drawstring channel when the garment is expanded to its

fullest width. For waist and bottom drawstrings in sizes 2T to 16, toggles, knots, and other attachments at the free ends of drawstrings were prohibited. Further, waist and bottom drawstrings in sizes 2T to 16 that are one continuous string were required to be bartacked, *i.e.*, stitched through to prevent the drawstring from being pulled through its channel. The ASTM standard is copyrighted, but can be viewed as a read-only document, only during the comment period on this proposal, at [insert link], by permission of ASTM.

The Commission's staff has estimated that the age range of children who would be likely to wear garments in sizes 2T to 12 is from 18 months to 10 years [Ref. 4]. The age range of children who would be likely to wear garments in sizes 2T to 16 is 18 months to 14 years.

3. *Previous actions by the Commission to address the hazard.* On July 12, 1994, the Commission announced a cooperative effort with a number of manufacturers and retailers that agreed to eliminate or modify drawstrings on the hoods and necks of children's clothing [Ref. 1].

In February 1996, the Commission issued guidelines [Ref. 8] for consumers, manufacturers, and retailers that incorporated the requirements that became ASTM F 1816-97.

On May 12, 2006, the CPSC's Office of Compliance posted a letter [Ref. 2], on CPSC's website, to the manufacturers, importers, and retailers of children's upper outerwear, citing the fatalities and urging them to comply with the industry standard, ASTM F 1816-97. The letter explained that the CPSC staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury under section 15(c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1274(c). Recalls of noncomplying products that were toys or other articles intended for use by children could be sought under that section. (At that time, section 30(d) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2079(d) (2007) provided that a risk that could be regulated under the FHSA could not be regulated under the CPSA unless the Commission, by rule, found that it was in the public interest to regulate the risk under the CPSA. Thus, at that time, a recall would be sought under the authority of section 15 of the FHSA, rather than the similar recall authority under section 15 of the CPSA, discussed below in section A.4 of this preamble. Section

30(d) of the CPSA was repealed by the CPSIA, so that now a recall of a consumer product that is a toy or other article intended for use by children can be sought either under the CPSA, without a finding by rule that it is in the public interest to do so, or under the FHSA.)

The 2006 letter also indicated that the Commission would seek civil penalties if a manufacturer, importer, distributor, or retailer distributed noncomplying children's upper outerwear in commerce and failed to report that fact to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b) (discussed below in section A.4 of this preamble). From 2006 through 2009, the Commission's staff participated in 78 recalls of noncomplying products with drawstrings and obtained a number of civil penalties based on the failure of firms to report the defective products to CPSC as required by section 15(b) of the CPSA [Ref. 4].

4. *Section 15 of the CPSA.* Section 15 of the CPSA authorizes the CPSC to order corrective actions regarding substantial product hazards. Section 15(a)(2) of the CPSA defines "substantial product hazard" as a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of

injury to the public. The term "defect" is discussed in 16 CFR 1115.4.

Section 15(b)(3) of the CPSA (15 U.S.C. 2064(b)(3)) requires manufacturers, distributors, and retailers of a consumer product or other product over which the Commission has jurisdiction under any act enforced by the Commission (other than motor vehicle equipment as defined in 49 U.S.C. 30102(a)(7)), and which is distributed in commerce, to immediately inform the Commission if they obtain information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard under section 15(a)(2) of the CPSA. After giving interested persons an opportunity for a hearing, the Commission may require manufacturers, distributors, and retailers, if in the public interest, to: (1) give notice of the defect to various persons; (2) repair the product; or (3) refund the purchase price. 15 U.S.C. 2064(c) and (d).

Section 15(j) of the CPSA authorizes the Commission to issue rules establishing that defined characteristics of a consumer product that present a risk of injury shall be deemed to be a substantial product hazard if: (1) the characteristics are readily observable; (2) the characteristics have been addressed by voluntary standards;

(3) such standards have been effective in reducing the risk of injury; and (4) there is substantial compliance with such standards. These requirements are discussed separately in sections B through E of this preamble below.

B. The defined characteristics

As explained above in section A.4 of this preamble, the requirements of the ASTM F 1816-97 voluntary standard to reduce the risk of strangulation or being dragged by a vehicle due to neck, hood, waist, or bottom drawstrings define the characteristics that present the substantial product hazard associated with garments subject to that standard.

C. The characteristics are readily observable

In the case of drawstrings, all of the requirements of the ASTM voluntary standard can be evaluated with simple physical manipulations of the garment, simple measurements of portions of the garments, and unimpeded visual observation. The Commission concludes that the product characteristics defined by the voluntary standard are readily observable. (The preceding is not intended to be a definition of "readily observable," and more complicated or difficult actions to determine the presence or absence of

defined product characteristics also may be consistent with "readily observable." The Commission intends to evaluate this issue on a case-by-case basis.)

D. The voluntary standard has been successful in reducing the risk of injury.

1. *Hood and neck drawstring incidents.* The CPSC staff examined reports of fatalities and injuries for the age groups whose upper outerwear is subject to the voluntary standard [Ref. 6]. CPSC staff is aware of 56 reports of neck and hood drawstring entanglements between January 1985 and September 2009. Eighteen (32%) of these entanglements were fatal. The majority of the entanglements involved a neck or hood drawstring becoming snagged on a slide. Also, in several incidents, a neck or hood drawstring became entangled on parts of a crib. Of the 38 nonfatal neck or hood drawstring incidents involving children in the age range of 18 months to 10 years (the ages estimated to be associated with sizes 2T to 12), 30 incidents resulted in an injury. In the remaining eight incidents, the neck or hood drawstring became snagged or entangled but no injury was reported. The year with the highest number of reported fatalities (three) was 1994. The 3 years with the highest number of reported incidents

(including both fatal and nonfatal incidents) were 1992 (11), 1993 (9), and 1994 (9). Slides were associated with 10 of the fatalities, 26 of the injury incidents, and all 8 of the no-injury incidents (jackets or sweatshirts snagged by a hood or neck drawstring on playground slides prior to the child's subsequent escape or rescue).

The specification for drawstrings on children's upper outerwear, ASTM F 1816-97, was approved in June 1997 and published in August 1998. CPSC staff is aware of 12 fatalities and 33 nonfatal incidents during the 12 years (1985-1996) prior to the ASTM standard that involved children aged 18 months to 10 years of age where the neck or hood string of upper outerwear became entangled. On average, this resulted in one reported fatality and about three reported nonfatal incidents a year. In the 8 years for which reporting is complete (1999 through 2006) after ASTM F 1816-97 was published, CPSC staff received reports of two fatal and two nonfatal neck or hood drawstring incidents. (The years 1997 and 1998 are omitted from this comparison because that was the transition period during which the ASTM standard was developed and published.) On average, this is approximately one fatality every 4 years and about one nonfatal entanglement every 4 years. For the years for which reporting is complete, the data show a

reduction in the annual average number of reported fatalities after the ASTM standard of 75 percent. The corresponding reduction in the annual average number of reported non-fatal entrapments is 91 percent. It should be noted that CPSC staff continues to receive incident reports for the years 2007 through 2009. CPSC staff is aware of three fatalities and no non-fatal incidents since January 2007. When reporting for 2007-2009 is complete, the percent reduction in the annual average number of reported fatalities associated with neck/hood drawstrings will be at most 55 percent if no additional fatal incidents are reported..

2. *Waist and bottom drawstring incidents.* Between January 1985 and September 2009, CPSC staff is aware of 27 entanglement incidents associated with a waist or bottom drawstring on children's upper outerwear [Ref. 6]. Of these 27 incidents, 8 (30%) were fatal, 11 (41%) resulted in injuries, and 8 (30%) involved snags or entanglements that did not result in an injury. All eight fatalities identified with waist and bottom drawstrings (seven involving a bus and one involving a slide) occurred in the years 1991 through 1996. From 1991 to 1996, there were 19 waist and bottom drawstring incidents, of which 13 involved buses (7 fatalities and 6 nonfatal incidents). CPSC staff

is not aware of any bus-related drawstring incidents after 1996. There were seven waist and bottom drawstring incidents from 1999 to the present (all nonfatal), two of which involved children caught on car doors. For years in which reporting is considered complete, the number of reported fatalities associated with waist and bottom drawstrings have fallen from the eight reported fatalities between 1985 and 1996 to zero since adoption of the ASTM voluntary standard in 1997. For the corresponding periods for which reporting is complete (1985 through 1996 and 1999 through 2006), reported nonfatal injuries fell from 11 in 12 years to 6 in 8 years. These data suggest that after the ASTM standard was adopted, for waist and bottom drawstrings the annual average of reported fatalities fell by 100 percent and the annual average of reported nonfatal incidents fell by about 18 percent. Reporting is ongoing for 2007-2009. CPCS staff is not aware of any reported fatalities for this time. Staff has one report of a non-fatal incident occurring between 2007-2009. These numbers may change in the future.

3. *Effectiveness of the voluntary standard.* To the extent that reductions in deaths and injuries are due to compliance with the voluntary standard, either by eliminating drawstrings altogether or by making them meet

the requirements of the standard, the effectiveness of the voluntary standard is likely to be higher than the reductions in reported deaths and injuries indicate. This is because many items of upper outerwear manufactured before the industry widely adopted the ASTM standard, and that had drawstrings that did not comply with that standard, probably remained in use long after the standard was adopted. Based on the injury data, the Commission concludes that the ASTM voluntary standard has been effective in reducing the risk of injury from children's upper outerwear with drawstrings.

E. There is substantial compliance with the voluntary standard.

In the context of the findings needed for a rule under section 15(j) of the CPSA to deem product characteristics regulated by a voluntary standard to be a substantial product hazard, "substantial compliance" refers to the extent the industry manufacturing and distributing the product complies with the voluntary standard. The issue is what degree of compliance will be deemed "substantial" in a particular situation. Neither section 15(j) of the CPSA nor the legislative history of the CPSIA (which amended the CPSA to add paragraph (j) to section 15 of the CPSA)

defines or explains what constitutes substantial compliance.

The Commission notes, however, that the term "substantial compliance," which is used in section 15(j) of the CPSA, also appears elsewhere in the CPSA, as well as in the Federal Hazardous Substances Act ("FHSA") and the Flammable Fabrics Act ("FFA"), in the context of whether the Commission can issue a mandatory rule addressing a risk that also is addressed by a voluntary standard. Because the provisions in the FHSA and FFA relating to substantial compliance are basically identical to those in the CPSA, only the CPSA is referenced in the following discussion.

Sections 7 and 9 of the CPSA prohibit the Commission from issuing a consumer product safety rule if there is a voluntary standard that passes a two-pronged test: (1) If the voluntary standard were universally complied with, it would adequately reduce, or eliminate, the unreasonable risk of injury that would be addressed by the rule; and (2) there will be substantial compliance with the voluntary standard. Failure of a voluntary standard to meet either prong of this test allows the Commission to issue a mandatory standard. The use of the concept of "substantial compliance" as a finding that can determine whether a mandatory consumer product safety rule can be issued will

be referred to in this preamble as the "rulemaking context."

The most comprehensive explanation of the Commission's views on substantial compliance in the rulemaking context is in the findings the Commission made in issuing the Safety Standard for Bunk Beds, 16 CFR Parts 1213, 1500, and 1513. Those findings are codified in appendices to 16 C.F.R. parts 1213 and 1513 and state, in relevant part, that the Commission does not believe that there is any single percentage of conforming products that can be used in all cases to define "substantial compliance." Instead, the percentage must be viewed in the context of the hazard the product presents, and the Commission must examine what constitutes substantial compliance with a voluntary standard in light of its obligation to safeguard the American consumer.

The findings in the rulemaking for bunk beds discuss a number of factors that the Commission should consider in the rulemaking context in determining whether there is substantial compliance. Factors that may influence the Commission to conclude that a mandatory standard is needed and that there is not substantial compliance include that:

- the risk is severe;
- no intervening action is required to create the risk;

- the risk targets a vulnerable population, such as children;
- the product has a long life and thus might be passed on to other children; and
- the product can be made relatively easily by very small companies.

See, e.g., Appendix to 16 CFR part 1213.

In the context of a rule under section 15(j) of the CPSA, the same factors would argue that the Commission should find substantial compliance, in order that the public be protected by the issuance of the rule.

Table 1 (below) shows information about the CPSC recalls for the years 2006 through 2009. The number of cases related to recalls of children's upper outerwear garments with drawstrings numbered 78 for that period, involving about 2 million units.

The number of recalls in 2008 and 2009 was more than the number of recalls in 2006 and 2007; however, the annual average number of outerwear garments recalled in 2006 and 2007 (about 650,000) was about 75 percent greater than the annual average number recalled in 2008 and 2009 (about 377,000).

Table 1
CPSC Office of Compliance Recalls
Drawstrings on Children's Upper Outerwear
2006 - 2009

Year	Number of Recall Cases	Number of Units of Upper Outerwear Recalled
2006	17	676,597
2007	14	626,172
2008	24	227,868
2009	23	526,193
Total	78	2,056,830

Source: Communication from CPSC Office of Compliance, March 18, 2010

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

As explained earlier in section A.2 of this preamble, the voluntary standard applies to sizes 2T to 12 for neck and hood drawstrings and sizes 2T to 16 for drawstrings at

the waist and bottom of upper outerwear. Information available to CPSC's staff indicates that a child's age generally matches the child's clothing size or is a year or two below the clothing size [Ref. 4]. For example, a child 12 years old might wear a size 12 garment or a size 14. Similarly, for smaller sizes, children who are as young as 18 months can be wearing size 2T clothing. Thus, the ages of children wearing size 2T to 12 (the sizes covered by the voluntary standard for upper outerwear with hood or neck drawstrings) would be 18 months to 10 years. The ages of children typically wearing size 2T to 16 (the sizes covered by the voluntary standard for upper outerwear with waist or bottom drawstrings) would be 18 months to 14 years.

For each of the years 2006 through 2009, the population of children of ages 18 months to 10 years was about 38 million and the population of children of ages 18 months to 14 years was approximately 55 million [Refs. 3, 4].

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

information is provided [Ref. 1]. However, because one way to comply with the voluntary standard is to eliminate drawstrings entirely, the garments to which the voluntary standard applies include all children's upper outerwear in the specified sizes, not just those with drawstrings.

Given children's growth patterns, it may be that, on average, at least one new piece of upper outerwear is purchased each year for each child. If so, then sales of children's upper outerwear could total the population of children who wear children's sizes 2T to 16, or at least 55 million.

Given these assumptions, and assuming that all violative items of children's upper outerwear were recalled in the years 2006 through 2009, it would appear that the percentage of children's upper outerwear garments sold in those years that complied with the drawstring requirements of ASTM F 1816-97 was in the high-90-percent range. While the number of recalled units in the years 2006 through 2009 totaled about 2 million units, the number of units sold during those 4 years, under the assumptions above, totaled 220 million. Thus, for the period 2006 through 2009, the units recalled by CPSC would account for about 1 percent of all units sold. In other words, given the assumptions noted, there was about 99 percent compliance with the

voluntary standard. Even if these assumptions are not entirely accurate, the Commission concludes that the compliance with ASTM F 1816-97 is very high and constitutes substantial compliance as that term is used in section 15(j) of the CPSA.

F. Size and Age Determination Issues

Children's upper outerwear that is labeled with a size in the 2T to 16 numerical size range clearly would be a garment subject to the ASTM F 1816-97 standard. In many cases, however, the garment's label may lack a numerical size, instead using a "small (S), medium (M), or large (L)" sizing system. It is fairly obvious when clothing is small enough for younger children and therefore would be included in the sizes specified in the ASTM standard. In contrast, it is not always apparent which non-numerical sizes correspond to the sizes at the upper end of the ranges in the standard, that is, size 12 and size 16, because styles and sizing systems vary. To determine which of these designations would be equivalent to sizes 2T to 16, the Commission's staff searched internet sites to locate clothing size charts in which firms link children's non-numerical sizes with numerical sizes [Ref.7]. All of the charts that were located, 31 of which were for girls'

apparel and 29 for boys' apparel, were included in the review. For each firm, letter sizes were recorded for boys' and girls' sizes 10 through 18 to explore the overlap in letter sizes one size below and one above the 12 and 16 endpoints in the standard. The number of firms adopting each size equivalence is presented below.

Table 2--Number of Firms by Number and Letter Size Equivalency

	<u>Girls</u>					<u>Boys</u>				
	<u>S</u>	<u>M</u>	<u>L</u>	<u>XL</u>	<u>XXL</u>	<u>S</u>	<u>M</u>	<u>L</u>	<u>XL</u>	<u>XXL</u>
10	1	23	7			1	21	7		
12		17	14				17	11	1	
14			21	10			1	19	8	1
16			9	17	1			15	9	
18				9	1			1	16	2

As can be seen in the table, firms vary in how they define those sizes. For example, although most firms equate children's sizes 10 with Medium, some equate size 10 with Small (S) and some with Large (L).

To increase the likelihood that as many products as possible that are subject to the ASTM standard will be included in the applicable size definition while minimizing the overlapping inclusion of products that are not subject

to the ASTM standard, the Commission proposes that non-numerical equivalencies for sizes 12 and 16 be based on the size equivalency that is (1) used by a substantial percent of children's apparel firms and (2) does not exclude a substantial percent of firms at a higher size equivalency.

For example, for girls' size 12 apparel, 55 percent of the size equivalencies shown in the chart above equate size 12 to size Medium. However, if Medium and smaller is selected as equivalent to size 12 and smaller, then another 45 percent of size equivalencies (in the Large category) are excluded. Therefore, to ensure that products covered by the standard are included, it appears to be more appropriate to select Large as the upper limit size equivalency for size 12 girls' upper outerwear. For boys size 12, 59 percent of the size equivalencies equate size 12 to Medium, but if that size equivalency is selected, then another 38 percent of size equivalencies (in the Large category) are excluded. Thus, it appears more appropriate to select Large as the upper limit size equivalency for size 12 boys' upper outerwear. While there is another data point showing size 12 equivalent to XL, it would constitute only 3 percent of equivalencies, and therefore it would be possible that products not covered by the standard would be included. Thus, it does not appear reasonable to include

that size. Using this approach and based on the table above, the Commission proposes that boy's and girls' size Large (L) should be defined as size 12 and that boys' and girls' sizes Extra-Large (XL) be defined as equivalent to size 16.

The proposed rule also would declare that the number and letter size-equivalency system used by a particular firm can, at the Commission's option, be used to determine the equivalency of that firm's sizes to the numerical system.

In cases where garment labels give a range of sizes, if the range includes any size that is subject to ASTM F 1816-97 the garment will be considered subject, even if other sizes in the stated range, taken alone, would not be subject. For example, a coat sized 12-14 remains subject to the prohibition of hood and neck area drawstrings, even though the ASTM standard prohibits head and neck drawstrings only in garments up to size 12. On the other hand, a size 13-15 coat would not be considered to be within the scope of the ASTM standard's prohibition of neck and hood drawstrings, but it would be subject to the ASTM standard's requirements for waist or bottom strings.

To address garments for which the lettered sizing system sizes given above are insufficient to determine

whether an item of upper outerwear is equivalent to sizes 2T to 16, the Commission's staff considered the possibility of determining garment equivalency on the basis of anthropometric data or a market survey of the actual size of garments marked 2T to 16. It was determined that such efforts were not feasible due to the vagaries of fashion and the varied purposes served by outerwear (e.g., how many layers of clothing will be worn under the garment). The Commission invites comments on how to determine the equivalency of unlabeled or ambiguously labeled garments to sizes 2T to 16.

In cases where the equivalency of a garment's size to the relevant size in the 2T to 16 system is not readily apparent, the Commission's staff will assemble evidence on that issue. The Commission concludes that, once equivalency has been established, the existence of any final rule under section 15(j) of the CPSA applicable to the product will obviate any need for the staff to present additional evidence to establish that the product contains a defect that presents a substantial risk of injury to the public.

G. Description of the Proposed Rule

Elsewhere in this issue of the FEDERAL REGISTER, the Commission is publishing a proposed rule to establish a new part 1120, titled, "Substantial Product Hazard List" which would codify the Commission's determinations that certain consumer products or classes of consumer products have characteristics whose existence or absence presents a substantial product hazard. Products that are determined in rules issued under section 15(j) of the CPSA to present a substantial product hazard, such as the rule proposed in this notice for drawstrings, would be listed in a new § 1120.3.

This proposed rule for drawstrings would create a new § 1120.3(b)(1) to specify that items of children's upper outerwear that are subject to ASTM F 1816-97, but that do not comply with it, are substantial product hazards under section 15(a)(2) of the CPSA. The proposal also would create a new § 1120.2(c) to define a "drawstring" as "a non-retractable cord, ribbon, or tape of any material to pull together parts of outerwear to provide for closure."

To facilitate determining which garments that are sized under a sizing system other than the numerical system (2T to 16) would be equivalent to sizes 2T to 16, proposed § 1120.3(b)(2)(i) would provide that garments in girls'

size Large (L) and boys' size Large (L) are equivalent to size 12 and proposed § 1120.3(b)(2)(ii) specifies that garments in girls' size Extra-Large (XL) and boys' size Extra-Large (XL) are equivalent to size 16.

Proposed § 1120.3(b)(2)(iii) would provide that if a garment is labeled for a range of sizes, the garment would be considered subject to ASTM F 1816-97 if any size within the range is subject to ASTM F 1816-97. Proposed § 1120.3(b)(2)(iv) would provide that, in order to fall within the scope of § 1120.3(b)(2)(i) through (iii), a garment need not state anywhere on it, or on its tags, labels, package, or any other materials accompanying it, the term "girls" or the term "boys" or whether the garment is intended for girls or boys. In addition, proposed § 1120.3(b)(2)(v) would provide that a size may be considered equivalent to the 2T to 16 range if a manufacturer, importer, distributor, or retailer has stated that it is equivalent. Last, proposed § 1120.3(b)(vi) would state that the Commission may use any other evidence that would tend to show that an item of children's upper outerwear is a size that is equivalent to sizes 2T to 16.

H. Certification

The Commission has received inquiries about whether a product that is subject to a rule under section 15(j) of the CPSA will have to be tested and certified as required by section 14(a) of the CPSA. The answer to that question is "no." Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other act enforced by the Commission must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product or on a reasonable testing program or, for children's products (those designed or intended primarily for children 12 years of age or younger), on tests by a third-party conformity assessment body (also known as a "third-party laboratory") recognized by the Commission. Under section 14(a) of the CPSA, the only type of rule *under the CPSA* that can trigger the requirement for testing and certification is a "consumer product safety rule." Section 3(a)(6) of the CPSA defines a "consumer product safety rule" as "a consumer products safety standard described in section 7(a) [of the CPSA] or a rule under [section 8 of the CPSA] declaring a consumer product a banned hazardous product." A rule under section 15(j) of the CPSA does not fit into either category, so products

subject to a rule under section 15(j) of the CPSA are not, for that reason, subject to the testing and certification requirements of section 14(a) of the CPSA. The Commission is aware that section 11(g)(1)(A) of the CPSA, 15 U.S.C. 2060(g)(1)(A), relating to judicial review, refers to a rule issued under section 15(j) of the CPSA as a "consumer product safety rule." However, this provision is limited to judicial review situations and, therefore, does not equate rules under section 15(j) of the CPSA with consumer product safety rules. (Although a rule under section 15(j) of the CPSA does not trigger the requirement for testing and certification, products subject to a rule under section 15(j) of the CPSA may need to be tested and certified if they are subject to other CPSC requirements, such as flammability requirements, the lead content requirements in section 101 of the CPSIA, or the phthalate content requirements of section 108 of the CPSIA.)

The Commission understands that retailers may be demanding certification tests to all CPSC requirements applicable to children's products. The discussion above makes it clear that certification to this proposed rule is not required by federal law or this regulation. While certification is not required by law, retailers still have a responsibility to report to the CPSC under section 15(b)

with regard to this rule. The Commission believes that because the retailer has an independent reporting obligation to the Commission, it should not be permitted to seek indemnity for a penalty assessed because of its own failure to report. The Commission would consider an agreement to indemnify a retailer for any civil penalties assessed for a failure to report to be void as against public policy. The Commission seeks comment on this position.

I. Preemption

The Commission has received inquiries about whether a rule under section 15(j) of the CPSA would have the effect of preempting State laws or regulations that are not identical to the requirements of the voluntary standard. Under section 26(a) of the CPSA, 15 U.S.C. 2075(a), if a "consumer product safety standard under [the CPSA]" is in effect and applies to a product, no State or political subdivision of a State may either establish or continue in effect a requirement dealing with the same risk of injury unless the State requirement is identical to the Federal standard. (Section 26(c) of the CPSA provides that States or political subdivisions of States may apply to the Commission for an exemption from this preemption under certain circumstances.) As discussed in the preceding

section H of this preamble, a rule under section 15(j) of the CPSA is not a "consumer product safety standard." Accordingly, the preemptive effect of section 26(a) of the CPSA does not apply to a rule under section 15(j) of the CPSA.

J. Paperwork Reduction Act

This proposed rule would not impose any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501-3520.

K. Environmental Considerations

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

L. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), 5 USC 601-612, requires agencies to consider the impact of proposed rules on small entities, including small businesses. For the reasons given immediately below, the Commission concludes that the proposed rule will not have a significant impact on a substantial number of small entities.

Aggregate information about the market for children's outerwear is not readily available; these types of garments are not reported separately by the U.S. Department of Commerce. Nearly all manufacturers of these garments would be considered small businesses under the Small Business Administration (SBA) guidelines applicable to such enterprises (fewer than 500 employees). According to SBA data for 2006, of 9,343 U.S. firms that manufactured "cut and sew" apparel, 9,286, or 99.4 percent, had fewer than 500 employees, and more than 80 percent had fewer than 20 employees. Firms that manufacture children's outerwear would be a subset of the cut and sew manufacturing category, but these statistics would support the assumption that nearly all are small businesses. SBA firm-size data for clothing retailers also show that nearly all of these firms would be considered to be small businesses.

The Commission's staff estimates that a very high percentage of small businesses that manufacture or sell children's upper outerwear already sell only garments that comply with ASTM F 1816-97. Therefore, these firms would not be adversely affected if children's upper outerwear garments with drawstrings are added to the list of products that present a substantial product hazard. Also, the Commission's Office of Compliance and Field Operations already considers children's upper outerwear with hood or neck area drawstrings that are subject to, but do not comply with, ASTM F 1816-97 to be a substantial product hazard and would seek recalls of such products regardless of whether they were added, by rule, to the list of substantial product hazards under Section 15(j) of the CPSA. Finally, conformance to ASTM F 1816-97 is achieved for many garments distributed in commerce by simply eliminating drawstrings from the manufacturing process with minimal or no increase in resulting production costs.

M. Effective Date

The Commission proposes that any final rule based on this proposal become effective 30 days after its date of publication in the FEDERAL REGISTER. After that date, all items of children's upper outerwear that are subject to,

but do not comply with, the ASTM F 1816-97 will be deemed to be substantial product hazards regardless of the date they were manufactured or imported.

N. Request for Comments

The Commission invites interested persons to submit their comments to the Commission on any aspect of the proposed rule. Comments should be submitted as provided in the instructions in the **ADDRESSES** section at the beginning of this notice.

O. References

1. Press Release: "CPSC Works With Industry To Remove Drawstring Hazard," *News from CPSC*, July 12, 1994.

2. Letter from John Gibson Mullan, Director, CPSC's Office of Compliance, to Manufacturers, Importers and Retailers of Children's Upper Outerwear, May 19, 1996.

3. Population estimates based on data from the Bureau of the Census, U.S. Department of Commerce, www.census.gov/popest/national/asrh/NC-EST2008/NC-EST2008-01.xls and from the National Center for Health Statistics, Centers for Disease Control and Prevention, www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_09.pdf .

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

5. CPSC staff memorandum, "Inclusion of Drawstrings on Children's Outerwear on the List of Substantial Product Hazards: Small Business Considerations," from Charles L. Smith, Economist, Directorate for Economic Analysis, to Jonathan D. Midgett, Ph.D., Engineering Psychologist, Division of Human Factors, Leader, Children's Program Area Team, January 26, 2010.

6. CPSC staff memorandum, "Reported Frequencies of Fatal and Nonfatal Incidents Related to Drawstrings on Children's Upper Outerwear Between 1985 and 2009," from John Topping, Mathematical Statistician, Division of Hazard Analysis, to Jonathan Midgett, Children's Hazard Team Coordinator, January 25, 2010.

7. CPSC staff memorandum, "Recommendation to Deem Children's Upper Outerwear with Drawstrings a Substantial Product Hazard," from Jonathan D. Midgett, Ph.D., Children's Hazards Team Coordinator and Robert J. Howell, Assistant Executive Director, Office of Hazard

Identification and Reduction, to the Commission, April 20, 2010.

8. CPSC *Guidelines for Drawstrings on Children's Upper Outerwear*, September 1999.

List of Subjects in 16 CFR part 1120

Administrative practice and procedure, Clothing, Consumer protection, Infants and children, Imports, Incorporation by reference

For the reasons stated above, and under the authority of 15 U.S.C. 2064(j), 5 U.S.C. 553, and section 3 of Public Law 110-314, 122 Stat. 3016 (August 14, 2008), the Consumer Product Safety Commission proposes to amend 16 CFR part 1120 as follows:

PART 1120 - SUBSTANTIAL PRODUCT HAZARD LIST

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

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

2. Add a new § 1120.2(c) to read as follows:

§ 1120.2 Definitions.

* * * * *

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

Add a new § 1120.3(b) to read as follows:

§ 1120.3 Substantial product hazard list.

* * * * *

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

Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

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

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

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

(ii) Garments in girls' size Extra-Large (XL) and boys' size Extra-Large (XL) are equivalent to size 16. The fact that an item of children's upper outerwear with a waist or bottom drawstring is labeled as being larger than

Extra-Large (XL) does not necessarily mean that the item is not equivalent to a size in the range of 2T to 16.

(iii) In cases where garment labels give a range of sizes, if the range includes any size that is subject to a requirement in ASTM F 1816-97, the garment will be considered subject, even if other sizes in the stated range, taken alone, would not be subject to the requirement. For example, a coat sized 12 through 14 remains subject to the prohibition of hood and neck area drawstrings, even though this requirement of the ASTM standard only applies to garments up to size 12. A size 13 through 15 coat would not be considered within the scope of the ASTM standard's prohibition of neck and hood drawstrings, but would be subject to the requirements for waist or bottom drawstrings.

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

(v) The Commission may determine equivalency to be as stated in a manufacturer's (including importer's), distributor's, or retailer's statements of what sizes are

equivalent to sizes 2T to 16. A firm's statement of what sizes are equivalent to sizes 2T to 16 may not be used to show that the size of a garment is not equivalent to a size in the range of 2T to 16.

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

Dated: _____

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